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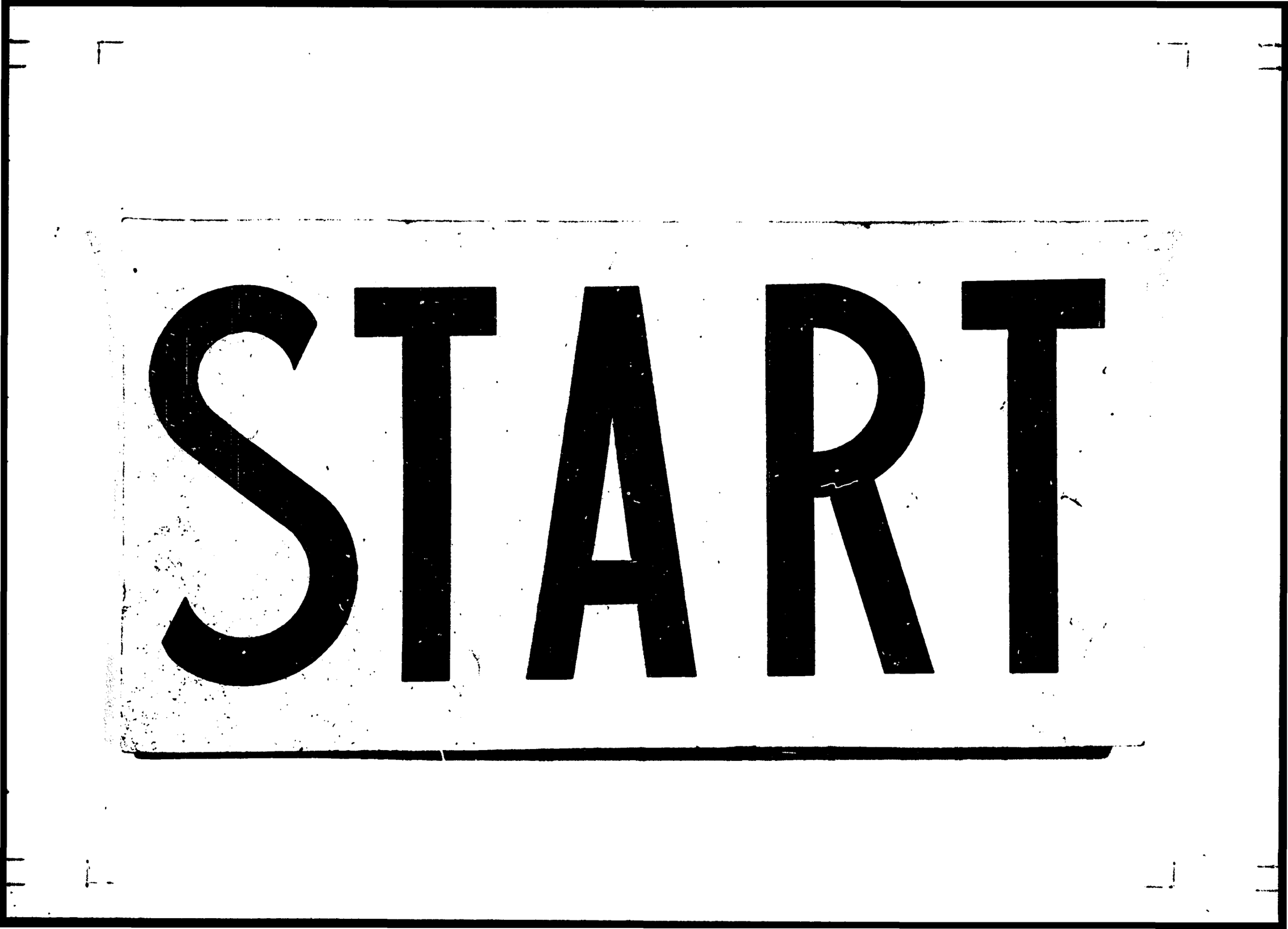
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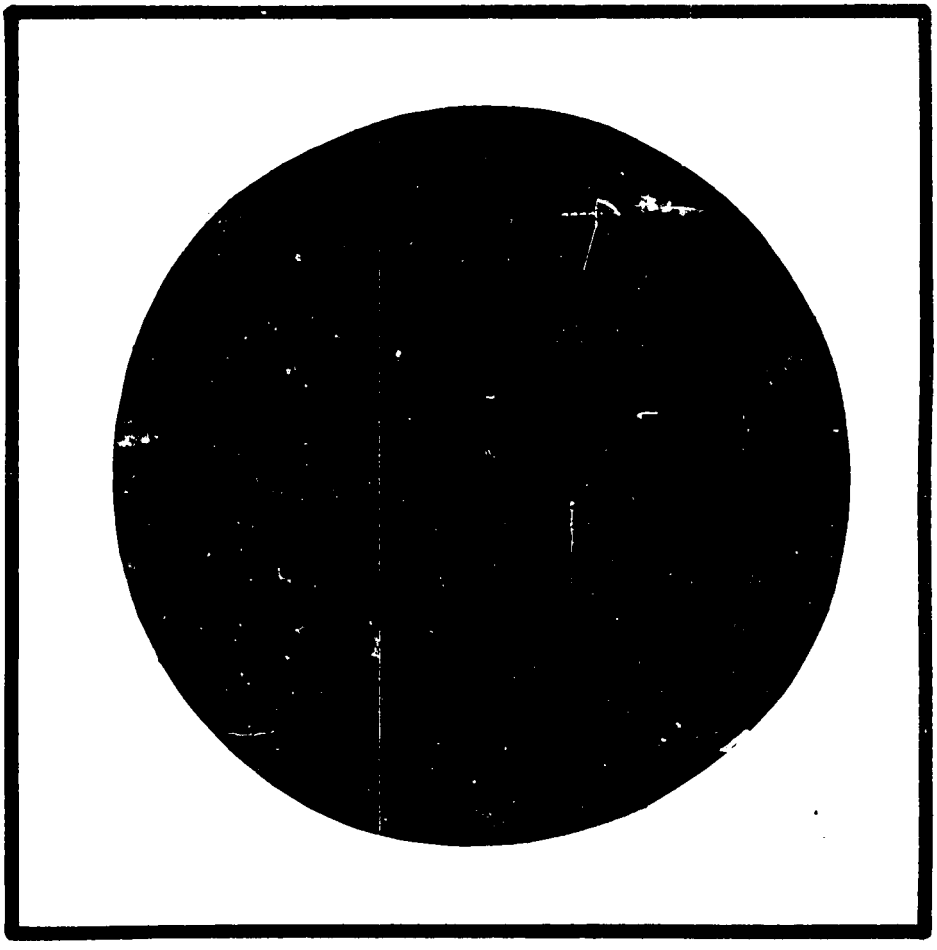

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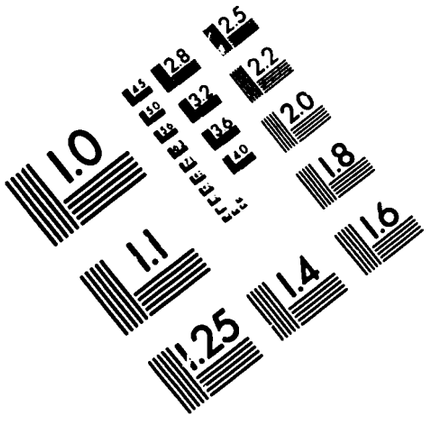

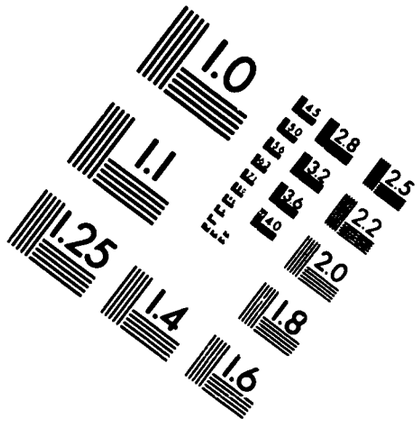

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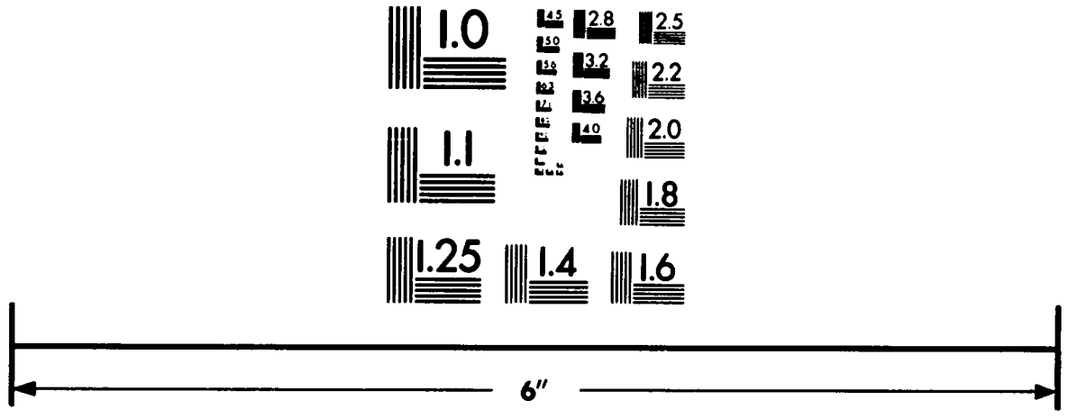

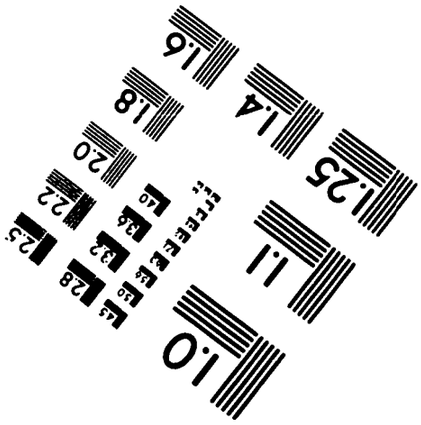

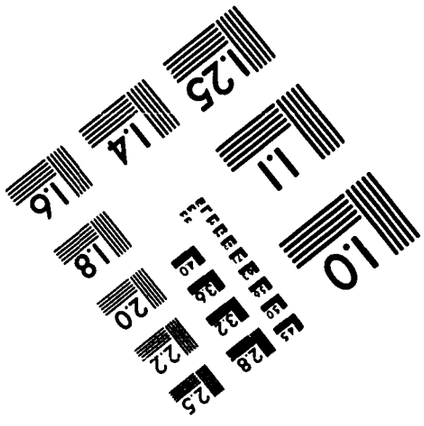

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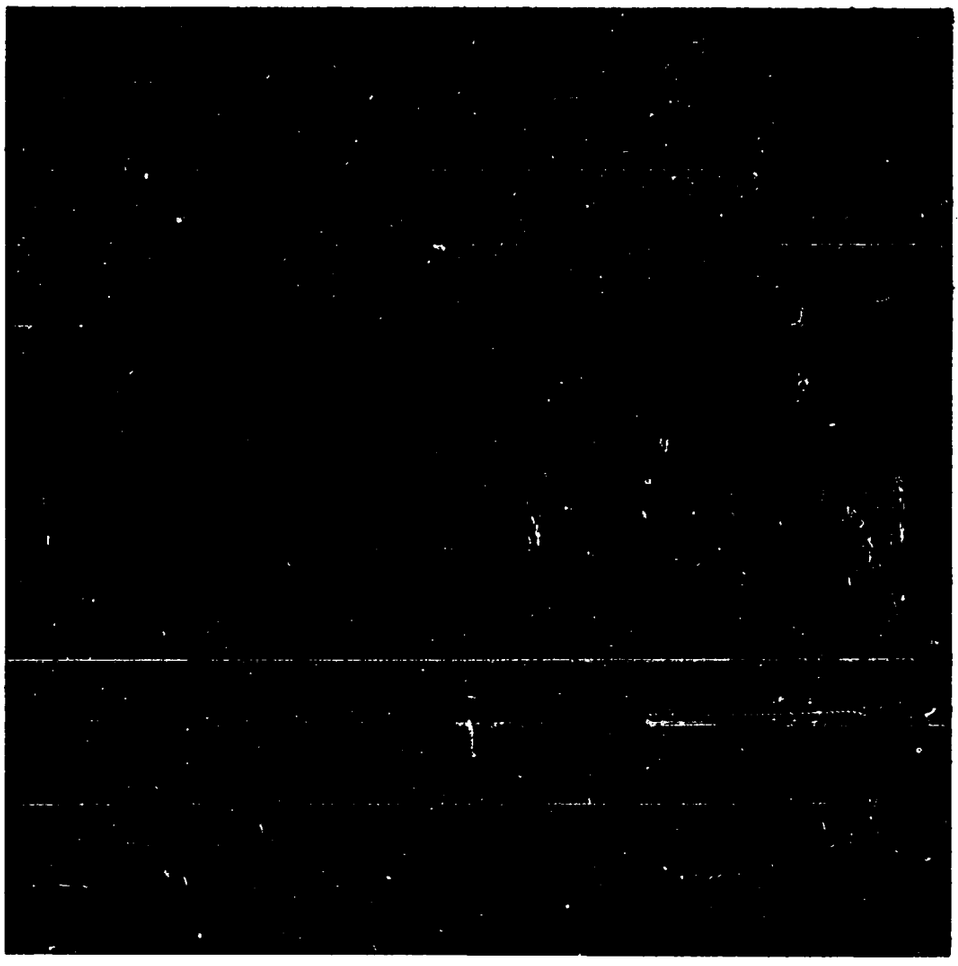

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MILITARY GOVERNMENT COURT

CASE RECORD

Pages 1340-1413

CASE NO. 000-50-136

PROSECUTOR Mr. Roth

*~~SUPREME~~ ~~INTERMEDIATE~~ MILITARY COURT
GENERAL

DEFENSE COUNSEL Mr. Welch
Howard Walker

INTERPRETERS Emily Powys-Cobb

PLACE Dachau, Germany

REPORTERS Sue McCulloch
Leona Mumedy
Eunice Hasdorff
Patricia Stewart
Mary Joan Fox

DATE 6 May 1947

WITNESSES
Hugo Brunner
Heribert Danboeck
Richard Ulmer
Hermann Giesler

ACCUSED Franz Auer et al

ADDRESS _____ SEX _____ AGE _____

	FIRST CHARGE	SECOND CHARGE
PLEAS		
FINDINGS		
PREVIOUS CONVICTIONS		

SENTENCE

IMPRISONMENT (TERM _____
(
(BEGINNING _____ 194_____

FINE AMOUNT _____
TO BE PAID BEFORE _____ 194_____
FURTHER TERM OF _____ IMPRISONMENT

CHARGE SHEET AND RECORD OF TESTIMONY ARE ANNEXED HERETO.

_____
SIGNATURE OF MEMBER OF COURT

REVIEW

ACTION OF REVIEWING AUTHORITY _____

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SIGNATURE OF REVIEWING AUTHORITY

*STRIKE OUT WORDS NOT APPLICABLE.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus FRANZ AUER, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 1 APRIL 1947

6 May 1947 Pages 1340 - 1413

TESTIMONY

Witnesses	Direct	Cross	Redirect	Recross	Court
HUGO BRUNNER		1340			1348
HERIBERT DARBOVEN	1353	1359	1364	1365	1365
RICHARD ULMER	1366	1373	1375		1376
HERMANN GIESLER	1378	1405			

EXHIBITS

No.	Description	Marked	Received in Evidence
D-38	Statement by Dr. Metzel	1352	1352
D-38-A	English translation of D-38	1352	1352
D-39	Certificate of discharge from prison	1369	1370
D-39-A	English translation of D-39	1369	1370
D-40	Discharge as a city official	1370	1370
D-40-A	English translation of D-40	1370	1370
D-41	Sheets from a magazine	1380	1381

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present; that all the defendants, with the exception of Jargas, are in court with their counsel; that the reporter and interpreter are here; and that the Government is represented.

HUGO BRUNNER, called as a witness by the defense, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

LAW MEMBER: Capt. Bachman, cross examination for the prosecution.

CROSS EXAMINATION

QUESTIONS BY CAPT. BACHMAN:

Q You say your relationship to Mr. Griesinger was what?

A I was his co-worker.

Q You worked under him, did you not?

A I worked together with him, and my superior was Hoffmann.

Q What was your position at the principal construction site, or the offices thereof?

A Mr. Griesinger, for the greater part, took care of the work that had to be done in the office; whereas I took care of the actual construction job going on at the construction site.

Q You were out at the construction site, were you, all the time?

A I had some office work to attend to myself.

Q Are you an engineer?

A Yes.

Q Is Mr. Griesinger an engineer?

A Yes.

Q Mr. Griesinger is not an administrative man, is he?

A No, he is an engineer.

Q So that there were two engineers both responsible directly to Mr. Hoffmann and not to each other, is that correct?

A Yes.

Q What was the division of duties between yourself and Mr. Griesinger out there?

A Like I said before, Griesinger t ok care of the engineering administration and took care of the technical correspondence and the telephone conversations in that connection; whereas I myself was mostly working at the main construction site.

Q What did you do at the main construction site?

A I had to check the work that was being done by the various firms under contract; that is, I had the technical control of the work.

Q And what did you say Mr. Griesinger had control of? Didn't you say he had control of the technical work?

A Griesinger had charge of this in the same manner, but he didn't have much time to go to the construction site, and that is why I was assigned to him as his assistant, and when there were new problems, we discussed them together.

Q But you were his assistant, weren't you?

A His co-worker.

Q Now, which was it, co-worker or assistant? You used the word assistant a moment ago and you used the word assistant yesterday on the stand. Were you or weren't you his assistant?

A I always emphasize that I was his co-worker.

Q Where was Mr. Griesinger's office?

A It was at the main construction site. I designated it on the map yesterday. It is the site marked with a cross.

Q But it was at the main construction site, wasn't it?

A It was at the main construction site, and like I showed yesterday and the way it is shown on the map, it was about two kilometers away from the railroad tracks.

Q But those railroad tracks were all part of the construction site, weren't they?

A Well, it was in the area of the main construction site, but it was located between the actual main construction site and the prison camp.

Q But this main construction site was several kilometers square, wasn't it?

A Not the main construction site.

Q What do you mean by the main construction site?

A The main construction site was just that place where the main construction project was to be built.

Q You mean just the airplane plant itself?

A Yes.

Q But this was a very large project which involved clearing a large number of trees and running a large number of railroad tracks in, and a gravel pit, etc., all was out there together, wasn't it?

A Yes.

Q And that was where Mr. Griesinger's office was, wasn't it?

A It was situated in this area.

Q Whereas Mr. Hoffmann's office was over at Ampfing, about five kilometers away, is that correct?

A In Ampfing, roughly four kilometers away.

Q Mr. Hoffman's office was set up to take care, I think you said, of either five or six different projects, isn't that correct?

A Yes.

Q Mr. Griesinger's office was set up to take care of the hauptbaustelle, was it not?

A Yes.

Q And he was in charge of that office, was he not?

A Yes.

Q And he spent all of his time down there at that particular office or going over the various works which came under that office, did he not?

A Yes.

Q He had nothing to do with these other projects which came under Mr. Hoffmann's office, did he?

A No.

Q So that if at a later date he was named as Mr. Hoffmann's deputy, so that he would have connection with these other projects, that would have been a promotion, wouldn't it?

A I can't imagine that he could have been made the deputy and at the same time have kept his position as construction leader.

Q And you can't imagine that Hoffmann could have named him as a deputy, because I think you said yesterday that Hoffmann had no confidence in Griesinger, wasn't that correct?

A Like I said yesterday, he had no confidence in Griesinger, and I can't imagine that he could have carried on his work at the office of the main construction site and at the same time carried on this other job in the office at Ampfing.

Q You are familiar with who made the appointments, and the relationships between these offices as they existed when you were there, are you not?

A I was only at this construction site for four months, and I was there as a soldier from the air force, and I was therefore not familiar with the customs prevailing in the OT.

Q If I tell you that Griesinger was, in fact, appointed as Hoffmann's deputy, would you say that you thought that came from Hoffmann himself or from higher authorit ?

A I can't say.

Q When you mentioned the various types of workers there, I believe you said there were free workers and there were concentration camp workers, is that correct?

A Free German labor, free foreign labor, and concentration camp labor.

Q Had the prisoner of war laborers come in when you left?

A Prisoners of war? No, we never had any.

Q That is, you never had any up until the time you left in the fall of 1944?

A I never heard anything about that.

Q You recall that when this underground factory was built, they first built two cement pedestals and then built a cement arch over that, isn't that correct?

A Yes.

Q As they built the pedestals, weren't the cement machines raised right along with the pedestals?

A I must explain this differently. The fundament was dug down 13 meters deep. The earth that was excavated was taken with cranes and made into a dam along the side, and on these dams were laid the railroad tracks in order to carry on the concrete job, so that the upper part of these railroad tracks were somewhat above the pedestals of these cement pedestals. It was necessary to construct these dams in order to build the pedestals in one process.

Q Mr. Brunner, will you get around to answering my question? Weren't the machines raised as the pedestals became higher in height?

A No.

Q You mean that the cement machines were always in the same position while these pedestals went up in height?

A Yes, but I must point out that I was only there as long as the ground work was being laid out with concrete.

Q So that if at a later date these machines were raised, and the height that this concrete had to be carried to was increased, you wouldn't know anything about that?

A I don't know that.

Q You told us about this circular that was put out regarding the beatings, and you told us, I think, that you had been hearing that there were beatings out there, is that correct?

A Yes.

Q By whom were these beatings that you heard about out there?

A I said that I had seen where one German laborer beat a prisoner, and that in consequence of this the circular was put out.

Q But you also told us that you heard about other beatings, both before and after, didn't you?

A I didn't say that I had heard about any beatings before, but it was about five weeks later, or it could have been a little less, after this first circular, I again heard rumors that beatings had been resumed.

Q When you said you again heard rumors that they had been resumed, you mean you heard rumors that there had been beatings before, don't you?

A I didn't say I had again heard rumors.

Q You mean that this circular came out because there was one beating?

A Yes.

Q Why wouldn't it have been easier to correct the one man who did the beating rather than put out the circular, if there was only one beating you ever heard of?

A In order to avoid such incidents being repeated, it was the proper procedure to inform everyone.

Q Didn't you say yesterday, in exactly these words, "The beatings stopped for four or five weeks?"

A Nothing was heard during this period. One didn't hear anything about beatings.

Q And yet you heard of only one beating before, and you used the expression that "the beatings stopped for four or five weeks," is that what you are telling us?

A I didn't say that I had heard this one case. I said t at I had seen it.

Q I have asked you whether you heard of other cases before the circular came out?

A No.

Q You said that in four or five weeks you heard that the beatings had started again, isn't that it?

A Not again, I heard rumors that there had been beatings.

Q And by whom were these beatings taking place, according to the rumors?

A I think that a rumor is just a general statement, and it was just said that beatings had occurred, but one can't place individual guilt through a rumor.

Q I am not asking you to place individual guilt; I am asking you what the rumor said, that is, who the rumor said was doing the beating?

A Those were OT construction leaders.

Q Now, you say that the physical condition of the older people looked bad, is that it?

A No, I said that the condition of the older people showed that they were less able to perform work.

Q But what about the condition of the younger people? Tell us about that.

A Yesterday, I stated that the condition of the younger people varied, but that for the most part they looked well and also strong.

Q And how many people did you see during the four months that you were there, who were obviously suffering from malnutrition?

A During my time I could not say that there were any people who were completely undernourished.

Q You saw no one in the four months that you were there who looked badly undernourished? - Is that what you want to tell us?

A There were some very thin people there, but in spite of this they still working very well.

Q You mean they were kept working very well, isn't that what you mean?

A Them?

Q These people you have just told us about who were very thin?

A All of them had to work.

Q And some of those people who were very thin, went back to camp and died while you were there, from starvation and over-work, isn't that right?

A I never heard anything about that

Q You never heard of anyone starving to death, or by over-work in the camps during the time you were there?

A No. We had no connection with these camps.

Q You never heard of anything that went on in the camps?

A No.

Q Mr Brunner, were you familiar with the policy of the Reich towards Jews?

A Yes.

Q What was that policy?

A It was the policy to subjugate the Jews, and not allow them equal rights with the others.

Q Also to subjugate them and exterminate them, isn't that right?

(BRUNNER-cross)

A I know nothing about the policy to exterminate them, I only knew they were subjugated. After the war, during the time that I was a prisoner of war, and in the hospital, this is after the war, I heard about all the brutal treatment they received in places like Auschwitz.

Q And these very thin people you told us about, who had to work on the construction site, just as everybody else had to work on that construction site, you did not consider that brutal treatment at that time, is that correct?

A As I already stated yesterday, consideration was made for the weaker people also at carrying cement: the ones who were less capable of working hard were only given half a sack of cement.

Q But you said they were all made to carry cement, even these people who were very thin?

A All of them had to work, but I had to take into account the weaker ones, and they had less.

CAPT.BACHMAN: That is all.

PRESIDENT: Any redirect examination by counsel for the accused?

DR. EGGELHORN: No further questions.

EXAMINATION BY THE COURT:

QUESTIONS BY PRESIDENT:

Q I believe you stated yesterday that the guarding of these prisoners was exclusively done by the SS, is that correct?

A Yes, that is right.

Q Did the OT have any guards on this site at all?

A No, never.

Q Now you testified that about one third of the workers were prisoners, and about two thirds free labor, is that correct?

A That is correct.

Q Now this free labor consisted of German free labor, and foreign

(BRUNNER-court)

labor, is that right?

A Yes.

Q About what proportion of the free labor was foreign labor, and what proportion was German labor?

A I would estimate that about two thirds of the free workers were German, and about one third were foreign.

Q About how many were working on this project at the main site?

A Roughly 1600 to 200 people on one shift.

Q And how many shifts did they have while you were there?

A Two shifts.

Q Do you know whether they had three shifts later on?

A During my time there were only two shifts.

Q Were the shifts about the same size and number?

A Yes. Yes, they were distributed equally.

Q Would you say then, that there were approximately 3600 to 400 workers on this main site?

A It could even have been a few more.

Q Now of this number, how many were Russians, do you know?

A No, I don't know.

Q Was there an appreciable number of Russians working on the project?

A I don't know that Russians were there.

Q We have had certain testimony before this court, that about 1000 Russians were brought back here to work. Did you see any Russians working at the main construction site while you were there?

A There were quite a number of foreign workers there, but I don't know whether they were Russians, or other nationalities.

Q About how many Italians were working on the project?

A I don't know how many. I cannot state a figure.

Q Did you ever see any French working on this project?

A I don't know whether there were any Frenchmen there.

Q You discussed with Griesinger quite often this project, did you not as to how it was getting along?

A Yes.

Q What date of completion were you working on?

A The period allowed was very short, but I don't know what dates were stated for the various sections.

Q Do you know the date which was stated for the overall completion, not the different sections, but the date of completion of the entire project?

A As far as I can remember I think one and a half years was allowed.

Q Did you ever hear that a date of completion had been given as March - sometime during the month of March 1945?

A No, I never heard that.

Q How many concrete mixing machines did they have on this project?

A There were six concrete sections - three on the north side and three on the south side, and these were always rebuilt to suit those sections where the concrete was being made because there were not sufficient concrete mixing machines.

A Let's get back to the question which I asked you. How many concrete mixing machines were there on this main site, if you know?

A During my time there were about nine concrete mixing machines.

Q You were there from July to October - 20th October, were you not?

A Yes - No, June.

Q From the 15th of June to 20th October?

A Yes.

Q During the period that you were there did you ever hear of any transports being sent out from Muenldorf?

A No. Oh! excuse me - what kind of transports?

(BRUNNER-court)

Q Personnel being sent away from Muehldorf.

A No, no. - Do you mean laborers?

Q Yes.

A Yes, it was like this, if a group of people was assigned to a detail on one day, there would be different people on the one day, and the next day they were always being changed.

Q Why was this necessary?

A I had the impression that the weaker ones were kept back in the camp and allowed to stay there, and the other people took their places. That is the question that I answered before.

Q You were familiar with the actual work out on the main site, were you not?

A Yes, I was familiar with it.

A And you observed the different crews or groups working, did you?

A In the first place I had to check the actual work, and see that it went according to plan. I therefore did not get much occasion to observe the people themselves.

Q About how many prisoners did it take to operate one of these concrete mixing machines?

A In order to carry the cement necessary for one concrete mixing machine there were forty to fifty prisoners assigned, and there was another group working exclusively to carry - unloading cement from the flat cars, and taking it into the warehouse.

Q How many were in these latter groups?

A Just as many.

Q At any time during the period of time you were there, was it found necessary to increase these crews or groups, in order to carry out the work necessary for that particular group?

(BRUNNER-court)

A We had nothing at all to do with the work details.

Q You observed these details working, didn't you?

A We saw them working.

Q Was it necessary at any time to increase the size of the details in order to accomplish the desired work?

A During my time it seemed there were too many working here, for instance, when they were carrying cement, there was always a large number who were not employed in carrying cement.

Q Do you know why they increased the number of shifts from two to three?

A I don't know anything about three shifts.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: I hand the reporter a document and request that it be marked Defense Exhibit D-38 and D-38A for identification.

(Whereupon the documents were marked Defense Exhibits D-38 and D-38A for identification.)

DEFENSE COUNSEL: If it please the court, the defense at this time offers in evidence a statement in question and answer form by Mr Metzel to Major Boysen, at the Landsberg Prison, taken on 1st May in reference to the accused Engelhardt, and the true English translation thereof, and request that these instruments be attached to the record and marked Defense Exhibits D-38 and D-38A.

PROSECUTION: No objection.

LAW MEMBER: There being no objection, Defense Exhibits D-38 and D-38A will be admitted in evidence.

(Whereupon the documents heretofore marked Defense Exhibits D-38 and D-38A for identification, were received in evidence as Defense Exhibits D-38 and D-38A, are attached hereto, and made a part of the record.

(BRUNNEN-court)

DEFENSE COUNSEL: I would like to read D-36A in English.

PRESIDENT: You may proceed.

(Whereupon Defense Exhibit D-36A, the English translation of D-36, was read to the court in the English language.)

DEFENSE COUNSEL: We waive the reading of D-36 in German until a later date.

The defense calls as its next witness Heribert Danbeeck.

HERIBERT DANBOECK, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION:

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name?

A Heribert Danbeeck.

Q Your address?

A Thann, House Number 36.

Q What is your occupation?

A Agricultural Assistant.

Q How old are you?

A 36 years old.

Q Do you know Professor Giesler?

A Yes.

Q If you see him in the courtroom, please point him out?

A Yes, number 7.

DEFENSE COUNSEL: Let the record show that the witness identified the accused Giesler, by number 7.

Q What was your occupation around 1 January 1944?

A I had an Agricultural Diploma, and was personal advisor to Professor Griesinger.

Q When did you get that position as personal advisor to Professor Giesler?

A In May 1942.

Q May 1942 - and you kept that position until when?

A Until the end of the war.

Q What was Professor Giesler's position in 1942, if you remember?

A Professor Giesler was Chief Architectural Counsellor for Munich.

PROSECUTION: I would like a correction on the translation. I took the question up with Dr.Leiling, and the word "referant" does not mean "advisor", it means "department chief".

DEFENSE COUNSEL: I think it should be.

PRESIDENT: Let the record show, that by agreement with both the defense counsel and the prosecution, the word should be translated as "aid".

QUESTIONS BY DEFENSE COUNSEL:

Q Do you mean that Professor Giesler was Chief Counsellor - the Chief Architectural Counsellor for Munich at that time?

A Yes, that is what I wanted to say.

Q And he kept that position until when?

A Until the end of the war.

PRESIDENT: Court will recess until 1030 hours.

(Whereupon at 1005 the court recessed until 1030 hours.)

(Thereupon the court reconvened at 1030 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present; that all the defendants with the exception of Jergas, together with their counsel, are in court; that the interpreter and the reporter are here; and that the prosecution is respresented.

HERBERT DANBOECK, called as a witness by the defense, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

DIRECT EXAMINATION (Cont'd)

QUESTIONS BY DEFENSE COUNSEL:

Q Now, you worked with Professor Giesler until when?

A Until the end of April 1945.

Q I believe you testified that you were Professor Giesler's personal aid. As a matter of fact, you mean that you were his secretary?

A Yes, it was approximately that type of a position.

Q Now, as part of your job as a secretary, did you receive the mail for Professor Giesler?

A Yes.

Q What did you do with the mail that you got?

A I handled the various letters in various ways, depending on the way they were addressed or what they contained.

Q Did you look at the contents of those letters?

A The ones which I presented to Professor Giesler, I looked at.

Q Supposing Professor Giesler got a letter -- that you got a letter and it was addressed to Professor Giesler and there was something personal in it, would you give that to Professor Giesler?

A Yes, that I presented to Professor Giesler.

Q Well, supposing a letter came to you and it said "Professor Giesler" and it had something to do with his position as General Counsellor of Architecture, would you give that to him?

A I most probably would have presented it to him if the matter would have been important enough for him to make a decision.

Q Supposing the letter would have been addressed "Professor Giesler, Head of Task Force 6," would you give that to him?

A If the letter would have been of a private nature I would have given it to Professor Giesler; if it would have been a matter of the OT, I would have given it to Gimpler.

Q If the letter was addressed to Mr. Gimpler, would you have received it?

A No.

Q Supposing the letter was addressed "Chief of the OT — Task Group 6," would you have received it?

A If the name of Professor Giesler did not appear on the envelope, I would not receive the letter.

Q Were you present when Professor Giesler had conferences with people?

A Yes.

Q Well, supposing a gentleman came in and he said he wanted to see Professor Giesler, would you see him before he went to Professor Giesler?

A Yes, under all circumstances.

Q As part of your duties as a secretary, would you ask him what he wanted?

A Naturally.

Q And if you found it had something to do with his position as General Counsellor for Architecture, would you have told Professor Giesler

about it and seen that he knew the man was there?

A I would have first asked Professor Giesler whether he would like to speak to the man, and most of the time Professor Giesler called one of his co-workers back.

Q Do you know a Dr. Baumgartl?

A Yes.

Q Did he ever have a private conference with Professor Giesler at which only you and Professor Giesler and Dr. Baumgartl were present?

PROSECUTION: Ask him, "if you know."

DEFENSE COUNSEL: No, I asked him if he were present; he would have to know.

PROSECUTION: All right.

Q Did Dr. Baumgartl ever have a conference with Professor Giesler at which only Dr. Baumgartl, Giesler, and yourself were present?

A Yes.

Q How many of these conferences did he have, if you know?

A There were all together, three. One couldn't say conferences; they were just short talks.

Q Perhaps you might remember what these three conferences were about. If you do, will you tell me about each one of them? If you remember?

A During the first conference Professor Giesler and Baumgartl walked into Professor Giesler's working study together. Dr. Baumgartl had waited for Professor Giesler before that and Dr. Baumgartl had various wishes concerning his offices in a German museum. He wanted larger rooms and more rooms — I can not exactly remember the particulars any more.

Q Do you know whether he spoke about the main construction site at Muehldorf at that particular conference?

A Nothing was said about the main construction site.

Q Do you recall the second time?

A The second time Professor Giesler was standing at the window and when Dr. Baumgartl passed by he called out and told him to come in and Professor Giesler spoke to Dr. Baumgartl about a sickness of his co-worker Gimpler, who needed a vacation very badly. The result of this conference was that Mr. Gimpler was brought to a hospital.

Q Do you know whether or not they spoke about the main construction site at Muehldorf at that time?

A No, it was not mentioned.

Q Do you remember the third one?

A The third time I called Dr. Baumgartl and asked him to bring certain medicine for Professor Giesler. I myself couldn't get those tablets in any of the pharmacies in Munich. A few days later Dr. Baumgartl brought that medicine and spoke a few words with Professor Giesler.

Q Did they speak about the main construction site out at Muehldorf?

A No, there was no talk about that.

Q Did they speak about concentration camp prisoners?

A No.

Q How about the first two conferences -- did they speak about any concentration camp prisoners at those conferences?

A No.

Q During the time from July first, 1944, until the end of April, 1945, were you away from your position for any length of time?

A From the middle of June to the beginning of July I was absent for about three weeks because of pneumonia.

Q Supposing Professor Giesler had had a conference with someone and you weren't present at that conference, would you have known about it, if you know?

(DANBOCKY-Direct)

A That case never happened. I was always there.

Q I mean the time that you were away, weren't there then — if there had been a conference during that time, you would have found out about it, do you know?

A I was more or less informed by Professor Giesler and by the secretary about the things that happened, while I was sick.

PROSECUTION: Mr. Roth, for the prosecution.

CROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q When letters would be addressed to Giesler in his capacity in connection with the OT, how would they be addressed?

A The envelopes varied. For instance, if an envelope would read "to the Task Force Commander of Task Force 6," I would not open the letter and I would give it to Mr. Gimpler immediately. If it would read "to the Task Group Commander, Number 6, Professor Giesler," then I would open the letter and if it is a matter — if I could see that it is an official letter, I gave the letter unopened to Gimpler.

Q There were many people working in your office, weren't there?

A What do you understand by "my" office?

Q In the office that housed the Task Group 6?

A Do you mean the office where I worked myself?

Q In the office that housed Task Group 6.

A That office had two rooms which were pretty far away from each other.

Q And where would the mail come?

A The mail with anything pertaining to OT or Task Force Commander always came to our office at Prinzregenten Street Number 3.

Q And where was Gimpler's office?

(DANBOLCK-Gross)

A His office was at Prinzregenten Street Number 3.

Q It never went to the other office, did it?

A If there were letters pertaining to the Task Force they always came to me.

Q And then to Mr. Gimpler? Didn't you tell the court before that when letters would come in to you addressed "Task Group 6" that you would deliver them unopened to Gimpler?

A Most of those letters went to Gimpler direct without my seeing them. Only once in a while some came to me by mistake.

Q Is there any doubt in your mind that officially Giesler was the chief of Task Group 6?

A Naturally.

Q What do you mean by "naturally"?

A Giesler was not the real Task Force Commander; the real Task Force Commander was Gimpler.

Q And you mean that was true with respect to his superiors — that they looked to Gimpler as the chief of Task Force 6?

A Whose superiors?

Q Giesler's superiors.

A Professor Giesler's superior in the OT was Mr. Dorsch, and he knew the situation very well.

Q Did you know a lady by the name of Kalda Laine?

A No.

Q Don't you remember the correspondence that took place with respect to the bringing of a lady by the name of Kalda Laine at the expense of the OT from Russia down here to Munich?

A The name is not known to me.

Q Do you remember Giesler's bringing a lady by the name of Laine

at OT expense from Russia to Munich?

INTERPRETER: Just a moment, Mr. Roth. I have just been informed that the name was Lang.

Q Good. Do you remember that name?

A No.

Q Do you remember an application that was made by Giesler with respect to the payment to his son of a certain amount of money every month by reason of Giesler's being a civil service employee?

DEFENSE COUNSEL: Do you mean the son or the father?

PROSECUTION: The father being a civil service employee, the state paid the son.

No.

LAY MEMBER: Counsel, is this relevant to the matters contained in the indictment?

PROSECUTION: Yes, sir, it shows — first of all, it shows the connection of Giesler with the OT. Secondly, it shows, as to his lack of knowledge of what went on in that office, because, as the prosecution will show later, there is a sheaf of such correspondence indicating his very intimate connection with the OT — not this ethereal, ephemeral connection as the witness will try to show.

LAY MEMBER: He said he knew nothing of such correspondence?

PROSECUTION: That is what he answered. That is the object, to show that he didn't.

Q Did you know that at one time Giesler was the plenipotentiary for Labor Allocation in November 1942?

A No.

Q I show you a copy of a letter and ask you if you have ever seen that letter before?

(DARBOUX—Cross)

LAW MEMBER: Counsel, is that correspondence between November 1944 and the capitulation in 1945?

PROSECUTION: No, sir, this letter was dated in 1942, but he says that he was working for Giesler --

LAW MEMBER: Do you promise to show that he could have had occasion to witness it during the period he was there?

PROSECUTION: Well, sir, he said he was his aid and he opened up all his mail and took care of his mail.

LAW MEMBER: Can you prove this mail was opened in the Fall of 1944 and the Spring of 1945?

PROSECUTION: No, sir, but this comes from Giesler's record.

LAW MEMBER: Your question is, is he familiar with this correspondence?

PROSECUTION: That is my question, sir.

WITNESS HERBERT DANBECK: This letter is not known to me.

QUESTIONS BY PROSECUTION: (Cont'd)

Q During the period that you worked for Giesler, he was busy with other matters, wasn't he?

A With what other matters?

Q He was busy with many matters, wasn't he? Not only with the OT?

A Yes.

Q And where was his office?

DEFENSE COUNSEL: Wait a minute. I don't think this witness testified he was busy with the OT. I think the counsel is misquoting the testimony. He never said he was busy with the OT.

LAW MEMBER: You may ask him, if you will.

Q During the time --

DEFENSE COUNSEL: I would like to have my objections translated,

if it please the court, so the people here can know what's going on; and I would like to know what the court says, and the prosecution, as it goes along.

LAY MEMBER: (To interpreter) Interpret what was said, please.

(Thereupon the interpreter did as instructed.)

PRESIDENT: Just a minute. Is there any objection before the court?

PROSECUTION: I consented to rephrase the question, sir.

PRESIDENT: Are you withdrawing the question?

PROSECUTION: Yes, sir, and rephrasing it.

QUESTIONS BY PROSECUTION: (Cont'd)

Q During the time that you were in Giesler's office at the Task Group 6, Giesler had many matters under him, such as the reconstruction of Munich, isn't that true?

A Yes.

Q Yes. And what else did he have under him besides that?

A Professor Giesler has various other tasks besides his job as Task Force Commander. He had the job of General Counsellor of Architecture. He also had the task of rebuilding of various buildings in Munich.

(DAMBACK-Cross)

Q Now he also had many people under him in his capacity of rebuilder of Munich, is that true?

A Under his supervision were only his officials. The workers who were used for those jobs belonged to various firms.

Q I mean that he had many officials under him, that is true isn't it?

A Yes.

Q Is there any doubt in your mind that Gimple was also inferior in rank to Giesler?

A No there is no doubt about it.

Q There is no doubt about it that Giesler was Gimple's superior, isn't that true?

A Yes.

PROSECUTION: That is all.

LAW MEMBER: Dr. Kolch, redirect examination, on the part of all of the accused.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Did you also take telephone calls that came in for Professor Giesler?

A Yes.

Q If those telephone calls had anything to do with the main construction site Muehldorf would you give it to Professor Giesler?

A No, I would have transferred it to Gimple.

Q Exactly where was your office in relation to where Giesler's office was?

A There were three rooms; one for Professor Giesler, one for his secretary, and the conference room. I stayed in the room for Giesler most of the time.

Q Then you want to tell the court that your office, where you stayed all day doing your work, is in the same room where Professor Giesler had his office?

A Yes.

Q How close was your desk to his desk?

A I did not have my own desk, I used the desk of Professor Giesler.

RECROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q Do you mean that Giesler never held a conference with respect to the work going on at the principal construction site?

A I didn't say that.

Q Who did he hold conferences with about the work going on at the main construction site?

A I am sure that Professor Giesler spoke to Mr. Gimple about it.

Q Who else did he speak to about it?

A I can also remember that Mr. Hoffmann spoke to Professor Giesler.

Q Do you remember a conference where the representatives of many firms, such as Kell, came to Professor' Giesler's office and Professor Giesler had a conference there with all of these firms?

A I cannot remember that Kell was present at a large meeting.

Q Were there many large meetings with respect to the main construction site that Giesler was present at?

A I cannot remember that.

PROSECUTION: That is all.

EXAMINATION BY THE COURT

QUESTIONS BY THE PRESIDENT:

Q You testified there were three rooms there, one for Giesler, one for his secretary, and a conference room. Is that right?

A Yes.

Q Where was Gimple's room?

A Gimple worked in Professor Giesler's room at the beginning of his CT career, whenever Giesler was not present. Later on Gimple had his own room one floor up.

PRESIDENT: Witness will be excused.

DR. ENGELHORN: Defense calls as its next witness Richard Ulmer.

RICHARD ULMER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. ENGELHORN:

DEFENSE COUNSEL: If it please the court, the defense would like permission to take Professor Giesler out for consultation. We have a guard to look after him.

PRESIDENT: I wish hereafter, if you can anticipate these matters, you could do this at recess. If you can arrange your work in that manner it is more in agreement with the court. We may leave the courtroom.

QUESTIONS BY DR. ENGELHORN:

Q What is your name?

A Richard Ulmer.

Q How old are you?

A Fifty-nine years.

Q Are you married?

A Yes.

Q What is your profession?

A I am a building constructor for the city.

Q Where do you live?

A In Hellbach, near Stuttgart.

Q Were you city building contractor for the city of Fellbach?

A Yes.

Q Were you a member of the army during the last war?

A Yes.

Q When were you drafted?

A On the 1st of March, 1940.

Q What rank?

A At that time I was a Lieutenant in the reserves.

Q What was your last rank?

A Captain and adjutant.

Q Where was your last office?

A In Roumania in Bukarest.

Q What type of work did you do there?

A I was a Captain adjutant in an engineer construction staff.

Q Did you remain in your position until the end of the war?

A No.

Q Why not?

A I was sentenced on the 24th of October, 1942, by court martial of the 179th Motorised Division in Kassel to three years imprisonment because of disobedience and misuse of my power of command. I was degraded from a captain to a private and besides that I lost my civilian position. I spent those thirty and one-half months in Breschenkeft in Zinna in the Prussian city prison, located at Torgau, all of them under the most horrible condition. On the 9th of May, 1945, I was liberated by American troops from this jail.

Q What was the reason for this verdict?

A After the Roumania Reichs law in the spring of 1941 the property of all Roumanian Jews was to be confiscated. I lived from the 15th of January 1941 until the 10th of December 1942 with a Jewish family by the name of Ilja Goldstern in Bukharest, on Bulvadacia street No. 14. In order to save the very valuable property of these people I gave an order for two of my soldiers to take the crystal, silver, and oil paintings from these people's house and to bring those things to a friend of mine, the 2nd Mayor of Bukarest, Dr. Cisek, in order to put them in safe custody in his house for my Jewish friends.

PROSECUTION: May it please the court, I would like to inquire whether this statement is material in this case, and if it is not I would like to object to it.

DR. ENGELHORN: I would like to show by this witness what happened to people who acted against the will of the German government.

PROSECUTION: I object as it is irrelevant, immaterial and incompetent.

LAW MEMBER: Subject to objection by any member of the court, the objection is overruled.

PRESIDENT: Did he complete his answer?

INTERPRETER: Will the reporter read the last portion of the answer?

(Whereupon the reporter read the answer as follows: "In order to save the very valuable property of these people, etc. - - "

THE WITNESS: This matter came up and I was Court Martialed by a General Court Martial.

QUESTIONS BY DR. ENGELHORN:

Q You said you were punished because of your misuse of your power of command. Where did the Germans see the misuse of command in this case?

A The misuse of my power of command was seen in this matter that I gave an order to two soldiers to take Jewish property away and to hide it in order to save it from being confiscated.

Q Besides that you said you were punished because of disobedience. Where did they see the disobedience in this case?

A Disobedience in this case was that I had free relations with Jews.

Q Before that you mentioned that you were also discharged from your civilian position because of this verdict?

A Yes.

Q Did this discharge also harm you in a monitory manner?

A I did not only lose my rights as an official but I also lost my rights for a pension. I also had financial loss through that, and besides I received bodily harm.

DR. ENGELHORN: I hand the reporter these documents and request they be marked Defense Exhibits D-39 and D-39a for identification.

(The documents referred to were marked Defense Exhibits D-39 and D-39a for identification)

Q Mr. Ulmer, I show you a letter and ask you to tell me what this is.

A This is the certificate of discharge from the army prison.

Q Is the verdict given here, and the reason for the verdict?

A Yes, the verdict is mentioned here. It reads as follows:

(Whereupon the witness began reading the exhibit in German)

PRESIDENT: We can save time by reading the English.

LAW MEMBER: Stop him and ask him if he offers this exhibit into evidence.

DR. ENGELHORN: Yes, I offer it in evidence.

LAW MEMBER: Show it to the prosecution, the English version.

PROSECUTION: No objection.

LAW MEMBER: Subject to objection by any member of the court the defense exhibits D-39 and D-39a are admitted into evidence.

(The documents heretofore marked Exhibits D-39 and D-39a for identification are received in evidence as Defense Exhibits D-39 and D-39a, are attached hereto, and made a part of the record)

PRESIDENT: Does the counsel wish to have this exhibit read to the court?

DR. ENGELHORN: Yes, only the first paragraph.

(Whereupon the interpreter read the first paragraph of Defense Exhibit D-39a, discharge from army prison)

DR. ENGELHORN: I hand the reporter these documents and request that they be marked Defense Exhibits D-40 and D-40a for identification.

(the documents referred to were marked Defense Exhibits D-40 and D-40a for identification)

Q Mr. Ulmer, I show you this letter and ask you to tell me what this is.

A This letter shows my discharge as a city official after I was sentenced.

Q What is mentioned in here in particular?

LAW MEMBER: Just a moment. Do you offer this in evidence?

DR. ENGELHORN: Yes.

PROSECUTION: No objection.

LAW MEMBER: Subject to objection by any member of the court the defense exhibits D-40 and D-40a are admitted into evidence.

(The documents heretofore marked Exhibits D-40 and D-40a for identification are received in evidence as Exhibits D-40 and D-40a, are attached hereto, and made a part of the record)

LAW MEMBER: Does counsel care to have this exhibit read to the court in English?

DR. ENGELHORN: Yes.

(Whereupon the interpreter read Defense Exhibit No. 40a, discharge of Richard Ulmer as city official)

PRESIDENT: Does the counsel for the accused waive the translation in German of Defense Exhibits Nos. 39 and 40 at this time?

DR. SIEGELHOFF: It is sufficient to have them translated to the court in English.

QUESTIONS BY DR. ENGELHORN:

Q Have you been reinstated to your office by this government?

A Yes.

Q Has the verdict of the court martial been nullified?

A Yes, it has been nullified by the State Ministry of Wuerttemberg in the end of 1945.

Q Do you know the accused Griesinger?

A Yes.

Q If you see him, point him out.

A I don't see him here. There he is, No. 9 (indicating).

DR. ENGELHORN: May the record show that the witness has recognised the accused, No. 9, Mr. Griesinger.

Q What do you know Mr. Griesinger from?

A I know Mr. Griesinger sine April, 1928.

Q During what occasion did you meet him?

A He was 19 years old at that time, and he came to me, to the building construction office of Fellbach and worked as apprentice for me.

Q How long did he stay with you?

A He worked for me for two years.

Q Was he in your office every day?

A Yes, daily.

Q As what type of man is Griesinger known to you?

A I trained approximately 12 young men in my work in Fellbach during the last 21 years. Mr. Griesinger was my best trainee.

Q What can you say about his character?

A Mr. Griesinger always showed diligence, was always willing to help. He always showed truthfulness and he was always very conscientious.

Q Do you know whether Griesinger was a member of the Party?

A He was never a member of the Party.

Q Can you tell us anything about his thoughts of the German Reich?

A He was a fanatical anti-Nazi.

Q How do you know that?

A Since he left the city government of Fellbach in 1930, I have kept up a very good friendship with Mr. Griesinger. Already the days before 1933, we spoke about National Socialism. After 1933, we had many discussions about National Socialism. We spoke especially about the persecution of Jews in Germany, which we were very much against, especially Griesinger. We were especially disgusted with the fact — about the shame of the burning down of the Jewish synagogues, and in the same way Mr. Griesinger was against the fight of National Socialism against the church.

Q After you had been sentenced, how did Griesinger behave towards you?

A After I was sentenced, Mr. Griesinger visited my wife every time when he came home on furlough. He gave her very much encouragement through his mental life in order to help her to overcome the results of my verdict. He continued to write letters to my wife of a very strong content. This was very dangerous to him under the National Socialist methods at that time. And I also know that he suffered mentally very much because of my sentence.

DR. ENGELHORN: That is all.

CAPT. BACHMAN: Captain Bachman, cross examination for the prosecution.

CROSS EXAMINATION

QUESTIONS BY CAPT. BACHMAN:

Q Your trial and imprisonment was a result of your friendship for these Jewish people, is that correct?

A Yes.

Q And your removal from your civil service office was because of your friendship for these Jewish people?

A Yes.

Q Of course, friendship for the Jewish people was contrary to the

Reich policy, was it not?

A Yes.

Q The Reich was very severe on people who opposed their policies, weren't they?

A Yes.

Q So that people who were known to oppose the Reich policies could not hold important civil positions, could they?

A Oh, yes.

Q What do you mean by "Oh, yes"?

A I kept my position in the city of Fellbach in the Second and Third Reich.

Q But referring to the time of National Socialism under Hitler, a person who opposed his policies could not hold an important civil position, could he?

A I was a Party member.

Q You were a Party member, but my question was that a person who opposed the policies of the Reich could not hold an important civil position under the National Socialist Regime, could he?

A One always had two faces in the Third Reich. That is the way it was.

Q But if the officials knew that a person was opposed to their policies, they would not permit him to hold an important civil position, would they?

A I always behaved with the Third Reich in such a way that the National Socialists couldn't do any harm to me. I worked in my profession and I didn't bother about politics.

Q Mr. Ulmer, I am not asking you about what you did. I want you to answer the last question I asked.

CAPT. BACHMAN: Will you read the last question, please?

(Whereupon the last question was read by the court reporter.)

A I know several people who were not Party members, and I could even mention their names, and they still remained in their offices.

Q Mr. Ulmer, if a man filled in a questionnaire stating that he belonged to a society which was banned in Germany, and which was illegal, and if he expressed anti-Nazi sentiments frequently, and those came to the ears of the officials, would they have permitted him to hold an important civil office?

A At that time, no.

CAPT. BACHMAN: That is all.

REDIRECT EXAMINATION

QUESTIONS BY DR. ENGELHORN:

Q You say that if he filled out a questionnaire and said that he belonged to a society which was opposed to the Third Reich, then he could not hold his job any more?

A Yes.

Q Do you know anything about the anthroposophic society?

A Yes.

Q Did membership in the anthroposophic society make it impossible for a man to be drafted?

A This question, Doctor, I cannot understand.

Q If a man has been a member of the anthroposophic society, he can still be drafted into the army?

A Yes.

Q Do you know whether such a man would be promoted in the army?

A I don't think so.

Q Have you had a trial before the denazification board already?

A Yes.

Q What was the result of this trial?

A I was acquitted.

DR. ENGELHORN: Thank you.

EXAMINATION BY THE COURT

QUESTIONS BY THE PRESIDENT:

Q Are you in business now?

A Yes, already the 15th of July, 1945, I took my old job as city building constructor back.

Q Is that the only position you hold at the present time?

A Yes.

Q During the period that Griesinger served under you as an apprentice, was he given construction work, building work?

A Yes.

Q How long did he work under you?

A Two years.

Q What was Griesinger doing in 1930, do you know?

A He left me in order to study.

Q Do you know where he went?

A To the State Institute for Construction Engineering of Wuerttemberg, which is in Stuttgart.

Q Do you know whether he graduated from that institution?

A Yes.

Q What degree did he get?

A He received the title of a construction architect.

Q Did Griesinger go into business after that, do you know?

A He had various private employments. At one time, he even had his own office.

Q What kind of an office?

A It was an architectural office.

Q What did he do in this office?

A He built houses and residences in Bad Cannstatt, and then he was

doing construction work near Reutlingen, and he also worked very much on the competitive jobs.

PRESIDENT: The witness will be excused.

(Whereupon the witness was excused and withdrew.)

PRESIDENT: Court will recess until 1:30.

(Whereupon the court recessed at 1200 hours.)

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that all the personnel of the court are present; that the defendants with the exception of Jergas and Gickeleiter are present together with counsel; that the reporter and interpreter are present in court; and that the government is represented.

DEFENSE COUNSEL: Professor Giesler, will you take the stand.

PRESIDENT: You may make a sworn or an unsworn statement, on which you may be cross examined. You are advised that the court may draw such inferences as the circumstances justify from your refusal to answer or from your failure to take the stand in your own behalf. Are you now willing to testify?

ACCUSED GIESLER: Yes.

PRESIDENT: Do you wish to testify under oath or unsworn?

ACCUSED GIESLER: Under oath.

HERMANN GIESLER, an accused, voluntarily took the stand in his own behalf and, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your name?

A Hermann Giesler.

Q And your present address?

A Camp Dachau.

Q What is your usual profession?

A Architect.

Q Your age?

A Forty-eight years.

Q And your usual residence?

A Sonthofen in the Algau.

Q Professor, I know you didn't speak to me about this at all, but I know you are a little bit nervous. If at any time during my examination you wish to take a few minutes to compose yourself, just ask the court and I am sure the court will give you a little time.

A Thank you.

Q How long have you worked as an architect?

A Since 1924.

Q Where did you learn to be an architect?

A First I received instructions through my father who was also an architect, and then I attended the Academy for Applied Arts, in Munich.

Q Did you ever go to an engineering school?

A No.

Q What particular kind of architecture did you concern yourself with?

A Artistic creation. By that I mean a cultivated house from every angle and all details including interior architecture, furnishings, illumination--in short, everything that belongs to a home.

Q I show you a book and ask you what it is. Briefly, now.

A That was the leading magazine for art, from the year 1933 until the end of the war.

DEFENSE COUNSEL: Will you please give us a translation of that, at the bottom?

INTERPRETER POWYS-COBB: This is a magazine with the year 1939, some National Socialist insignia, and the title is "Art in the Third Reich."

DEFENSE COUNSEL: I hand the reporter some sheets and ask that they be marked Defense Exhibit 41 for identification.

(Papers were marked Defense Exhibit 41 for identification.)

QUESTIONS BY DEFENSE COUNSEL:

Q I hand you some sheets and ask you what they are.

A This (indicating) is a hotel called Elephant in Weimar.

Q And the architect?

A I built it.

Q Are there several other buildings there on those sheets for which you are the architect?

A Yes, there are designs for other buildings but these have not yet been completed. They are models. There are some finished ones over there (indicating). These are also designs and models that I made.

DEFENSE COUNSEL: If it please the court, the defense offers into evidence these drawings by Professor Giesler, of architectural works of beauty, and requests that they be made a part of the record and attached thereto.

PROSECUTION: No objection.

LAW MEMBER: Subject to the objection of any member of the court, Defense Exhibit 41 is admitted in evidence.

(The documents heretofore marked Defense Exhibit 41 for identification were received into evidence as Defense Exhibit 41, are attached hereto, and made a part of the record.)

QUESTIONS BY DEFENSE COUNSEL:

Q Because of the fact that you drew up the plans for these buildings, did you receive any award or recognition?

A Yes.

Q Will you tell the court what it was.

A I was given the title "Professor" and in the year 1938, somewhat later, I was made a Senator of the Reichs Culture.

Q Did you ever get the award of the French Academie, an award for any of your work?

A Yes, in the year 1937 I received the golden medal and the grand prize from the Academie des Beaux Arts in Paris for my work in Weimar.

Q Professor, as a result of your work in artistic architecture, did you subsequently meet Hitler?

A Yes.

Q Tell the court about it.

A By virtue of a competition which was held in a small circle, I received the commission for the plans of the Party Castle at Sonthofen. I began with this

project in 1934-1935. In 1935 I had to take part in another competition, to which I was ordered. This competition had to do with the reconstruction of the town of Weimar and with the construction of a large square. I won this competition also, and the models which I made for this work were exhibited in the Reichs Chancellory. Adolf Hitler requested to meet the architect who had drawn up these plans. I was ordered to go to Berlin, was presented to Adolf Hitler, and explained my plans to him. At this point he stated that he desired to see my work in Sonthofen and also other examples of my work from former times, and he inspected Sonthofen, which was finished just about less than a quarter, and after this inspection he informed me that in the future I was not allowed to accept any further commissions unless they were ordered by him.

Q Were you subsequently made General Counselor for Architecture and when?

A That was in the year 1938. In the year 1937-1938, I was again requested to take part in another competition. That competition referred to the Hohe Schule, the project of here (indicating), and after I won this competition I was requested to take charge of the re-creation of Munich. Since this was only a request, I didn't do anything about it and I said that I had too many private projects which I was working on and that in view of the people who had commissioned me to do this work I couldn't let them down. In November

1938, I received a command to take over the re-creation of Munich as the General Counselor for Architecture. This order was published, as far as I know, on the 21st of December 1938. There was a short copy of this order in that volume there (indicating).

Q You say you didn't want to take the position. Will you tell the court why.

A There were several reasons. Up until this time I felt that I was a private architect and that I was my own boss and I felt depressed with this task and also with the size of it, because in re-creating a town of this size one had to fight all sorts of offices. There were Reichs offices, there were state offices, there were municipal offices, and there were Party offices. So that I felt that from a purely administrative point of view I didn't have sufficient experience to cope with all these authorities.

Q You held this position as General Counselor for Architecture until when?

A Officially, from 21 December 1938 until May 1945, the end.

Q Now how much of your time did this job take up,

A This work took one hundred percent of my time. I would like to explain this closely. When I say one hundred per cent, I mean one hundred per cent normal working time, plus a little extra working time. In addition to this there was work going on in my studios - my private studios, respecting Augsberg, Weimar, Senthofen, Oberhofen, and several other individual projects like Kassel, Schwarsburg, later on the city of Klessheim near Salzburg, also Schwarsburg in Thuringia. Particularly in 1944 Castle Fürstenstein in Silesia, but my greatest project since 1942 was the reconstruction of Linz. I can say in general that I worked 18 hours every day, and as much as 20 hours a day.

Q Now, when the office for the General Counsellor for Architecture finally was organized, how many departments did it have?

A It had three sections. The first department was the Planning Department, under that one for the construction of cities - the planning of cities. The second department was the Executive Department which was a group of engineers under the leadership of construction director Gimple. Each one of these engineers was a specialist in his own field. There were static engineers for iron construction, reinforced cement - reinforced concrete, excavation, water canalization, electric specialists, and specialists regarding heat.

Q Now Professor, what was Gimple, if you know?

A Gimple was an engineer. He received his education at the Technical High School in Stuttgart, and was an expert on excavation, and added to that, he was a suitable man from the point of view of organising construction and disposal.

Q Subsequent to January, or around January 1942, was the Executive Department taken away from the General Counselor for Architecture?

A Yes, and I would like to make a further remark. The third department was the Administrative Department and Legal Department. This was under the leadership of Dr.Fraum. I was in charge of the section dealing with city planning. My studios were separate, and were kept on one side.

e may go

Q Prior to January 1942, does that wall chart there at the right-hand side portray your departments?

A Yes.

Q And then in January 1942 Gimple's department left, is that right?

A Yes.

Q Now will you please tell the court when and what happened when Gimple's department left in January 1942: why did they leave and where did they go?

A I must make a remark. In January 1940 I received a command from Adolf Hitler to carry out the reconstion of the town of Munich in spite of the war. That means with all necessary firms, all necessary labor, and with the entire supply of building material that was required. This condition prevailed until December 1941. In January 1942 Reich Minister Dr.Todt appeared in my office, and he explained to me that there was an order by Adolf Hitler according to which all engineers, all firms, all labor, and the entire tools and equipment belonging to these firms, and working up until now for the entire Executive Department, should be transported to the Baltic countries.

Q For what reason?

A They were planning to build a railroad network in these countries with all the necessary tracks, and sheds for locomotives, railroad stations, bridges, and everything else that a railway network requires. Thereupon I checked back by telephone, and this order was confirmed. At the same time I was informed that this engineer staff - this was a staff consisting of one hundred engineers were to stay together, and all the firms which were working on this municipal reconstion - these municipal reconstion projects, the one which applied to the town of Munich, and also applied to Augsburg, Weimar and the other cities - these firms were all to stay together in the Balkan countries and form one composite group.

Q And when these people went up to Northern Russia, what was the whole

group known as?

A Construction Group "Giesler".

Q That was because you were the head of it?

A I was the head of it in Munich.

Q You mean to say that your office did not go up to the Baltic States, do you?

A No, I received specific instructions that all the architects who were working in the Planning Department and making artistic drafts and plans for the various towns, and also for buildings, and those architects, either in the Planning Section, and those in my private studios were all to stay in Munich.

Q If youroffice did not go up to the Baltic States, who was in charge there?

A Chief Construction Leader Gimple was kept in charge there. That was under agreement with the organization Todt.

Q Will you please tell the court why this group was known as Group "Giesler" ?

A In order to protect this construction group from infringements by the already existing groups of the OT or the Wehrmacht, in order to carry on my Planning Department it was necessary for me to have several engineers, and every time an architectural plan for a building had progressed far enough to start making specifications for details, it was my habit to call for expert engineers - people who were specialists in iron construction, thermo-technics, and electro-technics, and in order not to lose any of these people and in order to be able to call for any one of these people to be transferred back to Munich, this construction group was called Construction Group "Giesler".

Q That was done on whose orders?

A Adolf Hitler himself.

Q Now, did you ever give any orders or instructions in relation to

construction in Northern Russia?

A I think I would have made a fool of myself. I don't understand anything about railroad construction, and I had the best of experts and specialists in Germany in my group.

Q Now in order to get along Professor, will you tell the court whether or not you subsequently became associated with the OT?

A On the way - in the area between Germany and Russia, there were certain units of the OT which were called Front OT units. These details - these units were detailed to the various armies, and in the year 1943, an order came out according to which these Front OT Groups, and civilian construction staffs who were detailed to the troops in the large areas to make OT Groups: to bring these people together into OT groups, three such Groups were formed, one in Russia South, Russia Middle, and Russia North, and the OT Central Office in Berlin requested one OT leader for this OT Group "Russia". Gimple was not able to work under this man, and the engineers who were working for Gimple stated that they could not either, and Speer made a compromise and stated "we will make Giesler the nominal head of the Task Group, and Gimple will be acting head of this Task Group. The man immediately under Gimple was the man from the OT Central Office. That was Task Group "Klugar" - Task Group Leader "Klugar".

Q Now, from time to time Professor, if you want to refer to the chart, it is over there and you may do so. Now Professor---

INTERPRETER: He wants to say something else too.

DEFENSE COUNSEL: Go ahead.

PROFESSOR GIESLER: If I had not agreed to this compromise, I would have lost my entire staff of engineers.

QUESTIONS BY DEFENSE COUNSEL:

Q Did this Group from Russia - North Russia subsequently return to Germany, and if so, when ?

A This Group started coming back most of them in July, some more in August, and the rest in September 1944. That means that I slowly recalled the leading people who had been working formerly under Gimple in my executive Department.

Q Did that include Gimple?

A Yes, Gimple was the first man whom I recalled.

Q And this box here (referring to chart) came back here in existence?

A No.

Q Will you explain that answer to the court?

A Developement in Germany was as follows. As the front lines in Russia and France were brought closer, the OT Task Groups had no further duties there, but even before this took place, the necessity for active construction in Germany was so acute, that sections of these groups were recalled back to Germany on reconstruction in Germany, because there was no capable firm left in Germany. All the firms were under war contracts to the OT at the Atlantic wall, Russia, Finland, Italy, and so on.

Q Can you tell us anything about the planning of underground factories, and if so, when did this happen - tell us all you know about it?

A The first I heard about this was under control was the beginning of May 1944. During that time Task "Anemone" in Munich was in existence, organized through OT West in Paris. In my administrative department, there was an office called "G.B.Bau" which means "General Plenipotentiary for Building". This office was in charge of the building economy. This office knew how much cement was being manufactured in one section, how much iron in another; how much labor was in one given section; how many digging machines etc. All this labor; these materials, all these tools and this equipment was being used for the so-called civilian purposes, that is, for air raid shelters, and this Task Group "Anemone" suddenly requested this Department "G.B.Bau" in order to utilize the entire equipment at the disposal of this

(GISLER-direct)

office for their project.

Q Professor you had a brother did you not who was a Gauleiter?

A Yes.

Q Did you ever speak to him about this situation, or did he ever speak to you?

A He spoke to me about it. He was very much worried through this reshuffle, that his equipment for the construction of the air raid shelters would be cut off, and at the same time he informed me of the details concerning the building project in Muehldorf, and he told me that he had done everything within his power to stop this project and that he had no interest concerning this sort of construction project.

Q What did he say about it and why did he speak to you about it?

A My brother was an architect. He was a better architect than I was. He had more information concerning engineering sides, and he explained to me that these buildings were situated incorrectly, and at the same time he told me also that the office for Land Planning, under Reichsstatthalter Ritter Von Epp had put in an objection to this project in Muehldorf.

Q Were they the only people who objected to it?

A The City of Muehldorf, the Kreisleiter of Muehldorf, and also the Gauleiter of Munich.

Q What I cannot understand is, how you fit into the picture -what good did it do to complain to you?

A The Gauleiter had received an order from some higher headquarters, I don't know from whom, that he was to particularly support this project, and he on the other hand gave the order to the Kreisleiter of Muehldorf to lend special support to this project by assigning rooms, buildings for all sorts of uses, offices, and to requisition soil - the area which was set forth for this factory. The Kreisleiter in this manner was informed of the entire matter, and he told my brother about it, and my brother said that he felt this location being near a place where so many railroads came together, and

near a bridge of the importance of the bridge at Muehldorf, was wrong. Muehldorf is a freight relaying station for freight trains from Munich.

Q Did you go out to look whether or not it was in the wrong place?

A He asked me for a rough statement and I told him that I could only give him an opinion - the opinion we had concerning construction in a city. I went out with the section Land Planning.

Q Now wait a moment, you went where?

A To Muehldorf.

Q You went to Muehldorf. Did you go to the main construction site or was it there at that time?

A I did not go to the main construction site so much as I went to the city of Muehldorf to see that, and not until after I had the information regarding the locality did I start these conferences.

PRESIDENT: Court will recess for fifteen minutes.

(Whereupon at 1430 hours the court recessed until 1445 hours.)

(Whereupon the court reconvened at 1445.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present; that all the defendants with the exception of Jergas and Flocken, together with their counsel, are in court; that the reporter and the interpreter are here; and that the prosecution is represented.

Will the interpreter make the usual announcement concerning witnesses and remind the witness he is still under oath?

(Whereupon the interpreter did as requested.)

HERMANN GIESLER, an accused, voluntarily resumed the stand in his own behalf and continued to make the following sworn statement through an interpreter:

DIRECT EXAMINATION (Cont'd)

QUESTIONS BY DEFENSE COUNSEL:

Q Now, you were out at Muehldorf, you were telling the court at the close of the session. Did you give your brother any opinion as to the correctness of the placing of that building?

A Yes, after I had inspected the city of Muehldorf and the surrounding area, I visited Hoffmann at his office, whom I saw at that time for the first time. Hoffmann had his office in a small barracks in the woods. I had him show me the plans and I listened to the objections raised by the sector for land planning, and from the Kreisleiter, as well as from the Landrat, and I arrived at the opinion that their objections were justified, particularly in view of the further development which the city of Muehldorf would have to take in the direction of the west. At that time I asked Hoffmann, who had picked out this site and who had specified it. He told me that men of the OT central office did that and also leading men of the OT Task Force Paris West. I asked him how much preparations he had made for his construction work and how much time would be lost if he would look

for a new construction site; and he gave me a clear picture of what has happened so far and told me that the only thing that did happen was that the trees were cut down in the area, that the tracks would be moved, and that the construction firms were unloading from their transports and that they were fixing their work places up. All together, he thought it would take one and a half months to look for a new construction site and to move all the equipment.

Q Did they ask you to do anything about it?

A I showed them my papers, told them who I was, and I told them that I am getting the information from the Gauleiter and from the Reichsstatthalter.

Q Did you give them your opinion at that time?

A No. I told Reich to tell them my opinion about them finally, and I had no rights to tell Mr. Hoffmann anything about that. I went back to Munich and made a short telephone call to my brother, and he asked me whether I couldn't take this matter up in person with Hitler in my capacity as General Counsellor for Architecture and as an architect in order to finally find out whether it is the will of the Fuehrer that this project will be finished.

Q Well, subsequent to that time, did you go to Hitler and if you did, why?

A About two weeks later I got an order to take the plans of the project in Linz, to bring them up to Obersalzberg. I packed up my models and my plans and went up to the Obersalzberg and stayed up there for a week, and I would like to say the following to this: on the Obersalzberg I have my own private studio.

Q Did you spend the 8 days and the 8 nights with Hitler?

A I can't exactly express it like that, no, but after Hitler was

finished with his military and political duties, he would call me over at night or in the evening, and we would talk over those plans.

Q What did you do during the day?

A During the day I was in my studio and I worked there and I drew there. At the same time I used to go down to Castle Klessheim or to Salsburg to visit the various construction sites.

Q Did you at any time speak to Hitler about Muehldorf?

A I had to wait for that certain time when I could talk to him about a project like this.

Q You mean by that, the opportune moment?

A Yes, the opportune moment, in order not to receive a refusal right away.

Q All right, so you finally got to that opportune moment. Now tell the court what you said to Hitler and what Hitler said to you about this Muehldorf site?

A I told him that the Reichsstatthalter and Gauleiter told me about this project and that I myself went down there to look at it, and according to my opinion -- in my opinion this construction site in comparison to the situation of the city was not a proper one.

Q And what did he say to you?

A He took the time to look at the plans which I had brought along and he said I was right, but at the same time he asked "how much time will be lost if we look for a new construction site?" And I explained to him that the engineers in charge there had explained to me it would be approximately one and one-half months. Whereupon he said, "I can not sanction that."

PRESIDENT: He couldn't sanction the delay in the operation?

ACCUSED HERMANN GIESLER: That's right.

PRESIDENT: All right.

A (Cont'd) "We have to let the whole thing go because I can not lose this amount of time."

Q All right, now, Professor, let's talk about Task Group 6 for a little while. Will you tell the court when Task Group 6 was formed and who was the head of it and everything about it?

A I would like to say that at this time when I had the conference with Adolf Hitler Task Force Number 6 did not exist yet, and I also would like to say that the final words of Adolf Hitler were the following: "This matter has been discussed with the head of the OT central office. Engineers are working there who I trust. It is not your job; don't bother with it." And I called my brother to inform him about that.

Q Now tell us about Task Group 6.

A The end of June a new group was formed, a task force, in the same manner as had been formed on the various fronts and foreign countries, and it was called Task Force Germany. If I can remember right there were seven or eight of those groups in Germany, and the entire area of Bavaria and the Danube Area was looked at as a central point of the construction industry. Speer said, "Giesler is building in Augsburg, Munich, and Linz, and he will also build in Vienna. This is his area of interests as far as construction is concerned." Because at the same time they were thinking of keeping those task forces as peacetime construction task forces. There was even a talk to transfer the Task Force Paris West, which at that time was preparing to return to Germany already, to Munich in order to fill the project Anemone. I had a talk with Speer, and Speer asked me to take charge of the group formally, and he was satisfied with the fact that Gimpler was actually the leader of the group. I asked Speer to tell me

the entire truth and to officially promote Gimpler to the Commander of Task Force Number 6 Munich. It was clear to me that, first of all, it was too much work for me to lead this Task Force 6 because of my other architectural work which I had to perform and, second of all, I did not have the engineering knowledge to be the head of such a project; and Speer promised that at a later date, not immediately, he will make Gimpler the Commander of Task Force Number 6. At the time he couldn't do it yet because there were still some small differences between the OT Central and Gimpler. I would like to say that the main task of the OT Task Force was the following:

DEFENSE COUNSEL: If you want to use the map, you can use it.

A (Cont'd) The entire project of Main, Franken, and Wursburg does not mean the city of Wursburg, but the entire county of Wursburg; and the same went for Nuernberg, not only the city of Nuernberg, but also the entire area of Franken. The same thing with Bayreuth and Augsburg, which is the Gau Schwaben; and Munich, upper Bavaria; Linz, upper Danube; here the city of Vienna. (Indicating on wall chart.) Those eight groups. In other words, Task Force Bavaria and Task Force Danube was the project of OT Task Group Number 6 Munich; and that the Task Force had the question of airraid shelters, the reconstruction of bombed buildings, agricultural measures, and the reconstruction of the cities. And what did the Group have to do with Mushldorf? The planning, the construction, the time limits, and the building materials came directly from the OT Central Office Berlin to the construction sites of Mushldorf. As far as the group was concerned, the group was only a letter carrier --

PRESIDENT: As far as what was concerned?

A (Cont'd) As far as the OT Central Office Berlin was concerned,

(GIESLER-Direct)

Task Force 6 was only a letter carrier, because the courier route was Berlin-Munich and not Berlin-Muehldorf. The same thing with teletype machines — the teletype lines were from Berlin to Munich and not from Berlin to Muehldorf, but the requisitions for building material which came from Berlin partly came down here in the form of paper. They were bound requisitions for the disposition of construction site Muehldorf. As far as wood and similar construction material was concerned, it was the task of the Group Number 6 to turn those paper requisitions into material. And that was the job of Mr. Gimpler, and he instructed the various saw mills in the construction area Bavaria, and he turned those requisition slips into material, and the same thing he did with the requisitions for cement. But the cement manufacturing was not big enough in this area so that Task Group 6 could take care of the needs of Muehldorf. And that is where we come to the main problem. If this has to be constructed for a question of time. If we need 150,000 or 200,000 tons of cement for this construction — I just named this figure; I could even say 100,000 — then it makes a big difference whether this amount of cement has to be ready in 6 months or in a year's time; and the second factor of these construction sites was labor. That was the largest problem of the entire construction industry in Germany. It was already impossible in the years of 1942 and 1943 to set a time for a construction project, because the time factors could never be given. If there were enough laborers, there was a lack of material, or vice versa. Gimpler, if he had to supply this construction site with material, had to know how much material will be needed at what time. In other words, he had to inquire in Berlin and find out how much would be supplied the supply line down to Muehldorf. Berlin at that time said, "We will supply the entire steel, the entire iron." But we had to make sure that the entire cement coming from Wurzburg, Nuernberg,

(GIMPLER-Direct)

Bayreuth, Augsburg, and so on all the way down the line, had to go only to the construction site Muehldorf. That would have meant that the entire construction of airraid shelters, civilian use of cement, or other use of cement for the civilian sectors would have to remain -- would have to wait. And the second question was at what time intervals will they have to be delivered? One said, and I mean one said, "There will be a time of six months needed to construct this." I myself couldn't say very much to that. I am not an engineer, and I could not overlook the whole situation, and Gimpler explained to me that it was absolutely impossible. If possible, because of the great mass and of the large size of the project. Besides that, we just can not get the material. All the entire construction in this area will have to stop. And Gimpler said, "I will speak to the firms who have the job to construct this project. Only they can give me an objective answer."

Q Professor, how often did you visit the Muehldorf construction site?

A Never.

Q We had a witness on the stand who said he saw you at the main construction site at the corner stone laying, is that right or wrong?

A This witness saw me in Bunker No. 1, and again I say on my first visit to Muehldorf at the end of May or beginning of June 1944, I did not go to the main construction site. It didn't even exist, it was just wooded area.

Q You visited Hitler didn't you?

A Yes.

Q On business?

A I never visited Hitler, I was ordered to come to see him.

Q Did you ever speak to Hitler again about the Muehldorf site?

A Yes, for the second time I tackled the thing even though I was told the first time "this is not your job, this is the job of an engineer" and for the second time, in the fall of 1944, we started to talk about Muehldorf again.

Q Continue.

A I was asked by Gimple again to get directly in contact with Adolph Hitler to inform him about the situation in Muehldorf without going through the OT Central office in Berlin. Most of all was the question of labor. Gimple, as an engineer, explained to me this construction site, figuring from the very beginning that they would get free laborers at their disposal, but--I have to correct something--it was even planned that they would get Italian construction laborers in the form of firms to work there, and they would make special or partial contracts under the superivision of a large German firm. He was very much against the fact that laborers who

have never in their life worked in a construction site, who were not skilled laborers, would have to perform work at such a site. I told Gimple at that time "that is none of our business, we are getting our orders directly from the OT Central office at Berlin, this direct supervision of the Muehldorf construction area".

DR. LEILING: I have an objection to the translation. He did not say "we got our orders from Berlin direct" but "orders were issued from Berlin".

PRESIDENT: Do you agree with the translation.

PROSECUTION: Frankly I didn't notice it that closely.

INTERPRETER: I can find out for you.

THE WITNESS: I wanted to say that this construction site at Muehldorf was under the direct power or command of Berlin. This is already expressed in an expression of "special commitment ensemble" and both sides -- the construction site Muehldorf and the OT Central office in Berlin were very jealous that special attention would be paid to that fact. I would like to say that this was not the case with the other eight construction projects which were just as important as the construction at Muehldorf and which were over a much wider area. None of the leading men of any of those construction offices had the right to get into direct connection with Berlin without going through Munich, but they get their plans and instructions only from the OT Task Group No. 6 in Munich. This is what I told Gimple, and I told him "it is up to Berlin" and he told us that our common sense would have to get to the final results, or try to.

PRESIDENT: Court will recess for fifteen minutes.

(Thereupon at 1530 hours the court recessed)

(Whereupon at 1545 hours the court reconvened)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present, that all of the defendants, with the exception of Sperling, Jergas, and Flocken, are in court, that the interpreter and reporter are here and that the government is represented.

The interpreter will make the usual announcement as to witnesses remaining in the courtroom.

HERMANN GIESLER, an accused, voluntarily resumed the stand in his own behalf and continued to make the following sworn statement, being reminded he was still under oath, through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Will you continue where you left off right before the recess, and please make it as brief as possible.

A Gimple asked me to tell Hitler that it is not sensible to employ laborers who are unskilled and who cannot do a proper days work on a construction site of that kind, this is not equivalent to the ethics of an engineer, and for the second time I brought that question up to Adolph Hitler even though it was very hard for me to do so.

Q You mean to say you went up to see Adolph Hitler just because of that reason?

A No, I couldn't do that.

Q What was the reason you went then?

A I had to wait for some kind of order or telephone call which ordered me to come up to Headquarters, and again it was the planning of Munich and Linz that was developing month by month. I would like to say this was the only field of relaxation which Hitler had after taking care of his military and political work. I told him in our talk that the

construction site of Auschwitz is staffed with Jewish laborers who only do one-third of the normal work required, and I told him that it was promised to me sometime ago that those construction sites would be staffed with free, normal laborers. I used the drastic expression, I said "you cannot construct such a project from a group of lawyers and merchants". Hitler gave the order to Sauckel, via Bormann, to contract Italian laborers to send them to the construction sites with their firms. However, I was reprimanded at the same time and that I should only bother with the architecture job he had given to me and I should not bother with the jobs of Dorsch and Speer. Bormann told me "I am sure this is going to cause friction between Sauckel and Speer".

Q Professor Giesler, we had a doctor here by the name of Baumgartel who said he had a conference with you. Is that right or wrong?

A The way I understand the word "conference" is to work on a certain thing and to talk about it for fifteen minutes or one-half hour. That is my understandinf of a conference, so I can say that I did not have a conference with Dr. Baumgartel.

Q Were you ever with Dr. Baumgartel when only you and he were together?

A Never. Dr. Baumgartel came to see me in my office, the office of Chief Counselor of Architecture, I did not have an office as a formal Task Force Commander, and he made his social call and I told him in the presence of Dimple, who introduced Baumgartel to me, that it is my policy to give everybody a chance to develop his project in a free manner, and if he has any problems as far as the construction site is concerned, and as an OT doctor, he will always find an open door in my place because all of my project commanders had been instructed by Dimple that the demands of a doctor on the construction site are always to be followed.

Q Now Professor Giesler, in order to save time I want you to answer the rest of my questions "yes" or "no" and if I ask for a date just give me the date.

Q Did you visit or were you ordered up to Hitler toward the end of the war, and if so what date?

A In February.

Q Did you bring plans with you for the remodeling of cities?

A Yes.

Q Did you speak to him about OT matters at all?

A Not a word.

Q When you work, Professor Giesler, do you wear glasses?

A No.

Q What have you got them on now for?

A I am only wearing glasses since 1941 or 1942, usually in the theater, when I am looking at something far distant, in order to see better.

Q You mean to say you want to see the court now, is that what you are trying to tell us?

A Yes.

Q When you had a conference with people, in which you were together and not at some distance, did you wear the glasses or didn't you?

A No, never. I never wore glasses in my office.

Q When Dr. Baumgartel came in here he was asked to identify you. He looked around, and he couldn't identify you, and then you put on your glasses.

PROSECUTION: Just a minute. Counsel should not testify. I object to that.

DEFENSE COUNSEL: Well, it is in the record.

PROSECUTION: I object anyway.

LAW MEMBER: Subject to the objection of any member of the court, the objection is overruled.

QUESTIONS BY DEFENSE COUNSEL:

Q Then you put on your glasses and the prosecutor asked him this question: "I ask you again to look and see whether you can pick out Professor Giesler. Did he wear glasses?" And he answered this way: "As far as I know, never," and then he pointed to you. Now, why did he point out to you? Do you know?

A Because I put my glasses on at that moment, because the prosecutor asked me to do so.

Q Did any of the other accused wear glasses? Have you seen them with glasses in the courtroom?

A Dr. Flocken, yes.

Q All right, but no men. The prosecutor brought out this morning, in cross examining a witness the name of Kalda Laine and he wanted to know if the OT paid her fare or not. Can you tell us about that? Just in a few words, now. Did they or did they not?

A Yes and no.

Q Tell us why you give that answer.

A In the years 1942 and 1943, not even my wife could keep a maid because of the total war, and my wife developed a heart disease and I could not get a maid from a German labor commitment office. The OT Task Group Northern Russia made a contract with a maid by the name

of Kalda Laine who was from Reval, or to say better Wesenberg near Reval, and they made a contract and the labor commitment office did not have anything against that.

Q Here is what I want to know. Did they pay her fare, Professor, or not?

A The OT paid the fare from Reval to Munich, and my wife refunded expenses to the OT.

Q There is only one other matter I'd like to clear up. This morning a witness, your secretary, said that he didn't know that a conference was held with Moll or somebody to do with the Moll construction firm. Can you tell us why that might be?

A If I remember right, the witness testified that he was always present in my office whenever I was there with the exception of the dates between the middle of June 1944 until the beginning of July.

Q That is right. Now go ahead.

A This conference with the firms about material and contracting was held on 30 June 1944.

DEFENSE COUNSEL: That is all. Your witness.

PROSECUTION: Mr. Roth, cross-examination for the prosecution.

CROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q So you mean that any German citizen, Professor, could have had a maid brought in from Poland or Russia?

A Yes.

(Giesler--Cross)

Q And do you mean that the OT would have paid for that?

A No.

Q You mean that because you were an official of the OT that was the reason your wife was able to get a maid, is that true?

A No.

Q Well, you mean that the group up in Russia would have made a contract with a housemaid for anybody who would have asked them?

A No, but every family where the woman was not healthy had the right to get a housemaid.

Q But that would not have been done through the OT, would it, Professor?

A Not normally. They went over the labor commitment offices.

Q But you got your maid by reason of the OT group having made a contract for you, isn't that true?

A No. I got my maid from the labor commitment office in Reval.

Q Didn't you testify just a minute ago that the OT group, your OT group up there in Russia, made that contract for you?

A The OT group in the office up there spent the money for me because I wasn't there. The girl had no money to to come down from Reval to Munich.

Q And they would have done that even though you were not an official of the OT?

(Giesler--Cross)

A Yes, because not only for me but also for Mr. Gimple a maid was gotten, and later on also for an OT laborer who was a common worker because his wife had many children and he was in need of help.

Q All for OT people? Yes or no, Doctor.

A No.

Q All right. Let's go to something else. Outside of these eight main construction offices which are indicated on this chart were there any other main construction offices under Task Group 6?

A Yes, not under their supervision but Gimple had to turn over requisitions for material for other construction offices, by order of Berlin.

Q How about Kaufering? Remember Kaufering? Remember a conference you had with Moll and Co. about Kaufering?

A No, this conference concerned Muehldorf and Kaufering. It was one conference we had.

Q Well, why didn't you have Kaufering put on there? Was there any reason for that?

A I didn't draw that map. I suppose Kaufering is not represented there because we are concerned with the trial of Muehldorf.

Q And Landsberg, that isn't on there either, is it?

A As far as I know, Landsberg a l Kaufering are the same thing.

(Giesler--Cross)

Q Now, Professor, isn't it a fact that Anemone was later taken over by Task Group 6?

A No. Anemone was not necessary any more as soon as the Task Group Paris did not exist any more, but Anemone was not taken over by Task Force Munich, but Anemone went, together with the Task Group Paris West, into a new area, the area of --

Q Have you --

A Wait, I have to say something.

PRESIDENT: Let the interpreter interpret what the witness has said so far.

INTERPRETER WALKER: I have, sir.

QUESTIONS BY PROSECUTION:

Q Have you ever been in Riga?

A Riga? Yes.

Q What did you do up there?

A I visited my construction group, Construction Group Giesler, in Riga.

Q How many times did you go up there?

A I have got that before in some of the questionnaires I had to fill out in some other camps, and I said that I have, between the years 1942 and 1944, been eight times in the Baltic States or Northern Russia.

Q And that was always in connection with your group that was working up there, isn't that true?

A I took some plans under my arm and I went up there in order to talk things over with the engineers.

(Giesler--Cross)

Q Professor, will you be good enough to make your answers short? That could have been answered yes or no. So that it comes about that you visited the group around Riga about every other month, isn't that true?

A Approximately, but sometimes it was an interval of six months.

Q So that when you told us before that your group went up there but that you remained in Munich, you didn't tell us that you visited that group about every other month, did you?

A I said that already.

Q When did your brother become the Gauleiter of Munich?

A I can't remember the exact date. It was in the year 1943.

Q And that was before or after you became the General Counselor for Architecture?

A It was five and a half years later.

Q What was five and a half years later?

A That my brother became Gauleiter of Munich.

Q During the time that your brother was the Gauleiter, you visited Hitler pretty frequently, didn't you?

A Yes.

Q In fact you visited him about every other month, didn't you?

(Giesler--Cross)

A Mrs. Wolf explained it this way: that sometimes there was a time interval of two months, sometimes a time interval of half a year, sometimes less than that, between the times that I visited Hitler. In other words, that he ordered me to come up there.

Q How many times did you visit Muehldorf? I refer now to the construction site.

A You mean the construction site of Muehldorf which came under Hoffmann?

Q Yes.

A I explained once before. I was never at the main construction site.

Q Weren't you there when some construction was going on, Professor? Now, think it over.

A No.

Q Weren't you in Muehldorf at the time that some huts were being built for workers?

A That was a time in May when I had a talk with Hoffmann, but not as an OT task force leader.

Q What kind of huts were they that were being built?

A As far as I know, they were huts for the OT, which I had already also seen in my visit of the general area around Muehldorf.

Q And did you see the huts that were being built for the prisoners?

A No.

(Giesler--Cross)

Q Did you know what kind of huts they were?

A Yes, those are huts which were also used, which are called roof huts, and they were also used in Russia by the OT for key personnel and also for fighting personnel and they were copied from the Russia huts which were used to house families who worked in factory areas.

Q You mean that German OT personnel were living in huts that were built on the ground and had no flooring in them?

A I myself spent one night in one of those huts. Those huts are built on the ground for the following reasons--that they offer the least resistance for the wind and thus it helps to keep warm.

Q Gimple was under your jurisdiction, wasn't he?

A Mr. Gimple was under my supervision as far as he was a commander of the executive office of the General Construction Counselor.

Q And he was under the jurisdiction of Task Group 6, wasn't he?

A In his capacity as head of the executive department, that means between the years 1938 and 1942.

Q Professor, my questions deal with Muehldorf and with the construction site there. I am not interested in your capacity as Generalbaurat. I am interested now in asking you one question. Was Gimple responsible to Task Group 6? Yes or no?

A Yes.

(Giesler--Gross)

Q Was Hoffmann responsible to Group 6?

A No.

Q Whom was he responsible to?

A The OT Central Office.

Q When he said, in his statement, that he was under Group 6 and that you were his superior, was he lying?

A At least he explained himself very unclearlike.

Q How about Griesinger? Was he under Group 6?

A He was under Hoffmann. Not directly under Hoffmann, but he was subordinate to Construction Counselor Kideden.

Q And wasn't Kideden responsible to Task Group 6?

A No.

Q What was the relationship between Task Group 6 and Griesinger?

A I'd like to say once more that Special Commitment Muehldorf was put together of the OT Task Group West and OT Central Office. I understand it this way. If I could tell Hoffmann to leave or to transfer him, then Hoffmann would be under my supervision, but --

Q I didn't ask you that. Please make it short, Professor. I asked you whether Griesinger was subject to the orders of Task Group 6. Please tell us, yes or no.

A No, because I or Gimple could never have given orders to Griesinger.

(Giesler--Cross)

MILITARY GOVERNMENT COURT

CASE RECORD

Pages 1414 - 1475

CASE NO. 000-50-136

PROSECUTOR Mr. Roth

* ~~GENERAL~~ ~~EXPEDITIONARY~~ MILITARY COURT
GENERAL

DEFENSE COUNSEL Mr. Welch
Simon Weissglas

INTERPRETERS Howard Walker

PLACE Dachau, Germany

REPORTERS Sue McCulloch
~~Leona Mumedy~~
Eunice Hasdorff
~~Patricia Stewart~~
Gloria Spears
~~Mary Joan Fox~~

DATE 7 May 1947

WITNESSES

Hermann Giesler Bennow Wolf

Franz Egger Maria Lechner

Arno Van Der Milch Howard Walker

ACCUSED Franz Auer, et al.

ADDRESS _____ SEX _____ AGE _____

	FIRST CHARGE	SECOND CHARGE
PLEAS		
FINDINGS		
PREVIOUS CONVICTIONS		
SENTENCE		

IMPRISONMENT (TERM: _____
(BEGINNING _____ 194_____

FINE AMOUNT _____
TO BE PAID WITHIN _____ 194_____
FURTHER TERM OF _____ IMPRISONMENT

CHARGE SHEET AND RECORD OF TESTIMONY ARE ANNEXED HERETO.

_____
SIGNATURE OF MEMBER OF COURT

REVIEW

ACTION OF REVIEWING AUTHORITY _____

_____

_____
SIGNATURE OF REVIEWING AUTHORITY

*STRIKE OUT WORDS NOT APPLICABLE.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus FRANZ AUER, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 1 APRIL 1947

7 May 1947 Pages 1414 to 1475 incl

TESTIMONY

Witnesses	Direct	Cross	Redirect	Recross	Court
HERMANN GIESLER	---	1414	1429	---	1430
FRANZ FOGER	---	---	1436	1438	---
ARNO VAN DER WILCH	1438	1450	---	---	---
BENNO WOLF	1461	1464	---	---	---
MARIA LECHNER	1466	1469	---	---	---
HOWARD WALKER	1472	1473	---	---	---

EXHIBITS

No.	Description	Marked	Rec'd in Evidence
P-86	Statement (letter)	1415	withdrawn
P-87	Letter by Dr. Baumgartel	1460	1461
D-42	Statement of Otto Sperling	1434	1435
D-43	Statement of Fritz Degelow	1465	1465

Dachau, Germany

7 May 1947

MORNING SESSION

(Whereupon the court reconvened at 0920 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present; that all the defendants, with the exception of Jergas, are in court together with their counsel; that the interpreter and the reporter are here; and that the Government is represented.

Will the interpreter make the usual announcement concerning witnesses, please?

(Whereupon the interpreter did as requested.)

HERMANN GIESLER, an accused, voluntarily resumed the stand in his own behalf and continued to make the following sworn statement through an interpreter:

CROSS EXAMINATION (Cont'd)

QUESTIONS BY PROSECUTION:

Q Now, you mentioned yesterday the term "stadthalter." Will you tell us who that was?

A It was Reichsstatthalter General Ritter vonn Epp.

Q And you at one time were connected with Saukel, weren't you?

A Yes.

Q Who was Saukel?

A Saukel was the Gauleiter of Thuringia.

Q And what else was he?

A He was responsible for the labor commitment of workers from the foreign countries who had been working in German defense industries of occupied countries since 1943.

Q And what was your connection with Saukel?

A I was building. In Weimar I built the House Klephant and I

built the City Square and other buildings. Weimar was the residence of Gauleiter Saukel.

Q And what was your duty with respect to the procurement of labor?

A Nothing.

Q Didn't you take a trip one time with Saukel?

A No.

(A document was marked Prosecution's Exhibit P-86 for identification.)

Q I show you this letter and ask you if you ever saw that before?

A This is a letter which was written by the Administration and Legal Department to the Finance President in Munich in order to make arrangements for a journey of the General Counsellor of Architecture in Munich by order of Saukel. I have to explain something to that. Twice in my life I have been in Paris. I was in Paris in 1936 or 1937 -- I can not exactly remember the date -- and in 1940 I was in Paris again for exactly 4 hours. Since that day I have never entered Paris again. The same goes for France, and I ask you to look at the date that letter carries.

Q And, as a matter of fact, that last time you were with Hitler was the last time you were in Paris -- that was the time that you visited the opera with Hitler, isn't that true?

A Yes and no. I got the order to be in Paris, I think it was June or July -- I can not quite remember, but I could tell you the date because it was the date of the capitulation of France. I received an order to come to headquarters immediately and at that time I was in the Vienna area in civil. I was more or less arrested in the street, put in a plane and flown over to the headquarters. At 3 in the morning Adolf Hitler and an architect by the name of Speer -- later on Speer was Reichsminister -- and myself drove to Paris with a small accompanying staff and approximately

6 o'clock in the morning we visited the Paris Opera for maybe 15 or 20 minutes for a building survey.

Q Just a moment, Professor, that question has been answered and that was quite sufficient.

DEFENSE COUNSEL: If it please the court, I believe the witness can explain. He was asked the question, and I believe he has the right to explain.

LAW MEMBER: The question was about the occasion he went to Paris with Hitler, and he is explaining.

DEFENSE COUNSEL: All right, if the court thinks that is enough.

PROSECUTION: I now offer in evidence this letter which has been identified by the defendant and is marked Prosecution's Exhibit P-86 for identification. Is there any objection?

DEFENSE COUNSEL: If it please the court, I would like to ask the witness a question before I make any objection.

LAW MEMBER: You may take him on voir dire as to the exhibit offered.

DEFENSE COUNSEL: Well, if it please the court, I am going to object to the admission of this document because I don't believe it has any bearing on the case. The man hasn't denied anything in the statement — the witness hasn't denied -- and prosecution can ask him anything he wants to about it. If there is any discrepancy, then, I admit -- But this wasn't signed by the witness and it wasn't sent to the witness. The witness says he knows about it.

PRESIDENT: Do you want to ask the witness a question with reference to that exhibit?

DEFENSE COUNSEL: No, sir, not unless it is going into evidence. Then I would like to. But I don't see where it has any bearing on this case.

LAW MEMBER: Did you ask him about this transaction as a predicate for impeachment?

PROSECUTION: Yes, sir, and he denied that he held the office described in that paper.

DEFENSE COUNSEL: Which office did he say he denied?

PRESIDENT: The General State Surveyor of Buildings?

PROSECUTION: No, sir.

DEFENSE COUNSEL: At the end of the first paragraph, I believe. It doesn't say in the letter that this man held that title.

PRESIDENT: Ask him which one of the men held that title.

PROSECUTION: I withdraw the exhibit, sir.

QUESTIONS BY PROSECUTION: (Cont'd)

Q Your office had a subdivision for the supply of food to Muehldorf, did it not? Will you please answer "Yes" or "No"?

A As far as OT personnel was concerned, yes.

Q Now, you know that the OT drew its food from the army supply to feed the prisoners, don't you?

A No.

DEFENSE COUNSEL: Can we have dates on these things? Because —

PROSECUTION: We are talking about Muehldorf, Dr.

DEFENSE COUNSEL: All right, will you put that in there so we will know what you are talking about?

A (Cont'd) If the OT would have supplied the prisoners they would have done that as a whole. In other words, the OT would have also cooked for the prisoners, but due to the fact that Camp Dachau reimbursed the OT as far as rations were concerned —

Q Professor, I didn't ask you that. Will you please answer my question? Did your office have a subdivision for the procurement of food

(GIESLER-Cross)

from the army for the prisoners at Muehldorf, Yes or No?

A This question I can only answer with "No."

Q Now let me ask you this question: Did you have this question asked of you and did you make this answer? "Is it not a fact that someone at the office of Einsatzgruppe 6 was responsible for the procurement — "

DEFENSE COUNSEL: Can we get the date on this?

LAW MEMBER: Let the court have the date.

PROSECUTION: This is the defendant's statement, pre-trial statement, dated 12 February 1947.

Q Question: "Is it not a fact that someone at the office of Einsatzgruppe 6 — ". I withdrew that. "Now, in addition to supplying materials, it was also necessary for the OT to supply food for the OT personnel as well as the prisoners who worked at the OT construction sites, isn't that true?" Answer: "I can not answer this question; I am not informed." The next question: "Well, Professor, where did the food for the OT personnel and the food for the prisoners who worked at the OT construction sites come from?" "Also this question I can not answer. I don't know."

DEFENSE COUNSEL: Just a minute. Are we getting answers to these individual questions?

PRESIDENT: He is asking them in a group, apparently.

PROSECUTION: Yes, sir, I am asking them in a group.

Q (Cont'd) Question: "Is it not a fact that someone at the office of Einsatzgruppe 6 was responsible for the procurement or distribution of food for these prisoners?" Answer: "Certainly, yes."

A Yes, that is a fact.

Q Who in your office was responsible for the procurement of food for prisoners at Muehldorf? Just name them.

(GIESLER-Cross)

A As far as the free laborers and the OT personnel was concerned, it was the responsibility of Dr. Gutmut.

Q Professor, I told you before, we are only interested in Muehldorf and we are only interested in prisoners. Now will you please tell us who it was who was responsible in your office for the procurement of food for the prisoners at Muehldorf?

A I can not explain that to you.

Q You mean you don't know?

A I know more about it today.

Q Where did you learn about it now?

A I found out from this trial.

Q All right, tell us from whom you found that out.

A In general, I can not name the individual witnesses, but the general picture was that the food supply came from the OT, but only as far as raw food was concerned.

Q All right, now --

A (continued from last answer) With the exception of the bunker soup, which was dished out in general. The next witness said that the food was paid for by Dachau.

Q Now, Professor, your office, then, was responsible for at least supplying the raw food and this bunker soup for the prisoners, isn't that true?

DEFENSE COUNSEL: Now, if it please the court, this gentleman has testified on the stand here and in his statements that he didn't know who furnished the food for the prisoners. He said that during the trial he found out who furnished the food for the prisoners. Now, we have to keep those things apart, I believe. You've got to ask him questions about

(GERSLER-Cross)

what he knew before the trial and what he found out after the trial.

LAW MEMBER: Counsel will be permitted to frame his own question. You may offer such objections as you care to.

DEFENSE COUNSEL: Well, if it please the court, counsel has asked him where he found out certain things, and he said he found out since the trial started. Certainly he can't be held responsible for the things he found out since he has been in jail here, for any knowledge of things he learned since the trial started. I think it should be separated.

PRESIDENT: Do you have an objection?

DEFENSE COUNSEL: Yes, sir, I do, because I think the question should be framed in this manner: "When did you find out this information?"

LAW MEMBER: Counsel, the point is: Counsel may not want to ask him the question you framed. He has the right to frame his own question.

DEFENSE COUNSEL: I think for clarification of the court and the witness

LAW MEMBER: Subject to objection by any member of the court, the objection is overruled.

PROSECUTION: Will the reporter please read the last question?

(Whereupon the question referred to was read by the reporter as follows:

"Question: Now, Professor, your office, then, was responsible for at least supplying the raw food and this bunker soup for the prisoners, isn't that true?")

A That, I also have to answer with "No." The responsibility was the self-supporting main construction office Muehldorf.

Q Now, Professor, are you going to tell the court that your Group had absolutely nothing to do with the Oberbauleitung Muehldorf?

(GIESLER-Cross)

A I don't want to say that.

Q I want you to tell the court what the connection was between Group 6 and the Oberbauleitung at Muehldorf headed by Hoffmann, of which Griesinger was a member. And make it short.

A One can not make those things too short because one has to explain those matters.

Q Please make it short, Professor.

A When this group was originated the construction site Muehldorf and Anemone was in existence and started to get things under way.

Q Wait a minute. Let me interrupt you and ask you to list them for us 1, 2, 3, 4, what connection there was between your group and the Oberbauleitung headed by Hoffmann. Just a list of them.

A Gimpler had to turn over the requisitions which came from Berlin into actual material. That was wood, small steel parts, and the main content was cement.

Q Now, that is one item. Give us another item.

A The second connection between the Task Force and Muehldorf is shown here by the second line which states GB Construction. (Indicating wall chart.)

PRESIDENT: I wish you would tell the witness not to talk too long. If you can't interpret it and it is too long, the court isn't getting the evidence. Tell him to speak for a reasonable length of time so you can remember what he is testifying to and then translate it to the court.

(Whereupon the interpreter instructed the witness accordingly.)

A (Cont'd) In Berlin was the Office of the General Counsellor for Building Construction of Germany -- for Building Economy in Germany, and

(GRIESINGER-Cross)

in Munich was a subordinated office to him. Berlin was the superior office and Munich was a subordinated office. This office was called plenipotentiary for the building economy, construction economy or building economy. This office was a connection with the construction and building operation office Gimpler. When this group was formed, this office of the plenipotentiary for building economics was included in Task Force Number 6. The task of this office was to see that no material would be wasted and that every bit of construction being carried on was legal -- has been authorized -- and that each construction site was made in a priority list from Berlin.

(SIEGLER-Cross)

Q Let me interrupt Professor. I asked you please to list the matters in which your office stood in connection with the Oberbauleitung. Please don't give us a history, just list them one, two, three, four.

A That was No. two. And otherwise there was no connection of the Task Force as a construction organization with the construction site of Muehldorf, because the sanitation department, and the front leader department, and the housing department came under the head of Berlin and they only had a representative from Berlin at Task Group No. 6.

Q So you are telling the court whatever Task Group 6 did independent of these few items which you named, they did it all independent of the Oberbauleitung at Muehldorf, isn't that true?

A I do not understand your question.

PRESIDENT: Frame the question in a little simpler form.

LAW MEMBER: And ask the subordinate question, not the preliminary question. Just ask a direct question.

QUESTIONS BY PROSECUTION:

Q Do you mean, Professor, that while your office stood in connection with Oberbauleitung with respect to some matters, with respect to the other matters with which they were charged they acted independently.

A No, the head construction office was entirely independent from the group.

Q So that you are telling the court now Professor that all Task Group 6 existed for was for the purpose of supplying items of wood, iron and cement for Muehldorf. Is that right?

A As far as Muehldorf construction is concerned, yes, because this was a special construction office. The way I understand it, if it is a general construction site and I am responsible for it, like the construction sites of Nuernberg, Bayreuth or Munich, then I will make the plans, I will

make up the priority lists and I will take care of the building supplies.

Q So that Professor you are telling the court now that all you had to do with the Group, with respect to Muehldorf, is to supply materials. Is that right? Answer yes or no.

A I explained it very clearly by mentioning as far as the building sector is concerned.

Q Now outside of the building sector, what did the Group have to do?

DEFENSE COUNSEL: I am going to object to that as being repetitious. I have gone through it on direct and the prosecution is going through it on cross examination, he has asked four or five questions on this same thing.

PROSECUTION: I haven't had a direct answer from this man since he started to testify.

LAW MEMBER: Subject to objection by any member of the court the objection is overruled.

PROSECUTION: Will the reporter read the question please?

(Whereupon the reporter read the last question)

THE WITNESS: Had the message center up to the time that Muehldorf had its own teletype machine.

QUESTIONS BY PROSECUTION:

Q Next item?

A Medical department, but the medical department was fully organised from Berlin, down to the last OT doctor.

Q Next item?

A You could compare it with the--

PROSECUTION: The witness has answered the question, tell him to give me the next question.

LAW MEMBER: Let him translate it.

PRESIDENT: I want this last statement made by the witness translated.

THE INTERPRETER: It is organized the same way the medical department of the army was organized.

THE WITNESS: And this is only one-half of the question, I have to answer the entire question.

PROSECUTION: I want the court to direct this witness not to make comments but to answer the question simply and in a few words.

PRESIDENT: What does the witness want to say?

THE WITNESS: I would like to answer the question as fully stated.

PRESIDENT: He may proceed.

THE WITNESS: I did not have the authority to give orders or advice to the OT Task Group doctor, for instance I could not take this man out of his office nor could I put him into office, and the doctor was not responsible towards me he was only responsible towards the head physician of the OT Central office in Berlin.

QUESTIONS BY PROSECUTION:

Q Now I want you to answer this Professor. What did you have to do with the prison laborers at Muehldorf?

A If Nothing.

Q How about the Group?

A Nothing with the Group.

Q And yet when Muehldorf ran into trouble with its prisoner labor they came to you didn't they and they sent you up to Hitler to try to straighten it out.

(Diesler-cross)

A They came to Mr. Gimple and said since the OT Central office could not handle it any more they asked me to do a personal favor and go up in privacy.

Q But when they ran into trouble they went to Group 6 and not to Berlin, didn't they?

A They came to Berlin and since Berlin couldn't help them any more they tried to make headway via private personal contact and that was me.

Q They didn't come to you, they came to Gimple?

A They didn't come to me they came to Gimple and Gimple asked me personally to do that, and I at first denied his request.

Q Now one more question. Isn't that the reason you said in your statement Professor "I myself was contacted only when important conferences required my authority". That a conference with the Gauleiter considered the extent of the civil construction, isn't that the reason?

A I have to say that Muehldorf is not a civilian construction site; Muehldorf is a governmental construction which was ordered by the Fighter Staff and is of high military character.

Q Do you mean that the Gauleiter talked to you in your capacity as General Architecture Counselor or in your capacity as Leader of Group 6?

A The Gauleiter Paul Gimple spoke to me as a brother.

Q And when you said you were called into conference, was that call into conference you mean as a brother or in some official capacity?

A No, I have to explain something.

Q I don't want any explanation, just answer the question please.

A I'll answer the question the following way, that the civilian building sector questions came up which Gimple had to decide. If Gimple, because of his position, ran into difficulties with the construction sites

between Wurzburg and Vienna he came to see me after he had made his decision and told me about his difficulties.

Q Do you mean that Gimple never came to you on a question involving Muehldorf?

A I can only tell you that in the month of August I only spent one day in Munich.

Q Now forget about August. I am talking about June 1944 to May 1945, did Gimple ever come to you with problems?

A Naturally.

Q What kind of problems did he come to you with, Professor?

A He came with the following problems: He said first, Professor, unfortunately I had to strike the following air raid bunker off from the list---

PROSECUTION: I am not interested in any particular bunker--

LAW MEMBER: Let him answer the question.

PROSECUTION: I am not interested in learning about his troubles or about the air raid bunker--

COL. TOMLINSON: Maybe the court is interested.

PRESIDENT: Let the witness answer the question and don't interrupt the witness until he has completed talking.

PROSECUTION: Will the reporter read the answer as given.

(Whereupon the reporter read the last answer)

THE WITNESS: Were stricken from the lists in Munich. I'll tell you the example now: Besides that I had to quit the construction of the medical bunker in Munich, besides that I had to strike the housing bunker in the Signal department in Munich because Muehldorf received the entire cement by order of Berlin. The Gauleiter treated me like a son-of-a-bitch on the telephone whom I asked him to help me. The Gauleiter said "while my air raid shelter and my protective service for the people are being taken

off from the list in Munich, Mr. Hoffmann is building his personal protection in Ampfing. That is the moment I came into the picture and Gimple said "I can't make myself clear any more, I have not got the authority".

Q Do that again, Professor, when they ran into trouble they came to you?

A If Gimple got into difficulty with the Gauleiter I was never there, for instance Vienna, Linz, Munich, or any of the other cities, I had to help him out.

Q Can you tell the court whether Gimple knew the condition of the prisoners there in Muehldorf?

A That I don't know, but I don't think so.

Q Did Gimple ever go to the construction site?

A I think so, yes.

LAW MEMBER: Are you offering this in explanation of a paragraph of Exhibit P-15, or are you on a new subject?

PROSECUTION: This is a new subject.

Q How often did Gimple go to the construction site?

A This I can't answer, I don't know.

Q Was it more than once?

A I suppose he was there more than once, but I don't know.

Q Was it more than ten times?

A Impossible.

Q You mean that Gimple didn't go to the construction site at all except on rare occasions?

LAW MEMBER: What is the connection of the Gauleiter's visits to the construction site?

DEFENSE COUNSEL: He has answered the question three times and I object to it being repetitious.

LAW MEMBER: I'll withdraw my statement.

DEFENSE COUNSEL: I am objecting to it as being repetitious. He has asked three questions right in a row and the man has answered he didn't know.

LAW MEMBER: Subject to objection by any member of the court the objection is sustained.

PROSECUTION: That is all.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q I have just one question, Professor. Something was brought out on cross examination that I wish to clear up for the court. The prosecuter showed you a paper and you seemed to know something about it and the people mentioned in there. That letter was dated the 10th of November, 1942. I am going to ask you one question and I want you to answer "yes" or "no" so we wont take up the time of the court. On that date, on the 10th of November, 1942, were you the Plenipotentiary General for Labor Allocation? Answer yes or no.

A Never.

DEFENSE COUNSEL: That is all.

PRESIDENT: Court will take a recess for thirty minutes.

(Whereupon at 1015 hours court recessed)

(Whereupon the court reconvened at 1045 hours.)

PRESIDENT: Court will come to order.

CAPT. BACHMAN: Let the record show that all the members of the court are present; all the defendants, with the exception of Jergas, who is sick in the hospital, together with their regularly assigned defense counsel, are present; that the interpreter and reporter are in court; and that the Government is represented.

Will the interpreter make the usual announcement regarding witnesses in the courtroom and also remind the witness he is still under oath?

(Whereupon the interpreter did as requested.)

HERMANN GIESLER, an accused, voluntarily resumed the stand in his own behalf, and being reminded that he was still under oath, continued to make the following sworn statement through an interpreter:

EXAMINATION BY THE COURT

QUESTIONS BY THE PRESIDENT:

Q Professor Giesler, what are your relations with Dr. Baumgartl? Are they pleasant and agreeable, or not?

A I only got to see him shortly, and I only spoke to him for a short time, all in all, three or four times.

Q You heard him testify to the effect that he had had conferences with you from four to six times?

A They were short and precise conferences which mainly dealt with the welfare of his fellow workers or the sheltering of the offices, or a difference which he may have had concerning a Nuernberg official office. Furthermore, he made a short report at a meeting or conference of the actual oberbauleiters, of the eight oberbauleiters of the OT task force. However, this conference was discontinued on account of a heavy air raid in Munich. This air raid forced me for an immediate departure to Munich. It was very late. The meeting took place outside of Munich in a small house.

Q I simply asked you, Professor, what your relations were with him. Were they pleasant and satisfactory?

A It was always pleasant and satisfactory.

Q He testified, I believe, that he had seen you out at the main construction site about 10 or 15 times. Did you hear that testimony?

A Yes.

Q Was that true or was it false?

A I never entered the main construction site at Muehldorf.

Q So that wasn't correct testimony?

A Therefore, this is not correct testimony by Dr. Baumgartl.

Q I believe you heard him also testify that in one of his conferences, he had told you that the conditions at Muehldorf were terrifying?

A I cannot recall that. He only could have said that during a conference with Mr. Gimple.

Q Do you recall him telling you that from 5 to 15 people were dying at Muehldorf daily?

A No. May I explain something further to that? If Dr. Baumgartl had looked me up in order to discuss questions with me concerning the OT, I would have called in immediately the person responsible for that or competent for that subject; in this case, Mr. Gimple.

Q You heard him also testify that he had made a second complaint to you covering approximately the same things that he had complained of previously, and that you promised to do something about it, is that correct or incorrect? This was in the autumn of 1944, is that correct?

A That is incorrect. I would like to explain that further.

Q You may amplify your answer.

A In the late fall of 1944, I met with Dr. Poschmann in Berlin. He told me that he had spoken to Gimple. Gimple had looked him up. Based upon discussions with Dr. Baumgartl, Dr. Poschmann, the chief doctor of the OT, explained to me that everything would be done in order to do away with possibly arising emergency conditions.

Q What was the date of that, Professor Giesler?

A As far as I can remember, it was about the middle of November.

Q What had been done between July and November with reference to the complaints made to you by Dr. Baumgartl?

A As far as I can see, according to my opinion, these complaints could only have been brought out in Berlin, based upon what I found out here during the course of the trial, in October.

Q Were you known as the head of Task Force 6 by your associates?

A All my fellow workers knew that Gimple was the man in charge of the task force, and that I only had the title "task force leader," in a representative manner.

Q You heard Dr. Baumgartl testify that he knew you as head of Task Force 6, did you not?

A Yes, this I heard.

Q You heard the testimony of Roehr, did you not, that he knew you as head of Task Force 6?

A Yes, I heard that, too.

Q Was the question of delousing installations ever taken up with you?

A No.

Q You never gave any instructions with reference to delousing plants?

A These instructions I gave very generally in Russia North sector, and also frequently at the beginning of the Munich group. Then I explained that all the questions of the medical doctors, or as far as the sanitary department was concerned, with respect to the construction matter as far as it concerned us -- that means all requests for dispensaries, hospitals or sanitary installations, also delousing installations and disinfecting installations -- in other words, all requests of the medical doctors are by all means to abide by.

Q Did you hear this testimony of Dr. Baumgartl with reference to the lack of facilities and supplies and hygiene at Muehldorf, "I went to him because Ciesler was the only one who had power to make a change?"

(GIE LER-Court)

PRESIDENT: What is the objection on the part of the defense?

DR. LEILING: The question was not correctly translated. I have the record before me here and it says, "with authority to make a change." That is what the president said.

QUESTIONS BY THE PRESIDENT:

Q Dr. Baumgartl was asked this question, "Before you go any further, will you please tell the court why you went to Giesler with that information? A Because I know that Professor Giesler was the only person who would have authority to make a change." Is that correct or not, or on what do you consider Dr. Baumgartl based that statement?

A I do not have an explanation for that, because he could have gone to Hoffmann with this request and Hoffmann had a direct connection to Berlin, the office where he got his orders from, and Poschmann had a direct connection to these doctors of the construction site.

Q Do you remember Dr. Baumgartl making this statement, "Giesler could have done a great deal"?

A Yes, he stated I could have requisitioned private drugstores or medical supplies or army medical supplies. Aside from the point that I could not do that, I did not have the authority to do that, I also know that private drugstores were completely exhausted and did not have anything any more.

Q You also heard him testify to the effect that the supply house at Schwindegg was for Muehldorf, did you not?

A Yes, but I did not know until the beginning of the trial that there was a medical supply depot in Schwindegg.

Q Did you know prisoners were dying out at Muehldorf?

A Once I heard about this through Poschmann, but not in such a meaning that the condition in Muehldorf was in such an awful form.

Q Did you ever hear of any laborers being sent in to Muehldorf?

A Not that either.

PRESIDENT: The witness will be excused.

(Whereupon the witness was excused and resumed his seat in the dock.)

DEFENSE COUNSEL: I hand the reporter a document and request that it be marked D-42 for identification.

(The document referred to was marked Defense Exhibit 42 for identification.)

DEFENSE COUNSEL: I offer D-42 in evidence as being a statement by the accused Otto Sperling, made on the 6th of May, 1947, in which he explains certain statements which he made previously and in which he denies that certain statements were true, and giving the reason therefor, and request that it be attached to the record and made a part thereof.

CAPT. BACHMAN: If the court please, the prosecution objects to the admission of this exhibit by reason of the fact that this defendant is present here in court today and able to testify. There is no reason whatsoever for admitting a written statement except the inability of the court to obtain the testimony of the witness in person. We all recognize, of course, that a statement is not as good testimony as the testimony of a witness upon the stand for the reason that he cannot be cross examined, for the reason that the court cannot observe his demeanor in making such statement, etc. We all recognize in this court that statements are necessary because witnesses cannot be obtained at times, but when they can be obtained and are present, there is no reason whatsoever for admitting such a statement.

DEFENSE COUNSEL: If it please the court, I would like to explain the situation on the part of the defense. As the court knows, we have various interests in this case and we have various lawyers representing these interests. I myself have an interest, of course, in all of the accused, and a certain few in particular. Dr. Leiling has the interest of this particular man who made the statement at heart. Dr. Engelhorn has to do with one of the men mentioned in this statement. If it please the court, I would like this man to take the stand. That is my own wish in the matter. I spoke to Dr. Leiling, and Dr. Leiling said, "This man will not take the stand." I cannot compel him to

take the stand, and, as a matter of fact, neither can Dr. Leiling, even though Dr. Leiling doesn't want to make him take the stand. But it has nothing to do with the case and nothing to do with the accused himself. It has to do only with two other members of the accused, and it only explains previous statements made by him which have been put into evidence by the prosecution. Just one more thing. This statement was not taken by any member on the staff of the defense. It was taken by Mr. Horowitz.

LAW MEMBER: Subject to the objection of any member of the court, the objection is overruled and defense exhibit D-42 is admitted into evidence.

(The document heretofore marked Defense Exhibit 42 for identification was received in evidence as Defense Exhibit 42, is attached hereto and made a part of the record.)

DEFENSE COUNSEL: If it please the court, I would like to read the statement.

PRESIDENT: You may proceed.

(Whereupon D-42 was read by the defense counsel.)

DEFENSE COUNSEL: The defense rests.

PROSECUTION: The prosecution recalls in rebuttal Franz Egger, a U.S. Civilian, who has been examined in this case before.

FRANZ EGGER, called as a witness in rebuttal by the prosecution, being reminded that he was still under oath, testified as follows:

RE DIRECT EXAMINATION

(Whereupon the proceedings were translated into the German language.)

QUESTIONS BY PROSECUTION:

Q Do you know the accused, Sperling?

A Yes.

Q Did you have occasion to examine him by way of a pretrial statement?

A Yes. I examined Sperling three times.

Q Did you ever beat him?

A No.

Q Did he ever tell you that anybody ever beat him in Dachau?

A He stated he was beaten but not in Dachau.

Q Did you say anything to him about beating?

A Yes.

Q What did you say to him?

A I told Sperling he was not to be afraid; he wouldn't be beaten in Dachau, and questioned him where he was beaten.

Q What did he tell you as to where he was beaten?

A He told me he was beaten in Feldafing by Jewish former prisoners, and later after his transfer from Feldafing to Garmisch he was beaten at Garmisch.

Q Did you have conversation with him with respect to Gickeleiter and Griesinger?

A Yes.

Q What did he say to you, and what did you say to him?

A I questioned Sperling as to from whom he received orders to beat prisoners, and Sperling answered, "Why don't they get Gickeleiter and Griesinger--these are the ones responsible while I am sitting here."

Q Did he give you the impression that he was afraid of you?

A No.

Q What was the relationship between you and Sperling?

A I had interrogated Sperling one time--I believe it was December '46, and I took the statement off of him. He denied all beatings by himself. Later on I confronted Sperling, and took the statement after the confrontation, and Sperling informed me he had been lying before, and upon that he told me "Why don't they get Gickeleiter and Griesinger--these are the ones who are responsible while I am sitting here".

Q Following that, what action did you take with respect to Gickeleiter and Griesinger?

A I went and checked back to see if Gickeleiter and Griesinger were wanted previously, and I found that both of them were listed in CROWCASS, and upon that Gickeleiter and Griesinger were arrested.

Q Did you ever tell Sperling that you were going to beat him?

A No.

Q Did he ever indicate to you that he was afraid of you?

A No, he was sitting like any other prisoner in my office.

Q Did you take a supplemental statement from him?

A Yes.

Q Did he make a statement about Gickeleiter and Griesinger in a supplemental statement as well as the one preceding this supplemental statement?

A Yes.

PROSECUTION: You may examine.

(Egger-Direct, Redirect)

LAW MEMBER: Dr. Welch, cross examination on the part of all the accused.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q He said he had been beaten before, is that right?

A Yes.

Q And it is your understanding when he was being interrogated he had been beaten, but not at Dachau?

A No. He distinctly said he was not beaten when he was interrogated at Feldafing.

Q But he had been beaten?

A He had been beaten, Yes, afterwards.

DEFENSE COUNSEL: That is all.

PRESIDENT: The witness will be excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN BACHMAN: The prosecution offers as its next witness Arno Van Der Milich.

LAW MEMBER: Is that rebuttal?

CAPTAIN BACHMAN: Yes, Sir.

ARNO VAN DER MILICH, called as a witness in rebuttal by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN BACHMAN:

Q State your name.

A Arno Van Der Milich.

Q Your age?

A 43 years of age.

Q Where are you now residing?

A I used to live in Munich, Daubenstrasse, Number 4.

Q What is your nationality?

A German nationality.

Q Where are you living at the present time?

A Now I am here in the camp.

Q In what capacity?

A As an internee.

Q Why are you interned here in camp?

A Because I am supposed to have beaten Jews.

Q And that was at Muehldorf?

A Yes, that was in Muehldorf.

Q How long were you at Muehldorf?

A Six and a half months I was in Muehldorf.

Q From when until when?

A From August until the end--the capitulation in Muehldorf.

Q August of what year?

A August '44.

Q At what camp were you?

A I was in Muehldorf, then I was in Sachsenhausen, and then in the end I was in Dachau.

Q The question was, in what camp of Muehldorf were you?

A From Dachau.

Q There were several lagers in Muehldorf, were there not?

A There was the old camp, and then there was the Forest Camp.

Q Which camp were you in?

A The old lager, afterwards for five days in the Forest Camp.

Q What were your duties in Muehldorf?

A My duties were the following, to watch or supervise all prisoners and all capos.

Q You were a capo yourself?

A Yes, I was the chief capo.

Q And you were known as a "green patch" prisoner?

A Yes.

Q That is, you were a criminal prisoner at Muehldorf?

A Yes.

Q Your duties as head capo consisted of what?

A Everything was supposed to be reported to me. I had to observe everything, and I was in charge of everything.

Q That was at the main construction site?

A Yes, at the main construction site.

Q About how many prisoners were under your direction?

A There were approximately 2,000 prisoners under my supervision.

Q About how many capos?

A 15 Germans and 60 Jewish capos.

Q In directing the work of these prisoners, who in turn worked under these other capos--what sort of work was being done at the main construction site?

A Mainly carrying of cement.

Q How was the cement brought into the main construction site?

A The cement was brought in these little small type wagons to the main construction site.

Q Where was it stored there?

A That was stored in large shacks or warehouses.

Q How nigh did these shacks or warehouses become?

A According to my estimation, these warehouses were 6 to 8 meters high.

Q How was the cement put up into these shacks or warehouses?

A The cement bags were stacked one on top of the other one,

and a wooden board was leaned or placed against the cement bags, inclining sort of, and the prisoners had to walk up that wooden board.

Q And when they walked up this wooden board, they were carrying these cement bags, weren't they?

A Yes, they had to carry cement bags.

Q How far was this storage place from the cement machines?

A They were next to each other. Right here (indicating) was the warehouses, and right next to it was the mixer, and that was in one block only over there at the Forest Camp--that was different.

Q What do you mean, "that was different"?

A In the back there was a new silo being built, and the prisoners had to carry the stuff for about two floors.

Q How far was this silo from the machines?

A Here is the warehouse (indicating), and here is the silo (indicating), and there was a wooden board from the warehouse to the silo, and that wooden board was about 35 meters inclining.

Q Were people dying out there at the main construction site?

A According to my estimation, very many.

Q What were they dying from?

A From the heavy work and from the food--the little food that we got.

Q How many shifts were working out there at the main construction site?

A At first, one, afterwards, three.

Q Was there a time when there were two shifts?

A Yes, for a time, two shifts.

Q Can you tell us how long there was one shift, how long there were two shifts, and how long there were three shifts?

A Each shift was approximately 8 to 9 hours.

Q My question was this, what period of time were there two shifts, and what period of time were there three shifts?

A The shift in the morning was from 6 until 2, in the afternoon; then from 2 to 10; and then from 10 to 6 in the morning.

Q That was when there were three shifts. How many months did they work two shifts, and how many months did they work three shifts?

A That varied, depending on how much cement we had, but mostly we worked three shifts--that was in August, September, October, November, but not in December when it was very cold.

Q What about the condition of these prisoners who were working there at the main construction site in regard to clothing and shoes?

A That was very poor. I did not have shoes; I did not have stockings; I had nothing.

Q Did you see other prisoners there who did not have shoes?

A Yes, I saw that, too. We had to make special shoes in order to get some shoes for the prisoners, otherwise, their feet would have been frozen.

Q What about the conditions in regard to washing after doing this cement work?

A Very poor. There was no warm water there in the camp.

Q Do you know anything about a barber shop being set up at the main construction site?

A Yes. The barber shop was furnished or established by the former inmate, Herst, who was a Jewish prisoner--he was a clerk.

Q Could any prisoner go to the barber shop when he wanted to?

A When there was time, Yes, then they would get a piece of paper, and if they would be taken on, but usually they could not go in there because it was always full.

Q Whose permission did they have to get to go to the barber shop?

A From the capo.

Q Would the capo let them go when they were busy carrying cement?

A No. When cement was being carried no prisoner was allowed to go there.

Q Do you know the defendant Gickeleiter?

A Yes, I know him.

Q Is he in court?

A Yes, Gickeleiter is here. He is lying on a stretcher, on my left (indicating).

CAPT. BACHMAN: Let the record show that the witness properly identified the defendant Gickeleiter, No. 6.

Q Do you know the defendant Griesinger?

A Yes, I know Griesinger also. Griesinger has No. 9. He is sitting here on my left, a little off to my left (indicating).

CAPT. BACHMAN: Let the record show that the witness properly identified the defendant Griesinger, No. 9.

Q Was the defendant Gickeleiter at the main construction site?

A Yes.

Q What were his duties there?

A I believe his duties there were to rush the whole construction up into the air so they would get through.

Q How often did Gickeleiter talk to you?

A Two or three times a week, but there was one week when he was always there.

PROSECUTION: Didn't he say "einige Wochen"? Some weeks?

(Whereupon the interpreter, Weissglas, questioned the witness.)

THE WITNESS: It varied. Sometimes he was two or three days a week there and then there might have come a week when he was there every day.

QUESTIONS BY CAPT. BACHMAN:

Q What did he talk to you about?

A He spoke to me that the work didn't proceed fast enough. There is not enough here.

Q What answer did you give him about that?

A I gave him as an answer that I don't have the food. The food is bad, and the people are perishing in here.

Q What did he say to that?

A He shrugged his shoulders. Nothing else. This was his answer to me.

Q Do you know what action he took regarding his dissatisfaction with the work?

A No, he told me frequently that this had changed, I had to chase or push my capos more.

Q Did he tell you how you were to push the capos or what the capos were to do to achieve the results he wanted?

A I am of the opinion that he meant that we should sometimes really beat them. This is the opinion I had.

Q What about the defendant Griesinger, what were his duties at the main construction site?

A He was every day at the construction site.

Q For what purpose?

A Also so the construction could be rushed through.

Q Did he discuss that matter with you?

A No. No, he didn't talk about it. He only said, "Faster, faster, faster." But I couldn't any faster.

Q Did he say that to you?

A Yes, he said it to me, myself.

Q Did you say anything to him about why the work couldn't go any faster?

A I also told him that the reason for it was the bad food, the people are perishing, and in addition to that there was no warm water in camp, and that this was too much for the prisoners to work three shifts.

Q And what did he say about that?

A He also shrugged his shoulders. That was his answer.

Q Where were his offices?

A His office was in the back of the forest, about fifteen minutes away from us.

Q From where the factory was being built?

A Yes.

Q Did he spend most of his time in his office or over at the factory?

A When he was out with us, he stayed out there for about three or four hours and then he went back--maybe for breakfast or lunch--and in the afternoon he might have come back again.

(Van Der Milch--Direct)

Q How often did he come over to the main construction site?

A That varied. For instance, for one week he might have been out there for three or four days a week and then for another week he might have been out there all the time except when he went back to eat.

Q Was there much beating of the prisoners going on out at this main construction site?

A Yes, for instance, I can name you one of the best friends I have here. He is the man who is sitting over there (indicating) in the far corner, on the left to me, Mr. Sperling. He himself gave me several slaps across the face.

CAPT. BACHMAN: Let the record show the witness properly identified the defendant Sperling.

Q Do you know of other people who were beaten by Sperling?

A About other people I don't know so much except for one, two, or three different instances where prisoners came over to me and complained to me about Sperling, that they had been beaten by him.

Q Do you know of any other members of the OT who beat prisoners?

A I don't know them by name, but if they should be here I can point them out individually.

Q My question was: Do you know of other members of the OT who beat prisoners? Not by name, but whether it happened.

(Van Der Milch--Direct)

A Yes, that happened. This I have to answer in the affirmative.

Q How often would you say that happened?

A I'd like to say practically every two or three days, but I can also say practically every day.

Q Do you know of any capos who beat prisoners?

A Yes, we all were beating them. There were none among us who did not beat them.

Q Do you know of any Polensky and Zoellner personnel who beat prisoners?

A According to my opinion, all OT personnel were from Polensky and Zoellner.

Q These people that you speak of as OT people, were they wearing OT uniforms?

A Yes, all of them.

Q Were you ever present when the defendant Gickeleiter was there and saw prisoners beaten?

A That also I have to answer in the affirmative.

Q Were you ever there when prisoners were beaten and Griesinger was there and saw the prisoners beaten?

A Yes, I answer that in the affirmative too. I did it already.

Q Did any of these people who were beaten have to go to the hospital as a result of these beatings?

A Yes, that also I answer in the affirmative.

Q Did any of these people die, if you know?

A That I suppose that they did. I cannot tell you that with certainty.

(Van Der Milch--Direct)

Q Did you ever protest to the defendant Gickeleiter about these people who were dying from underfeeding and overwork?

A Yes, I also did that.

Q What did he say or do about it?

A That is not his affair; that is the matter of the camp.

Q Did you ever protest to the defendant Griesinger about these people who were dying from overwork and undernourishment?

A That protest I raised with him too and as answer I got a shrug of his shoulders. That is all he did.

CAPT. BACHMAN: Nothing further.

PRESIDENT: The court will recess until 1330.

(Whereupon the court recessed at 1200 hours.)

* * *

(Van Der Milch--Direct)

7 May 1947

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present; that all of the defendants, with the exception of Jergas, are in court together with their counsel; that the interpreter and the reporter are here; and that the prosecution is represented.

ARNO VAN DER MILICH, called as a witness in rebuttal by the prosecution, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

CAPT. BACHMAN: We had finished with this witness. He is your witness.

LAW MEMBER: Dr. Leiling, cross examination on behalf of -- ?

DR. LEILING: All the defendants.

CROSS EXAMINATION

QUESTIONS BY DR. LEILING:

Q Mr. Milich, when were you born?

A On the 14th of February 1903 in Hamburg.

Q Where did you live most of your life before you got into a concentration camp?

A In Hamburg.

Q Didn't you say that you were living in Munich, Tauben Street Number 14?

A Yes, lately.

Q Can't you give me your exact address in Hamburg?

A I was living at my mother's home in Hamburg, Borgfeldebau Street Number 24.

Q You have never lived in Silesia?

A No.

(MILICH-Cross)

Q For how long a period of time have you lived in Munich?

A In Munich I was living from the 18th of May until the 19th of October, until I was arrested.

PRESIDENT: May 18th until October 19th when?

WITNESS ANNO VAN DER MILICH: May 1945 until October 1945.

Q You say you were arrested in October 1945. Where were you brought to?

A To Garmisch.

Q Since when have you been in Dachau?

A I am in Dachau since six weeks.

Q When were you interrogated for the first time in the case of Muehldorf?

A Eight days ago.

Q Whereabouts in Dachau have you been during the last six weeks?

A Here in the camp.

Q In the War Crimes cage?

A Yes.

Q What previous convictions were you convicted of before you came into a concentration camp?

A Because of theft.

Q Tell me all of your previous convictions.

A Do I have to? If I don't want to, I don't have to say that.

Q How do you know that you don't have to testify?

A I know it because I am familiar with American law.

Q Where did you learn about that?

A In the United States. I was in the United States for four years and I am a ship's engineer from 1926 until 1930.

Q When did you live in Hamburg?

(MILICH-Cross)

A When I was young and when I was learning and when I worked there as a stoker and as an engineer.

Q Where did you live since 1930?

A Starting in 1930 I lived in Hamburg again.

Q What did you have to do with American courts?

A I had nothing to do with courts themselves in the States. I just know from my boys if they were locked up for maybe two weeks or three weeks sometimes because of violations of shipping laws.

Q Why did you as a criminal become head capo?

A Why? I think because I was a good worker. Otherwise I would never have become head capo. There were many people who were against it.

Q Did you work that well?

A I think, yes.

Q What type of work did you do?

A My work consisted of machine work and tunnel construction.

Q As head capo you had nothing to do with machine work, you were to watch over the people?

A I had everything under my supervision whatever there was.

Q You would like to say that the head capo is a position of trust?

A Yes.

Q Were you qualified to this position of trust because of your previous convictions?

A I don't think so.

Q As a head capo, didn't you have to watch over the Jewish prisoners especially?

A Why do you just pick on the Jewish ones. I had all prisoners under me, also the Germans.

(MILICH-Cross)

Q How was the relationship there? How many Jews and how many Germans?

A There were 1800 to 2000 prisoners on that construction site.

Q I didn't ask you that. I asked you how many people of Jewish faith were there and how many Germans were there.

A There were 15 German capos there and 60 capos of Jewish faith.

Q I am not talking about capos. I am talking about the workers, the ones you supervised. How many workers of Jewish faith were there and how many other ones?

A There were 2000 Jews working there and 15 German capos.

Q You understand why I am talking about the people of Jewish faith, because they were the ones who represented the majority there?

A Yes, that's right.

Q Those people were put under your custody as head capo, is that right?

A Yes.

Q And you had to take care of those people, didn't you?

A Yes.

Q Would you say that it is a very good way to care for people if you beat them?

A I don't quite understand the way you mean that.

Q You understand me very well.

A No, I don't.

Q Because you yourself know that in direct examination you said you beat the prisoners.

A Naturally, we all had to beat.

Q Isn't it a fact that you were one of the main beaters in Muehldorf?

(WILICH-Cross)

A No.

Q Isn't it a fact that people of Jewish faith beat you afterwards because you had bothered them so much?

A No. I would like to have proof of that.

Q You would like to say that you were never beat by Jewish people at all at Altotting?

A No.

Q How much did you get to eat as a head capo?

A Just the same as the rest of the prisoners did.

Q Isn't it right that the capos received three times as much?

A No.

Q You testified before that a prisoner fixed up a barber shop at the construction site?

A Yes.

Q How was that possible?

A How that is possible? Because all the prisoners could not be shaved in the camp.

Q You don't answer my question. I would like to know how it is possible how a prisoner out of his own will opens a barber shop on the construction site?

A Because he asked the camp headquarters for it -- for permission.

Q Were you there when he asked for permission?

A No.

Q How do you know?

A From him himself.

Q You also talked about a shoe shop. Where was that shoe shop?

A That was on the main construction site. We got that with the permission of Mr. Griesinger because the people did not have any decent

(MILICH-Cross)

shoes on the main construction site.

Q How many prisoners did you say worked on one shift?

A In one shift, including the old and the wood camp, I would say approximately 500 people.

Q In direct examination you made testimony about the carrying of cement. Do you know anything about carrying cement?

A Yes.

Q How high was the cement piled up?

A Sometimes 5 meters, sometimes 6 meters, sometimes 4 meters, depending on how much cement was delivered.

Q How big was this room?

A This room I would figure to be 3½ meters high.

Q You say that concrete was piled higher than this room?

A Yes.

Q You don't know that you can only pile cement a certain height because if you pile it over that height the cement on the bottom will spoil?

A There was a base underneath there — a foundation.

Q I am talking about the sacks below.

A It wouldn't bother the cement any whether the bags would break or not. The loose cement would be carted anyway.

Q I didn't say the bags would break, but the cement as a whole would spoil.

A No.

Q You were talking about a cement silo?

A Yes.

Q You said that from the cement silo cement was also carried?

(MILICH-Cross)

A Yes.

Q Have you ever been in a cement silo yourself?

A Yes.

Q How high was the cement piled in this silo?

A Do you mean where we carried it or where it was stored?

Q Where it was stored.

A It was stored — piled approximately 4 meters.

Q In bags?

A Yes.

Q How was the cement brought into the silo?

A It was carried there.

Q I am not talking about the outside, the inside.

A With lorries.

PRESIDENT: It was what?

WITNESS ARNO VAN DER MILICH: It was brought in there with lorries.

Q In small cars or large cars?

A Large cars.

Q DR. LEILING: I would like at this time to ask for a ruling of the court whether this witness is entitled to keep back any information as to his previous convictions.

PROSECUTION: I didn't understand that.

DR. LEILING: I ask for a ruling of the court to the point whether this man is entitled to keep back certain information as to his previous convictions.

CAPT BACHMAN: If it please the court, we realize the witness must answer all questions and should be so instructed, but we also would like to ask the court that the witness be instructed that he need not

make any statements which might tend to degrade or incriminate himself. His case is pending and he should not be required to testify to anything which might be held against him. We admit that he was a habitual criminal and was hired for that purpose, and I think that is the answer to Dr. Leiling's question, and I think he should be instructed as to that.

PRESIDENT: Order in the court.

DR. LEILING: As far as that is concerned, I think he has degraded himself by admitting that he beat prisoners, which is a crime already, and I think it is very important to know what his previous convictions are -- that it is very important to know what he did before -- especially a man of his credibility.

LAW MEMBER: Subject to objection by any member of the court, on the provisions of Section 270, subparagraph f, the witness will not be required to give answer to questions that will incriminate him, and in view of the fact that the witness himself has claimed the privilege, the court holds the testimony with reference to previous convictions would tend to incriminate him.

PRESIDENT: Are there questions by the prosecution?

DEFENSE COUNSEL: May it please the court, I have just a couple of questions regarding the firms and the CT.

CROSS EXAMINATION (Cont'd)

QUESTIONS BY DEFENSE COUNSEL:

Q How long were you at Muehldorf? From when until when?

A I was in Muehldorf from August until the end.

Q All right, now, you were in Muehldorf from August until the end. Isn't it true that you were in Dachau between August 1944 and May of 1945?

(MILICH-Cross)

A No.

Q Well, when were you in Dachau?

A I came to Dachau September 1944.

INTERPRETER WALKER: I think he misunderstood your question. I am not quite sure.

DEFENSE COUNSEL: I don't think he did.

INTERPRETER WALKER: He contradicted himself.

DEFENSE COUNSEL: I realize what he did. Just translate what he says.

A (Cont'd) I think I got there in August. I don't know.

Q All right. You got there in August of what year?

A August 1944. It was the beginning of August.

Q All right. And you stayed in Dachau until when?

A I was in Dachau two weeks. Two to three weeks.

Q And was it still August when you left here?

A Yes, it was still August.

Q And then you went directly to Muehldorf, is that it?

A Yes, from here I went directly to Muehldorf.

Q I believe you testified on direct examination that you yourself had no shoes and no socks, you had nothing, is that correct?

A No, I had nothing. Very little.

Q You want the court to believe you were a head capo over all the capos and over all the prisoners, isn't that true?

A Yes.

Q At the time that you had no shoes and no socks did all the capos and all the prisoners below you also have no shoes and no socks?

A They were in the same shape. They had nothing. I got a pair of shoes and they were completely ruined already.

Q But you want the court to believe you had no shoes and no socks and yet you were head capo?

A Yes, that's right. That, I would like to state.

Q All right. Now, you beat the prisoners, didn't you?

A Yes.

Q How often did you beat prisoners?

A I admit two or three times a week.

DR. ENGELHORN: Cross examination by Dr. Engelhorn on behalf of the accused Griesinger.

CROSS EXAMINATION

QUESTIONS BY DR. ENGELHORN:

Q Mr. Milich, where did you live before you came to the concentration camp?

A In Hamburg.

Q And what was the real reason that you came into a concentration camp?

A We were removed from the street.

Q Who removed you from the street?

A The Gestapo.

Q Was there any reason why you were removed?

A Maybe because I had too many previous convictions.

DR. ENGELHORN: Thank you. That is all.

PRESIDENT: The witness will be excused.

(Whereupon the witness was excused and withdrew.)

(MILICH-Cross)

CAPT. BACHMAN: I hand the reporter this document and request that it be marked Prosecution's Exhibit No. 87 for identification.

(The document referred to was marked Exhibit P-87 for identification)

If the court please, prosecution offers into evidence at this time a paper which has been marked for the purpose of identification as Exhibit P-87, which consists of a letter written by Dr. Baumgartel on the 21st of September 1944.

LAW MEMBER: Is this given in the rebuttal of evidence offered by the defense?

CAPT. BACHMAN: It is. This is evidence of the witness, I don't remember his name, the doctor of the OT from Berlin who testified that the OT had no responsibility for medical supplies.

DEFENSE COUNSEL: If it please the court, I think that agrees with this letter. He says that the OT did give medical supplies later on and I am going to object to the letter at this time. This man was here, he was a witness before the court. Why weren't these matters brought out at that time.

CAPT. BACHMAN: We didn't have that letter then. It shows the agreement in good faith, the OT did supply them in September, 1944.

DEFENSE COUNSEL: This man was here on the stand and he testified. I see no reason why we need this now. If the court please, we don't know anything about the signature, or about the letter itself.

CAPT. BACHMAN: We can put someone on to identify that signature. The letter has been in the possession of the CIC, and we just obtained possession of the letter.

LAW MEMBER: Is the original signed.

DEFENSE COUNSEL: That is not the original, that is the carbon copy.

CAPT. BACHMAN: The German copy is signed.

LAW MEMBER: Is this an original impression of the letter?

CAPT. BACHMAN: I presume not, Sir. Not according to the content; the original went to Berlin.

LAW MEMBER: I don't believe you understood my question. Is this an original carbon copy of the original letter?

CAPT. BACHMAN: Yes sir.

DEFENSE COUNSEL: There is nothing to show that. The original could have been made a week ago and destroyed and this a carbon copy of that original.

LAW MEMBER: Subject to objection by any member of the court Exhibit P-87 is admitted into evidence.

(The document heretofore marked Exhibit P-87 for identification is received in evidence as Exhibit P-87, is attached hereto, and made a part of the record)

CAPT. BACHMAN: With the permission of the court I should like to read a part of Exhibit P-87 to the court at this time.

PRESIDENT: You may proceed.

(Whereupon Capt. Bachman read a part of Exhibit P-87, which was statement by Dr. Baumgartel)

PROSECUTION: Prosecution offers as its last rebuttal witness Rennewolf.

RENNEWOLF, called as a witness in rebuttal by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Tell the court between what dates you were a prisoner at Muehldorf.

A From the 15th of August 1944 until the 2nd of May 1945.

PRESIDENT: Tell the witness to speak out so the accused can hear him.

(Whereupon the interpreter did as directed)

Q What was your job at Muehldorf?

A From the 3rd day after I got there I worked in the S3 office.

Q At what?

A As a clerk.

Q Now did you know a man by the name of Jergas?

A Yes.

Q Did you ever see him beat anybody?

DEFENSE COUNSEL: If it please the court, I am going to object as this isn't rebuttal testimony. I don't think we ever put anything on about Jergas.

PROSECUTION: If it wasn't I want to withdraw the question. My impression was that there had been some testimony about Jergas.

LT. HUGHES: There was no witness put on for the defendant Jergas.

PRESIDENT: What was the purpose of bringing this witness in, to rebutt what witness?

PROSECUTION: The defense witness who had testified against Jergas, so I will withdraw with Jergas and continue with another witness which was brought in by the defense.

LAW MEMBER: You stand corrected as to Jergas?

PROSECUTION: Yes Sir, I stand corrected.

QUESTIONS BY PROSECUTION:

Q Do you know a man by the name of Spaeth?

A Yes.

LT. HUGHES: I don't recall any testimony on him.

PROSECUTION: One of your witnesses testified. I have just one point I am covering.

LT. HUGHES: I stand corrected.

QUESTIONS BY PROSECUTION:

Q Do you know what Spaeth's job was in the camp?

A Spaeth was the Assistant Camp Commander in Camp M-I.

Q Were you in Camp M-I?

A No, I was in the Weed Camp but I knew Spaeth through correspondence and telephone calls.

Q Do you know Engelhart?

A Yes, Engelhart was the Adjutant to SS Major Langleist.

Q How do you know that?

A I have seen copies of the original from Camp M-I where First Sgt. Engelhart was carried as the Adjutant of SS Major Langleist.

Q Will you give us a closer description of what you saw?

A About Engelhart?

Q About Engelhart. Yes, what kind of correspondence was it?

A There were commitment reports which were sent every two weeks to the main camps at Dachau, and in those rosters Engelhart was always carried as a member of the Headquarter staff and as Adjutant to SS Major Langleist.

Q Do you knew a man by the name of Bayha?

A Yes.

Q If you see him in the courtroom, point him out.

A Right here (indicating).

PROSECUTION: Let the record show that the witness identified Bayha, No. 8.

Q Did you ever see Bayha beat anybody?

A Yes.

Q Tell the court about it, fixing the time and the place.

A I watched from my window in my office and I could see very well and I saw that he had beaten prisoners several times in the Holzinger detail.

I also saw Bayha when he was duty sergeant that he had beaten prisoners when the prisoners went in or left the camp.

Q What did he beat them with?

A Either he beat them by hand, or, when he was at the Holzinger detail, he beat them sometimes with branches.

PROSECUTION: That is all. You may examine.

LT. HUGHES: Lt. Hughes cross examination on behalf of the SS.

CROSS EXAMINATION

QUESTIONS BY LT. HUGHES:

Q Did you ever see any Orders from Camp M-I signed by Engelhardt?

A Yes.

Q And how was this signed?

A That was printed by machine saying "Adjutant of the SS, Major SS".

Q Are you positive, Wolf, that these papers that you saw were nothing more than correspondence between the camps?

A I saw that they were addressed to Camp M, that they were either orders or some kind of rules.

Q Do you know a man named Ostermann?

A Yes.

Q You got along pretty well with Ostermann, didn't you?

PROSECUTION: I object to that now, Sir. That wasn't brought out on direct examination, and this is rebuttal.

LT. HUGHES: That is all.

PRESIDENT: Witness will be excused.

(Thereupon the witness was excused and withdrew)

PROSECUTION: Prosecution closes.

DEFENSE COUNSEL: If it please the court, I think we have two witnesses for Surrebuttal, but they are Dr. Leiling's witnesses and I will go out and see what happened to them.

LT. HUGHES: I hand the reporter this document and request that it be marked Defense Exhibit No. 43, for identification.

(The document referred to was marked Exhibit D-43 for identification)

If the court please, at this time in Surrebuttal, I would like to read into the record an interrogation which took place in Landsberg by Major Beysen of the Counsel Section at Dachau. I would like to read this in because this witness is not available, and with the permission of the court I would like to read it at this time. It is an interrogation of a man by the name of Fritz Degelow.

LAW MEMBER: Is it a marked exhibit?

LT. HUGHES: This is Exhibit D-43, marked for identification.

LAW MEMBER: What is the date of it, please?

LT. HUGHES: I May 1947.

LAW MEMBER: Is the prisoner incarcerated there?

LT. HUGHES: Yes Sir, he is a former SS 2nd Lieutenant.

LAW MEMBER: Do you offer this in evidence?

LT. HUGHES: Yes Sir, I do.

LAW MEMBER: Subject to objection by any member of the court Exhibit D-43 is admitted into evidence.

(The document heretofore marked Exhibit D-43 for identification is received in evidence as Exhibit D-43, is attached hereto, and made a part of the record)

LT. HUGHES: With the court's permission I would like to read it at this time.

PRESIDENT: Proceed.

(Whereupon Lt. Hughes read Exhibit D-43, statement of Fritz Degelow)

(Exhibit D-43)

DR. LEILING: The defense calls as its next witness Maria Lechner.

MARIA LECHNER, called as a witness in surrebuttal by the defense, after being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. LEILING:

Q Give us your name.

A Maria Lechner.

Q Your age?

A Thirty-two years of age.

Q Profession?

A A cook.

Q Did you work in Muehldorf between June 1944 and April 1945?

A Yes.

Q In what position?

A As a cook.

Q Where?

A For the firm of Polensky and Zoellner.

Q Where?

A In Mettenheim.

Q Who did you cook for?

A For the people who worked in the office.

Q Did concentration camp prisoners work with you in that kitchen?

A Yes.

Q How many?

A Four Jewish women and four French women.

Q What ration did these people receive?

A The general rations.

Q What do you mean by "general ration"?

CAPT. BACHMAN: If the court please, I don't know where this comes in on surrebuttal. If the defense is reopening their case to put in more evidence so we can cross examine on that theory, that is a different matter.

LAW MEMBER: It is evidently preliminary to surrebuttal, but get to it as soon as possible.

QUESTIONS BY DR. LEILING:

Q In other words you say they received the same food the Germans did?

A Yes.

Q Who ordered that?

A Mr. Gickeleiter.

Q Did Mr. Gickeleiter give any other orders concerning the food?

A No.

Q Did he give you any orders about the food which was left over in your place?

A Yes, whatever is left over in food and bread we should give to the Jewish prisoners.

Q Did you do that?

A Yes.

Q How about the air raid shelter? Did Mr. Gickeleiter give any orders for the prisoners as far as they were concerned?

A Mr. Gickeleiter said that anybody can go into the air raid bunker, Jewish, foreigners, or Germans, there was no difference, but the people who were really in charge of the bunker, they threw them out.

Q What did Mr. Gickeleiter do them?

A He said everybody can go into the bunker, either Germans, foreigners, Jews, there was no difference.

Q Did you know the prisoner, Dr. Scabades?

A Yes, I know him.

Q Did he speak to you about Gickeleiter once?

A Yes.

Q What did he say?

CAPT. BACHMAN: If it please the court, I want to object as not being proper examination on surrebuttal. No statement went in for direct evidence for the prosecution about Dr. Scabades. If the defense is reopening their case and presenting this, we should like to know for cross examination.

LAW MEMBER: What are you bringing out?

DR. LEILING: I think during the rebuttal, the prosecution brought in new evidence as to the attitude of Mr. Gickeleiter towards the concentration camp inmates, and I want to show through this witness what his real attitude was.

CAPT. BACHMAN: I fail to see how a conversation by Scabados can do this.

LAW MEMBER: Subject to objection by any member of the court, the objection is overruled.

THE WITNESS: Dr. Scabados said that he had treated Mr. Gickeleiter's children already on the construction site.

QUESTIONS BY DR. LEILING:

Q Did he say how Gickeleiter treated the prisoners?

A He said good, very well.

DR. LEILING: No further questions.

PRESIDENT: Court will take a recess for fifteen minutes.

(Whereupon at 1430 hours court recessed)

(Whereupon the court reconvened at 1445 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present; that all the defendants with the exception of Jergas, together with their counsel, the reporter and the interpreter are here; and that the Government is represented.

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

CAPT. BACHMAN: Let the record show that after the recess all the members of the court are present; all the defendants, with the exception of the defendant Jergas, who is in the hospital, are present, together with their regularly assigned counsel, with the exception of Dr. Welsh, who is absent on business of the defense; the interpreter and the reporter are both in court; and the Government is represented.

Will the interpreter make the usual announcement regarding witnesses in the courtroom and remind the witness she is still under oath?

(Whereupon the interpreter did as requested.)

DR. LEILING: I just want to state to the court that I did not keep this witness from the stand. I didn't even talk to her. She had gone outside and I didn't know where she was.

MARIA LECHNER, called as a witness by the defense in surrebuttal, being reminded that she was still under oath, resumed the stand and testified further through an interpreter as follows:

CROSS EXAMINATION

QUESTIONS BY CAPT. BACHMAN:

Q By whom are you employed now?

A I am working in the hospital of Muehldorf.

Q But during 1944 and 1945 you were employed by Polensky & Zoellner, is that right?

(LECHNER-Cross)

A Yes.

Q This cooking that you were doing was for whom?

A For the employees of the office of Palensky & Zoellner.

Q Your kitchen didn't feed prisoners, did it?

A No, only for ——

INTERPRETER WALKER: Sir, I don't know how to translate it. She uses a term which is a very degrading term for Jewish women. There is no English equivalent for it.

DR. LEILING: I don't think so. This is a common woman, and she uses the term ——

LAW MEMBER: Can you agree that she means Jewish women?

CAPT. BACHMAN: We agree that she means Jewish women, but I think we should also agree that the term which was used was a term of degradation towards Jewish woman. I tink the record should so show.

LAW MEMBER: Ask her the question again.

CAPT. BACHMAN: Will you read the last question?

(Whereupon the last question was read by the court reporter.)

THE WITNESS: No prisoners.

QUESTIONS BY CAPT. BACHMAN:

Q So that your testimony only related to the eight prisoners who worked in the kitchen, is that correct?

A Yes, they were working there.

Q Will you tell us again who those women were that worked in the kitchen?

A They were four Jewish women from Hungary and four from France.

Q In speaking of those women in your direct testimony, what word did you use to describe them?

PRESIDENT: I understand from the translation she used the same expression that she used in the direct.

CAPT. BACHMAN: Sir, I understand she used a much worse word than she used towards them, and I would like to have the word in the record.

CAPT. BACHMAN: Will you read the question, please?

(Whereupon the last question was read by the reporter as follows:

"Q In speaking of those women in your direct testimony, what word did you use to describe them?")

THE WITNESS: We fed them the same way as the other ones.

QUESTIONS BY CAPT. BACHMAN:

Q Will you tell us what word you used to describe those Jewish women?

A What do you mean?

Q Didn't you use the word "Judenweiber"?

A I said Jewish women.

Q Did you or did you not use the word "Judenweiber"?

A No.

CAPT. BACHMAN: That is all.

PRESIDENT: The witness will be excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: The defense rests.

CAPT. BACHMAN: I would like to have the interpreter sworn, sir, and placed on the stand.

LAW MEMBER: Do you offer surrebuttal of surrebuttal?

CAPT. BACHMAN: Yes, sir. If the court please, I should like to explain my reason for doing this. In her direct testimony, this last witness used a particularly degrading term regarding Jewish women, which she then denied having used. In two questions, I can have this interpreter tell the court the word she used and what it means.

PRESIDENT: You may proceed.

CAPT. BACHMAN: Thank yousir. Please step forward, Mr. Walker, and be sworn.

HOWARD H. WALKER, called as a witness in rebuttal by the prosecution, being first duly sworn, testified as follows:

(Whereupon the proceedings were translated into the German language)

DIRECT EXAMINATION

QUESTIONS BY CAPT. BACHMAN:

Q Will you state your name?

A Howard H. Hallmer.

Q Your residence?

A Dachau, 7708 War Crimes Group.

Q What is your occupation?

A Court interpreter.

Q For what court?

A For the Kuehldorf trial.

Q Are you one of the interpreters in the case of the United States against Franz Auer, et al?

A Yes, sir.

Q Did you interpret the testimony of Maria Lechner, one of the witnesses herein?

A Yes, sir.

Q On direct examination of that witness, was she asked a question regarding the prisoners who were employed in her kitchen?

A Yes, sir.

Q In her answer regarding the Jewish women who were so employed, what word did she use to describe the Jewish women?

A Do you want me to state the German word, sir?

Q Yes.

A She stated the word "Judenweiber."

Q How did you translate that word to the court?

A I didn't, sir, because I am not familiar with such terms, and when I asked her to explain what it was, she said Jewish women.

Q Will you tell the court what the meaning of Judenweiber is?

A The best translation would be "Jewish bitches."

CAPT. BACHMAN: That is all.

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CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q You say you are not familiar with that word?

A It is a word which I am not used to using, no.

Q The question is, are you or aren't you familiar with the word?

A Well, I am not quite accustomed to translate that type of word,

Q Then you really don't know how to translate it, do you?

A I do, sir.

Q In spite of the fact that you are not familiar with the word, you do know how to translate it?

A Yes.

Q You have been translating off and on in this court ever since the trial started, haven't you?

A Yes, sir.

Q And many times you have not understood the witnesses correctly, isn't that true?

A That is correct.

Q And several times you have made mistakes in translations, haven't you?

A That is up to the court, to the check interpreter to determine.

DEFENSE COUNSEL: May it please the court, I would like a direction from the court that the witness answer the question.

PRESIDENT: Read the question and have the witness answer it.

(Whereupon the last question was read by the court reporter.)

THE WITNESS: That may be.

QUESTIONS BY DEFENSE COUNSEL:

Q Do you know whether you have made mistakes or not?

A I suppose so.

DEFENSE COUNSEL: That is all.

PRESIDENT: The witness will be excused.

(Whereupon the witness was excused.)

PROSECUTION: The prosecution rests with all exhibits and records.

DEFENSE COUNSEL: If it please the court, I thought we were finished with that witness, but Dr. Leiling has a few questions he would like to ask.

PRESIDENT: I wish you would indicate to the court when you are through with this witness, or if you want the witness recalled. It will assist in avoiding delay in the court.

DEFENSE COUNSEL: I don't speak German at all, but Dr. Leiling told me something that I thought perhaps he could bring out before the court, but I won't insist.

PRESIDENT: Dr. Leiling will be permitted by the court to make an explanation, if he desires, of that word to the court.

DR. LEILING: I think this word caused a misunderstanding unduly, because this witness is a common woman. She normally speaks Bavarian dialect, and in Bavarian dialect they never use the word "fraulein." They talk about weiber as for all females, and she tried to speak high language, which for her is, so to speak, a jacket into which she doesn't properly fit, and that is why at first — I didn't hear it myself — but she might have first said "weiber" and afterwards corrected herself to "fraulein." I don't think that should be held against that woman.

PRESIDENT: Do you waive translation of your explanation?

DR. LEILING: Yes, I will waive it.

DEFENSE COUNSEL: The defense rests.

PROSECUTION: The prosecution rests.

PRESIDENT: The court doesn't desire any witness called or recalled. Does the prosecution desire to open its argument?

PROSECUTION: The prosecution wishes to make a closing statement. I would like to state, however, that it is already ten minutes after three, and since we won't finish today with closing arguments, I suggest, if it please the court, that all closing arguments proceed at 9 o'clock Monday morning, and

that will enable us, perhaps, to be finished with all closing arguments by noon.

PRESIDENT: Does the counsel for the defense concur in those statements?

DEFENSE COUNSEL: Counsel for the defense does concur in those remarks.

PRESIDENT: Court will recess until 9 o'clock Monday morning.

(Whereupon the court recessed at 1510 hours.)

MILITARY GOVERNMENT COURT

CASE RECORD

Pages 1476-1580

CASE NO. 000-50-136

PROSECUTOR Mr. Roth

* ~~XXXXXX~~
~~XXXXXXXXXXXXXXXXXXXXXXXXXX~~
GENERAL

DEFENSE COUNSEL Mr. Welch

INTERPRETERS Howard Walker
Emily Powys-Cobb

PLACE Dachau, Germany

REPORTERS Mary Joan Fox
Gloria M. Spears

DATE 12 May 1947

WITNESSES

ACCUSED FRANZ AUER, et al

ADDRESS SEX AGE

	FIRST CHARGE	SECOND CHARGE
PLEAS		
FINDINGS		
PREVIOUS CONVICTIONS		

SENTENCE

IMPRISONMENT (TERM
(
(BEGINNING 194

FINE AMOUNT
TO BE PAID BEFORE 194
FURTHER TERM OF IMPRISONMENT

CHARGE SHEET AND RECORD OF TESTIMONY ARE ANNEXED HERETO.

SIGNATURE OF MEMBER OF COURT

REVIEW

ACTION OF REVIEWING AUTHORITY

SIGNATURE OF REVIEWING AUTHORITY

*STRIKE OUT WORDS NOT APPLICABLE.

R E C O R D O F T E S T I M O N Y

in trial of

THE UNITED STATES versus FRANZ AUER, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 1 APRIL 1947

12 May 1947 Pages 1476 - 1560 incl

Closing Arguments 1476

MORNING SESSION

(Whereupon the court reconvened at 0900 hours, 12 May 1947.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present, with the exception of Colonel Dickey, who is ill and in the hospital, and is excused VOCO; that all the defendants are in court together with their counsel; that the reporter and interpreter are here, and that the Government is represented. The prosecution asks the permission of the court to withdraw these prosecution exhibits, which are charts and which are numbered Prosecution Exhibits 5, 6, 7, 16, 19, 20, and 39. It asks to withdraw them and substitute photographs thereof for them.

PRESIDENT: The request is approved by the court. The prosecution may open its argument.

PROSECUTION: On the stipulation with the attorney for the defense, arguments will not be translated, but will be taken by the reporter, if it is agreeable with the court and translated to the defendants at some future date.

PRESIDENT: Let the record so indicate.

PROSECUTION: May it please the court, these accused stand charged for participating in the common design to encourage, aid, and abet in the participation in the operation of a concentration camp; that in the operation of that camp persons who were non-Germans, persons who came from almost every country of eastern Europe, also including France, were subjected to cruel inhumanities and starvation. This crime is made punishable under the rules relating to land warfare which imposes upon a victorious power the duty of preserving the lives of persons who are inhabitants and citizens of vanquished countries. The duties imposed upon such power that comes in as a victorious force impose a duty upon that

power to take steps to preserve the lives, the property of persons residing in the varquished country. The rules of land warfare make it a crime not to discharge that duty toward the citizens of such a conquered country, and in pursuance of the rules of land warfare these defendants stand charged here by reason of their having participated in the violation of the rules of land warfare and by reason of their participation in a crime, violation of those statutes, deaths resulted.

The purpose of Concentration Camp Muehldorf was the working of prisoners. It conformed at this Camp Muehldorf to the general policy of the Reich to exterminate various classes of people in Europe, but it was also a policy of the Reich insofar as Concentration Camp Muehldorf was concerned to extract from persons who were destined for extermination the last ounce of work that was left in them. When they could no longer work, the general idea was to get rid of them by a gas chamber. Most of the persons who came to Camp Muehldorf never got as far as the gas chamber—they died before it was necessary to gas them.

The starvation, beatings, the inhumanities to which these people were subjected was described here, and there is very little that I can add to this description. I believe, if it please the court, that these charts which the prosecution has prepared tell the story, and I want to point out now, if it please the court, that these charts represent figures which are not ours. These figures which are represented here were not dreamed up by the prosecution, but were taken from figures and records which these defendants kept themselves in the orderly course of conduct of Concentration Camp Muehldorf. Captain Braaf, a United States Army officer, when he worked over these figures, had no reason to lie. There was no possibility of lying, if it please the court, because the figures from which these figures came are in evidence in this courtroom. When Captain Braaf found the card index, he took 500 of them at random, as he says,

an this chart was the result, "Age at Death of Camp Kuehldorf Prisoners", and this one here, "Life Expectancy at Kuehldorf", and the reason that 467 was represented and not 500 was that 33 of those cards did not indicate the age at death, but insofar as the other 467 are concerned, this chart is accurate, based on figures, not on Dr. Braaf's figures, but rather on the figures that were kept by these defendants themselves. Insofar as this chart here is concerned, "How Prisoners Left Kuehldorf", the figures which were attached to the Bruck exhibit peculiarly enough were borne out almost within a figure of 10 or 20 by the records which were found at UNRRA, and which they gave us. Those records which we found at UNRRA were not in the possession of Dr. Braaf, were not in the possession of Bruck at the time that this chart was made. The fact of the matter is that when we found those records after this chart was made, we checked them, and we found that those records bore out Dr. Braaf's figures within a figure of 10 or 20. The court found that as names were mentioned during this trial, we were able to go to the records that UNRRA had furnished us and invariably we found the name or names mentioned by the witness stated in UNRRA's records, and those UNRRA records were made independent of the records furnished by Dr. Braaf and by Bruck, and both of them checked. Those records are accurate, and so are these figures accurate, and the end story of the whole thing is that 8300 people passed through Kuehldorf, 3934 of them died in nine and a half months, an average of 47 percent. That is a pretty good average--47 percent--even for this precious "Thousand-Year" Reich.

May it please the court, Kuehldorf was a product of the third Reich. It was an expression of the policy that underlay it. It was an expression of that policy, if it please the court, to take and exterminate politically unwanted people, and to that end Kuehldorf came into existence.

Now, the crime does not involve German people, the crime with which these defendants are charged, if it please the court, is the extermination of people other than Germans, vanquished people, conquered people, people to whom these defendants and their government owed a duty, and what was that duty--to preserve their lives and to preserve their property, and the contravention of those rules of land warfare which our Government, their government, almost every government in Europe laid down. Instead of preserving their lives, they went out of their way to exterminate, to kill, and that is the crime with which these people are charged, and these defendants were the willing instruments of that policy of the German Reich, of their own government. Each of these defendants had a motive; each had a reason for his whole-hearted participation in this crime--Giesler's reason, well, a passion for ever greater honors at the hands of his chief; Dickeleiter a blind, a passionate, a germanic loyalty to the firm with which he worked, combined perhaps with the hope of gain, the . an uncontrollable overpowering sadism; Griesinger a get-the-job-done co plex, the job's the thing, and life is cheap, get the job done no matter what the cost in human life; and Flocken a perverse, a sadistic desire to see nude men helpless before her, or in the satisfying thrill of marking them for death.

The pattern among the three principal groups was simple. The SS guarded prisoners; the OT fed, housed, supplied medical aid, and protected the interests of the Reich and Polensky and Zoellner, directed the work, directed the prisoners in their work while they were on the construction site while they were working. Dickeleiter's statement bears that out. Dickeleiter said:

"Q Who actually performed the labor?

A Germans, Italians, Russians and concentration camp prisoners.

Q And the employees of Polensky and Zoellner supervised the direction of the work you just named?

A Yes."

Bachmann said:

"Q Who directed the laborers in their work?

A Polensky and Zoellner.

Q In other words, Polensky and Zoellner had control of the direction of the workers during the hours of work, is that correct?

A During the time of work in the construction site, Yes."

And Bachmann continues:

"Q These capos were professional criminals who were put in as foremen over the prisoners, is that correct?

A I don't know, sometimes the capos knew something about the work and that was the reason they were made capos.

Q And they saw to it that the work as directed by Polensky and Zoellner foremen was carried out, isn't that right?

A Yes, the OT personnel could give orders at any time, but most of the time, we had the say."

And in the middle stood the prisoners--against Polensky and Zoellner, the ..., and the OT--friendless, alone, starving, beaten, and dying. And food--there was hardly a witness who took the stand who didn't describe how the prisoners looked--undernourished, thin, and weak. They themselves could see that. Every one of the defendants has said at one time or another that those prisoners looked bad, looked weak and starved, and the responsibility of supplying the food was the OT's. Listen to Spaeth's statement, Spaeth, sitting over there, who was responsible for the requisitioning of the food from the OT:

"Q Did you request the rations from the OT?

A Yes, on the basis of strength reports that were made out by the camp clerk."

And let's not forget Spaeth's statement regarding fuel:

"Q Billeting--did you have to requisition the straw, the few tents, and the blankets?

A Yes, from the OT."

And housing—that rested on the OT, too. You heard their own witnesses come in, men who worked for the OT and built those huts that they lived in; and when they built those underground huts, they didn't even put beds in those huts but let the prisoners sleep on the ground, and nothing between the prisoners and the earth but a little damp straw that was lousy and walking away with lice. And clothing? Wooden shoes that created sore feet. Medicine—well, everyone tries to shirk that one, and while the OT and SS fought around as to who was going to supply the medicine, the prisoners were dying for want of medicine, and finally in September 1944 an agreement was made—an agreement through the effort of Dr. Baumgartl. I would like to read part of that statement of Dr. Baumgartl, if I may. It was dated September 21, 1944. It is on the stationery of the Organisation Todt, Task Group VI, and I would like to point out to the court that this isn't from Berlin, this is Baumgartl's report to Berlin, notwithstanding the position taken by the defendants that it was Berlin that did this and Berlin that did that; it was always the other fellow, it was either Berlin or somebody else. Here is the original that was written by Dr. Baumgartl, it is on the stationery of the Organization Todt, Einsatz Gruppe VI. Einsatz Gruppe VI is the heading of it, and it is to the Chief of the Medical Branch of the OT at Berlin.

"Subject: Medical care of SS concentration camps (Jewish camps) connected with the OT construction sites."

And here is what it says:

"Concerning medical care of concentration camp labor (mainly from the Jewish camps) assigned to our big construction sites at Muehldorf, Landsberg and Allach, an arrangement has been made with the medical staff of the SS at Dachau, SS Sturmbann-fuehrer (Major) Wittler, according to which exclusively the SS will provide medical care. The OT will additionally and principally guarantee the furnishing of medicines since it has been found out that the medicines supplied to these Jewish camps by the SS have been quite insufficient. We have to adopt the point of view that every laborer will be kept fit

if possible and all efforts have to be made in order to keep the percentage of men unable to work as low as possible, while assigning the full number of workers to the construction sites. Moreover, we have expressly reserved to ourselves a far-reaching influence in medical matters referring to control of prisoner doctors, hygienic supervision etc.

"During the whole time of my activity in this group I have observed that the medical care administered by the SS has been quite insufficient and has indicated very little sense of responsibility. These observations have been confirmed to me by Dr. Starrach."

Dr. Starrach came from Berlin.

"Regularly all main construction offices and the physicians under my charge complain to me about the SS neglecting its own matters. When a typhoid epidemic broke out in a camp and SS Sturmbannfuehrer (Major) Wittler was informed by us, he expressed his surprise to Dr. Starrach that we were unnecessarily concerned about matters which really were his business. Besides, he considered the situation to be far less serious than the OT physicians did. Only when it was pointed out to him energetically that a spreading typhoid epidemic would highly endanger also our OT personnel and eventually constitute a severe danger to a big construction project of decisive importance for the whole war, Sturmbannfuehrer (Major) Wittler assigned a medical non-commissioned officer of the SS to fight the imminent danger.

"On 18 September the Oberbauleiter (chief construction manager) of the main construction office Ringeltaube at Landsberg, informed me that he with regard to the very poor medical care administered by the SS was most seriously concerned about his whole construction project . . .

"Dr. Poschmann had on the occasion of his last visit already an opportunity to be informed by me as well as Professor Giesler about complaints concerning difficulties as to the cooperation with the SS."

Now, I ask the court to look at this exhibit, it is Prosecution Exhibit 87. Look at the old paper and the faded type, and the date of it--21 September 1944. This letter was written at a time when there was no thought of a trial, when a trial was the last thing in the world that they thought of, and listen to the last paragraph.

"Dr. Poschmann had on the occasion of his last visit already an opportunity to be informed by me as well as professor Giesler about complaints concerning difficulties as to the cooperation with the SS."

But even after that letter, even after Baumgartl complained, the medicines still never got there. We found Frau Flocken ordering medicines, signing her name to them, but the quantities were so insufficient that still and all, with all the complaints, with all the fightin around with the SS and the OT, still and all the medicines never got there, and the prisoners still were dying. When our troops walked into Schwindegg they found enough medicines there to supply the whole of Bavaria. You heard Roehr's statement that there was enough medicine there, and Dr. Braaf, who is an American medical man, went down to Schwindegg and examined the medicines which they had, and the warehouse was overflowing with medicines and bandages, but the prisoners never got any of them. Why is it that Dr. Baumgartl on 21 September 1944 made a deal with the SS in which he said, "We are going to supply the medicines; now this is going to be a job for the OT". And who was he speakin of—Giesler's outfit. "We are goin," but nothing ever happened. She was there; Giesler knew it because Baumgartl says so, and that was written in September '44. He wasn't afraid then that he was going to be prosecuted, but the medicines never got there. Why? Because they didn't care; they didn't want them to get there. The general idea was to kill them, to starve them and don't give them anything—that was the general idea of the SS and the whole policy of the German Reich. That was the general idea of the German Reich, and she participated in it and so did he. That was the general idea.

What happens to that fancy argument that everything she did for the prisoners was done out of the kindness of her heart? She ran the risk of prosecution. She was going to be prosecuted for giving the prisoners some medicines. May it please the court, Flocken wasn't running any risk for any prisoners; Flocken isn't built that way; she didn't do that kind of thing. She is the kind of person to order that not more than two per cent of the prisoners at Muehldorf were to be admitted at

any one time, and if there is any more than two per cent, throw them out of the hospital, get rid of them, send them to the gas chamber. You heard the doctor himself. Dr. Gruenbaum came in here and testified that Flocken herself came into the hospital and told him that under no circumstances were more than two per cent of the total population of Buehldorf to be in the hospital at one time; it was not allowed. Flocken isn't running any risk for any prisoners. Flocken is the kind of a person who orders the downgrading of food of the little girls that worked in the hospital because they were given the same ration as the German employees. She is the kind to come around and say, "That is too good for them, give them some bunker soup; we are going to give them the same grade of food as we give the prisoners. She is not running any risk for any prisoners. She is the kind of person who tells the dentist not to work on prisoners. He had no reason to lie about her. He worked under that woman. She is the kind of person to tell him, "If I catch you treating the teeth of any prisoners, I will throw you out of here." She is not running any risk for any prisoners. That is the story, a funny story because Flocken is not that kind of a person. Flocken's theory was: "Let them die; they don't need any medicines; it is too good for them." She picks out a shoemaker instead of Dr. Gruenbaum for the head of that little hospital. She picks out a shoemaker and leaves the doctor standing there. She left the doctor and put a shoemaker in there to be a doctor for the prisoners. Flocken is the kind of a person who lets the fleck fieber patients lie in the same hospital with those who didn't have fleck fieber, to be sure they do become infected, and when Dr. Braaf gets there he findsenough fleck fieber serum at Schwindegg to inject the whole of Bavaria he says, but the prisoners never got any, and she was running a risk for the prisoners by supplying the medicines. Well, that is a good story, if it please the court. The only difficulty is that it isn't borne out by the facts. The only thing is Flocken lent

herself knowingly and willfully to the extermination of prisoners by neglecting her job of takin care of them, seeing that they got medicines. That is why she is guilty.

The general idea of Camp Muehldorf was to keep those prisoners working, and maybe that is the reason that Polensky and Zoellner paid for her personal maid. There has never been any explanation of that. Why should a millionaire concern like Polensky and Zoellner supply Flocken, a state official, with a personal maid. Flocken offers no explanation of that. There is no doubt about it because the maid herself comes in and says, "I got my salary from Polensky and Zoellner; they paid for my services to Flocken". Flocken doesn't offer one word in rebuttal or any explanation as to why it took place. Maybe that had something to do with that efficiency factor that we have been hearing so much about. The defendants turned handsprings in the courtroom here to explain it away. Maybe that was the key to the efficiency factor. Maybe Flocken was that key because Polensky and Zoellner didn't want any sick people around there. This was a matter of money or profits, as you and I understand profits, and they didn't want any sick people around. Of course, Polensky and Zoellner say they practically had to have their arm twisted to take this contract for 25 million marks, but that is another department again which is also open to a certain amount of doubt. I don't know whether Polensky and Zoellner put up much of an argument about taking the 25 million marks' contract, but the fact of the matter is that the efficiency factor which we spent two days talking about here included keeping well prisoners who were not sick, keeping well prisoners on the job. That was part of the efficiency department because you can't have efficiency if you have sick prisoners, and Polensky and Zoellner knew that because we know something about efficiency in the United States. The only difference is when we make a contract with the union with respect to efficiency, the employee, the worker gets the

fruit of his own efficiency, but not here. Under this contract, Polensky and Zoellner got the profit for increased efficiency. Read the contract. Not the concentration camp prisoners, not the OT or anybody else—it was Polensky and Zoellner. Why do you think that they tolerated this beating; why do you think they tolerated all the things that went on at Concentration Camp Muehldorf and at the construction site—only because of the fact that there was one of the ways to make money out of this contract—to up the efficiency—beat the prisoners so that they worked to the last, and when they can't work any more, get rid of them, and get rid of them right away. That was Polensky and Zoellner's idea of efficiency under the contract, their own contract which they supplied to this court. And Flocken was the key to the efficiency clause of that contract because when they couldn't work any more Flocken got rid of them for Polensky and Zoellner, for the OT because the OT was involved in this deal, too. They were paying for these prisoners, paying Concentration Camp Dachau for these prisoners. They didn't want any sick ones around either, and in the middle of the whole deal stood the prisoners and, of course, on cross examination the defense turned itself inside out to show inconsistencies in the manner in which Flocken chose the prisoners. Counsel stood in the middle of the room with his interpreter and almost turned handsprings to find out, "Did Flocken go to the prisoners, or did the prisoners go to Flocken", "Were they behind her or in front of her", "Was Schmidt over on this side, or was he over on the other side", but there is one thing that the counsel for the defense was not able to get around, and that was that Flocken picked them. That was the deal; that was her job—to get rid of the sick prisoners, and she did it very efficiently. She ought to get an efficiency rating, too, for her excellent record for pickin the prisoners to go to Auschwitz, for putting the finger on them to go to death, and after they got all through

cross examining for hours, there is no inconsistency shown in any of the witnesses who appeared here, and there might have been 250 of them who appeared here to testify with respect to her selection. Counsel sought to confuse and confound by confusing one transport with another, and there were many transports that she was present at, but it didn't help because those people,know, if it please the court, who walks around and who selects people for transports. I would know and I would remember her for 40 years, and you couldn't kid the prisoners as to the manner in which these prisoners were selected, and you couldn't kid the prisoners into not believing that Flocken did because she did, and she admits that she was there in her statement. These prisoners saw what was going on. When a man is confronted with death, he takes notice, and these prisoners, too, took notice, and whether Dr. Schmidt was behind or in front or whether Flocken went to the prisoners or the prisoners went to Flocken, the fact is that she picked them, and the evidence was always the same. Flocken was there, and Flocken picked them.

And where was Giesler all of this time? Giesler was up there in Einsatz Gruppe VI. He is pulling in the honors while Flocken is picking the prisoners; Giesler is up there talking to the bossman, Mr. Hitler and pulling in the honors, and on his own admission he does nothing—nothing to save the prisoners, to feed or house or clothe them, or anything else, and the prisoners go on dying. Why didn't he do anything about it? In the first place, he didn't know anything about it. Giesler never knew what was going on in the construction site or what was going on in the camp. And second, he had nothing to do with Einsatz Gruppe VI, in the first place, nothing at all. He was only there as a figurehead. Somebody told him he was a figurehead, and that was the only reason he was there. Giesler testifies in his own defense:

"Q What did you have to do with the prison laborers at Muehldorf?

A I? Nothing.

Q How about the group?

A Nothing with the group."

Not Giesler. The burden of Giesler's testimony was to convince the court that not only was Giesler free of responsibility for Muehldorf, but he was also free of responsibility for the group. He had nothing to do with it. His answer to the prosecution's charges is, "The construction office was on the construction site, and this construction office was independent of my Task Group, and took orders from Berlin", and the construction office was a stranger to the group that Giesler headed, and that is a perfect answer, a perfect answer because that divorces Giesler entirely from the responsibility. There is only one trouble with it, it isn't true, it isn't borne out by the facts, it is a lie, and I will show the court that it is a lie.

Let's look at some of this testimony that has come out. Giesler tells us, first of all, about his Task Group Russia. It was called Task Group Giesler. That apparently was Giesler's first contact with the OT. At first when he testified he tried to give the impression that Gimple was the man. Gimple went up there, and he had nothing to do with that at all. It was only on cross examination that Giesler admitted when he was pressed that he had made 8 trips up there to Russia. Why? He had nothing to do with this deal. He was only a figurehead. Why was he so interested in running up there to Russia 8 times as he so admits? Why? I will tell the court why he first denied it. Because it is a part of the pattern of Giesler's defense to make a complete denial of everything. He doesn't want to have any part of Task Group VI—"Task Group, stay away from my door," because as soon as he admits that he had something to do with Task Group VI, it only falls upon him to save the lives of 3900 people, but that doesn't work.

As hard as Giesler in his testimony sought to deny his connection with Hoffman's office, the facts come back to plague him. Listen to what Hoffman says:

"Q Did the construction in Muehldorf have any connection with Dachau?

A The construction itself did not.

Q Who did you get your orders from?

A The authorities at Munich.

Q What is the name of the man who was over you at Munich?

A Hauptbauleiter Somerer and Professor Giesler."

That is Hoffman's statement.

"Q Did you receive your salary from this firm (Polensky and Zoellner)?

A No, from the OT.

Q Who was your immediate superior in the OT?

A Professor Giesler."

Now, that is Hoffman's statement, and remember that that statement was made in 1945, before Giesler was arrested, two years ago. Listen to the testimony of John, and this is most telling testimony because John is a representative of one of the biggest firms in Germany—almost as big as Polensky and Zoellner—who did just as big a job as Polensky and Zoellner did. Listen to John's testimony for Moll and Company. John worked under Giesler on the Kaufering job.

"Q Can you tell the court who it was who was the responsible head of Task Group VI in Munich?

A Professor Giesler.

Q Did you ever confer with any persons who were part of Task Group VI?

A Yes.

Q Did you ever see Professor Giesler at any of these conferences?

A Yes.

Q How many conferences did you have at which Professor Giesler was present?

A It might have been two or three.

Q In your trade, Mr. John, was it generally recognised that Professor Giesler was the responsible head of Task Group VI

A In my opinion, Yes."

Now, Giesler said that Kaufering and Kuehldorf stood on the same level insofar as responsibility of Task Group VI is concerned. Of course, Mr. Giesler forgets about Kaufering, the murder factory. Kaufering here, that was under him, too. He forgets about that. I am referring to—I don't think it is in evidence. He forgets Kaufering.

DEFENSE COUNSEL: If it please the court, I am going to object to any testimony about Kaufering, even in the closing argument. We have nothing to do with it, and it has not been proved here that it was a murder factory. It is only to make an impression on the court, and I don't think it should be allowed.

PROSECUTION: I will withdraw the remark, if it please the court, it is not important.

LAW MEMBER: The president has directed this ruling: Subject to the objection of any member of the court, the objection is overruled and the weight will be allowed in argument on both sides.

PROSECUTION: And what does John say further about the work? He said when he started the job he submitted figures to Task Group VI, and that the contract for Kuehldorf was discussed with Task Group VI, after having said that, Kaufering and Kuehldorf stood on the same level.

"Q And did the OT produce all these materials for you?

A The OT tried to get them.

Q When you say the OT tried to get all the materials which were used, what part of the OT are you referring to?

A To Task Group VI, and furthermore the local construction offices helped, too.

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Q When you say the OT tried to get all the materials which were used, what part of the OT are you referring to?

A To Task Group VI, and furthermore the local construction offices helped, too.

Q Were these local OT units which you refer to and who also helped in the procurement of material, were they under Task Group VI, if you know?

A Yes, the chief construction offices were under the supervision of Task Group VI.

Q What was Task Group VI—what was their work—or what did they do in connection with the procurement of these Jewish prisoners, if anything?

A According to the work schedule we needed for the carrying out of the work a certain amount of labor. When these laborers were not present at the construction site then our construction leaders would contact the local chief construction office of the OT and would say, 'We need our sufficient number of laborers in order to complete our job on schedule.'

Q That local office was under Task Group VI, isn't that true?

A Yes.

Q Do you know whether the head of your firm, namely, Mr. Moll, ever had a conference with Professor Giesler personally?

A I know that the head of our concern, Mr. Moll, had one or two—I don't know how many—conferences with Giesler about the progress of the war, about the installations which were made, about the quality of the cement.

Q Do you know whether Mr. Moll discussed with Professor Giesler the question of a completion date?

A I assume so for certain."

John also said, "To my knowledge Gimple was a representative of Giesler, and he was the main liaison with the construction companies, and he gave the most of the orders, and he originated most of the instructions they received." That is referring to Giesler's representative. He is referring to Gimple. Gimple originated most of the instructions which the firm received. John says further, "At the beginning of the construction job under question, Task Group VI did not exist to my knowledge. Giesler came there later as the man in charge of that task group. Before there was a certain Mr. Liebermann in charge". John ends his testimony:

"Q Do you mean that you got your concentration camp prisoners through Task Group VI?"

And he answers, "Yes". And that is John's testimony, and John has no reason to lie. John has no reason to give false testimony. A man like John doesn't give false testimony, he is too big a man to indict that man with testimony if it was not true because John came in and told the truth, but that isn't the only evidence that Giesler's testimony was a lie from the start to the finish. Haeuschen worked for Polensky and Zoellner. There is one of his bosses lying there, and he has no reason to be friendly to me. He still works for Polensky and Zoellner, and worked at the Wettenheim site at the office there.

"Q Did Polensky and Zoellner have anything to do with a unit called Task Group VI?

A Yes, that was the office from which we received our orders." (Polensky and Zoellner)

Now we come to Baumgartl:

"Q What was your relationship to Giesler when you were working in Task Group VI?

A Giesler was head of Task Group VI.

Q Were you chief of one of his departments?

A Yes, I was head of the medical department."

Now, he doesn't say he was the head of the medical department from Berlin, he says very clearly, "I was chief of one of his departments," and "I was chief of the medical department".

"Q Will you please tell the court what specifically were Professor Giesler's duties, as far as you know?"

And here is the department chief:

"A As far as I know, Professor Giesler's job was to construct the planned buildings, together with the help of his co-workers, of specialists of various firms, also of concentration camp inmates."

"As far as I know, Professor Giesler's job was to construct the planned buildin s."

"Q Do you know whether one of the tasks that Task Group VI had was the building of a factory at Muehldorf?

A Yes."

Then he described how he had conferences with Giesler about Muehldorf, and he says: "I submitted a letter and also a report, an oral report about the conditions of lack in concentration camps--the poor conditions in concentration camps," and there is the letter the court asks. Now, there is Baumgartl's testimony in which he refers to this very letter which the court has before it, and I ask the court again to see whether Baumgartl wrote that letter before he came in there. Look at the date of that letter, the faded type. I want you to look whether that letter doesn't square with the contents of the letter which the court has before it. Yet, in the face of all that evidence, here is Baumgartl. Giesler: "I don't know what you are talking about; what is this Task Group VI; I don't know what you are talking about". Giesler was as far away from here as we were, he would like to have us believe. And look at the contents of that exhibit which I laid before you a moment ago with respect to the task which Einsatz Gruppe VI undertook with respect to those medicines. See whether Baumgartl lied when he took that stand with respect to the fact that he told Giesler what was going on there, and Giesler says, "I don't know anything about that at all", but look at the last paragraph but one in which he says to Berlin, "I told you, and Giesler told you", now, why would he say that in September '44. If it weren't true, why would he come in here and give the lie to Giesler? Was he anticipating that in September 1944 "Dr. Poschmann had on the occasion of his last visit", says Baumgartl, "already an opportunity to be informed by me as well as by Professor Giesler about complaints concerning difficulties as to the cooperation with the SS". And Baumgartl takes the stand and says, "I went up there to Giesler and told him", and Giesler comes here and says, "I don't know; I never saw the man before;

I don't know; I don't know what he means". And I ask the court with respect to that letter to notice the heading of that letter from the Einsatz Gruppe VI in Munich to Berlin telling Berlin about the arrangements which Baumgartl made, not Berlin telling Baumgartl, but Baumgartl telling Berlin. Baumgartl gives Giesler credit for the delousing units. Why would he do that if he were an enemy of Giesler. Why would he give him credit for the delousing units? He said "Giesler moved himself and he gave us some delousing units". Why would he be inconsistent about a lie? If a man tells a lie, he tells a complete lie. Giesler takes the stand and says, "I never heard of anything like that before", but the situation even after that letter, and even after all the reports to Giesler didn't improve. Baumgartl says, "Could Giesler have given authority to withdraw from Schwindegg Medical Depot sufficient medicine and bandages to take care of the needs of Ruehldorf, if he wanted to?" "Yes". "He could have done much more, and I could not assume that he did anything, at least nothing decisive."

"Q Do you know whether Giesler was ever at the principal construction site?

A Yes, I know that.

Q Can you give the court an estimate of how many times he was there?

A 10 or 15 times.

Q Do you know whether the deplorable conditions which existed there regarding the health of the prisoners was known to Giesler?

A Yes, first off he knew it from me, and then my doctors who were working on the various construction sites made the same complaints to him."

And then Baumgartl spoke about Hoffmann:

"Q What was Hoffmann at the principal construction site?

A Hoffmann was for the main construction site the same as Giesler was for the Task Group. Hoffmann was subordinate to Giesler."

Don't you think that man knew what he was talking about? Don't you think he knew the setup of the OT just as well as Giesler? One of their own witnesses said, "You don't go through life with your eyes closed". Of course, you don't, and neither did Baumgartl.

Let's look at another, Endroess, the little fellow who came in here and started to testify on behalf of Giesler. He knew all about it. There was nothing about the task group or the OT that he didn't know until he got to cross examination. The defense set him up as an expert, and he was doing fine until he came to cross examination.

"Q For what was Bruno Hoffmann responsible to Task Group VI?"

And, by the way, that was their expert.

"A I can't explain that—I would have to describe the entire activity of the construction chief.

Q Go ahead and describe it.

A I can't do that—this matter would have to be explained by someone who was working in Task Group VI."

That is the expert that they brought in to testify as to Hoffmann's responsibility and Hoffmann's jo . I can explain this, Task Group VI, according to the table of organization was the office in charge of the construction site in Muehldorf, but the construction site was allowed to appear directly to Berlin in case of urgency of great importance.

"Q In other words, when you say "independent", that in case of urgency they had a right to short circuit Group VI and that is all their independence amounted to, isn't it?

A Yes."

The other witness who appeared for Giesler was Toepler. You remember the attorney who came in here. Toepler was a lawyer. He had worked for the General Counselor for Architecture—for Giesler. After testifying at great length to many matters, it developed on cross that he had not the slightest idea of the setup of the OT or Task Group VI, and the reason was obvious—he didn't work for Task Group VI, he worked for Giesler

in his capacity as General Counselor for Architecture, but the last answer that he gave is enlightening.

PRESIDENT: The court will take a recess for 30 minutes.

(Whereupon at 1000 hours the court recessed until 1030 hours.)

* * *

(Whereupon the court reconvened at 1030 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present, with the exception of Colonel Dickey, who is ill and in the hospital, and is excused VOCO; that all the defendants are in court together with their counsel; that the reporter and interpreter are here, and that the Government is represented.

Before the recess I was discussing the testimony of Dr. Toepler on behalf of Professor Giesler. In his last answer prior to leaving the stand, he was most enlightening, and I would like to call the court's attention to a question:

"Q You know, don't you, that Gimple did have a great deal to do with Task Group VI?

A Yes.

Q And there is no doubt in your mind that for all purposes Gimple stood under the jurisdiction of Giesler?

A Yes."

And now I would like to turn to Speer's statement. Speer made a statement on behalf of Giesler, and after reading through it, one fact stands out. He says, "But I know from a disagreement between the chief of the OT center and Giesler that Giesler in this case said to Horst that Gimple was responsible for his technical tasks. Note the word "technical". Certainly Gimple was the technical expert. Certainly Giesler leaned on Gimple for Gimple was an engineer, which Giesler was not. There is no dispute at all that Gimple was the expert, whose engineering brains pushed the work at Muehldorf, but how does that relieve Giesler? Gimple was

subordinate to Giesler, and we know too much about the doctrine of respondia superior to say that Giesler was relieved of responsibility because he appointed a responsible subordinate. Giesler was and still is responsible for his acts and the negligence of his subordinate, Gimpl, and then listen to what Griesinger says. Griesinger knew he was on the job, and notice what he said in his pretrial statement, Exhibit 27:

"Q Who was chief of commitment Group VI?

A That was Professor Giesler.

Q What did Group VI have to do with the construction at Muehldorf?

A Group VI furnished the plans from the OT headquarters in Berlin to the construction group in Muehldorf. The group also furnished the labor and machinery."

Don't you think that Griesinger knew who was furnishing the labor; don't you know that Griesinger knew what Giesler's responsibility was? Do you think that Griesinger went through life with his eyes closed when he needed help, and he knew when he needed help he had to go to one place—not to Berlin—for labor when Dachau was down at Munich. Wouldn't that be the silliest thing in the world to do? Griesinger went over to Giesler when he needed help and when he needed labor, and he said so in his statement, and this is Griesinger again:

"Q How was labor for the principal construction site gotten?

A Commitment Group VI procured labor for the work, and in this connection procured foreign workers and also arranged for the procurement of labor from concentration camps.

Q Who determined the amount of food that the prisoners were to eat?

A That was determined in Munich at Einsatz Group VI headed by Professor Giesler."

That is Griesinger's statement, and Griesinger was on the spot, and when Giesler says in his own statement that there was somebody in his office who took care of procurement of the food, doesn't that square with what Griesinger says?

"Q Who looked sick or bad at the principal construction site?

A The Russian PW's looked bad--partly also the inmates but mostly the older ones.

And listen again to Hoffmann's statement--Hoffmann knew:

"Q Did you have to requisition workers from Dachau?

A We did not have to order them. They were sent here from Dachau to replace Italian labor that did not appear.

Q How did Dachau know how many to send?

A We requisitioned the laborers from the Munich authorities and they would assign them here."

Listen again to Gickeleiter. Gickeleiter was the one who represented Polensky and Zoellner.

"Q Do you know Giesler?

A Yes.

Q What was his position?

A He was Generalbaurat. He had the title of Generalbaurat and Professor, and he was leader of the OT group in Munich."

Gickeleiter doesn't say this or that, or somebody was the leader, he said Giesler was the leader. And don't you know that Gickeleiter knew who was the leader in Munich, who he looked to?

"Q Did you receive instructions from that OT group in Munich?

A Yes, by way of Hoffmann.

Q What was Hoffmann's position?

A He was leader or chief of the OT in Ampfing.

Q And he took his instructions from Giesler's group, is that correct?

A Yes."

May it please the court, Adolf Hitler said, "If you tell a lie, tell a big one, and if you repeat it often, people are liable to believe it; don't tell a little lie, tell a big one", and Giesler learned well from his chief. He told the biggest lie he could possibly think of.

He told a lie to this court when he said he had nothing to do with Einsatz Gruppe VI. Not only did he tell a lie, but he repeated it so often that the theory of his boss stuck out all over it like a neon sign. "Tell a big one, don't tell a little one, but if you tell a lie that is so ridiculous in its grotesqueness, people will believe it". He told lies. He came in here and said he didn't have anything to do with Einsatz Gruppe VI and that he didn't know anything about it. That was his theory because it was necessary for Giesler to lie if he was going to get out of this thing. He couldn't possibly admit his connection with Einsatz Gruppe VI because Einsatz Gruppe VI had the control of Muehldorf, and it was up to Giesler to say 4,000 lies. That is why he tried to duck it to get out of it, and the only way to get out of it was to show first they had nothing to do with VI, and the group itself had nothing to do with Muehldorf. That is why he pushed it off to Berlin. "It was the other fellow's fault, not mine". One of his own witnesses after testifying at great length admitted on cross that Giesler did not bother about details, but had to be consulted on matters of broad, general policy, and that is about the position of the prosecution all along. I know that Giesler did not bother about how many pencils were used at Muehldorf, but when it came to the broad general policy, the boss was consulted. Didn't they consult him with respect to the labor? Why did they do it? Why did Dimple come around crying to the boss, and why did he bother with that kind of labor? "We have to get normal workmen". Why did they come to Giesler if he had nothing to do with it? He tells us that was only a personal matter. "It was a matter between my brother and me, but really I had nothing to do with it."

Gentlemen, when they ran into trouble, they came to him. That is what he was there for. They got him to go up to Hitler to try to straighten the thing out. Why did Dimple go to him? Because he had

nothing to do with the construction site at Mue'ldorf. That is the story that he can tell somebody else, but not in this courtroom because the facts speak for themselves. Everybody recognized him as the chief, the boss. If there is any doubt about that, the only doubt is entered in this case by Giesler himself, and everybody who testified in this case with respect to Giesler gives the lie to Giesler. Giesler, when he testified here, knew the facts and figures; he knew all about the setup and organization and tables of organization. There is only one thing that Giesler didn't know anything about, that was why it was people died in nine and one half months--47 per cent of the people at Muenldorf--why they died. He didn't know anything about it except what his own department head told him about.

Gentlemen, Giesler's testimony was a fabrication of lies made of the whole cloth. It was a last effort to mislead and distort. I will admit he was a convincing liar, an excellent liar, but what nazi wasn't? They had to be a good liar. They were masters of the art. That was their stock in trade. They were successful liars only as long as they had nobody to controvert them, and unfortunately for Giesler, his own colleagues controverted him and gives a lie to Giesler. Now, because he wasn't telling the truth, things didn't happen the way Giesler described them. The facts are in the record. He is smart; he had to be smart in his job, and when he took the stand, his counsel was most tender with him and said, "Sit back; if you need time to recover, the court will be glad to give it to you". That was as phoney as Giesler's testimony was phoney. What under the law was his duty? Under the Geneva Convention his duty was to go out and see that nobody died. It was his duty to see that he wasn't working dying men. It was his duty to prevent Dickelsitter and Frie-linger and the rest of them from giving orders, "If they don't work, beat them". That was his job and he didn't do it. That is what humanity expected of him, and your own Government

expected of him when they put their signature to the Geneva Convention, they said that those things which Giesler did or didn't do wouldn't happen again, and that is where he failed in that duty. That is why he was guilty under the law. His duty was twofold--it was negative and affirmative. It was affirmative to take steps to prevent suffering and death, and it was a negative duty to see that nobody died there, and that was his job. He failed in it, and therefore he is guilty. He failed because he was a willing accomplice to the general policy of the German Reich--to kill, to exterminate by work and overwork. That was his job. He was a willing instrument, and because he was a willing instrument he is guilty. Nobody attained the stature in the nazi hierarchy that he attained without being a willing instrument to the general policy set by the Reich. He was too big, too important. A word or a look from him would have made those over at the main construction site shiver and shake. He didn't give that word or that look, and there isn't a word in evidence that Giesler ever extended himself to issue or execute one order that would have saved one life. All he did when he was asked on the stand--the only thing he said was to tell the court, "I didn't have anything to do with it".

May it please the court, the evidence with respect to Giesler is clear and convincing. The prosecution in this case asks the court to find Giesler guilty, pleads with this court to impose a sentence of death on Professor Hermann Giesler.

CAPT. BACHMAN: May it please the Court, Gentlemen of the Defense, Gentlemen of the Prosecution: Mr. Roth has covered at some length the picture which existed in this camp or ring of camps called Muehldorf. Very early in the case the prosecution proved the duties of each of these defendants and the part which he played in operating this camp. I won't stop to review this evidence at this time, but the court will recall that we successively introduced statements showing a connection of each of these defendants with that camp; and none of them except Professor Giesler, who ineffectually denied the importance of his part, Flocken, who tried to prove her acts were in an unofficial status, and Engelhardt, who denied the title of adjutant--none of them have denied that evidence of their part in this case. Each is guilty of common design and with the one exception they failed to take the stand and deny their parts in the common design.

I was appalled at the stories that were told in 1945 of the number of people who were beaten to death by the OT and SS men, who were killed at these various spots, and I say to this court that although those witnesses didn't know the names of the people and were not in a position to identify who it was who had done those killings, undoubtedly some of these defendants in the stand were guilty of those killings. But if they were not guilty with their own hands, they were accomplices. They were accomplices to the acts of each and every

one of the defendants in this camp. Just as many a man has gone to the electric chair who stood outside of the bank while his accomplice went in and killed the cashier, so these people are guilty, as accomplices and as a part of the common design, for every killing that went on in that camp.

However, since to some extent the severity of the sentence of each defendant must depend on his individual acts, I should like to review the individual acts of each of these thirteen defendants.

We shall begin with Capt. Ostermann, No. 11, captain of the Wehrmacht on temporary duty with the SS. Supposedly there as a guard company commander, he was actually the commanding officer of Wald Lagers V and VI (testimony of Dr. Gruenbaum, at page 179 of the record; testimony of Eisenhandler, at page 242 of the record; Judkowiez, page 321; Hoffmann's statement, P-3, page 7; Benoze's statement, P-56, page 3). Every one of them places him as commanding officer of the Wald Lager and as such commanding officer he was responsible for all of the acts of his men of which he had knowledge in that Wald Lager V and VI. But Capt. Ostermann did much more than that. He killed men by his own orders. What did he do as punishment for a minor offense? He forbade heat in the bunkers for three days and men died as a result (testimony of Eisenhandler, page 265 of the record; Wellner, page 691 of the record). He withdrew the rations or water from the starved men as punishment (testimony of

Eisenhandler, page 266; Wellner, 691; Lewin, 816, Judkowies, 321). Gentlemen, there is the record. He used an unheated bunker for punishment and he confined people in there for three days at a time, without food or water, so that they died (testimony of Eisenhandler, 270; Wellner, 691; P-62, page 4, statement of Herskovics, can actually tell you about that bunker).

Do you remember the description of Hoffmann who was shot in front for trying to escape and the story that he wasn't trying to escape, and how Ostermann had him brought out in the square and made the prisoners march around in front of him instead of punishing the guard (Eisenhandler, 252; Judkowies, 323)? You remember how he removed the floors of the bunkers, those miserable quarters. That is the testimony of Wellner at 691 of the record.

He was a fine commanding officer. When the citizens of the community protested to him about the prisoners who were beaten to death on their streets, he put out an order that it wasn't to be done any more in public. That is the testimony of Eisenhandler, at 270 of the record.

Ostermann even joined in the sending of these sick people to work (testimony of Raskin, 469 of the record).

There is no question that many of the prosecution witnesses, as well as the defense witnesses, testified that Ostermann did help the prisoners on many

occasions. That testimony is frequent and quite sincere, apparently. How do we explain this conflict of acts? Ostermann was a nervous man. He was a very heavy drinker and often drunk (testimony of Lewin, his own orderly, at 916 of the record; and Eisenhandler mentions it, at 267). When he was drunk, he would amuse himself, like this: midnight roll call when he turned all of the people out at midnight and fifteen prisoners caught pneumonia, while he hid one of the prisoners in his own room to check the efficiency of his own guards (testimony of Eisenhandler, 267; Judkowiez, 321).

This Dr. Jeckyl and Mr. Hyde, who was turned over to the SS because he was not good enough for the German Army, deserves consideration for his good acts, we admit, but he cannot escape the punishment for the murders he committed.

Defendant No. 12, Schmidberger, 1st Sgt. of the SS, detail leader with a reputation for brutality. As Lang says (569 of the record), one tried to stay off his details, one could not bear it if Schmidberger was on the job. He was a terrific beater. Beatings were mentioned by Lang (561 of the record). Rosenberg (766 of the record) was kicked in the ribs by Schmidberger for being slow in taking off his hat. Eisenhandler (263 of the record) remembers his frequent beatings with a cudgel. Raskin (page 467) tells how Schmidberger beat practically daily with a club, too often to state a time.

prisoners. Schmidberger was along on that final transport. You remember the condition of that transport, how the SS fired into these helpless prisoners. [illegible] this court finds that Gentlemen, these witnesses did not come in to persecute anyone, they did not come in to persecute Schmidberger. They did not say he fired any of those shots. That is a natural thing, because they did not stop to look at who was doing it. But we do know that Schmidberger was along, that the SS did the firing, and that Schmidberger was the kind of a man who would have been firing on those prisoners. That he was along on the transport there is no doubt (Raskin, 472; and his own testimony, P-28, page 4). Volkmer (516) told how, even in the forced Lang to do a day's work in two hours

an punishment (568). [illegible] and it was confirmed by their [illegible]. I refer now to the shooting on this detail, to that Schmidberger was in charge of at the railroad work station. You remember that (testimony of Lang, 561), even Langleist stopped an SA man from shooting that prisoner in the morning. When Langleist left, Schmidberger did not protect him and an SA man shot him [illegible] (Ruskin, 468). In answer to that, they bring in Major Vollmuth, major of the gendarmerie, who testified (936). You remember Vollmuth did about as good a job of heel-clicking as a man ever did sitting down. He went on to say that it was done by an SA man. He also showed what all of Germany thought of these concentration camp [illegible]. [illegible] a stick to

prisoners. It is very interesting to know that Lang's testimony (361) says that the actual murder was committed by a gendarme major, and I submit to this court that there was no gendarme major in that vicinity except Vollmuth himself.

Why didn't you take the stand, Schmidberger, and deny the charges? Because he was afraid the murders that he had committed would come out further than they did on the testimony.

No. 3, Wilhelm Bayha, 1st Sgt. of the SS, a detail leader, known as "the lame one." There isn't so much to tell about Bayha. Wolf (at 1464) tells of several beatings by Bayha. Judkowiez (316) told how, even in the cold weather, the prisoners had to take off their overcoats in order to work, and that was confirmed by their own witness afterwards, how they were driven to work at an early hour, how they were beaten on the neck with a stick, and treated to kickings by Bayha daily, how he ordered the capos to beat, and extra work as punishment. Also, according to Judkowiez (317), he forbade the use of air-raid shelters, and that is confirmed by Eisenhandler (373), who testified how Bayha shot at him because he was trying to get into an air-raid shelter as an air raid was imminent.

Bayha, you couldn't take the stand and deny any of that, could you?

Consider No. 8, Daniel Gottchling, "the black Hungarian." Gottchling went around carrying a stick to

beat (Lang 569). In his own statement, he admits he carried a stick to beat (P-26, page 2). How did he use it? He beat the prisoners to the ground with that stick (Mannheimer, 450; Schuster, 726). Whom did he beat? The young boys on his detail (Mannheimer, 454). And what did he beat them for? Such things as licking an empty pot because they were starving to death (Lang, 567).

You remember how Gottchling stuck that potato fork into a man's leg and crippled him (Froelich, 714).

I want to read from the record Berressi's testimony, page 774.

"Q Will you tell the court about Gottchling in connection with a friend of yours?

"A Yes. After having been in the camp for a while, I saw Gottchling grab a friend of mine. Yes, he took him to his warehouse and he told another prisoner, who was a prisoner just like us, to take him and give him 25 strokes on his behind. Yes, he told this fellow to give him 25 strokes and Max had to do it. He beat him, but as he was a comrade of his he only beat him lightly, but he said to him, "Go ahead and beat him hard; otherwise, I am going to beat you." After this comrade received the 25 strokes on his behind, and as he always said, "Beat him harder, harder," this comrade had to go to the hospital."

That is Gottchling, gentlemen.

Gottchling hung prisoners up in his cellar, hung them up by their arms. That was a common practice in concentration camps and Gottchling thought it was a good idea (Froelich, 728). Gottchling did other things

that killed men. He stole the food of these starving prisoners who were already dying from starvation--from them he took further food to trade for his own shoes or to give to his girl friend (Mannheimer, 455; Froelich, 713).

His whole attitude towards these prisoners was shown by Froelich (707 of the record). Gottchling went out and brought back the food that had been issued to one of the transports and what did he say? "They don't have to eat, they are already finished." They were, gentlemen.

Who came in and spoke for Gottchling? His co-criminal, Neubauer, the man who heard everything that went on in camp if it helped the defendant, and the best that Neubauer could say for him (1263) was that he only used his hands to beat. That won't help, Gottchling, not when you yourself said that you beat with a stick, in your own statement (P-26, page 2) and not when you yourself did not take the stand to deny the evidence against you.

No. 10, Wilhelm Jergas, Tech. Sgt, roll-call leader in the Waldlager. Here, gentlemen, we come to our first direct murder--the Hungarian boy who was beaten to death. Testimony of Raskin, 466 of the record:

"Q Now, can you tell me anything about the beating administered to a Hungarian prisoner?

"A From the many memories I have from the various camps, this is one of the most terrible things I have seen.

"Q Fix a time and place first, and then tell us what happened, will you?

"A It is very difficult for me to fix a date, but it must have been in the winter of 1944, sometime. We had been working on a detail next to the camp. The work was digging out roots of trees. We had been working beside the main camp at that time. Then this Jergas came out of the camp and looked at the people--the men who had been working around. There was a Hungarian boy who did not seem to work fast enough so he grabbed a shovel or a spade in that instance and beat this man with the spade so that the man fell, bleeding terribly. He was taken to the hospital; and he was taken to the hospital after this defendant left. About 20 minutes afterwards I had the possibility to go into the dispensary, where I saw the body of the boy in the middle of the hall. I asked the man from the infirmary, "Why is the boy still here? Why doesn't somebody take him to the hospital to take care of him?" and he said, "It is no use, the guy is dead." I have had experience with thousands of dead bodies, and when I came out of the hospital, I knew that the boy was really dead."

That is Jergas, gentlemen. He was a murderer, all right. You remember the testimony of Wellner (692), who said he not only was known as a beater but told how Jergas went around after the final transport left looking for the few Frenchmen who survived because he wanted to shoot them to death. He used a whip frequently. He beat to the ground. He kicked prisoners on the knee or the back of the ankle (testimony of Eisenhandler, 261). He often beat them unconscious (testimony of Raskin, 465). He always had a stick, using it to beat them unconscious. Reading from the testimony of Gruenbaum (199 of the record):

"A Jergas was roll call sergeant. Technical Sergeant Jergas was roll call leader. That took place at every roll call. He always either carried a whip or a small, thin stick with him.

"Q Go ahead.

"A And he would hit them on the head or on the legs, these prisoners who couldn't run fast enough and get to the place of roll call quickly."

Jergas would appeal to the court's sympathy now because he is sick with heart trouble. Any man's heart would trouble him, with the crimes that are on Jergas' head.

No. 13, Herbert Spaeth, Tech. Sgt. of the SS, food manager of M-1, and representative of the camp's commanding officer. Is there any doubt about his being the camp's commanding officer's representative? Wolf said so, at 1463. P-3, page 3, Hoffmann's statement, says that is what Spaeth was. He joined in the stealing of prisoners' food, according to Froelich (713), but he was described much more seriously by Mannheimer, at 453, as being much feared by the prisoners. He told how, when the women tried to share their scanty rations with the men, Spaeth went among them, beating the men who accepted rations, over the head, neck and back, and wounded many of them. Landau, at 549, called him a brutal beater and said one always kept out of his way.

He used a stick or club. Lang, at 569, told of being beaten; Froelich, at 708, described Spaeth and his stick with three wires; Schuster, at 726, told how Spaeth used a stick every day; P-26, page 2, Gottchling's statement, tells of how Spaeth used a club.

The severity of these beatings was terrific, gentlemen (Kiwilewics, 369). Kuritzka (397) told how he beat badly at every chance and particularly remarked how he sent Professor Zenent to the hospital. Schlaecter (608) remarked how he beat a man called Glaser unconscious. Schuster (725) told how he was present and directed the severe beatings of these PW's who dared escape from his camp. Nechama (654) told how he went into the musselmann block, the sick people, and beat them.

But much more serious than that, death after death is laid at his door. Schlaecter (608) told how the people in the sick block were to get nothing to eat at his orders. Why? Because he said they were going to die anyway. They did, gentlemen. They died from hunger.

Nechama (655) tells how many died from his beatings. Edelstein (678) tells what a beater he was and how he directed the beatings from which many died. Froelich (709) tells of the man who was dragged into the kitchen by Spaeth and beaten and carried out in such a condition that he died the next day.

Quoting from Edelstein's testimony (679 of the record)--this refers to one of the things that Spaeth did--

"Q How frequently did you see people hanged by the wrists or feet at the orders of the defendant Spaeth?

"A I was told about that once, and I was told so by the men who were working in my detail.

"Q Would the defendant Spaeth be present when this order was carried out, if you know?

"A Yes.

"Q Do you know of anyone who died as a result of such punishment?

"A Yes, one man died as a result of this.

"Q When was that, if you know?

"A That was in Spring.

"Q Spring of 1945?

"A 1945, yes."

This, gentlemen, was just one among the murders that Spaeth committed.

What did Spath bring to this court in his defense? Our friend Neubauer, who would speak for anyone whom no one else would speak for. What was the best Neubauer could say for him? At 1249 he says Spaeth did not beat hard. But, gentlemen, read P-22, page 1, Spaeth's own statement, in which he admits that he used a stick for his beatings and he adds these words: "The possibility exists that I kicked them." Gentlemen, the people who died from Spaeth's beatings thought he beat pretty hard.

No. 4, Heinrich Engelhardt, Tech. Sgt. of the SS. The prosecution alleges that he was the adjutant of the ring. He has brought in pretty good evidence that the ring had no adjutant but, whether

officially or not, the fact is that he acted as the ring's adjutant, signed as such, and carried out the duties of an adjutant (Kiwilewics, 367; Kuritska, 393; Edelstein, 674; Delicat, 837--that was brought out by the court's own questioning, not the prosecution's; Wolf, 1463, who saw orders signed by him as adjutant; P-22, page 2, Spaeth's statement, names him as Langleist's adjutant).

But whether or not he was an adjutant, he was a beater, a killer, and a brutal man. In more playful moods, he took the women's extra clothing away so they could not do any laundry, and he started the fleck fieber epidemic (testimony of Almosninos, 558; Kiwilewics, 367; Kuritzka, 393; Neohama, 654; Edelstein, 676). That was his more playful mood.

In his more serious moods, he would beat, kick, and seriously injure these prisoners. Almosninos (558) was herself beaten by him. Kuritzka (393) mentions many beatings. Edelstein (664), who was herself beaten by him, tells how he used a whip until the prisoners were bloody. And of course a man died from his beatings. Testimony of Edelstein (675):

"A It was like this. Our block was opposite the kitchen, and the night shift who was getting ready to leave was standing there getting their food. When Englehardt approached the rows of these people as they were standing there, they had to take off their caps. Everybody had to take off their caps when any of the SS people came along there. One of

the prisoners took off his cap a little slowly. He was already a very weak prisoner. And then this man had to be taken to the dispensary and I heard about him through a nurse who was there who was a friend of mine. I told her to get some information on how this man was doing and this man died three or four days later."

That refers back to this question:

"Q Do you know whether or not any prisoners ever died from a beating at the hands of the defendant Engelhardt?

"A Yes."

There is the record, Engelhardt. You couldn't come to the stand to deny it.

Only Neubauer, the boon of all defendants. He never heard that you beat, but then of course Neubauer never heard that there were any Auschwitz transports. He didn't even know the most common fact in camp --that Auer was a beater.

Next, Defendant No. 6, Gickeleiter, Chief construction engineer for Polensky and Zoellner. He was their representative at the site, with full power to do what was best to accomplish their mission. He dealt directly with the OT (Raskin, 140; P-3, page 11, Hoffmann's statement). Gickeleiter was in charge of the cement column (P-57, page 1). What does Gickeleiter say in his own statement? That he was responsible for the main construction site construction to the OT and to Polensky and Zoellner. And he accomplished that mission by working these starved prisoners to death. Polensky and Zoellner men beat to get the work done. There is no question of

it (Landau, 544; Van Der Milich, 1447) and Gickeleiter was present and saw and approved (Van Der Milich, 1444-1447). He saw these poor, sick prisoners working (Lang, 565; P-29, page 4, Sperling's statement). But, more than that, he took a hand himself in the beating of these men who couldn't work (Raskin, 477) and it was his fault that he drove everyone else to beat. He told the capos, "Rush the work," and he implied, "Beat the men to get the work done" (Van Der Milich, 1444). He always was out there, driving, driving, driving these starving men (Lang, 546). P-29, page 4, Sperling's statement, made in 1945 when there was no thought of a trial, said that Sperling protested that the men were not strong enough. What did Gickeleiter say? They must be worked under any circumstances. Gickeleiter reported a man who had quit work two minutes early, in order that he might be deprived of his food, although he was already starving to death (Delicat, 829-830 of the record). He was there to make a profit for his firm. Sperling's statement (P-27, page 3) contains these words: "The quicker the work the more money the firm would make," so Gickeleiter ordered the foremen to drive the prisoners and "they certainly drove them." Those are the truest words in the record, "they certainly drove them."

Page 1444 of the record, testimony of Van Der Milich:

"Q Was the defendant Gickeleiter at the main construction site?

"A Yes.

"Q What were his duties there?

"A I believe his duties there were to rush the whole construction up into the air so they would get through."

Yes, what Gickeleiter was doing there was rushing the work up into the air so they would get through. Yes, as his own witness said, they worried because they were using prisoners (Holsworth, 1044) because they were unskilled laborers and they needed skilled labor. That was their only interest whether they were using prisoners or not. P-58, page 1, the continuation of Sperling's statement --and what was his statement in there to Sperling, his assistant? "Don't treat them like prisoners of war, but like enemies--you will get the prisoners to work for you." And, gentlemen, they did. They got the prisoners to work for them, got them to work so that they died like flies from overwork.

You made your profit, Gickeleiter, in human blood.

No. 14, Otto Sperling, chief foreman of Polensky and Zoellner, Gickeleiter's assistant, in charge of all the foremen there. Not only guilty of the same sin as Gickeleiter in working these starved prisoners, but he was particularly known as a beater. P-29, page 2, his own statement made in 1945. What did he say then? That he always carried a pistol or a club at work. Note that he says that two-thirds of the cement machines were going all the time.

On page 3 of that statement, he admits frequent beatings "with my stick or any stick that was handy" and on page 5 he says that these men he beat were sick and undernourished. He knew that fact, gentlemen, but he added it was necessary to get the proper mixture of cement. Yes, gentlemen, that was the whole attitude--let them die, let them starve, but we've got to have the proper mixture of cement. That is Sperling.

What sort of a man was he? Remember his statement that he put in writing, that he had made previous statements because he was afraid of being beaten. Well, that same question came up in 1945 in this statement (P-29, page 5). He made this statement: "I did not receive these bruises from you or your assistants," speaking to the investigator, "but from the ex-prisoners at Feldafing a few days ago." That is the beating he got and he got it because those ex-prisoners at Feldafing had suffered under him as long as they could stand it.

What sort of a beater was he? What kind of a club did he carry? (Landau, 544; Lang, 569) And Lang adds that he was the most-feared man on the Herzberg site of the Hauptbaustelle.

Van Der Milich (1447) was beaten by him and tells of two other beatings by Sperling. Schlecter (609) told how the defendant used a board to beat people when he saw they weren't working. Wellner (669) testified

that he was known as a beater. Berreasi (773) said he made two men work all night, stripped stark naked, in the cold as a punishment for something that didn't suit him. Finally, Delicat (828) testified how, in January 1945, a man died from Sperling's beatings. There must have been many men who died from them, gentlemen, but we have at least one specific case in the record and never did any witness, including the defendant Sperling, say one word in his defense or in denial of these statements I have just called the court's attention to. Why? Because he was a cold, brutal man for whom nothing could be said.

No. 9, Wilhelm Griesinger, Hoffmann's OT man in charge of the main construction site, the spiritual man who worked starved men to death for the glory of the Fatherland. This able man was responsible for the entire work commitment (Lang, 555; P-57, page 4, Gickeleiter's statement, and Gickeleiter adds that Griesinger was his superior). He was there five or six times a day, according to P-61, page 3, the statement Herskovitz made in 1945. This philosopher ordered the capos to beat. Testimony of Raskin (476):

"Q Did you ever see Griesinger at the main construction site?

"A Twice or three times."

You remember Raskin was very seldom there himself.

"Q Tell us what you saw.

"A I saw him give the orders to the foreman and the capos there, and I have heard him specify that people had to be beaten there, that everything had to be taken out of the people to carry that cement, and I have seen him twice slapping a prisoner who was carrying cement."

You remember that Raskin said that he himself beat [illegible].

Lang (566): [illegible]

"Q Did you ever see Griesinger kick or hit anybody?

"A Yes.

"Q Tell the court about it, when and where?

"A There was a prisoner who was rather corpulent, and he was not able to do hard work, and he asked me whether I couldn't get him some light work. And then I told this prisoner to stand there and check on the other prisoners that they kept on working. And Griesinger came and gave out tickets for food working records, and the cement silo pushing was running empty. And during this procedure the OT called down, saying that there was no more cement in it, and Griesinger dashed up to this fat Jew and said, 'What are you doing here?' And the Jew said, 'I'm the capo.' And Griesinger said, 'Well, you're a nice capo,' and he gave him a kick with his foot so that he fell into the cement."

Yes, gentlemen, this decent man who loved Jews.

Herskovitz (P-61, page 3) tells about the same thing--not the same incident, but beatings by this defendant. He saw the sick prisoners who worked there and he saw them beaten time after time, this conscientious man. One witness after another told the court about it (Lang, 565; Schmeter, 611; Reliaat, 850; Einicke, 1191, 1192, 1194; Van Der Milich, 1446, 1447).

Yes, gentlemen, this conscientious man knew what kind of prisoners he was driving, and what was his

reaction to all of that? Van Der Milich told us (1445), that always his cry was "faster, faster, faster."

This quiet man used these premium certificates very effectively. The testimony of Schlaester (611) calls attention to this use of these premium certificates. What did Schlaester say about it? "My own opinion is this, through those premium certificates, Griesinger killed more people than he should have killed by beating them himself." How did he use these premium certificates? To get more work out of the people and he gave them to the people who would drive the men the hardest. It didn't matter that they were being driven into the mass grave. They had to be driven to get more work and the capo who drove the hardest got the premium certificates (Benvessi, 775; Meitles, 823). Even his own witness Rinicke (1190) said that the Jews had to perform the most difficult work out there, [illegible] and the [illegible] hangs.

What was the attitude of this fanatical anti-Nazi? Eisenhandler (259) testified to the attitude that he had and that was that if Germany lost the war it was going to be necessary to exterminate these people so they wouldn't be witnesses against them.

"Q Well, what was said at that conversation? [illegible]

"A And they were talking about the chances which were left to Germany at the end of the war; and then the question was raised: what was going to happen then if these prisoners are still here? Eye-witnesses of their crimes. Thereupon Griesinger made the remark, 'There is only one thing to do, to exterminate these people.'"

Gentlemen, they very nearly did exterminate all these witnesses. Fortunately there were a few left who came here and told you the story against these defendants, but that, gentlemen, was the attitude of Griesinger, our fanatical anti-Nazi, our friend of the Jewish people. But he got promoted, this able, upright man. He did a good job of driving these prisoners. P-85 shows that order for promotion.

Gentlemen, if a man won't take the stand when his own life is at stake and testify regarding the men that he is alleged to have worked to death, can you believe what anyone else says for him?

Franz Auer, No. 1, Tech. Sgt. of the SS, labor commitment officer for the ring. What was his name? "The devil." (Froelich, 710). The man who has murdered more men with his own hands at this and other camps than he could name between now and the time that he hangs. He murdered by driving sick people out of the sick block to work. Gruenbaum (192) names the people who died the next day after he drove them out of the sick block. (Eisenhandler, 255; Kisler, 264; Kiwilewics, 365) Raskin (475) describes it this way:

"Q And how did the people look who were chased out of that hospital by Auer?"

"A Some of these people had to crawl on their feet and hands, because they couldn't stand on their legs."

Those, gentlemen, were the people whom Auer drove out of the hospital to work, and they came back to the

hospital to die (Lang, 565). Dr. Benze (P-56, page 11) names seven people who died in one day, after Auer drove them out of the hospital to make them work on the last day of their life. (P-62, page 4, Herskovitz' statement.)

But he killed other ways than that. He killed with his own hands, with a pick-axe (P-67, page 2, statement of Tichauer). He killed by beatings. Talking about Auer, this question was asked (Kiwilowicz, 365):

"Q How did he send these people out to work?

"A With a pistol in his hand, with beatings.

"Q How severe were these beatings?

"A They were very severe, and sometimes it happened that they had to be carried away from the roll-call square.

"Q Were there people that died as a result of these beatings at the roll-call square?

"A Yes. They could walk up to the roll-call square on their own feet and then they were carried away dead."

Lang (562) names another person Auer beat to death, among all the people he killed.

After that it seems almost superfluous to mention some of the other things that Auer did, but we are considering what kind of a man Auer was. He used men and women as horses (Kuritzka, 400; Edelstein, 673). Witness after witness told of his terrific beatings (Eisenhandler, 255; Mannheimer, 451; Landau, 542, who still carries scars that Auer gave him and will carry them until he dies; Edelstein, 672; Froelich, 709;

P-61, page 4, statement by Herskovitz).

What else did Auer do? He ordered children and women to carry cement (Kuritzka, 390; Lang, 562; Edelstein, 672). He ordered them to work. If they had no shoes, they still couldn't walk for three-quarters of an hour through the woods without shoes (Mannheimer, 450; Landau, 647). He issued the orders for supervising the work that killed these French and Italian prisoners (Schlaechter, 616; Berressi, 771). I call the court's attention to P-62, page 4, statement of Herskovitz. What did Auer say? Auer said the Jews will never get out of the camp alive. Gentlemen, thank God the Americans came when they did or there wouldn't have been a Jew got out of that camp alive.

That is Auer, gentlemen, the black one.

The remaining defendants I shall try to cover rather quickly, although there is a great deal in the record about them. Mr. Roth has covered both of them from their duties. I want to cover them from the specific evidence against them.

No. 5, Dr. Flockeh, chief doctor of the OT group, an attractive, intelligent woman whose mind became so warped by Nazi philosophy that these prisoners ceased to be individuals with feelings. In her eyes, they were pieces to be used for the glory of the Fatherland and discarded when they were worthless. They weren't even cattle, because we protect cattle from

needless suffering. Is there any question she chose these transports to go to Auschwitz for extermination and after Auschwitz fell, to go to Kaufering, and on those transports over half of the persons died. Who saw it? Who saw her choose those transports, gentlemen? Dr. Gruenbaum (184) told the court:

"A It was made an announcement in the morning that a commission was coming and we at the camp dispensary were informed too. And also it was told the work details of the prisoners who went out of camp for work. At the dispensary it was like this: we had the sick people to get out of bed naked, and the clerk had to mark down always their numbers wherever the Doctor pointed to them--'This one, this one, and this one.' The ward was the base at the roll-call place. The people were undressed naked and the Doctor passed by and pointed out 'This one, this one, this one.' And there was one department at the camp dispensary where the Doctor didn't go at all. That was the department for the diarrhea cases, and the Doctor said right away, 'Mark down all of them.'

"Q Now, Doctor, did you see the accused Flocken at any of these selections?

"A Yes, in October 1944.

"Q I ask you, Doctor, to explain to the court exactly what Dr. Flocken did at that selection.

"A She was together with Dr. Schmidt. The people were lined up at the roll-call place. The male physician started to go through one row, and the female physician went through the next row.

"Q When you say 'female physician,' Doctor, whom do you mean?

"A Dr. Flocken.

"Q Proceed.

"A At this occasion my very best friend, a pharmacist, was picked out and sent away.

"Q Now, Doctor, was your friend, the pharmacist, standing in the row that was examined by Dr. Flocken or on the row examined by Dr. Schmidt? If you remember?

"A In the row of Mrs. Dr. Flocken.

"Q And what did Dr. Flocken do as she walked down the line? Please explain the picture to the court.

"A She walked through the row, pointed to a fellow --'This fellow is weak; take down his number. This one. This one.'"

That was only one of the many witnesses who saw her pick these transports. At 185, we find that he named another, Weisshaus, who was chosen.

The witness Eisler (281) saw her choose a transport. The witness Judkowitz (320) saw her choose a transport:

"A We had a roll call and then the order was given that everybody had to undress until we were half naked, and she pointed out left and right--left to death and right to live."

Yes, gentlemen, she chose those transports--left to death and right to live. Landau saw it (341). Almosnino saw it (354) when she herself was chosen but fortunately she hid out, but the others who were chosen with her went to Auschwitz and were exterminated. She told of another transport (356) of pregnant women. Kuritska (402) saw her choose a transport and the camp eldest told her where it was going. Nechama (555) saw a transport and named a particular prisoner who went on it. Schuster, 722; Deutsch, 747. Sapir (802) saw her sister chosen by Dr. Flocken and sent away, and never heard from her again. P-8 shows she is dead. Spaeth's statement (P-22, page 4) tells how Dr. Flocken picked that transport. Dr. Benzse's statement (P-56, pages 10 and 11), given back in 1945 right after the liberation, remarked that Dr. Flocken

chose transports for Auschwitz. No question of them all ganging up on someone because they were on trial. (P-66, page 8, Dr. Schoenfeld's statement given in 1945 after the liberation).

As Mr. Roth told you, the methods varied. Of these people who testified from this camp, some were in the hospital when chosen, some came in from work, some were at roll call. Of course she stood in different places. But these people didn't forget who pointed them and their friends out for death. Does she dare claim she didn't know what it was for? P-22, page 7, Spaethis statement, tells about the secret order on Eberle's desk before the transport left stating where it was going and says Flocken must have known it. Eisenhandler (254) tells how everybody in the camp knew what they were being chosen for. Was Dr. Flocken so innocent, so blind, that she was the only one who didn't know what she was choosing these people for? Even if she did claim that, look at the statement of Kiwilewica (372). He didn't say that she picked him, but said she came by and looked at him in bed and three hours later he was called out to go on the transport along with practically all of the sick block. Then what happened? He was a good chauffeur and Eberle took him out so that he didn't have to go. So the time then came when he was driving for Eberle and Dr. Flocken was along and they were

talking about the fact that he had been chosen and Eberle had taken him out of the transport. And what happened? She, Dr. Flocken, leaned over and patted him on the shoulder and said, "You can thank the camp commandant that he saved your life." She knew what it meant to go on a transport. I asked this question (374):

"Q When you say 'she' said that, whom do you mean by 'she'?

"A Miss Flocken.

"Q Were there any transports picked after that time, if you know?

"A I know of two other transports besides this one."

"Q Do you know who selected these subsequent transports?

"A Miss Flocken."

After she had already stated that she knew it meant death to go on a transport, she came down there and picked more transports and she knew that left was death and right was life, picked out those who were worthless for work. She was down there to protect the OT's interests. They wanted well people out there to carry cement until they dropped dead or had to go on a transport. You couldn't have sick people. You have to feed them and look after them. They are a nuisance. Send them to Auschwitz where they will be exterminated. Gentlemen, that is the most serious thing against Dr. Flocken.

There are lots of other things. Medical supplies were hopelessly inadequate. There is no question, if you will read this record. Could Dr. Flocken have remedied that? Roehr said she could. He discussed (75) it with her. Why? Because she was the one who could remedy it. She requisitioned it (80, Roehr's statement) or her subordinates did. The supplies were there. (Roehr says so at page 89; Dr. Gruenbaum, 181; Lang, 572.) Major Braaf's statement (P-4, page 11) gives the story of these supplies and Dr. Benese's statement (P-56, page 4) states that supplies came in two days before the liberation. They were there. They could have been there nine months before the liberation but they came in two days before to make a good show to the Americans who were liberating the camp. [illegible] Kolenndrr was never in Muehldorf and said she had no duties at that camp, but admitted he didn't know what she did. Von Kimpelheimer, also from Berlin, said she had no "official" duties and those words, "official duties," were stressed. [illegible] What did she do? Let's not talk about what she was supposed to do. She chose Dr. Gruenbaum (170 of his testimony) as a nurse and then put a barber over him to be in the hospital. She refused Almosninos (353) admission to the hospital, so that she had to be operated on with scissors without an anesthetic. She refused

the use of Schwindegg for an appendectomy, according to the testimony of Auritzka (392). She visited all of the lagers--M-1 daily, Waldlager V and VI every two or three days. That is the story of her own driver, who drove her there (Pirsch, 664 and 669; Sapir, 802). Why did she go there? Because she took charge of the hospital, gave the orders to the doctors, told them that they were forbidden to treat illnesses, only to give first aid for injuries (Dr. Scabados, P-64, page 4; Dr. Schonfeld, P-66, page 8).

Gentlemen, Auer at least inflicted pain for his own pleasure, because he was a sadist, because he enjoyed inflicting pain; but Dr. Flocken inflicted pain from complete indifference and she killed more people than the devil Auer.

Last we come to the individual acts of the defendant Giesler, chief of Task Group 6. Mr. Roth has covered his duties, his lack of interest because he had his head in the clouds rebuilding Munich for the greater glory of Hitler. I won't go into the question of organization in any detail, but after all even though Professor Giesler never killed a man with his artistic hands, by his own misuse of authority or disinterest in his own duties he killed three thousand nine hundred thirty-four people at Muehldorf. I'd like to look at the record for just a few more minutes to show you what he did.

He was the head of Task Group 6 (Moehr, 75; John, 125; Hauschen, 140; Baumgartel, 838). His own witness, Toepler (970), says that on decisive questions he wasn't the formal leader but the actual leader. Even Danbeck (1364), who did his best for his old boss, could not deny that Giesler was Gimple's superior.

Now he brings in a chart. He disclaimed that he drew it. Who identified it? Endress was the only one who identified it, showing that independent relationship, and yet on cross examination (1107) when we tried to ask about it, his answer was always, "I don't know. I can't answer this." Even he said the chart was incomplete. When you tried to pin him down on whether those two things were all Group 6 was responsible for, his answer was: "I can't answer that. I am not familiar with the particulars." And Mr. Roth read to you how he admitted that that independence was only a matter of a short circuit in case of great urgency. And even that is new since the trial began.

Remember Hoffmann's statement, taken in 1944, and Giesler's statement which said nothing about it's being a formal job. Griesinger says the OT was under Group 6, under Giesler, which furnished the labor. That statement shows they determined the amount of food the prisoners got and the rations came from the OT. P-57, page 3, Glckeleiter's statement, shows he received his orders from Giesler through Group 6, through Hoffmann.

Baumgartel (840) reported to Giesler that the death rate was terrifying. Why? Because he knew he was the only one with authority to make a change. He reported to Giesler again (843 of his testimony) and said that Giesler could have done something and what Giesler could have done. What did he do? What did Giesler do to save lives? Look at the chart, gentlemen!

Auer killed for pleasure; Flocken from indifference to the individual; but Giesler, by neglect and indifference of all humanity, allowed men and women to die by the thousands while he dreamed up new designs to while away the Fuehrer's idle hours.

I'd rather meet my Maker like Auer, with blood on my hands, than like Giesler, with blood on my soul.

PRESIDENT: The court will recess until 1330.

(Whereupon the court recessed at 1155 hours.)

* * *

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that all the personnel of the court, with the exception of Colonel Dickey, is present; all the defendants, together with their counsel are in court; that the reporter and interpreter are here; and that the government is represented.

CAPT. BACHMAN: If it please the court, I had finished this morning with my discussion of the acts of each of these individuals. There remains only for the government to request formally the conviction and penalty regarding these defendants.

The government therefore asks that each of these thirteen defendants be found guilty as charged. The government further asks penalties as follows:

Upon Anton Ostermann, whose life is forfeit by the lives he took but who redeemed himself to some extent by the lives that he saved, the government asks a sentence of life imprisonment.

DEFENSE COUNSEL: Just a minute, please. We'd like to have this part of it interpreted as we go along.

INTERPRETER POWYS-COBB: Will you read it, please?

(Whereupon the reporter read the last paragraph, which the interpreter translated.)

CAPT. BACHMAN: Upon Jacob Schmidberger, who stupidly, blindly, and madly participated in this mass murder, but on whom the government has proved no direct killing, the government asks a sentence of life imprisonment.

Upon Wilhelm Bayha, who drove his men madly through the woods to work and back, but on whom no direct killing was proved, the government asks a sentence of life imprisonment.

Upon the defendant Daniel Gottchling, for his brutal beatings and his starving of these prisoners, the government asks the death penalty.

Upon Wilhelm Jergas, for his murder and his brutal beatings, the government asks the death penalty.

Upon Herbert Spaeth, for his many murders, the government asks the death penalty.

Upon Heinrich Engelhardt, for his one killing and the many prisoners who were injured by his brutal beatings, the government asks the death penalty.

Upon Karl Gickeleiter, for the sick and starving men that he drove to the mass graves, the government asks the death penalty.

Upon Otto Sperling, for the man he killed and the many others he drove to death, the government asks the death sentence.

Upon Wilhelm Griesinger, for the lives that he watched ebb away, with his aid and approval, for the

greater glory of the Fatherland, the government asks the death penalty.

Upon Franz Auer, for his many murders, the government asks the death penalty.

Upon Erika Flocken, to answer for the murders she committed by pointing a finger, the government asks the death penalty.

Upon Hermann Giesler, for his complete disinterest in the responsibilities of a position he accepted, whereby the whole murder factory of Muehldorf was possible, and for every death therein, the government asks the death penalty.

DR. LEILING: Dr. Leiling, for the defendants Gickeleiter and Sperling.

May it please the court, the facts of the case at issue occurred during the last nine months of World War II. The importance of this observation can hardly be overestimated. We must remember that after the successful invasion of the European continent from the west the Allies were victorious on all fronts. The territories occupied by Hitler's armies and Germany herself were exposed to a relentless battering from overwhelming air power. Inside the country, the events of the 20th of July were a sign on the wall of tremendous significance. All these facts are certainly known to the court and to each member as to every other Allied soldier; but not everybody is perhaps to the same extent familiar

with other factors which dominated this specific time and site of the crimes at issue. Hitler's regime was based upon a devilish propaganda and an inconceivable system of terror. The more hopeless the situation became at the different fronts, the more brutally the grip was tightened on every individual person and the more intense the terror inside the realm of Hitler's dwindling power. In spite of all this terror, however, the signs of the final collapse became more and more evident. In daily life, as in the whole economic sphere, a shortage of practically every commodity was felt to a catastrophic extent. Food became shorter and shorter, the system of transportation was so disorganized that the authorities could not cope with the problem of moving goods to the spot where they were most needed. In this case, machinery was not available as the factories suffered hard under the air attacks and their output was reduced to nil. Raw materials were so short that one had to take them from one priority project to another just to fill the most dangerous gaps. The times were hectic, and overlapping directives, orders revoking former orders were the characteristics of those days and, above all, a last attempt of Hitler's regime with all its organizations to subjugate the nation for the purpose of their fatal war effort.

Under such auspices the building project of Weingut I, near Muehldorf, was started. From the

statements of witnesses and from the pictures in evidence the court must have gathered that it was a huge building site. This 500-meters-long tunnel was meant to serve as an air-raid shelter for important industries. The planning as well as the performance of this project required a mass of labor, and the labor allocation authority of the Reich tried to collect this labor as rapidly as possible, from almost every quarter of Europe. They used all their power and their channels to make labor available. The big organization of the OT had to rush workers from France and Russia, and the personnel and workmen of about sixty-four firms to the building site in upper Bavaria.

The highest officers of the OT were concerned with this problem too. They tried to hire labor from Italy, as the witness Lorey stated before this court. The building project was of highest priority. When, therefore, the Reich's labor allocation could not provide the necessary workmen out of these sources which I mentioned before--for obvious reasons, because in Germany practically every physically capable man had been called up and the Italians knew better than to place themselves at the disposal of the Germans shortly before the end of the war--they resorted to concentration camp labor and surprised the engineers at the building site with the announcement that this project of high

priority had to be partially carried out by concentration camp inmates.

I have tried to lay a broad description before the court in order to show how this project had necessarily to suffer from the same shortages and insufficiencies from which every enterprise suffered in the war-stricken and dismembered Germany of those last days, and how the situation was dominated by over-organisation, by desperate attempts of the potentiaries to alter their fate, and by terror exercised through all those well-known organizations the regime disposed of.

Now, turning to the defendant Gickeleiter, the only problem I have to deal with is the question of how far he can be made responsible for crimes committed against the concentration camp inmates at Muehldorf. The charge sheet accused this defendant, as all the other defendants, of acting in pursuance of a common design. I need not enlarge upon this problem especially as there is no evidence to this effect before the court. There was no connection proved between the defendant Gickeleiter and the operation of Concentration Camp Muehldorf--not as regards clothing, housing, feeding, general treatment, or work allocation. He has not negotiated plans for employment of concentration camp prisoners nor has he ordered or directed their employment in general or in particular.

I can't see how he can be tied into a common design, which the prosecution described this morning. There ought to be definite and direct proof of his co-operation. It isn't enough to make just general statements about "Here comes this man in and here the other man comes in." We can only rely upon the statements made by the witnesses here and by other evidence before the court and I don't see any evidence that would prove that Gickeleiter was a member of a common design, the purpose of which was to kill off those prisoners at Muehldorf.

The prosecution apparently wanted to establish responsibility as a consequence of the defendant's position as chief engineer of the firm of Polensky and Zoellner, but even this point was not proved.

First of all, I want to state that Gickeleiter was merely an engineer of that firm, Polensky and Zoellner. He is not a representative in the wider sense. He is not a director, he is not a manager. He is merely an engineer. He holds no special function within that firm. So everything that was said about the firm and was tried to burden on Gickeleiter must be rejected from the side of the defense and must not be taken into consideration.

There was no evidence that Gickeleiter instigated the order passed by higher authorities of the OT and there was no evidence that he voluntarily took

over the position he was assigned to or that he negotiated contracts or preliminary arrangements or later arrangements. Nothing of that sort was brought out before this court. On the contrary, the witness Wiedmann emphasized that the firm of which Mr. Gickeleiter is an employee had no choice to accept or to refuse an order because that would have meant the destruction of the firm as such. I need not add that a small employee such as Gickeleiter had no choice either.

There was no evidence that the defendant Gickeleiter was responsible for the plans of this project or for the way it had to be carried out. He did not make the construction plans, and he did not organize the employment of concentration camp inmates. It was not brought out that he had instigated or even influenced the way the different stages of work had to be done, nor did any witness testify to the fact that he in general supervised the work of the concentration camp inmates. I don't see where the prosecution takes the accusation from that Mr. Gickeleiter supervised the cement detail. From my knowledge, it was not brought out before this court and if an indication could be found in a statement like Hoffmann's, I'd like to see that. Hoffmann himself would be, as things stand, the chief defendant in this case. It is obvious that Hoffmann knew when he made his statement what would happen to him if he did not escape, as he did, and it

is obvious again that all his statements must be examined very carefully and with a view to that general purpose of his, that he wanted to get out of that position as much as possible beforehand.

The position of this defendant, Gickeleiter, does not, furthermore, imply responsibility for the workmen or the foremen of those sixty-four firms. On the contrary, it was proved that he had no disciplinary power over those persons. That was brought out by the witness Holzwarth, on cross examination by the prosecution. It was therefore not possible for him to fire a person or punish him, had he heard of any criminal acts. This again is shown by the circulars several witnesses testified to--I mean the circulars which came from the offices of the OT at Ampfing, warning everybody not to mistreat concentration camp prisoners. All these considerations support the conclusion that the defendant Gickeleiter cannot be made responsible by virtue of his position.

Now in this connection I must say that I have to deal, unfortunately, with another question which was brought up by prosecution during this trial--namely, the allegation that Gickeleiter drove the workers to do more work in order to make higher profits for his firm. This conception of the prosecution is based upon a misunderstanding of technicalities. In order to prove this, I

am forced to discuss the efficiency factor, which caused so much confusion before this court, and I beg the court to have patience with me for a few minutes. Experts and engineers have tried to explain this problem, and now a lawyer will do his best to put it in plain language. I think the situation is this.

Every firm which worked under the OT had to submit an estimate of the expected costs. One item of these costs was the price for labor which the firm would have to pay to the laborer per hour. In order to gain an average, the price for a German laborer served as a basis for the price mentioned in the estimate. It was, however, common knowledge that certain categories of laborers did not work as much as a normal German laborer. All the same, the price for the German laborer was inserted into the estimate, with the view of later alteration according to the experience made with other categories of laborers on the individual building site. This alteration was called the efficiency factor. As long as the efficiency factor was not fixed, no firm, provided it wanted to profit by exploitation of labor, could have a reasonable interest in speeding the work up, because then the experience on the building site would have shown that an efficiency factor was either not at all or only to a very small extent necessary. This state of affairs prevailed in the case at issue up to the beginning of March 1945 when the firm received the letter, in evidence, which fixed the efficiency factor for the concentration camp inmates. After March, however, there was hardly any work done until the liberation in April.

For completeness' sake, I must add that the fixing of the efficiency of the concentration camp inmates at one-third of that of a German laborer does not mean that the firm only had to pay one third for a concentration camp inmate for the same amount of work. As for the same amount of work, a prisoner needed three times as long. They would, without the correction through the efficiency factor, have had to pay three times as much as for the output effected by a German laborer. Through the efficiency factor, the firm neither lost nor won by the fact that prisoners worked on the building site. Several witnesses have testified that the price for a prisoner was the same as the price for a normal German unskilled laborer. Whether the individual prisoner got this pay for the work is another question. This was arranged for by the concentration camp authorities, but there was no connection between these and the firm, and above all no connection between these and the defendant Ciekeleiter.

I must say that I was a bit surprised this morning when I heard that the firm--and, through the firm, Mr. Ciekeleiter--was connected with the defendant Flocken, through the maid of Mrs. Flocken. I think that is a very, very vague statement and it is not testimony and is not evidence at all. The only fact that is before the court is that a maid who was paid by Polensky and Zoellner was used by Mrs. Flocken who

worked down there as a doctor. The maid herself is stupid enough. I mean, everybody could see that. I don't see how a firm, through a maid, could be tied in with what Mrs. Flocken is alleged to have done down there at Muehldorf. I don't think I need make any answer to this kind of evidence.

Now the most important question, however, arises--the question whether the defendant Gickeleiter can be made responsible on account of alleged actions. The witness Holzwarth testified that the defendant Gickeleiter protested against the employment of concentration camp prisoners, and under cross examination the witness said, "Gickeleiter protested because he was against this kind of labor on principle." Not only, as the prosecution pointed out this morning, because he thought that these laborers were less efficient. No, because he was against it on principle. What more can one expect in this connection? He protested to Hoffmann, the man in charge, although it was not Gickeleiter's duty to protest as he was not responsible for the allocation of labor for this building site.

Now, the prosecution tried to connect the defendant Gickeleiter with the alleged crimes through witnesses. One witness told the court that he just once saw Gickeleiter at the building sight, during the night. I must say I think it is a very incredible story he told us. The witness was himself detailed to a

comfortable job more than a mile away from the building site, but out of sheer curiosity he walked over to the cement detail just to see Mr. Gickeleiter--all that during the night. Moreover, the situation was described wrongly. The testimony of Lt. Tonner (P-74) shows that the incline to the mixing machine was at the side of the mixer. The witness mentioned that it was in front of it. Compared with the testimony of Lt. Tonner, the distances were wrong. And who would believe that a man in the striped uniform of a concentration camp inmate could sneak over to the cement detail and watch closely how the others had to work, while he himself stood around doing nothing?

The second witness, the witness Delicat, was similarly vague. It is remarkable that he said Gickeleiter did not beat anybody and that he only saw him shortly before closing time, not otherwise, on the building site. I may add here that there was not a single witness who could properly identify Gickeleiter and could state that he saw him a considerable number of times at the building site. This witness thought Gickeleiter was an OT construction officer, a fact which was not confirmed by any other evidence and which obviously is not true.

The allegation that Gickeleiter reported people is very unclear. In what way did he report the people? To whom did he report? Did he report

individuals whose names and numbers he did not know, or did he make a general report. It is very unlikely that a man of Gickeleiter's character would bother about two or three minutes' work. On the other hand, it was not shown that the alleged result, namely the reduction of food, could by any means be foreseen by Gickeleiter, because this happened in the camp, where Gickeleiter had no influence and of the customs of which he even had no knowledge. Above all, having dealt with the problem of profit and having shown to the court that there was no reason to speed up the work of these people, I don't see what Gickeleiter's personal reason would have been to drive those prisoners to do more work. I think prosecution owes us an explanation of that fact. Very much so, because everybody who acts acts somehow sensibly or at least we must assume that.

Now, to a large extent the prosecution relied upon Sperling, the co-defendant of Gickeleiter. I should like to point out at the beginning that Sperling himself took back what he said in his two statements before, namely all the incriminations of Gickeleiter. It is obvious that he would incriminate Gickeleiter at first and he said so. He said he was afraid, not only because he was once beaten--no matter by whom--but he was afraid again because he did not want to take everything upon himself or he did not

want to admit what he himself did and therefore he tried, as he explicitly said, to put the blame on other people. But he took it back now and I think we can believe his statement which was submitted to the court now because why should this man here in the court, where his life is at stake, take the statement back? Only because he feels now that it would be unfair to leave this evidence as it was and put the blame on people who were not guilty and were not responsible for what he accused them of.

In general, concerning the witnesses I should like to say this. It goes without saying that everybody must have the greatest understanding for their feelings and the greatest sympathy for their sufferings. But it seems to me that they are all inclined to testify more to generalities than to facts and to facts which may have happened than to distinguish between hearsay, general knowledge, and real, personal experience.

I need not examine in detail the testimony of the witness Milich, who is one of the habitual criminals about whom more than one witness of the prosecution complained before this court. Everyone knows that it was the devilish system to put such characters in charge of the concentration camp prisoners. It is common knowledge that they tyrannized their fellow prisoners in order to keep their positions

as capos. This witness obviously knows that he is himself sufficiently incriminated and he now tries to admit a little beating but to put the blame on other people in order to prepare his own forthcoming case. I am sure no business man would ever base a decision on the information he would get from a habitual criminal who does not even dare to announce his previous convictions. I am equally sure that no court in the world would choose such testimony as the basis of its verdict where the life, honor, and welfare of an individual as well as of a whole family are at stake.

Isn't it safer to rely upon the testimony of the former inmate, Dr. Scabados, who unfortunately could not be brought before this court but who left voluntary statements for the defendant Gickeleiter. Dr. Scabados is an educated man. He had close contact with the defendant and he was on the building site all the time because he was in charge of the first-aid station established there for him. The statement of Dr. Scabados was corroborated by the witness Lechner, who knew that Scabados was on friendly terms with the defendant--an amazing and decisive factor, considering Dr. Scabados' experiences as a concentration camp prisoner. In this connection it must be emphasized again that the statements of Dr. Scabados were made long after the liberation.

I would also like to recall the testimony of the witness Lechner, which shows how the defendant Gickeleiter treated the female prisoners who worked in

his office and for whom he was really responsible. He gave orders that they were to have free entrance to the common air-raid shelter, additional food, and food had to be sent to the construction site, just as he had installed tea kitchens at the construction site for the benefit of the prisoners, although the food problem as such did not come under his responsibility. I think there is no doubt about that, and it was brought out by the prosecution itself.

I again should like to mention the testimony of the witness Holzwarth, who said that the defendant Gickeleiter was against concentration camp labor on principle.

To complete the picture, I should like to scrutinize a final question, namely the problem whether the defendant Gickeleiter is guilty through an omission. As far as I am informed, it is a rule of criminal law in every civilized country that an omission can only be held against a person where the person was legally bound to act and where his action would have interrupted the chain of causes, so that the criminal result would have been prevented. There was no specific legal duty for the defendant Gickeleiter to act. I have mentioned before that he had no disciplinary power, and he definitely had no power over the people who were responsible for the hardships of the concentration camp prisoners.

For the sake of clarity, I should like to mention that there is a difference between a Nazi organization, or a state organization, and a private firm. Apart from the fact that his own private employees were not under his power, one could not normally make him responsible for the acts of employees in the same way as an officer is responsible for acts of his subordinates or as an official of an organization is responsible by virtue of his semi-military status. But even if one assumes that every human being has the duty to prevent crimes, he can only be made criminally responsible if his intervention could have prevented the crime. This, however, has to be denied. Even if Gickeleiter had had knowledge of the alleged crimes, which has not been proved, even if he had acted in the interest of humanity, he would not have altered the lot of the concentration camp prisoners one wit. He himself would have, as things stood, either gone to the concentration camp himself or faced one of those quick trials plus execution which were usual at that time. No criminal code, however, demands that a person should endanger his own life to prevent other people's crimes.

From whatever angle one approaches the question of Gickeleiter's responsibility, the result is negative. Prosecution has not connected this defendant with the crimes which undoubtedly happened at Mühldorf. It is clearly impossible to prove such a connection,

because Gickeleiter was only a small wheel in a gigantic machine. This building site was not dominated by private enterprise. It was dominated by Hitler and his terror and it would have required a high-ranking man of great influence to alter the lot of the concentration camp prisoners.

Considering these facts, I should like to request the court that Gickeleiter be acquitted.

I shall now turn to the defendant Sperling. First, I want to clarify one misunderstanding. Sperling was not the chief foreman down there. He was just one foreman among many others, of sixty-four different firms. The defendant Sperling has frankly admitted that he beat prisoners. In his statement, he explained he thought it was his duty to keep order and to keep the machines running. This was certainly a primitive statement, but one cannot expect otherwise. He has spent all his life on building sites, where manners are rough. He was abroad with the OT during the war, where working conditions were even tougher. Strong as he is himself, he expected efficiency from those beneath him in his dull and insensitive way. Witnesses have testified that the prisoners tried to avoid work and he thought it was his duty to prevent this, in that manner of misunderstood duty which a mediocre mind is inclined to have. He did not see further than his small realm of work and, in that fashion of servile obedience which was crammed into the masses during Hitler's Reich, he did not stop to

consider whether it was right or wrong, but just kept the machines going. I am sure he is not a bad man capable of malice aforethought, and he would have certainly rejected the idea of causing the death of a human being. He is too stupid to understand the complex situation of a concentration camp prisoner and I request the court, in spite of the overwhelming evidence, to take all this into consideration before it arrives at a final decision.

To conclude, I want to resume my initial chain of thought. It was Hitler's folly to think he could challenge the whole world with his insufficient means and as the war progressed the shortage became more and more evident. Things were of a catastrophic character long before the Allied armies arrived, but the Nazi machine went on and on. One may call it madness, but one cannot make the individual responsible for these facts without proving a specific crime one man personally committed.

DR. ENGELHORN: May it please the court, as defense counsel for the accused, Griesinger, I should like to present the following arguments:

The accused Griesinger is an architect by profession and belonged neither to the Nazi party nor to any organization of the party, as the SS or SA. He is married and the father of an eight year old child.

During the war he was drafted to the construction management of the air force. His military rank was that of a private first class, he did not obtain any higher rank. Due to his excellent knowledge as an architect he was used in this profession by the construction management of the air force, until he was ordered for temporary duty to Muehldorf by his office on 9 May 1944. It was a military transfer against which Griesinger, of course, could not raise any objections, being a soldier.

What position did Griesinger hold at Muehldorf? By the main construction office, the chief of which was Hoffmann and which was located at Ampfing, Griesinger was allocated as the manager of the main construction site. Hoffmann was Griesinger's superior, and between them there was the technical department, the head of which was an architect called Kiderlen. Griesinger's task, being the immediate subordinate of the Chief Construction Manager (OT Colonel) Hoffmann, consisted solely and merely of the technical supervision of the construction parts of the main edifice. In particular, he had to examine and remeasure, whether the parts in construction complied exactly with the blue-prints, which had been drawn by the OT headquarters in Berlin. To assist him in this work, three construction leaders had been assigned to him, whose task also was only the technical supervision of the constructions, and who had nothing to do with the accomplishment, i.e., the building proper.

Any divergences of the constructions from the construction plans had to be reported at once by Griesinger to his superior Hoffmann, who as Senior Construction Manager had the sole right to decide what measures were to be taken. The assignment of the three mentioned construction leaders and the assistant Brunner, who was interrogated as a witness, to Griesinger had been necessary, because Griesinger was occupied by his works in the office of the construction management so much, that he was not able to visit the construction site every day. For Griesinger had to take care of all the correspondence with the Main Construction Office and had also to be at his office as much as possible in order to answer inquiries by telephone of which he was the only one who had the necessary knowledge. Besides his duties at the main construction site, Griesinger had also to supervise the work on the rail construction, road construction, and the allocation of the trucks.

Therewith the duties of Griesinger are described in detail. In particular, Griesinger had nothing to do with the food, billeting, and clothing of the prisoners whatsoever. For these tasks there had been set up special sections of the Main Construction Office at Ampfing; while the guarding of the prisoners was the exclusive matter of the SS. Just as little did Griesinger have to do with the disciplinary supervision of the OT personnel; for this there was also a special section, the manager of which was a man by the name of Seebauer.

In connection with this I would like to mention, that the prosecution strived to denote Griesinger as the deputy of Hoffmann. It is correct, that formally he was appointed the deputy of Hoffmann on 15 February 1945. This was due to the fact that a certain Kiderlen, who up to that time had been the deputy of Hoffmann and had his residence of office at Ampfing, had been transferred to another place. But upon the appointment of Griesinger as deputy it had been ordered expressly

that he was to continue in his position as manager of the main construction site, and it was mentioned also that he was entitled to sign bills. According to German law every official must have a deputy, so that in case of absence or illness his position is taken care of at least in the beginning. But this case never occurred, Hoffmann was always present at Ampfing. In case the deputyship would have come into effect, Griesinger, of course, would have had to take residence with his office at Ampfing. But he was always remaining at his office near the main construction site.

I will now refer to the charge and want to mention the following in advance: After the accomplishment of several trials against the influential persons in concentration camps it has been established a sure fact that there were concentration camps, which one ought to denote as extermination camps. This, however, led to the fact that many people throw all these camps into one pot and believe that all these camps had had the same purpose, namely the extermination of the inmates. I must oppose such generalisation most explicitly. Characteristically for the extermination camps is the mass execution of prisoners, taking place by shootings to death with machine guns, gassing or injection of chemical means into the blood vessels, and such things, but there were no such installations at Muehldorf. The Muehldorf camp was purely a work camp.

The prosecution charges all the accused to have participated in the accomplishment of a common design, which consisted in the assistance of the maintenance of the Muehldorf concentration camp. This conception, however, is actually wrong and cannot be substantiated legally. The concentration camps had been set up by highest authorities and were all under the jurisdiction of the Economic and Administrative Main Office. The decision about the foundin of such a camp or about its disbandment

was solely up to this office. Those persons active in the camp were altogether more or less people in subordinate positions, who did not have the slightest influence upon the management or the continuance of the camp. They merely had to obey the orders given to them by the Economic and Administrative Main Office.

The accused are further charged to have exercised their duties in pursuance of a common design by beating and tormenting the prisoners, exposing them to starvation and humiliation, and treating them in a manner undeserving of a human being. If the prosecution believes that the SS pursued such endeavors, so this is still no proof, that other people dealing with prisoners had the same intention. This in particular can never apply to the members of the OT.

I draw the attention to what has been proved by witnesses, that originally free labor had been intended for the performance of the construction work at Muehldorf, and that due to the lack of German workers same had to be procured from Italy. The witness Lorey described in detail what intensive work had been done in Italy in order to win over Italian workers, and he also indicated the reasons for which this plan could not be carried through in Italy. After good success in the beginning, opposition began to form in Italy, which was caused by the moving of the front lines too far toward northern Italy and by the fear of the people to be separated from their families upon a sudden end of the war, furthermore also by the resistance which the guerillas offered against the OT in Italy in the middle of the war.

The OT did not have the least thing to do with allocating prisoners to the construction works at Muehldorf. On the contrary, we have heard that the OT was highly dissatisfied with this plan to allocate prisoners, and that Hoffmann complained to his superior office that prisoners were employed at this large scale construction because he was

of the opinion that these people comprising all professional classes did not possess the specialized knowledge for the correct performance of their work. However, the complaints of Hoffmann did not have any success and it was maintained that prisoners would work at the main construction site. As the SS had the commission to accomplish this construction, they had to use the prisoners whether they wanted to do not, but for this reason they were also interested in keeping the prisoners in a good state of health in order to be able to accomplish the work to which they were assigned as well as possible. Therefore, it is wholly incomprehensible that the SS should have been striving to drive these prisoners to death by exposing them to unnecessary tortures and hunger.

I will now refer to the direct charges made against Griesinger. Upon an interrogation before the chief trial a certain witness Herschkowitz stated, Exhibit K-16, that Griesinger had once slapped him with his hand. He then described the appearance of Griesinger and stated among other things that he had gray eyes, black hair, and several golden teeth. These three marks do not apply to Griesinger. He has brown eyes, dark blond hair, and not even one golden tooth, but all perfect, natural-colored teeth. If a person has several golden teeth, everyone who speaks with him can easily notice that, and merely in regard to the statement about the golden teeth it can be said for sure that Herschkowitz had another man than Griesinger before him, and that another one beat him. Herschkowitz also stated that the person he carmen had been wearing golden shoulder straps with two stars (pips). This statement, too, does not apply to Griesinger. It has been confirmed by several witnesses that Griesinger had never been wearing such insignia at all. In this case it is quite obviously a confusion of persons, which can be easily explained by the fact that the prisoners heard the names of SS members merely by chance, and that Herschkowitz is referring to another person besides Griesinger.

Griesinger is further accused by a witness, Raskin, who claimed to have seen twice that Griesinger slapped a prisoner. Here, too, it can only be a confusion of persons, for this witness stated that Griesinger had been wearing a brown uniform with a red arm band with a swastika and a pistol. This description, too, can never apply to Griesinger. He never wore an OT uniform with arm band and particularly during all the time that he was at the construction site, he not once carried a pistol, which has been proved by witnesses.

The accused, Sperling, stated upon a previous interrogation that he had beaten the prisoners and had been instigated to do so by Griesinger and Gickeleiter. Upon an interrogation on 6 May 1947 Sperling withdrew these statements as not being true and as a reason for this misstatement he said that he thus wanted to have his own guilt appear less grave, and that he had been instigated to do this by the others. This new statement of Sperlingis absolutely credible; he had to admit on his previous interrogation that he had beaten and he just wanted to excuse himself by saying he had been instigated to do so by other persons.

Another onus is based on the statements of the witness Van Der Milich. This Van Der Milich was a prisoner in camp and he was wearing a green triangle. He was, therefore, a criminal. The entire appearance made by Van Der Milich is a rather bad one, and I cannot think that the court will believe such a witness. This Van Der Milich himself is detained in American custody because he was accused by several Jews to have beaten them. He was the chief camp, and under him he had 15 German and 60 Jewish camps. He himself admitted that he frequently beat the prisoners. Of course, he expects to be put on trial for these mistreatments and thus tries to mitigate his own guilt as much as possible. Therefore, he is using the excuse that Griesinger had been informed about these conditions and to make his statements more credible, he

particularly declared that Griesinger had been present at the main construction site every day. This claim has already been disproven by many witnesses who have testified that because of all the work he had to do at his office he had been able to go to the main construction site only two or three times a week, and then only for a few hours. The witness himself stated as a reason for his arrest and being committed into a concentration camp, that he had so many previous convictions. He thus belongs to that species of criminals to whom every means is right to make their own misdeeds appear in another light. A person like Griesinger cannot be indicted by the testimony of such a man.

The prosecution further brought up the matter of the premium coupons as a further cause to charge Griesinger. These premium coupons were a social and humane institution and should be viewed in the light of a reward for the prisoners. One of the witnesses, Schlechter, made a completely false description of this institution. He stated that these premium coupons were given largely to the capos and in particular to those capos who beat. Schlechter was only present on one occasion when these premium coupons were distributed, and he was also not in a position to make any statements concerning the method by which they were distributed.

Among the capos on the main construction site, 60 were Jewish capos and only 15 were German. It is incredible from the start to think that these Jewish capos would have allowed themselves to receive these premium coupons thus depriving their fellow citizens of the benefit. I am absolutely convinced that if any one of these Jewish capos had received several of these premium coupons, he would have distributed them afterwards to the rest of the Jewish capos. It seems that the witness Schlechter did his best to incriminate all the accused when he said that the institution of these premium coupons cost more lives of people than if Griesinger had actually done some beating.

Then this is not a statement based on fact, this is just an opinion of the witness which lacks all basis. We can see his hostile attitude by the fact that he can make an insupportable statement like this. The testimony of Schlechter is confronted with other testimony, for instance, that of the witness Speer, Esser, and Bowman, who stated that the premium coupons were divided equally among the weak prisoners. The sole testimony by Schlechter, which has no substance, cannot be credited.

I would like to make a general statement concerning the credibility of the witnesses. Among these witnesses are many who had to suffer a difficult life in the concentration camps, and it is humanly understandable that they have a certain feeling of hatred which results in generalization and exaggeration. I also request that consideration be given to the fact that these incidents are all several years ago, so that the witness who desires to speak the truth may make a mistake. Therefore, I am of the opinion that the statements of these witnesses are by no means fit to incriminate Griesinger.

It may have happened that there were beatings at the main construction site. At a construction site where several thousands of workers are employed, this may even happen then and now with free laborers, and these beatings may even have had their reasons in particular cases, for instance, laziness of the worker concerned. There is no proof of any kind that Griesinger saw these beatings or that he had given his consent to them. It can be assumed that rough people who otherwise would work this way restrained themselves in the presence of Griesinger because he otherwise would not have tolerated such things.

In this connection, I would like to draw attention to the fact that the witness Lorey once saw a prisoner bein, beaten and that he reported this to Griesinger, and that Griesinger owing to this incident

issued a circular to the various work places to the effect that the beating of prisoners or foreign workers were strictly forbidden.

Although, as I already mentioned, Griesinger did not have anything to do with the care of the prisoners, I want to go into some details on behalf of all the accused. It has been testified by several persons that the food situation of the prisoners, at least part of them, was not too well, but I ask to consider that this concerns the time from the summer of 1944 until April 1945. It is necessary to look at the food situation in Germany. Owing to the longer duration of the war and the loss of certain valuable farm areas in the eastern territories, the food situation in Germany became increasingly worse. The entire German population had to suffer from the decreasing allotments of food rations. People in excellent health suffered considerable losses of weight without exception, which on the average amounted to 10 to 20 kilograms. Sick people, of course, were even more affected by the scarcity of food. It has been proved by statistics that particularly such sick persons who needed additional rations or a special diet were suffering a high mortality rate. That such a situation would also have its repercussions in a concentration camp is natural. Just during the time in question, the concentration camps had to accommodate prisoners who had been evacuated from other concentration camps in the east. A huge lot of people gathered there and everybody knows that even the very best organisation would hardly be able to feed such a crowd of people sufficiently. The present conditions in Germany illustrate these difficulties in the very best way. Today the fact cannot be denied that the food situation in many PW camps left something to be decided in the past two years, but what reasonable person would think of making the camp personnel responsible therefor? Here the situation is simply more powerful than the possibilities of alleviation. Therefore, I would

issued a circular to the various work places to the effect that the beating of prisoners or foreign workers were strictly forbidden.

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think it a grave injustice to make one of the accused responsible for this who was in a subordinate position and who did not have any influence over these conditions.

To shed light upon the labor conditions in Germany in 1944 and 1945, I submit the following. Since the year 1942 every German was compelled to work and he only received a food ration card if he had an identification by the labor office saying that he had employment or was not able to work due to illness. The requirements of workers for industry and other war essential businesses were so excessively high that every German was already allocated to a job. The working time, formerly having amounted to the normal 8 hours, was increased to 12 hours.

PRESIDENT: The court will recess for 30 minutes.

(Whereupon at 1500 hours the court recessed until 1530 hours.)

* * *

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court, with the exception of Colonel Dickey, is present; that all the defendants are in court together with their counsel; the reporter and interpreter are here; and that the prosecution is represented.

PRESIDENT: You may proceed.

DR. ERGELNORN: At last I spoke of the situation of the German labor market, and I will now continue. The work time, formerly having amounted to the normal 8 hours, was increased to 12 hours. Among those allocated for work there were, of course, many people who could hardly work due to the bad food they received, but it was requested from them nevertheless. With this I merely want to prove that the prisoners were not allocated for work maliciously, but had to work merely due to the fact that there was such a grave lack of labor in Germany.

Finally, I want to enter into the character of Griesinger. There appeared several witnesses for Griesinger, who all without exception described Griesinger as a very decent and helpful person, who was not capable to harm anybody. Griesinger was a member of the Anthroposophic society, which is spread over all civilized countries of the world. The members of this society support all endeavors of humanity and are fighting for the human rights. They do not know any difference between nations or races. Everybody can join this society who places himself on the basis of their endeavors. We did also hear that Griesinger has never been a member of the Nazi party, that on the contrary he has always been a strict opponent of the party and was disgusted by the anti-semitic attitude of the Third Reich. We did also hear that Griesinger employed Jewish prisoners at his office management though this was prohibited, and that he treated those in a human way and not like prisoners and let them have all kinds of privileges. The witness, Fuchner, in whose home Griesinger was a frequent guest, testified that she gave food to the Jewish prisoners who came to her house, though it was strictly forbidden, and that Griesinger knew about this and consented to it. Griesinger was the last to consent to that kind of employment of these Jewish prisoners, but he did not have the slightest influence to be able to make any changes.

Somebody who has not been in Germany during the period of the Third Reich can hardly imagine how hard the pressure of the government was and how powerless the individual was against the measures of the government. Anybody who acted in contrast to the orders of the Third Reich was subject to the greatest dangers involving his life. I refer to the testimony of the Municipal Councillor for Constructions, Ulmer. He had been on duty as Captain, adjutant with an engineers staff in Rumania. He had friendly relations with Jews and upon imminent confiscation of the Jewish properties he helped his friends to hide

these properties. For this act he was punished
three years, and he lost his rank, being degrade
private. Besides that he lost his position as Muni
at Fellnbach near Stuttgart and at the same time all c
and retirement.

Concluding, I would like to say that there is not a
deed that could be classified as a war crime, that could be prov
be committed by Griesinger, and that he did not have the slightest
influence upon the conditions as they prevailed at Muehldorf, so that
according to my opinion he cannot be proved guilty at all, and, therefore,
I ask for his acquittal.

DEFENSE COUNSEL: If it please the court, for the accused Professor Giesler, I should like to point out to the court that at the outset the prosecution did very little with the case of Giesler and that can be shown from the amount of work that was put in on the summation. Of course there is always one way. If you don't have anything against anybody, you call him a liar. That is a trick that everybody knows. There was only one thing he did not call Giesler and that is "a Fascist." I was waiting for that. What did his witnesses--all the witnesses that were available for the use of the United States government in two years--what did they say about Giesler? I will tell you what they said. They said that Giesler was the head of Task Group 6. Here we have it over here (indicating chart). That wasn't denied. The defense never denied that, but said that Gimple was the man. There is the man, right there (indicating), who is responsible if anybody in Task Group 6 was responsible, and it wasn't Giesler.

The prosecutor commented upon the fact that Giesler said he had nothing to do with the task group that went up to Russia and Giesler said he didn't. As you remember, witnesses said that the office of Gimple went up to Russia but Giesler's office didn't. Then he makes a point of the fact that Giesler admitted under cross examination that he went up to Russia. Sure, he went up there for a couple of visits. So what? He went up to consult with some of his engineers. So what?

Was it on OT matters? Does the prosecution prove that?

No. No. They put a man on the stand and said:

"Q Was Giesler out at the main construction site?

"A Yes, he was out there at the laying of the cornerstone."

and then the defense proved--I think beyond the shadow of a doubt--that this didn't take place during the daytime; it took place at night. How could he be out there? This man didn't know a thing about it. He couldn't even identify him when he came in. He said he thought it was the man.

One man was damaging to Giesler. Baumgartel.

What kind of a man is Baumgartel? He was in this Task Group 6. He was the kind of a man who said he gave medicines to the prisoners and the prisoners were dying like flies. And that is the man who comes in here and puts the finger on somebody else. The prosecutor spoke about this man Baumgartel who had something to do with the roll call. He didn't say anything about this construction site over here (indicating). No; he didn't say anything about that. He talked about Kaufering and about a conference and did the prosecution bring out what Giesler did at that conference? I wonder why. Something he should have done. Something to do with that main construction site. They know better than I and better than you why they didn't bring out what he did at that conference. He was present, yes, but they didn't bring out what he did. And he was asked this question, on direct examination:

"Q When you say that this labor . . . were supplied by the OT, what unit of the OT supplied that labor, if you know?

"A I think there was a central office for the distribution of work in Berlin and labor was requested through this office there."

Where is that office? That wasn't here (indicating). That was up here (indicating) and he had nothing to do with that. This prize witness that was brought in here, the only one who could put the finger on Giesler, the only one. Who was it? Baumgartel. Here is the way the testimony runs, and I quote from the record.

"Q Do you know a man by the name of Giesler?

"A Yes.

"Q If you see him in this courtroom, will you please point him out.

"A For sure, I cannot say which one is Mr. Giesler.

"Q How many times have you seen Mr. Giesler in your lifetime?

"A Maybe ten times."

And then again they go on:

"Q I ask you again to look and see if you can pick out Giesler. Did he wear glasses?"

Now, I wonder why the prosecutor asked him that--"Did he wear glasses?" It so happens that a few seconds before Professor Giesler had put his glasses on and he is the only one of all the accused who has glasses. And let's see what the answer is.

"A As far as I know, never. That is where Mr. Giesler is sitting."

My goodness! Isn't that something now! All of a sudden he knows him. He says he had five or six conferences with him. Nobody present, and yet the secretary sat right at the same desk with Giesler all the time. Are we supposed to believe that man Baumgartel? Are we sup-

posed to hang that man because he said that from the witness stand? I don't think this court will do that. No, I am sure they won't. This is an American court. This isn't a German court. They might do that in Germany, but not with us.

And then he spoke about medicines. He said Giesler could have done an awful lot about medicines, but who was the one who did the things about medicines? Baumgartel, of course. Whom would you expect? And he did it in spite of everything. He went and stuck his neck out to get these medicines and then of course, later on, on cross examination, he stated it was approved. It had been approved by somebody and he didn't say that Giesler approved it but he did say that this group up here (indicating) did approve it. He did say that. Sure, he didn't say Giesler said it. Why? Because he wasn't supposed to. He didn't come in here for that. He came in here to put the finger on him.

If it please the court, we claim that we have proved this chart is an accurate chart and we don't say that everything on it is the way it was. I mean, there were things left out. I was the one who made this chart. Why should I put Kaufering on there when it had nothing to do with this case? Wouldn't that be foolish? That would be almost as foolish as this chart over here (indicating) where they put three murderers on. Why didn't they put other people on there? I wonder if that was to influence the court?

We had a man get on the stand and testify about all this stuff over here (indicating) and he said he didn't know all that (indicating) and all down here (indicating). He was frank enough to say he didn't or he wasn't brought here to find out what Hoffmann did. He was up in Berlin. He knew what was going on around here (indicating). He knew the contact between the OT Central and Berlin and down here (indicating). But he didn't know what Hoffmann was supposed to do.

Did the prosecutor at any time catch that man in a lie? That is the test of a witness. No. Every time he asked him a question he gave him an answer, a direct answer, and right from the shoulder, the same with Giesler. And because he came back with an answer every time we are supposed to say now that he is a liar. What kind of witnesses do we want on the stand? The kind the prosecution produces? They don't know when things happened, and think that about this time or that time things happened. We put people on the stand and state this time this thing happened. This fellow Endroess testified:

"Q Isn't it a fact that the chief construction office was under Task Group 6?

"A Not all of it."

So what is wrong with that? I am not going along with Endroess' testimony because I believe the court knows all about that and there is no reason why I should have to reiterate that here.

I'd just like to comment upon a couple of things the prosecutor brought out in his closing argument. He said that Giesler had a passion for honors from his leader. Well, I don't think that was proved. Anything in the closing argument should have been proved during the trial. One witness here on the stand said she thought he had World War I medals. I don't know what Hitler had to do with World War I. He certainly got no honors in World War II. He admitted he had the Nazi badge. I don't think we are trying him for that here. It seems to me some other court should try him for that. We are trying him here for Muehldorf and nothing else.

If it please the court, as far as the accused Flocken is concerned, the defense is not going to be so foolish as to say that Dr. Flocken never entered any of these camps. We admit that. We admit that Dr. Flocken may have been very nosey. We know how women are, all of us, how they like to butt their noses into something that doesn't concern them. But there is a big difference between putting your nose into places where it doesn't belong and committing the crimes that this court is supposed to hang this woman for.

She admits that she was present at the time when Dr. Schmidt was there, when he selected people. That is in her own statement in the first Dachau case.

But the defense does maintain that she did not pick people out for a transport which later went to Auschwitz. The prosecutor has put quite a few statements in from people who weren't here. Of course the court realizes that after two years it is pretty hard to cross examine or get in touch with these people. But, here is a report of investigation of alleged war criminals by an investigating team. This, if it please the court, was made up under the auspices of the American government, by American Army people and people who didn't give a darn about anything but finding out the truth if they could. It wasn't made by anybody who was trying to hang people for something that had been done at a camp and trying to hang everybody connected with that camp. This report of investigation says: "The September and October transports went to Auschwitz to the gas chamber." Two, two transports went to Auschwitz. If it please the court, I beg of you to keep that in your mind. Two transports went to Auschwitz, September and October.

Dr. Gruenbaum, witness for the prosecution, said that Dr. Flocken was present at one of the selections. He said one transport was in October and he was very definite about that--that it was one, not two or three or four. He said one. He was definite about one and this man was a doctor there all through the time that Forest Camp 5 and 6 existed, so he should know how many transports went out of there for Auschwitz

and he said it was one. If the court will recall, he was asked on direct examination to testify about it and he said these people were undressed--that means fully undressed--and they were in lines and Flocken went from one side and Dr. Schmidt went from the other side. He also testified, if it please the court, that at later times Dr. Schmidt, the SS doctor, came in by himself. So, this one time that Flocken was there and only one time he said she selected them.

Now we come to the witness Dr. Gruenbaum.

"Q Tell the court what an invalid transport is.

"A Weak people who were not able to work any more. Practically each month a commission came to pick out these people."

And Flocken was there once.

"Q Now, Doctor, did you see the accused Flocken at any of these selections?

"A Yes, in October 1944.

"Q I ask you, Doctor, to explain to the court exactly what Dr. Flocken did at these selections?

"A She was together with Dr. Schmidt. The people were lined up at the roll-call place. The male physician started to go through one row and the female physician went through the next row."

And then we wanted to find out how it was he knew that this transport went to Auschwitz. After all, if she selected people, for the sake of argument, and these people were to go to another camp to be built up, they weren't being sent to the gas chamber. I wonder if that was it? If she did select them, was it to go to some place to be built up? Let's find out from this doctor who says that this transport went to Auschwitz. When did he find out about it? "A few days later I was told that from Muehldorf . . . they were taken away to Auschwitz. I was told by the SS guard who escorted them there."

If she did pick out anybody and she didn't know they were going to Auschwitz, we can't hold her for that, not the American way anyhow.

Now, these people were going to be exterminated, and they were just about dying at the time she was sent out. Now, we are talking about Weisshaus, that friend of the doctor's.

"Q At the time that he was sent out, Doctor, what was his physical condition, good or bad?

A He wasn't so weak yet, but he had a little bit of edema."

In other words, he may have been sent away to be built up. They had those places in Germany, and I know the court knows about that.

"Q How many times did you see the selection of prisoners for a transport?

A There were several, September, October, November, January. They were every month.

Q How the ones that went to Auschwitz, how many of these were there?

A I knew of one. I know for sure they were picked out in October and went to Auschwitz.

Q Were you present when those people were selected for the transport?

A Yes.

Q Was that the only one that you were present at?

A I had to be present at every selection.

Q I am talking about the ones that went to Auschwitz. Was that the only one that you were present at, the one in October?

A I remember that was in October.

Q I ask you now is that the only one that you were present at?

A No, I was there several times always."

And how many went to Auschwitz? One in September and one in October—and this man says "several times". "Several" is more than two.

Now, we come to the witness, Eisler:

"Q Will you tell the court when this selection took place and where in which Dr. Flocken was involved?

A In any event, it was in Forest Camp V, but I do not know any more whether it was on the 20th of October or 15th of November 1944."

We have two transports going to Auschwitz—September and October—and now we have a witness that gets on the stand and says that there was one in October and one in November. And then we asked the witness, or he was asked rather by the prosecutor to tell the court about the selection, and he said, "they had to bare the upper half of their bodies". The first fellow testified they were all naked. This fellow says they bared only the upper half.

If it please the court, she says that she was at one of them—October or November—one—and he was there all that time. What was this fellow? He was the clerk in the camp. He didn't know what was going on. He did know that there was a selection, and he only knew there was one. He was there all the time and Flocken says she was only at one, but they seem to disagree. Ordinarily, this might not mean anything. One fellow says they were naked, and one says that they were only half naked. My goodness, are we going to hang somebody on the testimony of people that don't agree? And this fellow says that the prisoners had to form lines, about 10 in a row, and Schmidt came from one side and Flocken from the other side, so we have two different ways of doing it again. He says Flocken was on one side and Schmidt on the other, and this was testimony on cross examination of the same witness.

"Q. Do you remember being asked this question and having given this answer . . .?"

And this was in reference to Lt. Hughes interrogating him in our office:

"Q Do you know how the orders were received as to the transport? And I might add this had reference to the transport which left 20 October or 15 November, and your answers We had to send a daily report about our

activities to Dachau. It had to contain the number of prisoners on work details, the number of prisoners in the camp and sick prisoners, and if there was a considerable number of sick prisoners in the camp, Dr. Schmidt used to come from Dachau to select the prisoners for the sick transport. Do you remember that question and do you remember giving that answer?

A Yes.

Q Is that true?

A Yes."

Again:

"Q Were you on that particular occasion asked this question, and did you give this answer: Then after the prisoners you say were selected for the transport had departed from your camp, you did not see them any more, is that correct?

A No, but I want to stress, I do not maintain she knew of the purpose for which these prisoners were selected. In other words, she could have been under the same impression that Ansor was.

That is the man that is here but he has never been tried. He is here, but he is not on trial. "Schmidt knew of the purpose, that was quite sure. I do not know whether she knew." And his next answer: "I would like to make a point of the word 'stress'. I cannot say I remember having used that word."

"Q All I want to know is, on that occasion when you gave that answer, was it true as far as you know?

A At that time, Yes, but I arrived here on the Tuesday, and on the Wednesday I was called in to see the Lieutenant. In the meantime I have had an opportunity to refresh my memory considerably concerning events I experienced at that time, and today, not only today, I am quite sure that Dr. Flocken knew what the purpose of this was", etc.

So after he had time to refresh his memory he knew, and when he got on the stand he remembered.

"Q Do you know where the transport on the 20th of October went to?

A We never were informed about the exact destination of the transports."

"A Yes, I remember. It says that we were never officially informed."

"Q Do you know where the transport went that left on 15 November 1[illegible]?

A I do not know any more than the first transport, I can only assume the same thing.

Q Was there any prisoner in the camp who would have officially known where these transports were going?

A It could only have been possible in case a prisoner had spoken to an SS guard or any member of the guard detail after they came back."

And we are asked to hang this woman for something, if it did happen, it happened once, and the prosecution did not know that she knew where it was going; and then I would like to read to the court the answers that he gave to the court later on when the court asked him about this. There must have been some question in the court's mind.

"Q Did you know what these people were selected for at the time?

A Me?

Q Yes, You.

A I was absolutely certain for what they were picked out."

Now, there have been other witnesses that have testified about transports, too, as a matter of fact, one prisoner who was in the hospital was there about a month, and he said she came in, and every day when she came in she made notes in a notebook, and that was ostensibly for a transport, so I guess that transport left every day. It may have been that she was trying to find out why they were sick and, of course, she won't get credit for that. I wouldn't blame these witnesses, and if I had been in a concentration camp as long as these witnesses were, I might do the same thing, maybe a little bit worse, but it is up to this court to do justice.

And then the prosecution made big time about this woman that was operated on with primitive instruments because Dr. Flocken wouldn't let Jews into the Schwindorf hospital. She didn't like Jews. No, she

didn't like Jews, but a month or so before she contacted the civilian hospital, and that wasn't her duty. She contacted the civilian hospital to admit a man there to be operated on for the same thing, and did they take him? Yes, and how did we find that out? We were lucky. They kept that record in the hospital, and that was the only way we could do it. We produced that record, and it showed that man was admitted on Dr. Flocken's order. Did she have any right to do it? No, she didn't have any right to do it. She did it because she hated Jews. He was saved. And later on they called up and wanted to send somebody to Schwindegg hospital. If they could have taken anybody in the beginning, why didn't that man go there? It certainly proves that they couldn't take him there, so she got him into the civilian hospital; and then we hear about a telephone call. This is hearsay evidence piling up and piling up and piling up with nothing to base it on. We even had a witness on the stand here that said a transport left on the 28th of March to go to Auschwitz and yet, Gentlemen, we have this from our own people—September and October—and I am inclined to believe that if anything. I don't say that it is accurate all the way through. At least, it is not biased; at least, it is the truth as they know it.

This man also testified that there were several transports around March that went to Auschwitz. They all go to Auschwitz, and how do they know it—from hearsay. And then we have another witness, Kapin:

"Q Go ahead and tell the court what happened."

It is very easy for these people to tell the court what happened. What can we do to the defense against things like this:

> "A We always knew that when Frau Flocken was coming to see us that something would happen because she was the one that picked out the people who were to be sent to the crematory."

You get witness after witness—and yet how many transports went to Auschwitz? Two. Here is a man, this same man was in the hospital 30 days,

and while he was there for 30 days two transports went out to Auschwitz. They must have been going out every other day.

" And who was the camp leader?

A Gabel."

He knew Flocken's name, but he didn't know the camp leader's name. Talking about a transport:

"Q Did you see the transport?

A Yes."

"Q Were there any people in there who were not sick?

A Yes, many."

"Q Who were not sick?

A Yes, Yes, they came from the rest block, and they only got weak from eating."

If it please the court, we contend that Flocken was there once at a selection, and she was there as an onlooker; she was there as a busy-body. She had no right there, we know that. We try to keep these women out of a lot of places where they shouldn't be. So the prosecution wants to hang this woman because she was in the wrong place.

Now, the prosecution spoke about all these people being killed at Muehldorf. We have no way of checking on the figures. What can the defense do? But the prosecution never told where these people came from and the prosecution never told how long they had been in other concentration camps. The prosecution never said how weak they were when they came there. I wonder if it is possible that these people were pretty well on the road to dying when they got to Muehldorf. Maybe that had something to do with it.

Now, the prosecution told about the medicines that the Americans found when they came into Muehldorf. Evidence has been brought out to show that these medicines were received a few days before the end.

Certainly, there were lots of medicines--medicines that were received two or three days before the end of the war before the Americans came in. The prosecutor said that it was up to the people at Muehldorf to kill these people; that is what they were there for, to kill these people. For what were they building that place at the main construction site? Doesn't it seem sound and sensible that they would try to keep them alive? We don't say that they didn't, but it shows that their only purpose wasn't to kill them.

Now, as far as signin these requisitions for medicines, I am not going to touch on them because I believe the evidence has been brought out by the prosecution that if Flocken signed any requisitions for medicines, she wasn't doing it because it was her duty. In a little way she might have thought she was doing a big thing, but we know it was insignificant, but she was doing something to try to help out, if she could, in a very small way, and it didn't do any good because these people were in a bad way, but she did try to do something, and I believe, if it please the court, that should be taken into consideration; and on this transport, she was there all right. We can't deny that; we don't want to deny that, but were all the different people that testified they were there correct that the doctor was there at one time or another? We even had one man that said they were in lines coming up. If the court will recall now, it couldn't have happened two or three ways. There could have been only one way it happened. Yes, there were two selections, there is no doubt about that. This fellow, Schmidt, did that, but she didn't do it, and the witnesses got the thing confused. She was at the camp. Yes; she was there many times, and as far as these female witnesses are concerned, the court knows as well as I do there is no scorn like a woman's scorn for another woman.

Mr. [illegible]: If it please the court, I would like permission of the court for the use of three minutes to present my argument. I want to compliment the court on the manner in which this trial has been conducted. I would like to emphasize the [illegible] patient attention and intense interest which it has given each and every witness that has appeared upon the witness stand.

This has been a long, drawn out, and tough ordeal. It has been hard and tough on each and every one of us. That, I feel that the court because of its close attention to detail, the extreme impartiality of its rulings, is as aware of the facts pertinent to this case as I am, and I deem it strictly unnecessary for me to attempt to clarify the maze of evidence presented to this court, as I feel that this court is perfectly capable of arriving at a just decision without my attempting to enlighten it, and I assure the court I don't intend to belittle the intelligence of this court by attempting to do so.

There is just one thing that I would like to ask the court for before I rest--it is a question. If, through some fortuitous circumstance this court would find itself in the same position as these defendants, would the members of this court be willing to be judged by men in the same frame of mind as you are. If so, on behalf of the [illegible], I personally fear no fault of this court.

[illegible] to present anything further to present?

[illegible]: The prosecution has nothing further.

[illegible] the defense at this time?

[illegible]: Not any further.

[illegible]: The court will be closed.

(Whereupon the court was closed at 1635 hours.)

MILITARY GOVERNMENT COURT

CASE RECORD

Pages 1581 - 1596

CASE NO. 000-50-136

PROSECUTOR Mr. Roth

*~~MILITARY~~
~~[redacted]~~
GENERAL

DEFENSE COUNSEL Mr. Welch

INTERPRETERS Howard Walker

PLACE Dachau, Germany

REPORTERS Sue McCulloch

DATE 13 May 1947

WITNESSES

TIBOR DEMBIK

ACCUSED FRANZ AUER, et al

ADDRESS SEX AGE

	FIRST CHARGE	SECOND CHARGE
PLEAS		
FINDINGS		
PREVIOUS CONVICTIONS		

SENTENCE

IMPRISONMENT (TERM
(
(BEGINNING 194

FINE AMOUNT
TO BE PAID BEFORE 194
FURTHER TERM OF IMPRISONMENT

CHARGE SHEET AND RECORD OF TESTIMONY ARE ANNEXED HERETO.

SIGNATURE OF MEMBER OF COURT

REVIEW

ACTION OF REVIEWING AUTHORITY

SIGNATURE OF REVIEWING AUTHORITY

*STRIKE OUT WORDS NOT APPLICABLE.

R E C O R D O F T E S T I M O N Y

in trial of

THE UNITED STATES versus FRANZ AMER, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 1 APRIL 1947

13 May 1947 Pages 1581 - 1596 Incl

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T E S T I M O N Y

Witnesses:-	Direct	Cross	Redirect	Recross	Court
TIBOR DEVECSERI.	1588	1589	1590	1591	

E X H I B I T S

No.	Description	Marked	Rec'd in Evidence
D-43	Letter from Alexander Strakosch	1586	1587
D-44	Letter from Auguste Unger	1587	1587

Sentences	1594

Camp Dachau,Germany
13 May 1947.

MORNING SESSION:

(Whereupon the court reconvened at 1000 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present, with the exception of Lt.Col.Dickey: all the defendants are present together with counsel: the court reporter and the court interpreter are present: and the prosecution is represented.

PRESIDENT: As each defendant is called, he willrise in place.

FINDINGS:

PRESIDENT: Franz Auer, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you: Franz Auer,

Of the Particulars and Charge : Guilty.

You may be seated.

PRESIDENT: Wilhelm Bayha, the court in closed session,at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you: Wilhelm Bayha,

Of the Particulars and Charge : Guilty.

You may be seated.

PRESIDENT: Heinrich Engelhardt, the court in closed session,at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you: Heinrich Engelhardt,

Of the Particulars and Charge : Guilty.

You may be seated.

PRESIDENT: Erika Flocken, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you: Erika Flocken,

Of the Particulars and Charge : Guilty.

You may be seated.

PRESIDENT: Karl Gickeleiter, the court in closed session, at least

(findings)

two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you: Karl Gickeleiter,

Of the Partifulars and Charge : Guilty.

You may be seated.

PRESIDENT: Hermann Giesler, the court in closed session, at least two-thirds of the members present at the time the vote was taken, conburring in each finding of guilty, finds you: Hermann Giesler,

Of the Particulars and Charge : Guilty.

You may be seated.

PRESIDENT: Daniel Gottchling, the court in closed session, at least two-thirds of the members present at the time the vote was taken, concurring in each finding of guilty, finds you: Daniel Gottchling,

Of the Particulars and Charge : Guilty.

You may be seated.

PRESIDENT: Wilhelm Griesinger, the court in closed session, at least two-thirds of the members present at the time the vote was taken, concurring in each finding of guilty, finds you: Wilhelm Griesinger,

Of the Particulars and Charge : Guilty.

You may be seated.

PRESIDENT: Wilhelm Jergas, the court in closed session, at least two-thirds of the members present at the time the vote was taken, concurring in each finding of guilty, finds you: Wilhelm Jergas,

Of the Particulars and Charge : Guilty

You may be seated.

PRESIDENT: Anton Ostermann, the court acquits you of the Particulars and the Charge:

You may be seated.

PRESIDENT: Jakob Schmidberger, the court in closed session, at least two-thirds of the members present at the time the vote was taken, concurring in

(findings)

each finding of guilty, finds you: Jakob Schmidberger,

Of the Particulars and Charge: Guilty.

You may be seated.

PRESIDENT: Herbert Spaeth, the court in closed session, at least two-thirds of the members present at the time the vote was taken, concurring in each finding of guilty, finds you: Herbert Spaeth,

Of the Particulars and Charge : Guilty.

You may be seated.

PRESIDENT: Otto Sperling, The court in closed session, at least two-thirds of the members present at the time the vote was taken, concurring in each finding of guilty, finds you: Otto Sperling,

Of the Particulars and Charge : Guilty.

You may be seated.

PRESIDENT: During the recess, it is desired that the accused who was acquitted, be removed from the courtroom under guard.

Court will recess for thirty minutes.

(whereupon at 1010 hours the court recessed until 1040 hours.)

(Whereupon the court reconvened at 1040 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present, with the exception of Lt.Col.Dickey: the defendants are all present together with counsel: The court interpreter and the court reporter are also present, and the prosecution is represented.

PRESIDENT: The court will receive evidence of previous convictions and any extenuating circumstances.

PROSECUTION: The prosecution has no evidence of previous convictions.

PRESIDENT: Do any of the accused desire to give evidence of extenuating circumstances, or make any further statement to the court?

LT.[illegible]: I have one defendant sir, who would like to make a statement to the court. Also two others say they do, Gottenling, Spaeth, and I believe Bayha.

[illegible]: They will take the stand.

Will the interpreter admonish the defendant that he is - that any statement he has to make is limited and he is not to touch on the facts that have been brought up on the case, subject to cross-examination.

[illegible]: Yes,sir.

(whereupon the interpreter did as directed.)

[illegible]: My name is Daniel Gottenling. I am 50 years of age and a Roumanian citizen. My profession is inn keeper. In September 1939 I was drafted into the Roumanian army together with two brothers of mine,and all three of us brothers were soldiers in the Roumanian Army, until early in August 1943. Then all people of German descent had to join the waffen SS, men from the age of 16 to 60 years. All of us three brothers had to leave our families and our homes. I had a good business: I had an Inn in Kronstadt,but in August 1943 I had to close up because I have a wife and four little children the oldest being 7 years of age, and one could not take care of the Inn any more. In the Roumanian army we had furloughs very often so that we three brothers could look after my business on and off, but in the waffen SS, a man who was of German descent very seldom got a furlough. As far as people of German descent were concerned, there were always limited furloughs, and in August 1944 the Russians invaded Roumania, and all these people of German descent lost their property, houses, and estates, and also cattle and live-stock, and that was divided amongst the Roumanians. In January 1945, all people of German descent - women between the ages of 18 and 35 years, and all men between the ages of 16 and 60 years were taken to Russia for forced labor. My wife, the mother of four little children; my sisters, and my sisters-in-law were also there, so my four little children were divided amongst four families

under bad conditions, and they were housed there. Since,my wife has no parents, and I only have an old motherand she is dependent on the house support. My wife was sent from Russia with a sick transport to Roumania. The women were undernourished and sick and they were brought to the hospital in Hermannstadt. My wife was raped in Russia and was brought - and she gave birth to a baby, then she was brought from Russia to Hermannstadt, with that baby, in a sick condition, and a few days afterwards she died from typhus. My poor children are left all alone, and they have no one , and they are waiting for me to go home. I have not been a member of the Party, and I never had a previous conviction. I have been in custody now for two years and it is four years since I have been home last. Before that I had been four years with the Roumanian Army, and I could only spend time with my family during my furlough, so it is now almost eight years that I have been away from my family, and I beg this court to give me mild punishment in order that I can return home to my children soon again. They have no one: even my brother is still a prisoner.

PRESIDENT: Is that all?

ACCUSED GOTTCHLING: Yes.

PRESIDENT: You may be excused.

(Whereupon the said defendant was excused and resumed his seat in the prisoner's dock.)

PRESIDENT: Do any of the other accused desire to give evidence of extenuating circumstances, or make any further statement to the court?

LT. HUGHES: The accused Spaeth desires to make a statement.

PRESIDENT: Will the interpreter warn the witness in the same way as the other?

(Whereupon the interpreter did as directed.)

PRESIDENT: You may proceed.

ACCUSED HERBERT SPAETH: My name is Herbert walter Kurt Spaeth. I

am 28 years of age. My profession is merchant. After five years duty in the German Army, I was wounded by a grenade splinter and lost my right eye sight, and lost the hearing in my right ear. Through that injury I was not able to perform any more duties in the front lines, and the firm I worked for in Brandenberg asked for my release from the Army. This application was refused, and in the year 1944 I was transferred to the Waffen SS to do duty with concentration camp Dachau. From there I was transferred to the out-camp of Muehldorf. I am the only son of my parents and my home is in Brandenberg-Havel. My parents I have not seen for three years,,and they are still there, and in the Spring of 1944 they lost everything through the war . They are both sick, and at an age when they need me to support them. I have never got into any conflict with the law during my time of being a soldier, and also during the time of being a civilian, and I have never been punished. I myself have been in American custody since 5 May 1945. I had the chance several times to escape, and also I could have been discharged as a member of the German Army if I hadn't have told them that I was amember of the Waffen SS. I did not do that because I have always gone through life as an honest man, and I like to satisfy my own conscience. I therefore ask this court to take those circumstances into consideration when passing my sentence.

PRESIDENT: You may be seated.

(Whereupon the defendant was excused and resumed his seat in the prisoners' dock.)

PRESIDENT: Do any of the other accused desire to introduce evidence of extenuating circumstances or make any further statement to the court?

DR. ENGELHORN. On behalf of the accused Wilhelm GRIESINGER, I ask that this document be marked for identification as Defense Exhibit D-45.

(Whereupon the document referred to was marked Defense Exhibit D-45 for identification.)

PROSECUTION: No objection.

DR.ENGELHORN: I offer this document in evidence. It is a letter from Alexander Strakosch, dated 26 April 1947, and I request that it be received in evidence as Defense Exhibit D-43.

PROSECUTION: No objection.

PRESIDENT: What is the date?

DR.ENGELHORN: 26 April 1947.

LAW MEMBER: Subject to objection by any member of the court, the letter from Alexander Strakosch, marked Defense Exhibit D-43 will be received in evidence and marked Defense Exhibit D-43.

(The documentheretofore marked Defense Exhibit D-43 for identification was received in evidence as Defense Exhibit D-43, is attached hereto, and made a part of the record.)

DR. ENGELHORN: I ask the interpreter to read this letter to the court because it is only in English here.

PRESIDENT: You may proceed.

(Whereupon the interpreter read Defense Exhibit D-43 to the court in the English language.)

DR. ENGELHORN: I now ask that this document be marked for identification as Defense Exhibit D-44.

(whereupon the document referred to was marked Defense Exhibit D-44 for identification).

DR. ENGELHORN: The defense counsel now offers in evidence this letter which is from Auguste UNGER, of Dornack, dated April, 1947, and requests that it be marked Defense Exhibit D-44.

PROSECUTION: No objection.

LAW MEMBER: Subject to objection by any member of the court, the document will be received in evidence and marked Defense Exhibit D-44.

DR. ENGELHORN: I request that the letter be read by the interpreter since it is only here in English.

PRESIDENT: YOU may proceed.

(whereupon the interpreter read Defense Exhibit D-44 to the court in English.)

PRESIDENT: Does any other accused desire to offer any evidence of extenuating circumstances or make any further statement to the court?

DR.LEILING: On behalf of the accused Karl GICKELEITER, I want to calla witness.

TIBOR DEMBIK, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION:

QUESTIONS BY DR.LEILING:

Q What is your name?

A Tibor Dembik.

Q Where do you live?

A In Muehldorf.

Q What is your nationality?

A Hungarian.

Q What is your religion?

A Jewish.

DR LEILING: Mr Dembik, I want you to testify only as to the personal character of Mr Gickeleiter.

WITNESS: Yes.

QUESTIONS BY DR.LEILING:

Q Were you ever a prisoner in Mettenheim?

A I was a prisoner in Mettenheim myself.

Q Do you know the accused Jickeleiter?

A I know him - I knew him while I was a prisoner, by name.

Q Since when did you know him personally?

A After the liberation.

Q Would you tell the court about the personal character of Mr.Griesinger?

A I can testify that I was a male nurse in the hospital, and my

comrade Dr Sanbotage spoke very often about Mr Gickeleiter as a person. He was a doctor in the main construction site, and he told me very often that Mr Gickeleiter had spoken to him. He told me very often that he was surprised that such a human being is still in existence in the third Reich. Later, after the liberation, I heard from Dr. Sanbotage that Mr Gickeleiter had been arrested, and Dr Sanbotage said to me "I feel it is my duty to help Mr Gickeleiter now", which he did with several of his comrades who were still present at Sachsburg at that time, so Mr Gickeleiter was set free again. Afterwards I myself investigated his personal character, and this investigation turned out to be negative and as far as he personally was concerned, there was no incriminating testimony.

Q Testimony by whom?

A By the other prisoners.

Q In what capacity did you make these investigations?

A As an investigator for Military Government.

DR. LEILING: No further questions.

CROSS EXAMINATION:

QUESTIONS BY PROSECUTION:

Q Mr Dembik, do you know a man by the name of Alfons Baer?

DR. LEILING: I object to this, and don't think it is proper cross examination to bring new things out here when it is only a question of mitigation.

[illegible]: Subject to objection by any member of the court, the objection is sustained.

QUESTIONS BY PROSECUTION:

Q At the time that the proceedings took place at the denazification board, were there any persons who appeared against Gickeleiter?

DR. LEILING: I object again because that was not brought out on direct examination. He never talked about a denazification board.

(DEMBIK-cross)

LAW MEMBER: Subject to objection by any member of the court, the objection is sustained.

QUESTIONS BY PROSECUTION:

Q Do you know whether or not Dr.Saabetage ever treated Mr Gickeleiter's children?

A Yes, I know that from the time that I was a prisoner/

Q Can you tell this court towards whom Gickeleiter ever showed any kindness or consideration, except to Dr. Saabetage?

A I know a man by the name of Nagel, but he is back in Hungary.

Q Well then, go ahead and tell the court what he did for Nagel?

A I don't know that. Nagel was working on the main construction site.

Q Isn't it a fact that Nagel was in the office of Gickeleiter?

A Yes.

Q Yes. And isn't it a matter of fact that Nagel was a clerk for Gickeleiter? Isn't that so?

A Yes, I heard he was working for Mr Gickeleiter.

PROSECUTION: That's all.

REDIRECT EXAMINATION

QUESTIONS BY DR.LEILING:

Q But you stated before that you had taken the testimony of many prisoners during that investigation, is that right?

A Yes, I myself was interested in this case.

Q And did these people not say good things about Mr Gickeleiter?

A Mr Gickeleiter was a pretty big man on the main construction site, and only the people who worked on softer details got to know Mr Gickeleiter, and those people spoke about the humane treatment they got from him/

Q Were those prisoners?

A Yes.

DR.LEILING: I have no further questions.

PROSECUTION: I have.

(DEMBIK-redirect)

Tahe 208, SQ Muehldorf.
18 May 46 11

REDIRECT EXAMINATION:

QUESTIONS BY PROSECUTION:

Q I want you to tell the court, any person who so expressed himself, with respect to Mr Gickeleiter, and give us his address?

A Most of the people went back to Hungary.

Q Well, give us one?

A Dr.Mende.

Q When did this investigation take place?

A It took place right after the liberation.

Q Why did you make an investigation?

A There was an order by Military Government that everybody would submit a questionaire.

Q And you were working for Military Government at that time?

A Yes.

Q And Military Government investigated Mr Gickeleiter?

A Yes.

Q Will you tell us what detachment of Military Government that was?

A Yes, Muehldorf.

Q Who else was it besides this other Doctor who gave you a statement about Mr Gickeleiter?

A There were several ten thousands of people, and I spoke to quite a few of them.

Q Did you report to Military Government?

A Yes.

Q And you mentioned names on that report?

A I think so but I cannot quite remember.

Q You made a report to Military Government but yet you don't remember what you stated in that report?

A That was two years back. I said that even though Mr Gickeleiter

(DEMEK-recess)

had been a party member since 1929, the prisoners and even the German population also, could only say good things about him.

Q Was Gauleiter in custody at that time?

A Before that, yes.

Q Who was it who took him into custody?

A I think the C.I.C.

Q The C.I.C. took him into custody and yet the Military Government was making an investigation?

A Yes, the C.I.C. arrested him and then let him out again, and afterwards, after he had filled out his fragebogen - his questionnaire, the case was being investigated because there was a political question there.

Q Did I understand you to say that Military Government investigated every questionnaire that came into your office?

A Yes.

Q How many questionnaires came into your office while you were at Military Government?

A Several tens of thousands.

Q And Military Government investigated ten thousand questionnaires?

DR. LEILING: I object to this. It is getting right off the substance of this case. It is common knowledge that Military Government investigated practically every questionnaire.

PROSECUTION: I would like to answer Dr.Leiling. I am a former Military Government Officer, and I know that Military Government did not investigate all these questionnaires, and that many of them went to Berlin.

PRESIDENT: Do you know that for testimony?

PROSECUTION: I offer that in contravention of Dr.Leiling's statement.

DR.LEILING: I was in Military Government too and I know that they did./

PROSECUTION: All right then. I withdraw the question. That's all.

(DEMBIK-recess)

PRESIDENT: Is there anything further?

LT. HUGHES: The defense has nothing further.

PROSECUTION: The prosecution has nothing further.

PRESIDENT: Court will be closed.

(Whereupon at 1115 hours the court was closed.)

(Whereupon the court reconvened at 1445 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that the entire personnel of the court is present with the exception of Lt.Col.Dickey; that all the defendants are without the courtroom pending sentence: that their counsel are in court, together with the court reporter and the court interpreter, and that the prosecution is represented.

PRESIDENT: All spectators are cautioned not to make any demonstration after the sentences are announced by the court.

SENTENCES:

PRESIDENT: Franz Auer, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you to death by hanging at such time and place as higher authority may direct.

(Whereupon the accused was removed from the court room under guard.)

PRESIDENT: Wilhelm Bayha, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you Wilhelm Bayha, to be imprisoned for a term of ten years at hard labor commencing forth with, at War Crimes Prison #1, Landsberg,Germany, or at such place as may be designated by competent Military Authority.

(Whereupon the accused was removed from the court room under guard.)

PRESIDENT: Heinrich Engelhardt, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you, Heinrich Engelhardt, to life imprisonment commencing forthwith at War Crimes Prison #1, Landsberg, Germany, or at such place as may be designated by competent military authority.

(Whereupon the accused was removed from the court room under guard.)

PRESIDENT: Erika Flocken, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you, Erika Flocken, to death by hanging at such time and place as (sentences)

higher authority may direct.

(Whereupon the accused was removed from the courtroom under guard.)

PRESIDENT: Karl Gickeleiter, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you Karl Gickeleiter, to be imprisoned for a term of twenty years at hard labor commencing forthwith at War Crimes Prison #1, Landsberg, Germany, or at such place as may be designated by competent military authority.

(Whereupon the accused was removed from the courtroom under guard.)

PRESIDENT: Hermann Giesler, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you, Herman Giesler, to life imprisonment commencing forthwith, at War Crimes Prison #1, Landsberg, Germany, or such other place as may be designated by competent military authority.

(Whereupon the accused was removed from the courtroom under guard.)

PRESIDENT: Daniel Gottchling, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you, Daniel Gottchling, to be imprisoned for a term of fifteen years at hard labor, commencing forthwith, at War Crimes Prison #1, Landsberg, Germany, or such other place as may be designated by competent military authority.

(Whereupon the accused was removed from the courtroom under guard.)

PRESIDENT: Wilhelm Griesinger, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you, Wilhelm Griesinger, to be imprisoned for a term of fifteen years at hard labor, commencing forthwith, at War Crimes Prison #1, Landsberg, Germany, or such other place as may be designated by competent military authority.

(Whereupon the accused was removed from the courtroom under guard.)

(sentences)

PRESIDENT: Wilhelm Jergad, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you, Wilhelm Jergas, to death by hanging at such time and place as higher authority may direct.

(Whereupon the accused was removed from the court room under guard.)

PRESIDENT: Jakob Schmidberger, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you, Jakob Schmidberger, to be imprisoned for a term of twenty years, commencing forthwith, at War Crimes Prison #1, Landsberg, Germany, or such other place as may be designated by competent military authority.

(Whereupon the accused was removed from the courtroom under guard.)

PRESIDENT: Herbert Spaeth, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you, Herbert Spaeth, to death by hanging at such time and place as higher authority may direct.

(Whereupon the accused was removed from the courtroom under guard.)

PRESIDENT: Otto Sperling, the court in closed session, at least two-thirds of the members present at the time the vote was taken concurring, sentences you, Otto Sperling, to death by hanging at such time and place as higher authority may direct.

(Whereupon the accused was removed from the courtroom under guard.)

PRESIDENT: Is there anything further to be presented to the court?

PROSECUTION: The prosecution has nothing further.

DEFENSE COUNSEL: The defense has nothing further.

PRESIDENT: The court adjourns to meet subject to call by the president.

(Whereupon the court adjourned at 1400 hours subject to call by the President.)

CERTIFICATION OF AUTHENTICATION OF RECORD

The undersigned hereby certify the foregoing is a true and accurate record of the proceedings of a General Military Government Court sitting at Dachau, Germany, 1 April - 13 May 1947 in the case of the United States versus Frans Auer, et al; that the oaths administered by the Court complied with the proper forms as set forth in the Technical Manual for Legal and Prison Officers, Military Government Germany and that all of the foregoing proceedings were translated into the German language by the interpreter because the accused did not understand the English language.

President of the Court

Chief Prosecutor

Defense Counsel

This is to certify that the foregoing is a true and correct copy of the transcript of the testimony taken by me in the case of the United States versus Frans Auer, et al.

Mary Joan Fox
Mary Joan Fox

Eunice Hasdorff
Eunice Hasdorff

Sue McCulloch
Sue McCulloch

Patricia Stewart
Patricia Stewart

Leona Mahaffey
Leona Mahaffey

Gloria Spears
Gloria Spears

Legal Form No. 5

[redacted] MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Commitment .
Einlieferungsbefehl

TO: The Officer in charge of .....[redacted]..... *Prison
An den Leiter der (s) *Strafanstalt

or any other prison or camp to which the prisoner may hereafter be lawfully transferred: oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte .....[redacted].....
has been convicted of the offense of
ist wegen der folgenden strafbaren Handlung

.Violation.of.the.laws.and.usages.of. Wrongful.acts.of.the.Service.for.Prisoners
.war..... .....
....

and has been sentenced by the *[redacted] Military Court to serve a sentence
*General
*[redacted]
schuldig erkannt und vom *[redacted] Militärgerichte
*Oberen

of ..[redacted].....
zu .....

and to pay a fine of .....
und zu einer Geldstrafe von verurteilt worden.

The said sentence to commence on .....194.....
(Date)
Der Strafantritt hat am (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten Prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe abverbuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this .....[redacted]..... 194.....
Gezeichnet am [redacted]

.....[redacted].....
(Presiding Officer - Vorsitzender)
[redacted] Military Court of
*General
[redacted]
[redacted] Militaergericht
*Oberes
[redacted]
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Legal Form No. 5

MILITARY COVERNMENT COURT
MILITÄRGERICHT

[redacted]

Commitment
Einlieferungsbefehl

TO: The Officer in charge of .....
An den Leiter der (s) [redacted]

*Prison
*Camp
*[redacted]anstalt
*Lager

or any other prison or camp to which the prisoner may hereafter be lawfully transferred: oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte .....
has been convicted of the c[redacted] Wilhelm [redacted]
ist wegen der folgenden strafbaren Handlung

.....
Violation of the laws and usages of war
.....

.....
Vergehen gegen die Gesetze des Krieges
.....

and has been sentenced by the *Summary *Intermediate *[redacted] Military Court to serve a sentence
schuldig erkannt und vom *Einfachen *Mittleren *Oberen Militärgerichte

of .....
zu 10 Jahren Gefaengnis
and to pay a fine of .....
und zu einer Geldstrafe von verurteilt worden.

The said sentence to commence on .....194.....
18 May 1947
Der Strafantritt hat am (Datum) zu erfolgen.
18. Mai 1947

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe abverbuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so [redacted] this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vernahme der Handlung.

Signed this ..... 194.....
Gezeichnet am 18 May 1947
18. Mai 1947

.....
(Presiding Officer — Vorsitzender)
*Summary
*[redacted]
*Einfaches
*Mittleres Militaergericht
*Oberes
.....
[redacted] APO 407
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durch zustreichen.

Legal Form No. 5

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Commitment
Einlieferungsbefehl

TO: The Officer in charge of .....*Prison / *Camp / *Strafanstalt / *Lagers
An den Leiter der (s)

or any other prison or camp to which the prisoner may hereafter be lawfully transferred; oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one **[redacted]**
Der (die) Verurteilte .....
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung
Violation of the laws and usages of war Vergehen gegen die Gesetze des Krieges
.....
.....
.....

and has been sentenced by the *Intermediate Military Court to serve a sentence
*General
*Oberen
schuldig erkannt und vom *Mittleren Militärgerichte

Life imprisonment
of **[redacted]**.....
zu .....

and to pay a fine of .....
und zu einer Geldstrafe von verurteilt worden.

The said sentence to commence on .....194.....
(Date)
Der Strafantritt hat am (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten
prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe abgebuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this **18 May 1947**..... 194.....
Gezeichnet am

[redacted]
*Intermediate Military Court of
*General
*Oberen
*Mittleres Militaergericht
[redacted] Det., 7708 War Crimes Gp. ETO, APO 407
.....
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durch zustreichen.

Legal Form No. 5

MILITARY GOVERNMENT COURT
MILITAERGERICHT

Commitment
Einlieferungsbefehl

TO: The Officer in charge of .....[redacted].....
*Prison
*Camp
*Strafanstalt
*Lagers
An den Leiter der (s)

or any other prison or camp to which the prisoner may hereafter be lawfully transferred; oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte .....[redacted].....
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung

*Violation of the laws and usages of war | *Vergehen gegen die Gesetze des Krieges

.....

.....

and has been sentenced by the *Summary / *Intermediate / *General / *Einfachen / *Oberen Militaergerichte to serve a sentence
schuldig erkannt und vom

of [redacted]
zu

and to pay a fine of .....
und zu einer Geldstrafe von verurteilt worden.

The said sentence to commence on .....194.....
(Date)
Der Strafantritt hat am (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten
prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe abgebuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this ..[redacted]..... 194.....
Gezeichnet am [redacted]

[redacted]
(Presiding Officer — Vorsitzender)
*Summary / *Intermediate / *General / *Einfaches / *Oberes Militaergericht

[redacted]
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Legal Form No. 5 6

[redacted]dorf

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Commitment
Einlieferungsbefehl

TO: The Officer in charge of .....[redacted].....
An den Leiter der (s)

*Prison
*[redacted]
*Strafanstalt
*[redacted]

or any other prison or camp to which the prisoner may hereafter be lawfully transferred: oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte ....[redacted].....
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung

Violation of the laws and usages of war .Verstoss gegen die Gesetze des Krieges

....

....

and has been sentenced by the *[redacted] Military Court to serve a sentence
*General
*[redacted]
schuldig erkannt und vom *[redacted] Militaergerichte
*Oberen

of 20 years imprisonment.....
zu 20 Jahren Gefaengnis.....

and to pay a fine of .....
und zu einer Feldstrafe von verurteilt worden.

The said sentence to commence on ..15 May 1947.....194.....
(Date)
Der Strafantritt hat am 15. Mai 1947 (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe verbuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this ..15 May 1947..... 194.....
Gezeichnet am 15. Mai 1947

...Charles G. Sandmen...
(Presiding Officer - Vorsitzender)
*[redacted] ARDEN C. SANDMEN, Col., Inf
*[redacted] Military Court of
*General
*[redacted]
*[redacted] Militaergericht
*Oberes
[redacted] Det., 7708 War Crimes Group, APO 407
.....
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durch zustreichen.

Legal Form No. 5

[redacted]

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Commitment
Einlieferungsbefehl

7

TO: The Officer in charge of .....[redacted]..... *Prison
An den Leiter der (s) *Strafanstalt
*Lagers

or any other prison or camp to which the prisoner may hereafter be [redacted]
fully transferred, oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte ...[redacted]...
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung

~~Violation of the laws and usages of war~~ Vergehen gegen die Gesetze des Krieges

.....

.....

and has been sentenced by the *Summary [redacted] Military Court to serve a sentence
*Einfachen [redacted] Militärgerichte
schuldig erkannt und vom

of [redacted]
zu [redacted]

and to pay a fine of .....
und zu einer Geldstrafe von verurteilt worden.

The said sentence to commence on .....194.....
(Date)
Der Strafantritt hat am (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe abverbuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this 18 May 1947 194.....
Gezeichnet am 18. Mai 1947

[redacted]
(Presiding Officer — Vorsitzender)
*Summary [redacted] Military Court of
*Einfaches [redacted] Militaergericht
[redacted]
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Legal Form No. 5

MILITARY GOVERNMENT COURT
MILITAERGERICHT

[redacted]

Commitment
Einlieferungsbefehl

TO: The Officer in charge of .....[redacted]..... *Prison
An den Leiter der (s) *Strafanstalt

or any other prison or camp to which the prisoner may hereafter be lawfully transferred; oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte ....[redacted].....
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung

~~Violation of the laws and usages of war~~ ~~Verstoss gegen die Gesetze des Krieges~~

.....

.....

and has been sentenced by the *Summary *General *Einfachen *Militaer Court to serve a sentence
schuldig erkannt und vom *Oberen Militaergerichte

of ~~15 years imprisonment~~.....
zu ~~15 Jahren Gefaengnis~~.....

and to pay a fine of .....
und zu einer Geldstrafe von verurteilt worden.

The said sentence to commence on ..[redacted].....194.....
(Date)
Der Strafantritt hat am [redacted] (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe abverbuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this ...[redacted]..... 194.....
Gezeichnet am [redacted]

...[redacted]...
(Presiding Officer — Vorsitzender)
*Summary [redacted] Military Court of
*General
*Einfachen
*Militaergericht
*Oberen
[redacted]
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Legal Form No. 5

MILITARY COVERNMENT COURT
MILITÄRGERICHT

[redacted]

9

Commitment
Einlieferungsbefehl

TO: The Officer in charge of .....[redacted].....
*Prison
*Camp
*Strafanstalt
*Lagers

An den Leiter der (s)

or any other prison or camp to which the prisoner may hereafter be lawfully transferred; oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte ...[redacted].....
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung

[redacted]

....

....

and has been sentenced by the *Summary *Intermediate *General *Einfachen *Mittleren *Oberen Military Court to serve a sentence

schuldig erkannt und vom Militärgerichte

of [redacted].....
zu [redacted].....

and to pay a fine of .....
und zu einer Geldstrafe von verurteilt worden.

The said sentence to commence on ...[redacted].....194.....
(Date)
Der Strafantritt hat am 18. Mai 1947 (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe abgebuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this ...[redacted]..... 194.....
Gezeichnet am 18. Mai 1947

[redacted]
(Presiding Officer – Vorsitzender)
*Summary
*Intermediate *General *Einfachen *Mittleren *Oberen Military Court of
[redacted]
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Legal Form No. 5

[redacted]

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Commitment
Einlieferungsbefehl

TO: The Officer in charge of .....[redacted].....
An den Leiter der (s)

*Prison
*Camp
*Strafanstalt
*Lager

or any other prison or camp to which the prisoner may hereafter be lawfully transferred:
oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte .....[redacted].....
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung

Violation of the laws and usages of war ..Vergehen gegen die Gesetze des Krieges

....

....

and has been sentenced by the *Summary [redacted] Military Court to serve a sentence
schuldig erkannt und vom *Einfachen [redacted] Militärgerichte

of ..death by hanging..... .....
zu ..Tod durch Erhaengen..... .....

and to pay a fine of .....
und zu einer feldstrafe von verurteilt worden.

The said sentence to commence on .....194.....
(Date)
Der Strafantritt hat am (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe abgebuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this ...15 May 1947..... 194.....
Gezeichnet am 15. Mai 1947

...Eustace S. Gardner...
(Presiding Officer – Vorsitzender)
*Summary [redacted] Military Court of
*General
*Einfachen
*[redacted] Militärgericht
*Oberen

*[redacted] APO 407
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durch zustreichen.

Legal Form No. 5

[redacted]

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Commitment
Einlieferungsbefehl

TO: The Officer in charge of [redacted] *Prison
An den Leiter der (s) *[redacted] *Strafanstalt
*[redacted]

or any other prison or camp to which the prisoner may hereafter be lawfully transferred: oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte [redacted]
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung

[redacted]

and has been sentenced by the *[redacted] Military Court to serve a sentence
*General
*[redacted]
schuldig erkannt und vom *[redacted] Militärgerichte
*Oberen

of [redacted]
zu [redacted]

and to pay a fine of .....
und zu einer Feldstrafe von verurteilt worden.

The said sentence to commence on ....18 May 1947.....194.....
(Date)
Der Strafantritt hat am 18. Mai 1947 (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe verbuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so long this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this ..18 May 1947..... 194.....
Gezeichnet am 18. May 1947

[redacted]
(Presiding Officer - Vorsitzender)
[redacted] Military Court of
*General
*[redacted] Militaergericht
*Oberes
[redacted]
(Address of Court)
(Anschrift des Gerichts)

Strike out words not applicable.
Nichtzutreffendes ist durch zustreichen.

Legal Form No. 5 13

[redacted]

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Commitment
Einlieferungsbefehl

TO: The Officer in charge of ....[redacted]
An den Leiter der (s)

*Prison
*[redacted]
*Strafanstalt
*Lagers

or any other prison or camp to which the prisoner may hereafter be lawfully transferred: oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene spaeterhin rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte ...[redacted]
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung

[redacted] Verletzung gegen die Gesetze des Krieges

.....

.....

and has been sentenced by the *Summary *General *Einfachen *Oberen Military Court to serve a sentence

schuldig erkannt und vom *Militärgerichte

of [redacted]
zu [redacted]

and to pay a fine of .....
und zu einer feldstrafe von verurteilt worden.

The said sentence to commence on .....194.....
(Date)
Der Strafantritt hat am (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe verbuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this ...[redacted]...194.....
Gezeichnet am [redacted]

...[redacted]...
(Presiding Officer - Vorsitzender)
*Summary [redacted] Military Court of
*General
*Einfachen
*Oberen
[redacted] Militaergericht
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durch zustreichen.

Legal Form No. 5

MILITARY GOVERNMENT COURT
MILITAERGERICHT

[redacted]

Commitment
Einlieferungsbefehl

TO: The Officer in charge of ....[redacted]..... *Prison
An den Leiter der (s) *Strafanstalt

or any other prison or camp to which the prisoner may hereafter be lawfully transferred: oder irgend einer anderen Strafanstalt oder eines anderen Lagers, in welches der Strafgefangene hierauf rechtmaessig ueberwiesen werden wird:

Whereas one
Der (die) Verurteilte ...[redacted].....
has been convicted of the offence of
ist wegen der folgenden strafbaren Handlung

[redacted]

and has been sentenced by the *General Military Court to serve a sentence
schuldig erkannt und vom *Militaergerichte

of [redacted]
zu [redacted]

and to pay a fine of .....
und zu einer Geldstrafe von verurteilt worden.

The said sentence to commence on .....194.....
(Date)
Der Strafantritt hat am (Datum) zu erfolgen.

Now, therefore, you are hereby authorized to receive the above named
Auf Grund des genannten Urteils sind Sie ermaechtigt, den (die) genannten prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court
Strafgefangenen in die Strafanstalt (das Lager) aufzunehmen, bis er (sie) die ueber ihn verhaengte Strafe abgebuesst hat oder bis Sie eine weitere Anordnung von diesem Gericht
or a competent military authority and for so doing this shall be sufficient warrant
oder von einer zustaendigen Militaerbehoerde erhalten werden. Diese Urkunde ermaechtigt Sie zur Vornahme der Handlung.

Signed this ..15. May 1947..... 194.....
Gezeichnet am 15. Mai 1947

[redacted]
(Presiding Officer - Vorsitzender)
[redacted] Military Court of
*General
[redacted] Militaergericht
*Oberes
[redacted]
(Address of Court)
(Anschrift des Gerichts)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

Pages 1 - 58

Case No. Superior Orders

~~*Summary~~
~~*Intermediate Military Court~~
*General

Place DACHAU, GERMANY

Date 10 JANUARY 1947

~~Members of Court:~~
WITNESSES:
KURT H. TEIL

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Mr. Rudolf M. Nathanson

Interpreter Mr. Rudolph H. Schubert

Reporter Patricia Stewart
Irving Hayett
Sally Rose Hayett
Imogene D. Butler
John McDonald
Paula Silverman

Accused JURGEN STROOP, et al

Address Sex Age

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term
  - Beginning 194
- Fine
  - Amount
  - To be paid before 194
    or in case of default of payment to serve a *further term of imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES Versus [illegible] JOSEF KROOP, ET AL

by

A [illegible] GENERAL MILITARY GOVERNMENT COURT [illegible]

Special Order #9, [illegible] tried at [illegible]

DACHAU, GERMANY, [illegible] BEGINNING 10 JANUARY 1947

10 January 1946 [illegible], Pages 1 - 58, Inc.

at Civil hours, [illegible]

Interrogation of Accused as to name, age, [illegible] of residence, nationality and status Page 8

[illegible] Ziegler, Otto Hermann, [illegible] Arraignment 29

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TESTIMONY

[illegible] to order.

WITNESS:	Direct	Cross
KURT H. TEIL	22	23

[illegible] with the oath of the United States.

EXHIBITS

[illegible]

NO.	DESCRIPTION	MARKED	REC'D IN EVIDENCE
P-1	Letter Appointing Counsel	3	4
P-2	Orders referring Case	3	5
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[illegible]

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Camp Dachau, Germany

10 January 1947

MORNING SESSION

A General Military Government Court appointed by Special Order #8, paragraphs 13 and 21, dated 8 January 1947, Headquarters, United States Forces European Theater, APO 757, met at Camp Dachau, Germany, on 10 January 1947, at 0911 hours, as directed by the President thereof.

The court proceeded in open court to the trial of Jurgen Stroop, Hans Traumler, Otto Sommann, Arthur Fuchs, Wilhelm Hoehler, Hans Eichel, Josef Johann Kiwitt, Wilhelm Albrecht, Hermann Heller, Wilhelm Friedrich Goehrendt, Paul Nahrgang, Philipp Hermann, Bernhard Fay, Georg Best, Erwin Goss, Heinrich Matthias Michely, Julius Lassak, Fritz Girbes, Heinz Hallenbreich, Karl Franz Stattmann, Michael Raafs.

Leonard Kramer
No 17 absent

* * * * * *

PRESIDENT: Court will come to order.

PROSECUTION: May it please the Court, the Prosecution is ready to proceed with the case of the United States of America against Jurgen Stroop and 21 other defendants. May it please the Court, there are two interpreters to be sworn, Mr. Rudolf M. Nathanson and Mr. Rudolph H. Schubert.

PRESIDENT: Mr. Rudolf M. Nathanson and Mr. Rudolph H. Schubert have been appointed as court interpreters. They will be sworn.

(Whereupon Rudolf M. Nathanson and Rudolph H. Schubert, U. S. Civilians, were sworn as court interpreters.)

PROSECUTION: May it please the Court, there are six court reporters to be sworn, Miss Patricia Stewart,

Mr. Irving Hayett, Mrs. Sally Rose Hayett, Miss Imogene D. Butler, Mr. John MacDonald, and Miss Paula Silverman as interpreters of the accused.

PRESIDENT: Miss Patricia Stewart, Mr. Irving Hayett, Mrs. Sally Rose Hayett, Miss Imogene D. Butler, Mrs. John MacDonald and Miss Paula Silverman have been appointed as court reporters. They will be sworn now. I am informed

(Whereupon Patricia Stewart, Irving Hayett, Sally Rose Hayett, Imogene D. Butler, John MacDonald, and Paula Silverman, U. S. Civilians, were sworn as court reporters.)

PROSECUTION: Whom does the accused desire to introduce as counsel in addition to the regularly appointed counsel?

DEFENSE COUNSEL: The accused, may it please the court, are represented by myself, Colonel Gerhan, Major Saxon, Mr. Rachel, the three regularly appointed American Defense Counsels. In addition, there are four German counsels here. The lady is Dr. Frost. Next to her is Dr. Ruj; then comes Dr. Duerger, then Dr. Aheimer. Does the Court desire me to make that statement now in advance of the denazification boards concerned?

LAW MEMBER: Yes, I did. And further, if any of said

DEFENSE COUNSEL: With respect to the four German counsels--Dr. Frost, I am informed, is exempt by virtue of her nationality from the normal denazification proceedings. The remaining three, the three men, have now pending before their denazification boards their application for permission to practice before the German courts. All three of them were members of the German court. Final action on their petition for the right to practice now is still pending before the denazification boards and have not been completed. Mens

of them have been barred from practicing at the present time. All four have appeared in the past before military commissions. Each of them has been requested specifically by various members of the accused. In view of all those circumstances, I request on behalf of the accused and the German counsels concerned, permission from the Court for them to appear as attorneys before this Court for this particular case only. I am informed that the Prosecution has no objection.

PROSECUTION: The Prosecution has no objection.

PRESIDENT: Based upon the statements made by the Chief Defense Counsel, and there being no objections on the part of the Prosecution, the German nationals now presented to this Court as special counsel for certain of the accused are authorized by this Court to appear and represent as counsel the accused requesting them as special counsel in this case, with the understanding that each special counsel will present to this Court his credentials showing him qualified to practice before this Court as soon as their individual cases now pending before the denazification boards concerned are completed. And further, if any of said special counsel are disqualified by action of their denazification boards while this case is pending, said special counsel shall immediately notify this Court.

PROSECUTION: I hand the reporter a document and ask that it be marked Prosecution's Exhibit 1 for identification.

(The document referred to was marked Prosecution Exhibit 1 for identification.)

PRESIDENT: If there is any person in the Court who has been called as a witness in this case or who may be

called as a witness, they will now leave the Court and remain outside the Court room until called as a witness.

PROSECUTION: We ask the Court to make an exception in that case in the case of four American witnesses which will be called by the Prosecution, Captain Eric Mohlgut, Captain Thomas S. Smith, Mr. Kurt Tiel and Mr. Gerald Coates. Those will only be called for identifying signatures on statements made by the Accused, but they are working with the Prosecution's team, and it is desired that they be allowed to remain in Court.

DEFENSE COUNSEL: No objections.

PRESIDENT: The exception is granted.

PROSECUTION: I now offer in evidence this document which has been marked Prosecution's Exhibit 1 for identification, the letter appointing counsel in this case.

DEFENSE COUNSEL: No objections.

PROSECUTION: And I ask that it be made a part of the record and that the Prosecution be permitted to read the same.

PRESIDENT: There being no objection, the letter appointing counsel, marked Prosecution's Exhibit 1 for identification will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 1 for identification was received in evidence as Prosecution Exhibit 1, is attached hereto and made a part of the record.)

(Whereupon the Prosecution read Prosecution Exhibit 1, followed by a translation into German.)

PROSECUTION: I hand the reporter a document and ask that it be marked Prosecution's Exhibit 2 for identification.

(The document referred to was marked Prosecution Exhibit 2 for identification.)

PROSECUTION: I now offer in evidence this document which has been marked Prosecution's Exhibit 2 for identification, the order referring this case to this Court, and request that it be made a part of the record and that it by the Prosecution be permitted to read the same.

DEFENSE COUNSEL: No objections.

PRESIDENT: There being no objection, the order referring this case to this Court will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 2 for identification was received in evidence as Prosecution Exhibit 2, is attached hereto and made a part of the record.)

(Whereupon the Prosecution read Prosecution Exhibit 2, followed by a translation into German.)

PROSECUTION: Let the record show that the following members of the Court are present:

Brigadier General Emil C. Kiel, AC, President USA
Lt. Colonel Frank A. Hunter, Inf., Legal Member
Colonel Gilbert E. Ackerman, Cav.
Colonel Harry R. Pierce, CAC
Colonel William W. Robertson, Inf.
Colonel Jacob E. Bechtold, TC
Colonel Earle B. Dunning, AC
Lt. Colonel Edward B. Walker, AC

The general nature of the charges and particulars in this case is as follows: There are 10 charges. Number one accuses all of the defendants of participating in a common

design and a criminal conspiracy, particularly by dissemination of illegal orders which brought about the mistreatment and killing of surrendered and unarmed prisoners of war, and all of this occurred between the 8th day of December 1941 and the 8th of May, 1945. Charge Two alleges that all of the accused were, after the first of September, 1939, members of certain organizations declared criminal by the International Military Tribunal at Nuernberg, with knowledge that those organizations were being used in the commission of acts declared criminal by that tribunal or were personally implicated in the commission of those acts. Charges Three to Ten allege certain specific murders committed on certain dates at certain places, and being murders of surrendered and unarmed prisoners of war, all of which occurred in Germany during the war.

The prosecution will not call any member of the Court as a witness. Will the Accused call any members of the Court as a witness.

DEFENSE COUNSEL: The Accused will not call any member of the Court as a witness.

PROSECUTION: Has any member of the Court a personal interest in this case?

PRESIDENT: No.

PROSECUTION: Let the record show that Lt. Colonel Frank A. Hunter, a member of this Court, is an officer with legal training.

PRESIDENT: The Court has satisfied itself that it is properly constituted under the laws and rules governing

Military Government Courts and has jurisdiction over the persons and offenses of the Accused. If either the Prosecution or Defense has any ground for challenge of any member, it is requested that it be disclosed now.

PROSECUTION: The Prosecution has no challenges.

DEFENSE COUNSEL: May it please the Court, the Defense has a challenge to the entire Court which, by arrangement, it will present later on in the proceedings, after the charges have been read.

PRESIDENT: The Court is declared to be properly constituted.

DEFENSE COUNSEL: Perhaps for the sake of the record, I ought to state that we have no individual challenges against individual members of the Court for the reasons normally given.

PROSECUTION: As the Prosecution understands, by the remarks of the Defense, speaking of the challenge of the Court, the Defense is referring to a motion attacking jurisdiction.

DEFENSE COUNSEL: That's all, and I wanted to make it plain that that was the only ground.

PRESIDENT: The trial will be conducted in open Court. Let the record show that by agreement all interlocutory questions arising during this trial will be decided by the President of the Court, subject to the objection of any member of the Court.

The Accused will now be interrogated as to their names, [illegible], residences, nationalities and status.

Jurgen Stroop. [illegible]

(Whereupon the accused Jurgen Stroop arose.) I assign you [illegible]. Will you state your name?

ACCUSED JURGEN STROOP: Jurgen Stroop.

PRESIDENT: [illegible]

ACCUSED JURGEN STROOP: [illegible] years of U. S.

PRESIDENT: [illegible]

ACCUSED JURGEN STROOP: Cross-Reichlienen.

PRESIDENT: Your status?

ACCUSED JURGEN STROOP: I am a prisoner of war at Dachau. [illegible]

PRESIDENT: As means of identification, I assign you placard number one. [illegible]

INTERPRETER: Pardon me, sir, the nationality was omitted. [illegible]

PRESIDENT: What is your nationality? I assign

ACCUSED JURGEN STROOP: German.

PRESIDENT: Hans Traubler.

(Whereupon the accused Hans Traubler arose.)

PRESIDENT: State your name.

ACCUSED HANS TRAUBLER: Hans Traubler.

PRESIDENT: Your age?

ACCUSED HANS TRAUBLER: 43 years.

PRESIDENT: Residence?

ACCUSED HANS TRAUBLER: Postsch on the Elbe.

PRESIDENT: Nationality?

ACCUSED HANS TRAUBLER: German.

ACCUSED ARTHUR FUEHR: German.

PRESIDENT: Status?

ACCUSED HANS THUMALER: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you placard number two.

Otto Sommer, Jr.

(Thereupon the accused Otto Sommer arose.)

PRESIDENT: State your name.

ACCUSED OTTO SOMMER: Otto Sommer, Jr.

PRESIDENT: Your age?

ACCUSED OTTO SOMMER: 47 years.

PRESIDENT: Residence?

ACCUSED OTTO SOMMER: Hamburg Mittelwegen Lehm.

PRESIDENT: Nationality?

ACCUSED OTTO SOMMER: German.

PRESIDENT: Status?

ACCUSED OTTO SOMMER: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you placard number three.

End of
Mk 1
Dr Fels

(Thereupon the accused Arthur Fuehr arose.)

PRESIDENT: State your name.

ACCUSED ARTHUR FUEHR: Fuehr, Arthur.

PRESIDENT: Age?

ACCUSED ARTHUR FUEHR: 36 years.

PRESIDENT: Nationality?

[illegible]

ACCUSED ARTHUR FUHRE: German.

PRESIDENT: Status?

ACCUSED ARTHUR FUHRE: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you placard number 4.

Wilhelm Hoehler.

(Thereupon the accused Wilhelm Hoehler arose.)

PRESIDENT: State your name.

ACCUSED WILHELM HOEHLER: Wilhelm Hoehler.

PRESIDENT: Your age?

ACCUSED WILHELM HOEHLER: 56 years.

PRESIDENT: Your residence? cation, I assign you

ACCUSED WILHELM HOEHLER: Cramberg on the Lahn.

PRESIDENT: Nationality?

ACCUSED WILHELM HOEHLER: German.

PRESIDENT: Status?

ACCUSED WILHELM HOEHLER: Civilian internee in Dachau.

PRESIDENT: As a means of identification, I assign you placard number five.

End of
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PRESIDENT: Hans Eichel, step.

(Thereupon the accused Hans Eichel arose.)

PRESIDENT: State your name.

ACCUSED HANS EICHEL: Hans Eichel.

PRESIDENT: Your age?

ACCUSED HANS EICHEL: 56 years.

PRESIDENT: Residence?

ACCUSED HANS EICHEL: Bensheim, Hesse-Darmstadt.

PRESIDENT: Nationality?

ACCUSED HANS EICHEL: German.

PRESIDENT: Status?

ACCUSED HANS EICHEL: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you to Placard No. 6.

Josef Johann Kiwitt.

(Thereupon the accused Josef Johann Kiwitt arose.)

PRESIDENT: State your name.

ACCUSED JOSEF JOHANN KIWITT: Josef Johann Kiwitt.

PRESIDENT: Your age?

ACCUSED JOSEF JOHANN KIWITT: 52 years.

PRESIDENT: Residence?

ACCUSED JOSEF JOHANN KIWITT: Villingen, Baden.

PRESIDENT: Nationality?

ACCUSED JOSEF JOHANN KIWITT: German.

PRESIDENT: Status?

ACCUSED JOSEF JOHANN KIWITT: Prisoner of war at the time in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 7.

PRESIDENT: Wilhelm Albrecht.

(Whereupon the accused Wilhelm Albrecht arose.)

PRESIDENT: State your name.

ACCUSED WILHELM ALBRECHT: Wilhelm Albrecht.

PRESIDENT: Your age?

ACCUSED WILHELM ALBRECHT: 56 years.

PRESIDENT: Residence?

ACCUSED WILHELM ALBRECHT: Offenbach-Main.

PRESIDENT: Nationality?

ACCUSED WILHELM ALBRECHT: German.

PRESIDENT: Status?

ACCUSED WILHELM ALBRECHT: Prisoner of war at the time in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 8.

(Whereupon the accused Hermann Moller arose.)

PRESIDENT: State your name?

ACCUSED HERMANN MOLLER: Hermann Moller.

PRESIDENT: Your age?

ACCUSED HERMANN MOLLER: 44 years.

PRESIDENT: Residence?

ACCUSED HERMANN MOLLER: Offenbach-Main.

PRESIDENT: Nationality?

ACCUSED HERMANN MOLLER: German.

PRESIDENT: Status?

ACCUSED HERMANN MOLLER: Civilian internee in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 9.

Doc. No. 2-50-2/10-3

PRESIDENT: Wilhelm Friedrich Goehrendt.

(Whereupon the accused Wilhelm Friedrich Goehrendt arose.)

PRESIDENT: State your name.

ACCUSED WILHELM FRIEDRICH GOEHRENDT: Wilhelm Friedrich Goehrendt.

PRESIDENT: Your age?

ACCUSED WILHELM FRIEDRICH GOEHRENDT: 53 years.

PRESIDENT: Your residence?

ACCUSED WILHELM FRIEDRICH GOEHRENDT: Offenbach-Main.

PRESIDENT: Your nationality?

ACCUSED WILHELM FRIEDRICH GOEHRENDT: German.

PRESIDENT: Your status?

ACCUSED WILHELM FRIEDRICH GOEHRENDT: Civilian internee in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 10.

Paul Mahrgang.

(Whereupon the accused Paul Mahrgang arose.)

PRESIDENT: State your name.

ACCUSED PAUL MAHRGANG: Paul Mahrgang.

PRESIDENT: Your age?

ACCUSED PAUL MAHRGANG: 46 years.

PRESIDENT: Your residence?

ACCUSED PAUL MAHRGANG: Offenbach-Main.

PRESIDENT: Your nationality.

ACCUSED PAUL MAHRGANG: German.

PRESIDENT: Your status?

ACCUSED PAUL MAHRGANG: Civilian internee in Dachau.

PRESIDENT: As a means of identification, I assign you

Placard No. 11.

[redacted]: May it please the court, may it call the court's attention to the fact that the U.S. is the missing somebody that we've got him up there for convenience in that empty chair. Any objection?

[redacted]: None.

(There [redacted] Plaintiff Pay arose.)

(Whereupon the Plaintiff Bernhard Fay arose.)

[redacted]: State your name.

[redacted] Bernhard Fay.

[redacted]: Your age?

[redacted] 41 years.

[redacted] 51 years.

[redacted]: Your [redacted] in Hanau.

[redacted]

[redacted]: Your nationality?

[redacted] German.

[redacted]: Your [redacted] in Hanau.

[redacted] for a matter of identification, I mark you

Plaintiff's Exhibit No. 15.

-14-

15

In Supreme Court

[redacted]: Philipp Hausmann, prisoner of war in Dachau.

(Thereupon the accused Philipp Hausmann entered.) I assign you

Plaintiff No. [redacted]: State your name.

ACCUSED PHILIPP HAUSMANN: Philipp Hausmann.

(There [redacted] Court urged. Court recessed.)

ACCUSED PHILIPP HAUSMANN: 51 years.

[redacted]: Your residence?

ACCUSED PHILIPP HAUSMANN: Offenbach-Main.

[redacted]: Your nationality?

ACCUSED PHILIPP HAUSMANN: German.

[redacted]: Your religion?

ACCUSED PHILIPP HAUSMANN: Prisoner of war in Dachau.

[redacted]: As a means of identification, I assign you

Plaintiff No. [redacted]: Your status?

ACCUSED REINHARD FAY: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 13.

State your name.

Georg Best.

(Whereupon the accused Georg Best arose.)

PRESIDENT: State your name.

ACCUSED GEORG BEST: Georg Best.

PRESIDENT: Your age?

ACCUSED GEORG BEST: 39 years.

PRESIDENT: Your residence?

ACCUSED GEORG BEST: Wiesbaden.

PRESIDENT: Your nationality?

ACCUSED GEORG BEST: German.

PRESIDENT: Your status?

ACCUSED GEORG BEST: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 14.

State your name.

Erwin Goss.

(Whereupon the accused Erwin Goss arose.)

PRESIDENT: State your name.

ACCUSED ERWIN GOSS: Erwin Goss.

PRESIDENT: Your age?

ACCUSED ERWIN GOSS: 41 years.

PRESIDENT: Your residence?

ACCUSED ERWIN GOSS: Dillenburg, in Hesse.

PRESIDENT: Your nationality?

ACCUSED ERWIN GOSS: German.

PRESIDENT: Your status?

ACCUSED ERWIN GOSS: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 15.

PRESIDENT: Rabbiah Mattidas Nichaly.

(Thereupon the accused Rabbiah Mattidas Nichaly arose.)

PRESIDENT: State your name.

ACCUSED NICHALY MATTIDAS MENAHEM: Rabbiah Mattidas Nichaly.

PRESIDENT: Your age?

ACCUSED NICHALY MATTIDAS MENAHEM: 33 years.

PRESIDENT: Your residence?

ACCUSED NICHALY MATTIDAS MENAHEM: Dudweiler, Saar Basin.

PRESIDENT: Your nationality?

ACCUSED NICHALY MATTIDAS MENAHEM: German.

PRESIDENT: Your status?

ACCUSED NICHALY MATTIDAS MENAHEM: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you

Plaintiff No. 16.

Julius Laszik, sworn.

(Thereupon the accused Julius Laszik arose.)

PRESIDENT: State your name.

ACCUSED JULIUS LASZIK: Julius Laszik, Lemberg.

PRESIDENT: Your age?

ACCUSED JULIUS LASZIK: 39 years.

PRESIDENT: Your residence?

ACCUSED JULIUS LASZIK: Lemberg, in Rumania.

PRESIDENT: Your nationality?

ACCUSED JULIUS LASZIK: German.

PRESIDENT: Your status?

ACCUSED JULIUS LASZIK: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you

Plaintiff No. 17.

PRESIDENT: Frits Girke.

(Whereupon the accused Frits Girke arose.)

PRESIDENT: State your name.

ACCUSED FRITZ GIRKE: Richard Frits Girke.

PRESIDENT: Your age?

ACCUSED FRITZ GIRKE: 34 years.

PRESIDENT: Your residence?

ACCUSED FRITZ GIRKE: Held on the Ala.

PRESIDENT: Your nationality?

ACCUSED FRITZ GIRKE: German.

PRESIDENT: Your status?

ACCUSED FRITZ GIRKE: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 19.

Heins Hellenbroich.

(Whereupon the accused Heins Hellenbroich arose.)

PRESIDENT: State your name.

ACCUSED HEINZ HELLENBROICH: Heins Hellenbroich.

PRESIDENT: Your age?

ACCUSED HEINZ HELLENBROICH: 40 years.

PRESIDENT: Your residence?

ACCUSED HEINZ HELLENBROICH: Dortmund, Westphalia.

PRESIDENT: Your nationality?

ACCUSED HEINZ HELLENBROICH: German.

PRESIDENT: Your status?

ACCUSED HEINZ HELLENBROICH: Prisoner of war in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 20.

Rule [illegible] counsel, Karl Franz Stattman.

(Whereupon the accused Karl Franz Stattman arose.)

[illegible]: State your name.

ACCUSED KARL FRANZ STATTMAN: Karl Franz Stattman, referring to the [illegible]

[illegible]: Your age?

ACCUSED KARL FRANZ STATTMAN: 35 years.

PRESIDENT: Your residence?

ACCUSED KARL FRANZ STATTMAN: Blomberg, Lippe.

PRESIDENT: Your nationality?

ACCUSED KARL FRANZ STATTMAN: German.

PRESIDENT: Your status?

ACCUSED KARL FRANZ STATTMAN: Civilian internee in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 21.

Michael Raaf.

(Whereupon the accused Michael Raaf arose.)

PRESIDENT: State your name.

ACCUSED MICHAEL RAAF: Michael Raaf.

PRESIDENT: Your age?

ACCUSED MICHAEL RAAF: 40 years.

PRESIDENT: Your residence?

ACCUSED MICHAEL RAAF: Stuttgart-Feuerbach.

PRESIDENT: Your nationality?

ACCUSED MICHAEL RAAF: German.

PRESIDENT: Your status?

ACCUSED MICHAEL RAAF: Civilian internee in Dachau.

PRESIDENT: As a means of identification, I assign you Placard No. 22.

PROSECUTION: At this point, I would like to call the court's attention to Military Government Regulations, Title 5, particularly

Rule 5-327.7, which is entitled, "Trial in Absentia." That rule reads as follows:

"In the event of the accused not appearing before the court, the following action may be taken -- and in this connection, I am referring to the absent accused, Leonard Brenner, No. 1?

"If it is proved that the accused was duly served with a summons to appear, the court may proceed with the trial in his absence, and may, if it considers the case against him proved, record a conviction and sentence."

May it please the court, the accused Leonard Brenner was not served with a process in this case. Paragraph b of the rule provides as follows:

"If it is not so proved but the court is satisfied that, after reasonable steps have been taken to find and summon the accused, he cannot be found, the court may proceed in his absence up to but not beyond the recording of evidence and making any order permitted under Sub-rule (e) of this Rule. In the event of the accused being subsequently brought before the court, such recorded evidence shall be admissible as evidence in the case, provided that the accused shall be entitled to cross examine any of the original witnesses for the prosecution whose attendance can be procured (in which case the prosecution shall be entitled to re-examine) and both the prosecution and the accused shall be entitled to introduce additional evidence.

"Sub-paragraph (e). In either of the above cases, the court shall appoint an officer of the U. S. Forces or other suitable person to represent the defense."

We therefore request the court at this time to appoint the regularly appointed American defense counsel to represent the absent accused, Leonard Brenner. May it please the court, on behalf of the Government, I have investigated the absence of the accused Brenner, and

it has been reported to me that on or about the 31st of August, 1946, he escaped from Dachau prison camp. Efforts have been made to re-apprehend him, but he has not been discovered. We are present [illegible] by verbal order of

PRESIDENT: Has the defense any statement?

DEFENSE COUNSEL: Just this, may it please the Court, that Paragraph b referred to calls for a finding of fact on a very important issue by this court, if this court is satisfied, and I find myself unable to agree on the bare statement by the prosecution that there is a sufficient basis of fact for such a finding.

[illegible] telephoned Mr. Steigner, [illegible] investigation and investigation of this case.

PRESIDENT: Have you anything further, Mr. Steigner,

PROSECUTION: Nothing further.

PRESIDENT: Court will be cleared.

(Whereupon the court was cleared at 1000 hours.)

[illegible] made from the time of [illegible] present time, and are still being made, to reapprehend him. If further evidence is desired by the court there are available to us at this time the chief of the screening section here in Dachau and one of the civilian investigators from our Prisons Headquarters in Augsburg, who will testify about the escape of Leonard Steiner.

PRESIDENT: Will you call the witness?

CAPTAIN YARS: Call Major Brooks.

PROSECUTION: On behalf of the prosecution, Captain Yarrs will interrogate the two witnesses.

CAPTAIN CZOSNEK: May I address to the court that it was not the intention of the accused or myself viewing for the moment to challenge the fact that this man escaped from Dachau. What troubled us was the second and third phrases in that section which discusses the necessity for reasonable steps to re-[illegible] and have the accused, so that if the purpose of these [illegible] to remove the [illegible] --

1-10-47;JOMeD;1

(Thereupon the court was opened at 1040 hours.)

PROSECUTION: May it please the court, let the record show that all the personnel of the court are present except Colonel Ackerman, who has been excused by verbal order of the appointing authority; all the members of the prosecution and all the members of the defense, all of the accused, and the reporter and interpreter are present.

PRESIDENT: Have you anything further to offer?

PROSECUTION: During the recess I telephoned War Crimes Headquarters in Augsburg and spoke to Mr. Stegner, who previously handled the preparation and investigation of this case. He told me that efforts were made from the time of the escape of Leonard Brammer on until the present time, and are still being made, to reapprehend him. If further evidence is desired by the court there are available at this time the chief of the Screening Section here in Dachau and one of the civilian investigators from War Crimes Headquarters in Augsburg, who will testify about the escape of Leonard Brammer.

PRESIDENT: Will you call the witness?

CAPTAIN VANCE: Call Major Brooks.

PROSECUTION: On behalf of the prosecution, Captain Vance will interrogate the two witnesses now.

DEFENSE COUNSEL: May I address to the court that it was not the intention of the accused or myself speaking for the accused to challenge the fact that this man escaped from Dachau. What troubled me was the second and third phrases in that section which discusses the necessity for reasonable steps to reapprehend and serve the accused, so that if the purpose of these witnesses is merely to prove the escape --

Ta 3 - 50
1-10-47;JCMcD;3

PROSECUTION: The purpose of the witness Major Brooks is to prove the escape, but the purpose of the second witness, Mr. Teil, is to prove the efforts that were made to reapprehend the prisoner. Third Army Provost Marshal.

DEFENSE COUNSEL: So far as I have a right to bind this man Kraemer, I will agree that he did escape from Dachau at or about the time said by Colonel Swinell. I think that - was August of 1946, if I am not mistaken. over here at the hospital, PROSECUTION: That is right. He got out of the hospital, a CAPTAIN VANCE: In view of the statement made by the defense counsel, we ask that the witness Major Brooks be excused. As of yesterday had the accused Kraemer been reapprehens PRESIDENT: He may be excused.

CAPTAIN VANCE: We call the witness Kurt Teil.

KURT H. TEIL, called as a witness by the prosecution, being first duly sworn, testified as follows:

(Whereupon the proceedings were translated into the German language.)

DIRECT EXAMINATION: questions. Cross examina-

QUESTIONS BY CAPTAIN VANCE:

Q Please state your name.

A Kurt Teil.

Q By whom are you employed? personally play in the

A United States Army, War Crimes Group;

Q In which place? Lechfeld when Captain Sloan came

A In Augsburg. I heard him talk on the phone to

Q Are you familiar with and did you investigate the escape of one prisoner named Leonard Kraemer?

A Yes I heard him talk on the telephone to the Augsburg Police and to [illegible] Germans of this case.

Q Are you familiar with what efforts have been made to reapprehend the accused Branner?

A I know that Captain Sloan from the control section in Augsburg has notified Third Army Provost Marshal.

Q Do you know what if any efforts this Captain Sloan has made to apprehend the accused Branner?

A Captain Sloan came down here to Dachau to investigate the escape, and he talked to people over here at the hospital, trying to find out how Branner got out of the hospital, and he tried to get some leads as to the possible whereabouts from people in the hospital.

Q As of yesterday had the accused Branner been reapprehended?

A No.

Q Is an effort still being made to apprehend the accused Branner?

A Yes.

CAPTAIN VANCE: No further questions. Cross examination.

CROSS EXAMINATION:

QUESTIONS BY DEFENSE COUNSEL:

Q What part, if any, did you personally play in the effort to reapprehend Branner?

A I was in the SS bunker when Captain Sloan came down from Augsburg, and I heard him talk on the phone to the hospital.

Q I am sorry. I didn't hear you.

A I heard him talk on the telephone to the hospital here and to the several security officers of this camp.

(Teil - Cross)

I don't know their names.

DEFENSE COUNSEL: Will you read that answer, please?

(Whereupon the answer was read by the reporter as follows:

"A . I heard him talk on the telephone to the hospital here and to the several security officers of this camp. I don't know their names."

QUESTIONS BY DEFENSE COUNSEL:

Q What else?

A Well, I know that Captain Sloan has called the Third Army Provost Marshal from Augsburg, told him about the escape, and asked him to undertake--make every effort to recapture and reapprehend him.

Q How do you know he made those telephone calls?

A I heard him. I heard him.

Q So that your knowledge of the efforts to reapprehend Branner consist of the fact that you heard one Captain Sloan talk on the telephone to certain people in the hospital here and you heard him telephone to various provost marshals in different territorial sections, telling of the escape and asking them to reapprehend Branner; is that correct?

A Yes.

Q And that is a fair statement of your complete knowledge of the efforts made to reapprehend Branner and to serve him with notice of trial in this case; is that correct?

A Well, I know that they tried to recapture him. I don't know anything about the --

Q Just a minute, please. I ask you if this is a fair statement to make of your knowledge of the case, so far as efforts were made to reapprehend Branner and to serve him

(Teil - Cross)

him with papers, and that knowledge consists of having heard Captain Sloan telephone to certain people in the hospital at Dachau and of having heard Captain Sloan talk to certain MP officials? [illegible] defense counsel to demand the accused [illegible] A. Keep.

Q And what efforts were made by the military police, of course, you have no knowledge of, is that correct? [illegible] A. That's right. I can't say that, no.

Q So far as you know they made no efforts? So far as you know? PRESIDENT: It is so ordered.

A. Well, I know that several rechecks were made with the provost marshal, and they said, "We have not reapprehended Leonard Kramer." [illegible] a copy of the charges upon trial. DEFENSE COUNSEL: I have nothing further.

B. CAPTAIN VANCE: Any questions by the court? [illegible] PRESIDENT: No, any witnesses.

C. CAPTAIN VANCE: I request the witness be excused? [illegible] PRESIDENT: The witness is excused, by counsel of your [illegible] (Whereupon, the witness was excused and withdrew.) [illegible] any part? PROSECUTION: May it please the court, we did not anticipate being required to produce this proof. Had we anticipated or thought for one minute that any challenge would be made, we could have gone to the members of the War Crimes Headquarters, beginning with Colonel Ellis, right on down the line, with whom I have discussed this matter several times and have told me that they cannot find Leonard Kramer, whom they desire to make a perpetrator and accused in this case. [illegible] to the court for an adjournment [illegible] necessary to enable us to [illegible]
(Tell - Excused)

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PRESIDENT: The court is satisfied that reasonable steps have been taken, and the court will proceed in absentia in the case of Leonard Brenner. The court appoints the regularly appointed defense counsel to defend the accused Leonard Brenner.

PROSECUTION: Subject to any objection by the defense, it is requested that all arguments on questions of law be recorded and made a part of the record.

DEFENSE COUNSEL: No objection.

PRESIDENT: It is so ordered.

Precedent - You are advised that under the law of Military Government you are entitled in this court to the following:

1. To have, in advance of trial, a copy of the charges upon which you will be tried.

2. To be present at your trial, to give evidence, and to examine or cross examine any witnesses.

3. To consult counsel before trial and to conduct your own defense or to be represented at the trial by counsel of your own choice, subject to the right of this court to debar any person from appearing before it.

4. In any case in which a sentence of death may be imposed to be represented by a member or civilian attorney of the United States Forces and such other counsel as the accused may designate.

5. To bring with you to this trial such material witnesses in your own defense as you may wish, or to have them summoned by the court at your request, if practicable.

6. To apply to the court for an adjournment where necessary to enable you to prepare your defense.

7. To have the proceedings translated when you are otherwise unable to understand the language in which they are conducted.

8. In the event of conviction, to file a petition for review to the appointing authority setting forth grounds why the findings and sentence should be set aside or modified.

PRESIDENT: Jurgen Stroop, do you understand?

ACCUSED STROOP: Yes.

PRESIDENT: Hans Trumpler, do you understand?

ACCUSED THUMMLER: Yes.

PRESIDENT: Arthur Fuehr, do you understand?

ACCUSED FUHRER: Yes.

PRESIDENT: Wilhelm Koehler, do you understand?

ACCUSED KOELLER: Yes.

PRESIDENT: Hans Eichel, do you understand?

ACCUSED EICHEL: Yes.

PRESIDENT: Josef Johann Ziwitt, do you understand?

ACCUSED KIWITT: Yes.

PRESIDENT: Wilhelm Albrecht, do you understand?

ACCUSED ALBRECHT: Yes.

PRESIDENT: Hermann Moller, do you understand?

ACCUSED MOLLER: Yes.

PRESIDENT: Wilhelm Friedrich Goehrendt, do you understand?

ACCUSED GOEHRENDT: Yes.

PRESIDENT: Paul Mehrgang, do you understand?

ACCUSED MAHRGANG: Yes.

PRESIDENT: Philipp Hamsmann, do you understand?

ACCUSED HAMMANN: Yes.

PRESIDENT: Bernhard Fey, do you understand?

ACCUSED FAY: Yes.

PRESIDENT: Georg Best, do you understand?

ACCUSED BEST: Yes.

PRESIDENT: Erwin Goss, do you understand?

ACCUSED GOSS: Yes.

PRESIDENT: Heinrich Matthias Micholy, do you understand?

ACCUSED MICHELY: Yes.

PRESIDENT: Julius Lassak, do you understand?

ACCUSED LASSAK: Yes.

PRESIDENT: Fritz Girke, do you understand?

ACCUSED GIRKE: Yes.

PRESIDENT: Heinz Hellenbroich, do you understand?

ACCUSED HELLENBROICH: Yes.

PRESIDENT: Karl Franz Stettman, do you understand?

ACCUSED STATTMAN: Yes.

PRESIDENT: Michael Graf, do you understand?

ACCUSED GRAF: Yes.

PRESIDENT: Are you now ready for trial in this case?

DEFENSE COUNSEL: Subject, may it please the court, to certain regulations which the defense will raise on its own behalf, the defense is ready to proceed.

PRESIDENT: Has a copy of the charge sheet been served upon the accused prior to trial?

DEFENSE COUNSEL: Yes, except, of course, in the case of Brunner.

PRESIDENT: There being no objection on the part of the prosecution, the defense and the court, the reading of the charges and particulars in the English language is dispensed with and the interpreter is directed to read the charges and particulars to the accused in the German language.

(Whereupon the interpreter read the charges and particulars in the German language.

DEFENSE COUNSEL: May it please the court, at this time the defense presents for the consideration of this court a motion challenging the jurisdiction of the court over the cause and over the persons named in the charges and particulars. I have here in writing a motion which I should like to read and then invite the consideration of the court. A copy of this was given to the prosecution yesterday. It is captioned,

"Dachau, Germany, case number12-2000, 9 January 1947, United States against Jurgen Stroop and others."

"MOTION

1. Now come several of the accused as named hereafter and move to quash the Particulars and Charges brought against them and for reasons assigns the following:

a. That Jurgen Stroop, Hans Trummler, Otto Hermann, Arthur Fuchr, Hans Eichel, Johann Kiwitt, Wilhelm Albrecht, Philip Hamann, Bernhard Fay, Georg Best, Julius Lassak, Frits Sirks, Heins Hellenbroich, Erwin Goss and Matthias Michely were members of units recognised as an intregal part of the armed forces at the several times the offences with which they are charged were alleged to have been committed.

b. That Jurgen Stroop, Hans Trummler, Otto Hermann, Arthur Fuchr, Hans Eichel, Johann Kiwitt, Wilhelm Albrecht, Philip Hamann, Bernhard Fay, Georg Best, Julius Lassak, Frits Sirks, Heins Hellenbroich, Erwin Goss and Matthias Michely not only were members of units recognised as intregal parts of the German armed forces at the times and under the circumstances as set forth in Paragraph 1a but were also members of the armed forces at the time of their captures.

c. That Erwin Goss the not only a member of the armed forces at the time and under the circumstances as set forth in Paragraph 1a and b but has not yet been discharged as a member of the German armed forces."

The motion is signed by myself, William Berman, Lieutenant Colonel, Air Corps, Defense Counsel.

I am informed that last night or early this morning a discharge from the German armed forces was effected in the case of this man Goss, I imagine by some officials connected with War Crimes. I will admit that whoever procured the discharge was legally authorised to do so.

By this motion, may it please the court, the defense and the accused named in that motion challenge the jurisdiction and the authority of this court, not only of the causes as set forth in the particulars and charges as just read into the record, but also challenges the authority and jurisdiction of this court over them personally. The defense will always seek to avoid extended arguments on any motion and will content itself likewise in that case with two or three sentences as the basis of the motion.

It is the contention of the accused that the Geneva Convention established the procedures and the causes and circumstances under which members of military forces of enemy nationals can be tried by, for example, the United States. It is our contention that rights so established by the Geneva Convention cannot be taken away by any action of certain subscribing parties to the Geneva Convention for anything they did subsequent to the Geneva Convention. It is our understanding that under the terms of the Geneva Convention, members of armed forces of any national, as in this case, Germany, when tried by a capturing government, must be tried by that capturing government for offenses committed while they were members of hostile armed forces in accordance with the procedures and the rules and regulations laid down for the trial of members of the armed forces of the capturing national.

Trial by military commissions such as this court, under the rules of procedure and evidence and so on which govern this court, would be absolutely illegal for the trial by an American commission or a member of the United States armed forces for an act committed while a member of the armed forces. It is therefore our contention that it is likewise illegal to try in this way by this court under the rules governing this court the men who were named in the motion since they were members of units recognized as integral parts of the German armed forces at the time of the commission of the alleged offenses and consequently are entitled to the same rights an American soldier would have before an American army court.

PROSECUTION: May it please the court, the term "war criminal" is of very recent origin. All the offenses of any importance which the term "war crime" properly denotes are old and well known to the laws of war. War criminals are of various states, ranging from heads of state and top ranking civilian officials down to the grades of the army to the private. They are found among civilians, both those who do and do not accompany or serve with the armies in the field. Previously, before modern times, war

criminals were called "brigands", and that is what they are, -- brigands, buccaneers, pirates, guerrillas and marauders. Today we are nice and we say "war criminals." For present purposes, the important rules concerning brigands are the following: Death is the punishment they deserve. It has been held many times in the past that brigands have withdrawn from the agreement and broken the treaties -- yes, the treaties of the human race.

Now, let us come to modern times. Wheaton, an acknowledged authority on international law, states:

> "....The judicial power of every independent State extends to the punishment of offenses against the law of nations 'by whomsoever and wheresoever committed.'"

Oppenheim, another acknowledged authority on international law, states:

> "....In contradistinction to hostile acts of soldiers by which the latter do not lose their privilege of being treated as lawful members of armed forces, war crimes are such hostile or other acts of soldiers or other individuals as may be punished by the enemy on capture of the offenders."

Wheaton has said this:

> "If men are taken prisoner in the act of committing violations they are not properly entitled to the privileges and treatment accorded to prisoners of war."

The weight of authority is clearly against the contentions of the defense that this court is without jurisdiction over certain of the defendants. Precedents were established here in Dachau in the Mauthausen and Malmedy cases on the very same question. In those cases this same point was raised and the court made a decision adverse to the accused. These accused were war criminals as of the date they committed their crimes now that those crimes have been discovered. No court has ever said anything to the contrary. At least, they became war criminals on the 14th of December, 1946, when I served charges upon them. And when they became war criminals, they lost any rights they had to the Geneva Convention.

Now, in the Yamashita case, Mr. Justice Murphy said this in his dissenting opinion, although the court was not called upon to decide this

question:

"Upon service of the charge he was removed from the status of a prisoner of war and placed in confinement as an accused war criminal."

Now, as I said, the majority opinion did not decide the question of when an accused becomes an accused war criminal because they were not asked to answer that question. However, they did decide this point and I quote from the majority opinion:

"Petitioner further urges that by virtue of Article 63 of the Geneva Convention of 1929, 47 Stat. 2052, he is entitled to the benefits afforded by the 25th and 38th Articles of War to members of our own forces. Article 63 provides, 'Sentence of may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining Power.' Since petitioner is a prisoner of war, and as the 25th and 38th Articles of War apply to the trial of any person in our own armed forces, it is said that Article 63 requires them to be applied in the trial of petitioner. But we think examination of Article 63 in its setting in the Convention plainly shows that it refers to sentence 'pronounced against a prisoner of war' for an offense committed while a prisoner of war, and not for a violation of the law of war committed while a combatant."

It is the pride of modern humanity.

to be observed well.

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DEFENSE COUNSEL: May it please the Court, I should like permission for Dr. Rau, speaking for German counsel, to talk very briefly on the same subject.

PRESIDENT: Permission is granted.

DR. RAU: Members of the Court, I cannot fight enough against the opinion of the Prosecution. It is contradictory to the clear wording and the purpose of the Geneva Convention, to the general principles of law and is of the greatest importance, especially according to the opinion expressed in English law. Everybody is innocent in the eyes of the court until his guilt is proven. Therefore, the accused can be treated as war criminals only from that time when the court has determined that they are war criminals and until that time they have to be considered as prisoners of war, with all the rights which they have according to the Geneva Convention. The Geneva Convention, you might say, is the Magna Carta of the prisoners of war or as a teacher of international law said, it is the pride of modern humanity. There would be no purpose for the Geneva Convention if now you would declare that the accused are not subject to the rules and rights of the Geneva Convention. It is the purpose of this trial to prove whether or not the accused are war criminals. I am therefore of the opinion that the rules and regulations of the Geneva Convention as expressed in Article 82 have to be observed well. Article 82, furthermore, states that until such time when prisoners of war are sent home again, they have the benefit of these rules of the Geneva Convention. The accused have not been sent home as yet. I wish furthermore, to bring to your attention that the Geneva Convention is part of American Constitutional law in accordance with the Constitution of the United States from 1789.

PROSECUTION: I have nothing further.

DEFENSE COUNSEL: Nothing further from the Defense.

PRESIDENT: The Court will be recessed until 1:30 P.M.

(Whereupon at 1140 hours the Court recessed.)

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(Thereupon the court reconvened at 1350 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court except Colonel Ackerman, who has been excused by the appointing authority, all the members of the defense, all the members of the prosecution; all the accused except Brenner, the interpreter and reporter are present.

May it please the court, the prosecution desires to correct the record in that this morning an announcement was made that all the accused were present. An exception should have been made in the case of the accused, Brenner.

PRESIDENT: The record will be so corrected.

DEFENSE COUNSEL: I was going to suggest, may it please the court, since this situation is going to come up frequently, we might agree to stipulate now that whenever the statement is made that all the accused are present, that will be understood to mean all the accused except Brenner.

PROSECUTION: That is good, sir.

PRESIDENT: The stipulation is approved by the court. The defense, in support of its motion, relies on the terms of the Geneva Conference in its contention that certain of the accused are prisoners of war and should be tried as such. The court is of the opinion that Article 63 of the Geneva Convention pertains, as pointed out in the opinion of the Supreme Court of the United States, in the so-called Yamashita case, to offenses committed while a prisoner of war and not

to violations of the laws of war committed while a combatant. The motion of the defendants is overruled.

PRESIDENT: Off the record.

(Whereupon there was discussion off the record.)

PRESIDENT: On the record.

Do the accused understand the charge?

DEFENSE COUNSEL: They do, may it please the court.

PRESIDENT: How do the accused plead?

DEFENSE COUNSEL: I understand that the accused are going to be called to plead individually and I will plead for them. I will follow the roster as it is stated in the charge sheet.

LAW MEMBER: Have you any objection to their all being pleaded at one time?

PROSECUTION: No objection.

LAW MEMBER: Then it is not necessary to plead individually.

DEFENSE COUNSEL: I will plead in one group without waiving the contention as made by them in the motion challenging the jurisdiction of the court which has just been denied, but relying upon them, all the accused, including those who raised that question, plead "not guilty" to each of the individual specifications and to each of the charges with which he stands accused, with one exception. The one exception, may it please the court, is the accused, Koller, who pleads "not guilty" by reason of insanity. With respect to this one accused, arrangements have been made to have him examined by a psychiatrist who is waiting outside, and there is also the additional possibility he may be hospitalized

for an indefinite period of time. In view of those circumstances, the defense stipulates that the evidence against Woller may continue while he is absent as though he were present in court.

PROSECUTION: That is agreeable to the prosecution, particularly because of the fact that the evidence principally offered against Woller will not come until a later state of the trial. He is principally concerned with Charge No. 3, and if it is agreeable to the court, that accused may withdraw at this time as the psychiatrist is waiting in an outer office and would like to begin his examination at this time.

PRESIDENT: Court will recess in place.

(Thereupon the court recessed in place.)

PRESIDENT: Court will come to order. The court directs that the accused, Hermann Woller, be examined for insanity, and directs the prosecution to take necessary steps to have such an examination conducted and an official report made, as soon as possible, to the court. The accused is excused.

(Thereupon the accused, Hermann Woller, was excused and withdrew.)

DEFENSE COUNSEL: We return his number back to the prosecution until he returns.

PROSECUTION: We will check with the psychiatrist at the first recess of the court.

PRESIDENT: Yes. At a later stage of this trial, the accused may make an unsworn statement on which they may be cross examined. They are advised that any statements they make in their trial will be evidence in this case. They are also advised that the court may draw such inferences as the circumstances justify from their refusal to answer or

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from their failure to take the stand in their own behalf. However, they may not be sentenced for contempt for refusing to answer.

Does the prosecutor desire to make an opening statement?

PROSECUTOR: The prosecution does desire to make an opening statement.

The prosecution intends to offer proof to convict the accused on ten separate charges.

Under Charge I we will prove that between 7 December 1941 and 8 May 1945 the accused individually and collectively as principals, accessories, leaders, organizers, instigators and accomplices engaged in, formulated and participated in a common plan or design to commit or cause to be committed violations of the laws of war, and wilfully, deliberately and wrongfully encouraged, aided, abetted, ordered and participated in or took a consenting part in the subjection of surrendered and unarmed prisoners of war who were members of the armed forces of the allied nations, to cruelties, mistreatment, including killings, beatings, tortures, abuses and indignities.

We will prove the established law that when two or more persons unite to execute a purpose to injure or destroy the life of another, a conspiracy exists. The mere combination of persons to do a criminal act is a crime, even though the object of the combination is not consummated. If two or more persons act together with an unlawful intent to commit a crime, the common design and acting together make them co-pirators, ipso facto, and a conspirator in a consummated crime thereby makes himself a part of what has therefore been said and done by his fellow conspirators in the furtherance of the common design. The existence of the assents of minds which is involved in a conspiracy may be, and from the secrecy

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of the crime, usually must be inferred from proof of facts and circumstances which, taken together, apparently indicate that they pretermitly [illegible] result of acquiescence in, or consent to, [illegible] execution of the or the existence of the criminal intention of the criminal [illegible] party and generally the smallest degree of consent or collusion. [illegible] further into the [illegible] or course of one against the other. [illegible] Count 2 which will [illegible] the violation of paragraph 1(c) of [illegible] Article 2 of Control Council Law No. 10, we will prove that after September 1939 all the above-named members of organizations which have been declared criminal by the International Military Tribunal at Nuernberg if what is known as the Leadership Corps, the Gestapo, the SD [illegible] SS, with full knowledge that said organizations were being used — in the commission of [illegible] criminal by Article 6 of the Charter of the International Tribunal referred to the [illegible] and establishing the [illegible] tribunal, [illegible] August 1945, were personally implicated in the commission of such criminal acts [illegible] We will prove that each one of the accused has committed membership in one or more of these criminal organizations and by the evidence offered in the case as a whole, so that they knew that these organizations were used for criminal purposes and were actually involved in the perpetration of such criminal acts, [illegible] We will establish nine such groups and prove that certain of the accused actually fired the fatal shots and, in other words and of the laws of war, murdered [illegible] while they were prisoners of war; and that, combining their efforts, all of the accused were implicated

and brought about the commission of these original deeds.

"I will establish by Charge 3 the murder on or about 3 October 1944 of an unknown, surrendered and unarmed American prisoner of war at or near Giessen, Germany, in which crime a common design and conspiracy of certain of the accused was herewith effectuated, and that the accused, Branner, No. 17 fired fatal shots. The accused, Branner, is not in the prisoner's dock. It is the purpose of the prosecution to see that the evidence is received against him as well as against his co-conspirators in accordance with the Office of Military Government, U. S. Zone, Military Government Regulations Title 5, Legal and Penal Administration, entitled "Trial in Absentia". That rule provides in part as follows: - In the event of the accused not appearing before the Court, the following action may be taken —

"a. If it is proved that the accused was duly served with a summons to appear, the Court may proceed with the trial in his absence and may, if it considers the case against him proved, record a conviction and sentence.

b. If it is not so proved but the court is satisfied that, after all reasonable steps have been taken to find and arrest the accused, he cannot be found, the court may proceed in his absence up to but not beyond the recording of evidence and making any order permitted under sub-rule (a) of this Rule. In the event of the Accused being subsequently brought before the court, such recorded evidence shall be admissible as evidence in the case, provided that the accused shall be entitled to cross-examine any of the original witnesses for the prosecution whose attendance can be procured (in which case the prosecution shall be entitled to reexamine) and both the prosecution and the accused shall be entitled to introduce additional evidence.

c. In either of the above cases, the court shall appoint an officer of the U. S. Forces or other suitable person to represent the defense."

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The court has appointed the present American defense counsels to represent the absent accused.

We will establish by Charge 4 the murder on or about 19 October 1944 of a surrendered and unarmed American soldier believed to be Sgt. Willard F. Perry at or near Wiesbaden, Germany, in which crime a common design and conspiracy of certain of the accused was effectuated, and that the accused Hohler, No. 5, and Fuhr, No. 4, fired the fatal shots.

We will establish by Charge 5 the murder on or about 30 December 1944 of a surrendered and unarmed American soldier, believed to be T Sgt Robert N. Garrison, at or near Delkenheim, Germany, in which crime a common design and conspiracy of certain of the accused was effectuated, and that the accused Fuhr, No. 4, fired the fatal shots.

We will establish by Charge 6 the murder on or about 15 February 1945 of a surrendered and unarmed American soldier believed to be Ray F. Hermann, at or near Bensheim, Germany, in which crime a common design and conspiracy of certain of the accused was effectuated, and that the accused, Stattman, No. 21, fired the fatal shots.

We will establish by Charge 7 the murder on or about 22 February 1945 of a surrendered and unarmed American prisoner of war believed to be 2d Lt. William A. Duke at or near Bieber, Germany, in which crime a common design and conspiracy of certain of the accused was effectuated, and that the accused, Moller, No. 9, fired the fatal shots.

We will establish by Charge 8 the murder on or about 22 February 1945 of a surrendered and unarmed American prisoner of war believed to be 2d Lt. Archibald B. Monroe, Jr., at or near Offenbach, Germany, in which crime a common design and conspiracy of certain of the accused was effectuated, and

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that the accused, Fay, No. 12, and Hartman, No. 13, fired the fatal shots.

We will establish by Charge 9 the murder on or about 16 March 1945 of a surrendered and unarmed American prisoner of war believed to be Jimmy R. Heatherman at or near Hillersbonstein, Germany, in which crime a common design and conspiracy of certain of the accused was effectuated, and that the accused, Michely, No. 15, fired the fatal shots.

We will establish by Charge 10 the murder on or about 24 March 1945 of two surrendered and unarmed American prisoners of war believed to be Lt. William H. Forman and Pvt. Robert T. McDonald at or near Benshein, Germany, in which crime a common design and conspiracy of certain of the accused was effectuated, and that the accused, Stattman, No. 21, and Asaf, No. 22, fired the fatal shots.

We will conclusively prove the allegations contained in Charges 1 and 2, but in addition thereto and further in support thereof, there will be submitted the evidence of the crimes specifically alleged in the Charges 3 to 10 inclusive.

This is not the Superior Order case. That is a legal fiction and so-called defense which the court cannot recognize. These are flier slaughter cases and the evidence will show a vicious and nefarious combine of German arch-criminals who set up and developed the notorious criminal organizations that the American Military Tribunal has stigmatized and which will be written in the recordings of crime and sin for centuries to come. The proof will show that these hirelings of Hitler and Himmler who now sit in the dock before this court, fully cooperated with these despicable men in the furtherance of a vicious plan to violate all known decent standards of human conduct; the rules of warfare; the laws and usages of war, the

laws of humanity and the Conventions and Agreements that were championed and made sacred by the great powers at Geneva.

"There were differences of rank and position among the accused but we will show that they had equal rank as willfull violators of International law, the laws and usages of war, and the laws of humanity, and equal rank as despicable criminals, and, therefore ultimately there should not be, and cannot be any gradation in punishment.

> "In the coming war we shall fight not only on land, on sea, and in the air. There will be a fourth theatre of operations—the Inner Front. That front will decide on the continued existence of the irrevocable death of the German Nation."

Those were Himmler's words in September, 1937, and the Inner Front which he predicted is that which the police forces were ordered to maintain to the last. To continue the fight on that front, even beyond the duration of actual hostilities, was undoubtedly the task Himmler had allotted to the German Police in conjunction with the SS.

PROSECUTION: I hand the reporter two documents and request that they be marked Prosecution's Exhibit 3 and 3A, respectively, for identification.

(The documents referred to were marked Prosecution Exhibits 3 and 3A for identification.)

PROSECUTION: The Prosecution offers in evidence a paper entitled "Extracts from War Department Basic Field Manual Entitled Laws of Land Warfare", being 27-10, dated October 1, 1940, and ask that it be marked Prosecution's Exhibit 3, and the German translation thereof, as Exhibit 3A, and made a part of the record.

DEFENSE COUNSEL: We have no objections.

PRESIDENT: There being no objections, Prosecution's Exhibit 3 will be admitted.

(The document heretofore marked Prosecution Exhibit 3 for identification was received in evidence as Prosecution Exhibit 3, is attached hereto, and made a part of the record.

PROSECUTION: Prosecution's Exhibit 3A was offered, is there any objection?

DEFENSE COUNSEL: You mean the German translation? No, of course not.

PRESIDENT: It will be admitted.

(The document heretofore marked Prosecution Exhibit 3A for identification was received in evidence as Prosecution Exhibit 3A, is attached hereto and made a part of the record.)

PROSECUTION: The Prosecution then asks permission of the Court to read Prosecution's Exhibit 3.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution's Exhibit 3.)

PROSECUTION: I hand the reporter three documents and request that they be marked Prosecution's Exhibits 4, 5 and 6 for identification.

(The documents referred to were marked Prosecution Exhibits 4, 5 and 6 for identification.)

PROSECUTION: The Prosecution offers in evidence a map to be marked Prosecution's Exhibit 4, being Sheet L-51, geographical section of General Staff No. 4346; and offers map, Sheet K-51 to be marked Exhibit 5, geographical section of General Staff No. 4346; and offers in evidence map, Sheet L-50, to be marked Exhibit 6, geographical section of General Staff No. 4346. Any objections?

DEFENSE COUNSEL: No.

PROSECUTION: These maps, may the record show, are for the guidance of the Court and contain information as to the location of the areas in which the alleged crimes were committed.

PRESIDENT: There being no objections on the part of the Defense, Prosecution's Exhibits 4, 5 and 6 are admitted.

(The documents heretofore marked Prosecution Exhibits 4, 5 and 6 for identification were received in evidence as Prosecution Exhibits 4, 5 and 6, are attached hereto, and made a part of the record.)

PROSECUTION: I hand the reporter two documents and ask that they be marked Prosecution's Exhibits 7 and 7A

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for identification.

(The documents referred to were marked Prosecution Exhibits 7 and 7A for identification.)

PROSECUTION: May it please the Court, the Prosecution is about to offer in evidence a secret document prepared by SHAEF Headquarters, G-2 Section. Prior to offering that in evidence, I would like to read this letter.

DEFENSE COUNSEL: May I see the letter before it is read into the record?

PROSECUTION: It is a cancellation of classification of the instrument.

"DACHAU DETACHMENT
7708th WAR CRIMES GROUP
APO 208, U. S. ARMY HFB/sg

7 January 1947

SUBJECT: Cancellation of Classification of Documents to Be Used in War Crimes Trial Case No. 12-2000 and Related Cases (Superior Orders Cases)

TO: The General Military Government Court Appointed to Meet at Dachau, Germany, for the Trial of Subject Cases

1. In accordance with War Crimes Group memorandum No. 26 (revised), extract of which being attached hereto, the classification of SECRET of a book and all the contents thereof compiled by Supreme Headquarters Allied Expeditionary Force, Evaluation and Dissemination Section, G-2, Intelligence Sub-division, entitled "The German Police" and dated April 1945, is hereby canceled for the purposes of the War Crimes trial of the subject cases.

2. Pursuant to the same authority the classification CONFIDENTIAL on the sworn statements, both in English and the original German, of Jakob Bosan, dated 27 September 1945, and August Georg Schaper, dated 21 September 1945, is also canceled.

/s/ Howard F. Bresee
t/HOWARD F. BRESEE
Colonel CMP

1 Incl.
1. Extract Group Memorandum 26 (revised)

"Dachau Detachment"

The inclosure reads as follows:

"DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
WAR CRIMES GROUP
UNITED STATES FORCES, EUROPEAN THEATER

15 July 1946

GROUP MEMORANDUM NO. 26 (Revised)

* * *

13. Cancellation of Classifications. By letter, this Headquarters, File AG 000.5 CBI-AGO, subject: "Cancellation of Classifications placed on War crimes Evidence and Documents", 27 June 1946, authority was delegated to personnel in this Group to cancel the classification placed on "all sworn testimony of witnesses and other war crimes evidence where such cancellation is deemed necessary by them as an incident of the trial of war crimes cases, providing, that the authority hereby granted does not extend to the cancellation of classifications placed on records and documents procured for purposes other than the trial of war criminals." The power to exercise such delegated authority is hereby limited to the Executive Officer and the Chiefs of the Trial Branch, the Dachau Detachment, and the Counsel Section.

* * *

/s/ C. E. Straight
C. E. STRAIGHT
Colonel JAGD
Deputy Theater Judge Advocate
for War Crimes"

Prosecution

Now comes the Prosecution and offers in evidence a book issued by Supreme Headquarters Allied Expeditionary Force, Evaluation and Dissemination Section, G-2, Counter Intelligence subdivision entitled "The German Police" and bearing date of April, 1945, and ask that it be received in evidence but that the Prosecution be permitted to withdraw it at the conclusion of the case; and, also, at the same time, Prosecution would like to offer in evidence typewritten extracts from this document to be made a part of the record, which have been marked Prosecution's Exhibits 7 and 7A for identification, and read into the record. Does the Court desire that the book be given a number? My intention is only to read into the record certain parts

of that book.

LAW MEMBER: Are you going to give the extracts a number?

PROSECUTION: They have been typewritten, and they have been given a number. There are a lot of things in that book that are irrelevant, but I would like to have the Court see the whole book if it desires.

LAW MEMBER: Give the book a number.

PROSECUTION: I hand the reporter the book and ask that it be marked Prosecution's Exhibit 7 for identification only, and that the two previous exhibits be changed from Prosecution's Exhibit 7 and 7A to Prosecution's Exhibit 8 and 8A.

(The document referred to was marked Prosecution Exhibit 7 for identification, and the numbers on the two previous exhibits were changed to Prosecution Exhibits 8 and 8A for identification.)

PROSECUTION: The Prosecution now offers the book, which has been marked as Prosecution's Exhibit 7 for identification, in evidence, and asks that the Court grant the Prosecution permission to withdraw the same at the conclusion of the trial.

DEFENSE COUNSEL: On behalf of each of the accused individually, the Defense objects to the receipt of this book in evidence in whole, as it's now offered, I take it, and even in part. I am sorry that I, personally, have never seen it before; so that my comments are based on very rough statements from my associates as to what is

contained in that.

PROSECUTION: Before counsel continues, I think it would be appropriate in view of the remark just made for one of your associates to inform the Court that the book was submitted to your side several days ago for check.

MR. RACHAEL: Two days ago, colonel.

DEFENSE COUNSEL: I hope we won't get touchy about these things. I was just about to say that. To avoid any misinterpretation, I will state that Major Saxon did see the book several days ago, but didn't have a chance to read it; but that doesn't pertain to the objection at all. Our objection to the Court as to that document's being received in whole or in part is generally that its receipt will be highly prejudicial to the substantial rights of the accused, and more specifically on this ground. There is a distinction in the receipt by this Court of official documents of military tribunals. During the course of this trial extracts from official documents of military tribunals will be offered, and at that time we will take objection to them, but there is a vital distinction--that a document prepared, for instance, in accordance with accepted legal procedure, guarded and supervised by legal precedence in proof of charges is a legal document which is governed and prepared according to set rules. This thing here is merely a document compiled by a section of the Army without regard to rules of evidence, without regard to procedure, without regard to hearsay. It is more or less an intelligence report which used to be disseminated during war, tipping people off as to what to expect, as to what to look for--the enemy is using this kind of tactic--or something of that kind.

There is not a single thing in this book, as far as I know, referring to the accused on the charges for which they stand or face this Court.

End Ta 7,
PS fols

To open this court and this trial to this particular book would be, in effect, to throw this trial open to the hundreds and thousands of individual intelligence reports which were made and upon which this book was based and compiled. It is hearsay of the rankest kind. It is a general discussion of the police in general, or the police system as a whole, and does not apply in the slightest degree directly to those men or what they had. It is our contention it has no probative value; it is not relevant or germane to these issues by the widest stretch of the imagination; and to put in this book and open it to the inspection and consideration of this court, in its entirety, would deprive this trial of practically all semblance to recognized legal rule.

[illegible]: May it please the court, I would not have offered this book had it not been my intention to comply with the rules of evidence that have been laid down for the guidance of this court at previous war crimes trials and Inspector Generals' reports, and various reports of this nature have been received in evidence in the Kalmody case. That was done in numerous cases, the Dachau, Mauthausen and Nuremberg cases. A number of times documents of this kind were received without question. Now, as to counsel's contention it does not apply, Stroop's name is mentioned, Trummler's name is mentioned, Jurgen's name is mentioned, this chart is shown, their connection with the police is shown -- the court will see all of the structure of the plan we are trying to prove, so it is, therefore, very relevant, and applies to each and every accused.

[illegible]: Anything further by the defense?

[illegible]: Just this comment was suggested to me, that there is much better evidence to prove the police setup, if that is the purpose for which the book is offered.

PRESIDENT: The objection is overruled. The exhibit will be admitted as evidence.

(The book heretofore marked Prosecution Exhibit 7 for identification was received in evidence as Prosecution Exhibit 7, is attached hereto, and made a part of the record.)

DEFENSE COUNSEL: I would like to have one thing cleared up, may it please the court. I objected to the receipt of that book in evidence. The objection was overruled, and I would like to be able to assume that my objection to its receipt is saved without adding, "I would like an exception." The mere fact that I object to it means I would like my exception saved, in case I am overruled. Is that agreeable?

PROSECUTION: That is agreeable. Furthermore, it is always open to the defense, after an exhibit goes in, if it so desires, to move to strike it out again.

Prosecution now offers in evidence ——

PRESIDENT: Permission is granted to the prosecution to withdraw the exhibit at the conclusion of the case.

DEFENSE COUNSEL: I must have been a little bit off my guard at that time, may it please the court, for which I apologize, but inasmuch as in the opinion of the counsel for the defense the introduction of that book would constitute serious error, I am wondering now how our rights on an appeal or review will be prejudiced if the exhibit is withdrawn.

PROSECUTION: The book was obtained from the War Crimes Library in Nuremberg, and when returned to that place, will be available to the reviewing authority at all times.

DEFENSE COUNSEL: Then I think a very thorough description of the book should be read into the record, so there can be no mistake

as to what book was introduced. [illegible] document in the record.

[illegible] DEFENSE: Let that be done. [illegible] the prosecution.

PROSECUTION: I will do it again. I believe I offered it as an official publication from SHAEF Headquarters, entitled, "Supreme Headquarters Allied Expeditionary Force, Evaluation and Dissemination Section, G-2 Counter Intelligence Sub-division, entitled 'The German Police,' prepared jointly by M.I.R.B. London branch and E.D.S. in consultation with the War Office, dated April, 1945.

The Prosecution now offers in evidence extracts from Exhibit 7, in English, and asks that it be marked Prosecution Exhibit 8. The extracts are paragraphs of the book, numbered 7, 8, 9, 10, 11, 12, 16, 17, 18, 30, 91, and three extracts from the annex in the book.

I have offered Prosecution Exhibit 8, which is the extract from the book.

DEFENSE COUNSEL: May it please the court, the accused individually object to the receipt of those extracts in evidence on the general ground that their introduction is highly prejudicial to their rights, and on the second ground that they are extracts from a book which has been received in evidence in toto, and the effect of it is to introduce in duplicate certain evidence already before the court. Likewise, in my opinion, it is prejudicial for the prosecution to pick out certain sections of an exhibit which has been introduced as a whole, and introduce those special parts as separate exhibits. May I add one word more? In our opinion, the procedure would be proper, I think, for the prosecution to point out to the court certain sections of an exhibit that they desire to invite the court's particular attention to, and that is the way we think it should be done.

PROSECUTION: The prosecution thought it more practicable for the reviewing authority and for the court to have this read in the

record, attached to it, rather than bind that document in the record. Any way the court desires it be done, it is agreeable to the prosecution.

DEFENSE COUNSEL: We would rather have it done our way, the whole thing go in. [illegible] present [illegible] of

PRESIDENT: Off the record. [illegible] by the appointing [illegible]

(Discussion off the record.) [illegible] the prosecution, will the reporter [illegible]

PRESIDENT: On the record. [illegible] and, the reporter, and the interpreter [illegible]

The court will recess for thirty minutes.

(Whereupon the court recessed at 1505 hours.) [illegible] the admission of these extracts will be of convenience to the court and the reviewing authority. It is the privilege of the defense to introduce at the present time any further extracts from prosecution exhibit 7.

Objection overruled. Prosecution Exhibit 8 is admitted in evidence.

(The document heretofore marked Prosecution Exhibit 8 for identification was received in evidence as Prosecution Exhibit 8, is attached hereto, and made a part of the record.)

[illegible]: The prosecution offers in evidence prosecution Exhibit 8-A for identification, which is a true and correct German translation of Exhibit 8.

[illegible]: Subject to the same objection.

[illegible]: Objection overruled.

[illegible]: The prosecution requests the court's permission to read Exhibit 8.

[illegible]: The document will be admitted.

(The document herein referred to for identification as Prosecution Exhibit 8-A was received in evidence as Prosecution Exhibit 8-A, is attached hereto, and made a part of the record.)

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court are present except Colonel Ackerman, who has been excused by the appointing authority; all the members of the prosecution, all the members of the defense, all the accused, the reporter, and the interpreter are present.

PRESIDENT: The court feels that the admission of these extracts will be of convenience to the court and the reviewing authority. It is the privilege of the defense to introduce at the proper time any further extracts from Prosecution Exhibit 7.

Objection overruled. Prosecution Exhibit 8 is admitted in evidence.

(The document heretofore marked Prosecution Exhibit 8 for identification was received in evidence as Prosecution Exhibit 8, is attached hereto, and made a part of the record.)

PROSECUTION: The prosecution offers in evidence Prosecution Exhibit 8-A for identification, which is a true and correct German translation of Exhibit 8.

DEFENSE COUNSEL: Subject to the same objection.

PRESIDENT: Objection overruled.

PROSECUTION: The prosecution requests the court's permission to read Exhibit 8.

PRESIDENT: The document will be admitted.

(The document heretofore marked Prosecution Exhibit 8-A for identification was received in evidence as Prosecution Exhibit 8-A, is attached hereto, and made a part of the record.)

PROSECUTION: The prosecution requests permission to read Exhibit 8.

PRESIDENT: Permission is granted.

(Whereupon the prosecution read Prosecution Exhibit 8.)

PRESIDENT: Off the record.

(Discussion off the record)

PRESIDENT: On the record.

DEFENSE COUNSEL: May it please the court, before the German translation is read, I would like the court's permission for Mr. Rachael, who is associated with the defense, to make his motion with respect to what has just been read.

MR. RACHAEL: If the court please, on behalf of each and every defendant, I respectfully move this court to strike from the record prosecution exhibits P-7 and P-8 on the ground that it is the worst kind of prejudice to the substantial rights of the accused given to the accused in these courts. There are very few rights which the laws allow to the defendants. One of them is very specific, and it says that evidence of bad character of an accused shall be admissible before finding only when

the accused person has introduced evidence as to his own good character. Several times I heard the prosecution specifically refer to the defendants here as "little Himmlers." Himmler has been convicted by a court and people of that type have been definitely shown to be persons of bad character. The prosecution has referred to these defendants as "Himmlers." I respectfully renew my motion.

LAY MEMBER: Has there any reference other than the one that counsel has referred to?

MR. RACHAEL: Not only that, but he has characterized the organizations too, which he has not yet proved to have been criminal, as criminal organizations to which the prosecution is going to claim that these defendants are members; and it also refers to them directly as to their character. The entire exhibits P-7 and P-6 are complete with such characterizations. I respectfully submit that they should be stricken from the record.

PRESIDENT: Court will be closed.

(Whereupon the court was closed at 1620 hours.)

(Whereupon the court was opened at 1645 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that all the members of the court except Colonel Ackerman, who has been excused, all the members of the prosecution, all the members of the defense, all the accused, the reporter and interpreter are present.

PRESIDENT: The court is of the opinion that the use of the words "little Himmler" referred to in the defense's argument went to the position held as a designation of the extent of authority, the position carried, and not to the character of any individual. Furthermore, the document from which exhibit 8 is an extract, was written at a date prior to any person being tried as a war criminal. The court will disregard the reference as having any reference or bearing on the character of any of the accused. The motion to strike from the records is overruled.

The court will adjourn until Monday morning at nine o'clock.

(Whereupon the court adjourned at 1650 hours until 0900 hours Monday, 13 January 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date ...
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

Particulars: ..... Einzelheiten: .....

Second Charge: ..... Zweite Anklage: .....

Particulars: ..... Einzelheiten: .....

The above charges are referred for trial to the *Summary/ *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194 .....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um - Uhr stattfinden.

By Order
Im Auftrage von

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

Copy of above served on accused ..... 194 .....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

(2)

Pages 59 - 108

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 13 JANUARY 194 7

*~~Military Government Court~~

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Rudolph H. Schubert

Reporter Patricia Stewart, John McDonald, Irving J. Hayett, Paula Silverman, Sally Rose Hayett, Imogene D. Butler

WITNESSES:

HANS GUNTHER

KURT TEIL

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF PROCEEDINGS

in trial of

THE UNITED STATES Versus JURGEN STROOP, ET AL

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY OCTOBER 10 JANUARY 1947

13 January 1946 Pages 59 -

TESTIMONY

WITNESS:	Direct	Cross	Redirect
HANS HUNTER	62	72	
CORP H. TEIL			96

EXHIBITS

NO.	DESCRIPTION	Admitted	Rec'd In Evidence
P-9	Organizational Chart, German Police	61	61
P-10	German translation of P-9	61	61
P-11	Map of Germany showing Zeltkarelce and Claus	65	65
P-12	Map on wall, same as P-11	66	66
P-13	Organizational Chart, chain of command	67	71
P-14	Wall Chart, same as P-13	71	71
P-15	Copy of USA Ex 696 in trial of Hermann Goering et al	87	88
P-16	Copy of USA Ex 30[illegible] in trial of Hermann Goering et al	88	88
P-17	Document No. C-179	89	89
P-18	Document No. C-178	89	90
P-19	Document No. R-110	89	91
P-20	Document 721 PS	91	92
P-21	Document 1076 PS	92	92
P-22	Document 657 PS	92	93
P-23	Document 735 PS	93	94
P-24	Document 729 PS	94	94
P-25	Document D-788	95	95
P-26	Document 2070 PS	95	96
P-27	Statement of General Stroop	97	98
P-27A	English translation of P-27	97	98
P-28	Statement of Jurgen Stroop	100	101
P-28A	English translation of P-28	100	101

EXHIBITS (Continued)

No.	Description	Marked	Received in Evidence
P-29	Statement of Fritz Girke	101	102
P-29-A	English translation of P-29	101	102
P-30	Statement of Heins Hellenbroich	103	103
P-30-A	English translation of P-30	103	103
P-31	Statement of Hans Trumler	105	106
P-31-A	English translation of P-31	105	106

Camp Dachau, Germany

13 January 1947.

MORNING SESSION

(Whereupon the Court reconvened at 0900 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the personnel of the Court are present, all the members of the prosecution and all the members of the defense, all of the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: I should like to ask permission to address the Court for a moment. One of my associates feels very strongly on the matter involving something that took place on the last day of the record. I am not in agreement with him, but inas much as he is my associate, I do not feel justified in refusing him an opportunity to address the Court on the matter. Mr. Rachael wishes to address the Court about an argument made by him on the last day of Court which, by order of the Court, was not put into the record.

MR. RACHAEL: May it please the Court, at the session on Friday I moved to strike from the record, Prosecution Exhibit 7 and Prosecution Exhibit 8. I stated my grounds for the motion. Part of the grounds were put in and part of the grounds were left out of the record. There is a statement in the record by the Law Member, subsequent to the piece that was put in, "Off the record". I respectfully submit that the record should be corrected to include my complete statement on the motion and that the record as it now stands does not truly reflect the record of the proceedings on Friday.

PRESIDENT: The record will reflect the entire statement.

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1/18 MO

MR. RACHAEL: One more thing, may it please the Court. It is my opinion that everything that takes place in the courtroom must be transcribed into the record. I do not know whether my associates agree with me but it is my opinion also that there should not be any conversation between anybody that is not transcribed into the record. I request the Court, on my behalf, that there be no "Off the record" insertions in the record.

PRESIDENT: The Court will determine that when the time comes.

PROSECUTION: Does the Court desire, at this time, the reading in German of the extract of the G-2 Report, that was received in evidence on Friday?

PRESIDENT: The Court does desire that it be read.

(Whereupon the Interpreter read Prosecution Exhibit 8-A in the German language.)

End tm 11
Pg folso

PROSECUTION: I hand the reporter a document and ask that it be marked Prosecution Exhibit 9 for identification.

(The document referred to was marked Prosecution Exhibit 9 for identification.)

PROSECUTION: The prosecution now offers in evidence a photostatic copy of a chart entitled Organization of German Police, the original of which is in the C-2 document, Prosecution exhibit 7, and ask that it be marked Prosecution Exhibit 9 and be made part of the record.

DEFENSE COUNSEL: The defense objects on the same ground it did to Exhibit No. 7, and likewise, on the ground it does not admit at all it is an accurate representation.

PRESIDENT: Objection overruled. It will be admitted in evidence.

(The document heretofore marked Prosecution Exhibit 9 for identification, was received in evidence as Prosecution Exhibit 9, is attached hereto, and made a part of the record.)

PROSECUTION: I hand the reporter a document and ask that it be marked Prosecution Exhibit 10 for identification.

(The document referred to was marked Prosecution Exhibit 10 for identification.)

PROSECUTION: The prosecution offers in evidence, a photostatic copy of a chart entitled Organization of the German Police, the original of which is in Prosecution Exhibit 7. This chart is in German and is a translation of Prosecution Exhibit 9, and we ask that it be marked Prosecution Exhibit 10 and made a part of the record.

DEFENSE COUNSEL: Same objection, may it please the court.

PRESIDENT: Objection overruled. It will be admitted in evidence.

(The document heretofore marked Prosecution Exhibit 10 for identification, was received in evidence as Prosecution Exhibit 10, is attached hereto, and made a part of the record.)

Tu 12 SO pls 1-13-47

HANS GUNTHER, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q What is your full name?

A Hans Gunther.

Q How old are you?

A Thirty-four years old.

Q Are you at present an internee at Dachau?

A Yes.

Q Were you a member of the armed forces of the German Reich during World War II?

A Yes.

Q To what military organization did you belong, and from what day to what day?

A From December '39 until May 1940, I was a member of the Infantry Regiment 112 in the Army. Later on, until December '40, I was a member of the Infantry Regiment 80 until December '41, in the Army. Then I was wounded in the hospital until April, 1942. Thereafter I was on the Eastern front with the Eight Infantry Division and with the 93rd Division, with the Army. There I was badly wounded, again in the hospital until May 1943. Then I was transferred from the Main Personnel Office of the Army to the Waffen SS and was taken over by the Waffen SS and was ordered to the Higher SS and Police Leader, Rhine-Westmark, in Wiesbaden.

Q Who was that Higher SS Police Leader?

A General Stroop.

Q Were you assigned to duty as a member of General Stroop's staff?

A Yes.

Q To what duty were you assigned?

(Continued)

A I had to take care of the security plan which I took over from Captain Kaesmann.

Q What title did you have?

A My title was 1-A.

Q Is that known as Operations Officer?

A My duties included to keep the security plan, excluding the forces, equipment, etc., current. I had no power whatsoever to give verbal or written orders or to sign papers.

Q Would you recognize General Stroop if you saw him again?

A Yes.

Q If he is in the courtroom, point him out.

A No. 1.

PROSECUTION: Let the record show that the witness has identified the accused, Stroop, as wearing No. 1.

QUESTIONS BY PROSECUTION:

Q In connection with your duties as 1-A on the staff of General Stroop, were you familiar with General Stroop's jurisdiction and his command?

A Yes.

Q Was General Stroop in command of the police in the Rhein-Westmark area?

A Yes.

Q What special commands were under him?

A Under the command of General Stroop was the Orpo, the Sipo, and various organization staffs.

DEFENSE COUNSEL: Pardon me, you are both going too fast for me. Will you read that last answer.

(Whereupon the reporter read the last answer.)

Ta 12 30 pls 1-13-47

THE WITNESS: Furthermore, General Stroop was in charge of the general SS as the Commander of the SS Main District, Rhein-Westmark.

QUESTIONS BY PROSECUTION:

Q Were you familiar with the police sub-division known as the Wehrkreise?

A Yes.

Q Tell the court what that means.

A Wehrkreise is the military name, and in peacetime it had an army corps in its district. During the war the title, the general command, was changed to assistant general command, and was taken care of by the commander of the Wehrkreise and the commanding general. In the hands of the Wehrkreise were the entire replacement problems of troops for the front service. The borderlines of the Wehrkreises usually were the same as the borderlines of the Gaus.

Q What is a Gau?

A Gau is a party name for a certain district of Germany.

Q Is it a political sub-division?

A In the beginning it was a political name, later on, during the reform of the Reich, it became also part of the Reich organisation. The Gauleiter was in charge of the Gau. The Gauleiter usually, at the same time, became Reich Commissar and Commissar for Reich Defense.

Q Was the Gau territorially usually smaller than a Wehrkreise?

A Yes.

THE INTERPRETER: Will you read that answer of the witness?

(Thereupon the reporter read the answer as follows:

"Answer: In the beginning it was a political name, later on, during the reform of the Reich, it became also part of the Reich organization. The Gauleiter was in charge of the Gau. The Gauleiter usually, at the same time, became Reich Commissar —")

THE INTERPRETER: That should be Reichstattheilter.

PROSECUTION: I hand the reporter a document and ask that it be marked Prosecution Exhibit 11 for identification.

(The document referred to was marked Prosecution Exhibit 11 for identification.

DIRECTION BY PROSECUTION:

Q I hand you a piece of paper and ask you to tell me what it is.

A That is a map of Germany with a plan of the Gauleiters and the Gaus.

Q Looking at the map, what do the red boundary lines indicate?

A The red lines indicate the Reichskreise.

Q What do the green lines indicate?

A The green lines indicate the Gaus.

PROSECUTION: I offer this map in evidence and ask that it be made Prosecution Exhibit No. 11 and be made part of the record.

PRESIDENT: Any objection?

DEFENSE COUNSEL: None.

PRESIDENT: It will be accepted in evidence.

(The document heretofore marked Prosecution Exhibit 11 for identification, was received in evidence as Prosecution Exhibit 11, as attached hereto, and made a part of the record.)

PROSECUTION: Let the record show that in the courtroom is a large copy of this map which has been received as Exhibit 11. Does the court desire that that be put in as evidence and withdrawn at a later date, or remain here as a copy of that map?

DEFENSE COUNSEL: We have no objection for the court to use it as the court deems best.

PRESIDENT: The court desires that that remain in the courtroom and be admitted and withdrawn at the end. The copy will be put in the record.

(Gunther-Direct)

PROSECUTION: The prosecution then offers in evidence, to be marked Prosecution Exhibit 12, a large wall map, which is an exact copy of Prosecution Exhibit 11 and requests permission of the court to withdraw the same at the end of the trial.

(The map referred to was marked Prosecution Exhibit 12 for identification.)

DEFENSE COUNSEL: No objection

PRESIDENT: Request granted.

(The document heretofore marked Prosecution Exhibit 12 for identification, was received in evidence as Prosecution Exhibit 12 and made a part of the record.)

QUESTIONS BY PROSECUTION:

Q Looking again at that map now in evidence as Prosecution Exhibit 11, what do the black lines indicate with respect to Wehrkreise XII?

A The black line indicates the entire command of General Stroop.

Q Did General Stroop command one or more Wehrkreise?

A General Stroop was in charge of the Wehrkreise XII with the exception of the part which belonged to the Gau Baden and he was also in charge of this part of Wehrkreise IX which was part of the Gau Hessen-Nassau.

Q Go over to the large wall map and point out General Stroop's command.

A The entire area shown on this map shown by the black lines.

PROSECUTION: Let the record show that the witness is pointing to the area surrounded by a black line covering part of Wehrkreise XII and part of Wehrkreise IX.

QUESTIONS BY PROSECUTION:

Q What does the shadowed part indicate?

A The shadowed part indicates this part of the Wehrkreise IX which was part of the Gau Hessen-Nassau and was under the command of General Stroop.

(Gunther-direct)

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[illegible]: I hand the reporter a document and ask that it be marked for identification.

(The document in question was marked Prosecution Exhibit 13 for identification.)

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QUESTIONS BY PROSECUTION:

Q I hand you a piece of paper which has been marked Prosecution's Exhibit 13 for identification and will ask you to tell the Court what that is.

A This is a general organization map.

Q A general organization map of what?

A A general organization plan for the regular police and the security police.

Q Did you discuss the contents of this plan and chart with me in my office or not?

A Yes.

Q Does this chart actually portray in schematic form the general organization and chain of command of the regular police and the security police, and particularly the command of General Stroop from November, 1943 to April, 1945?

A Yes, this plan shows exactly the organization as it existed in the command of General Stroop.

Q Does General Stroop's name appear on that chart?

A Yes.

Q Do you see the name Otto Schmann on that chart?

A Yes.

Q Who was he?

A Otto Schmann was an inspector of the security police in the Command Stroop.

Q Do you see the name Hans Traumler?

A Yes.

Q Who was he?

A Trummler was the commander of the security police in the Command troop.

Q Would you recognize Otto Somann if you saw him again?

A Yes.

Q If he is in the court room, point him out.

A Number 3.

PROSECUTION: Let the record show that the witness pointed to the accused Somann, Number 3.

QUESTIONS BY THE PROSECUTION:

Q Would you recognize Hans Trummler if you saw him again?

A Yes.

Q If he is in the court room, point him out.

A Number 2.

PROSECUTION: Let the record show that the witness pointed to the accused Trummler, Number 2.

QUESTIONS BY THE PROSECUTION:

Q Do you see the name Fritz Girke on the chart?

A Yes.

Q Who was he?

A He was commander of the state police office at Darmstadt.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the court room, point him out.

A Number 19.

PROSECUTION: Let the record show that the witness pointed to the accused Girke, Number 19.

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QUESTIONS BY THE PROSECUTION:

Q Do you see the name Heinz Hellenbroich?

A Yes.

Q If he is in the court room, point him out.

A Number 20.

PROSECUTION: Let the record show that the witness pointed to the accused Heinz Hellenbroich, Number 20.

QUESTIONS BY THE PROSECUTION:

Q Who was Hellenbroich?

A I can't give any information about Hellenbroich's position in detail, because I am not well enough informed about internal organization of the Gestapo.

INTERPRETER: Pardon me, not Gestapo, Security Police.

PROSECUTION: The Prosecution offers in evidence chart which has been marked Prosecution's Exhibit 13 for identification and to be made a part of the record.

PRESIDENT: Any objections?

DEFENSE COUNSEL: On the ground, may it please the Court, that the witness hasn't been qualified as an expert on the political and criminal setup of the jurisdiction to qualify him to identify this as being accurate and not the best evidence.

PROSECUTION: This chart is offered as an organization chart and was offered through a witness who was a member of the General Command Staff, who was familiar with the personnel and chain of command; and the main purpose is for the guidance of the court as to the terminology of the olice and the members of the staffs of the various organizations under General Stroop. It has its added

purpose of showing the extent of command under General Stroop and various other officers whose names appear on the chart.

PRESIDENT: Objection overruled. It will be admitted as evidence.

(The document heretofore marked Prosecution Exhibit 13 for identification was received in evidence as Prosecution Exhibit 13, is attached hereto, and made a part of the record.)

PROSECUTION: I ask the reporter to mark the chart on the wall Prosecution's Exhibit 14 for identification.

(The document referred to was marked Prosecution Exhibit 14 for identification.)

PROSECUTION: The Prosecution now offers in evidence to be marked Prosecution's Exhibit 14, the map wall chart which is an exact copy of Prosecution's Exhibit 13 and request that the Court permit the Prosecution to withdraw Number 14 at the conclusion of the trial.

DEFENSE COUNSEL: We object to that part of the offer which would be applicable to Exhibit 13.

PRESIDENT: The objection is overruled. The exhibit will be admitted in evidence and permission to withdraw it at the end of the trial is granted.

(The document heretofore marked Prosecution Exhibit 14 for identification was received in evidence as Prosecution Exhibit 14.)

PROSECUTION: The Prosecution has no further questions, but will recall this witness. Prior to cross examination, Prosecution desires to state for the record that the accused Koller, Number 9, withdraw from the court room on Friday for the purpose of being examined by a psychiatrist. That was done, I have been reliably informed.

(Gunther-direct)

The accused Moller, from the beginning of today's session, has been in the dock. The psychiatrist is in the 98th General Hospital in Munich. Arrangements are being made by the Chief of the Dachau Detachment to have him back tomorrow to testify. You may cross examine.

CROSS EXAMINATION

QUESTIONS BY THE DEFENSE COUNSEL:

Q When did you first begin your study of the organizational structure of the police system in Germany?

A June, 1944, yes.

Q Did you, in the course of your duties, ever have occasion to visit any of the Headquarters to which General Stroop was subservient?

PROSECUTION: I don't believe that question is clear. I believe you should rephrase it.

WITNESS: I don't understand the question.

QUESTIONS BY THE DEFENSE COUNSEL:

Q During the course of your duties, did you ever have occasion to visit Headquarters of the Security Police?

A No.

Q Did you ever have occasion to talk to any of the officers in the Headquarters of the Security Police?

A At Headquarters? No. Berlin? No.

Q I don't know--wherever they were. Where were the Headquarters of the Security Police?

A Headquarters of the Security Police was at Berlin--the Reich Security main office.

(Gunther-Cross)

Q What was the distinction and the functions between the Security Police and the Ordnance Police?

INTERPRETER: Ordnance?

DEFENSE COUNSEL: Regular police.

WITNESS: The Ordnance Police was for the purpose of keeping up public order and security. There was the Security Police which was for the purpose of protecting the inner security of the Reich.

QUESTIONS BY THE DEFENSE COUNSEL:

Q What is the distinction between the ordinary security and the inner security?

A The gene al security will take measures to the effect that public security is given. That means in the behavior of people toward the state.

Q And what was the function of the Security Police? What do you mean by "inner security"?

A To the field of inner security first of all belongs a secret state police, Gestapo, the Criminal Police, and the SD Security Service as information organization.

Q Calling your attention to this map, this line here "Commander of Security Police" and "SD". (Indicating) Isn't it true that the SD was a part of the Security Police?

A It was not part of the Security Police, but there was union in personnel through Kaltenbrunner, who also was in charge of the Security Service, SD.

Q What is this Security Service shown on the diagram?

A The Security Service was an information organization of the party which was not made through the State, through the Reich.

Q And what was the difference between the group called the Security Service and the group called the SD? Between this group here, and the SD (indicating). If you can't see, come closer. What is the difference between the Security Service and this SD?

A That was the same.

Q In other words, the Security Service shown here as one of the subdivisions under Kaltenbrunner is the same as the words "SD" just below?

A The main office of the Security Service was in Berlin under the command of Kaltenbrunner.

Q My question was whether or not the group called Security Service and the group called SD were one and the same thing.

A No, a subdivision.

Q What was the SD a subdivision of?

A The SD Security Service, Weisbaden, was a subdivision of the General Security Service, which was in Berlin--which had its Headquarters in Berlin.

Q My question is directed to the map by which the witness speaks as an expert. Now, up here the map shows under Kaltenbrunner, Gestapo, Criminal Police, Security Service, and underneath that in a line coming from General Stroop it shows Commander of the Security Police and the SD. Now what is the difference between Security Service and the SD?

A Security service and SD express the same thing and refer to the same information organization.

Q In other words, the term Security Police and SD are synonymous in their meaning, is that correct?

A Yes, it is only an abbreviation.

PRESIDENT: Court will recess for 15 minutes.

(Whereupon at 1020 hours the court recessed.)

End Ta 13
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(Whereupon the court reconvened at 1035 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all members of the court, all members of the prosecution, all members of the defense, all the accused, and the reporter and interpreter are present.

HANS GUNTHER, called as a witness by the prosecution, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

CROSS EXAMINATION (Continued)

QUESTION: BY DEFENSE COUNSEL:

Q You stated that you became a member of the staff of General Stroop sometime in June, 1943. Can you place the exact date?

A During June, 1943, on the date Captain Kassmann was relieved from his duties.

Q What day was that?

A I cannot state the exact date.

Q Do you remember whether it was the last half of the month or the first half?

A I assume it was the second half.

Q Who was the commander of the Security Police at the time you first assumed the duties of your office?

A SS Colonel Sammet.

Q Was Colonel Sammet relieved of his command and transferred elsewhere after you assumed the duties of your office?

A Yes.

Q How long after you became a member of General Stroop's staff?

A Approximately two to two and a half months afterward.

Q Will you please state the name of the month during which Colonel Sammet was relieved or transferred?

A The end of August or beginning of September.

Q When did Trumpler assume Somann's place?

A In the month of September.

Q Was there any lapse of time between the transfer of Somann and the assumption of command by Trumpler?

A Yes.

Q How long?

A Perhaps fourteen days to three weeks.

Q Coming back to the Security Police, the chart here shows it to be divided into three sections, the Gestapo, the Criminal Police, and the SD. Is that a correct statement of the composition of the Security Police?

A Yes.

Q So that coming down on the map, and reading "Commander of Security Police and SD," the words "and SD" are unnecessary, are they not, because Security Police includes the SD?

A No, it is not superfluous, because the Security Police was an apparatus of the state, including the Gestapo and the Criminal Police, while the SD was an apparatus for information for the Party.

Q If the SD was not a state institution, what kind of an institution was it?

A It was an organisation of the Party.

Q Who was the responsible head of the SD?

A The chief of the Security Police, General Kaltenbrunner. The same person was also in charge of the SD.

Q What were the duties and functions of the Gestapo?

A I am not familiar with the individual missions of the Gestapo, because I had officially no connection with the Gestapo.

Q Are you familiar with the internal structure of the Gestapo?

A No, not the internal structure.

Q What was the function of the criminal police?

(GUNTHER-Cross)

A To investigate crimes.

Q What was the distinction between the functions of the Gestapo and the functions of the regular police?

A The regular police was there to keep public order and security, while the Security Police was there to guarantee the internal security of the Reich.

Q My question was, what was the difference between the functions of the regular police and the Gestapo, if you know?

A These are the differences that I just mentioned.

Q What was the function of the Criminal Police?

A To investigate crimes.

Q What duties did the regular police have with respect to crime?

A In connection with crimes, it was the mission of the regular police to assist the Criminal Police.

Q In what ways?

A That is not known to me.

Q It is true, is it not, that you do not know the difference between the functions of the regular police and the Criminal Police?

A Yes, I know the difference.

Q What is the difference?

A It was the mission of the Order Police to guarantee public order and security, while it was the mission of the Criminal Police to investigate crimes.

Q Let us assume that a crime had been committed. Will you explain to this court just how the regular police and the Criminal Police would function with respect to that crime?

PROSECUTION: I object to that question. The premise is badly laid. We do not know whether it is a crime against the state, individual crimes, political crimes, or what the nature of the crime is he is talking

about. I think the premise should be restated.

PRESIDENT: Objection sustained. Make your question more specific as to the type of crime.

DEFENSE COUNSEL: May it please the court, the fact that there is such a difference is one of the fundamental things I am trying to use to probe this witness' actual knowledge. If he really knew, he would know there was such a difference, but we are warning him against the very thing I am trying to uncover or discover. In this particular case, I will start over.

QUESTIONS BY DEFENSE COUNSEL:

Q What functions did the Criminal Police have to do with political crime, as distinguished from violations of criminal statutes?

A Details are not known to me, because my duties consisted of military tactical matters.

Q What was the general function of the Criminal Police with respect to the suppression of political crime?

PROSECUTION: I interpose an objection. The witness was put on the stand for the purpose of authenticating a chart which is very general in nature, showing the personnel and general over all structure. It is not the purpose of the prosecution to break down the various detailed functions and inner workings of the various subdivisions and subheads and subdepartments. The only purpose of this chart was a guide to the court, to show that on one side of the picture we have the Security Police, on the other side the Order Police, and what General Stroop had under him in general and what his personnel consisted of. That was the only purpose of the chart. This witness authenticated it because he was a member of Stroop's staff, and was, in the over all sense, aware of the personnel and general structure only.

DEFENSE COUNSEL: May it please the court, if the purpose of

this chart is merely to show titles and the names of individuals who occupied particular offices, the defense has no further need to cross examine on the chart. However — now, this is fundamental with us — if that is supposed to be a chart showing the chain of command, then it is vital to us, and my purpose ——— and I understand that that is the thing for which it was introduced, to show the chain of command from Streep down, directly and left and right, and also upwards, directly and left and right. If that is the case, and that is our understanding, I am cross examining the witness for the purpose of showing that his knowledge is such that he could not be sufficiently expert to testify that that is an accurate representation of the chain of command. On that statement is the purpose of my cross examination. I ask the ruling of the court.

PROSECUTION: Just for the record, I will refer the court back to my question of the witness, which he answered in the affirmative, "Does this chart accurately portray in schematic form the general organization and chain of command of the regular police and Security Police, particularly the command of General Streep, from November, 1943, to April, 1945?" and that was the purpose for which the chart was offered. However, counsel is questioning the witness in detail as to the individual setup in the Criminal Police, and the inner workings thereof.

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: Would you be good enough to read my question?

(Whereupon the last question was read by the reporter as follows:
"Q What was the general function of the Criminal Police with respect to the suppression of political crime?")

QUESTIONS BY DEFENSE COUNSEL:

THE WITNESS: Of political crimes?

Q Q That is what I said.

A It was the mission of the Criminal Police to discover crimes.

DEFENSE COUNSEL: Some of this may be my fault, may it please

(DEFENSE-Cross)

the court. Some of it, I think, is the witness'. He does not listen to my question. I may be wrong, but I would like the assistance of the court if I happen to be wrong.

QUESTIONS BY DEFENSE COUNSEL:

Q My question was, what was the function of the Criminal Police with respect to the investigation and suppression of political crimes?

A I cannot give any information about that.

Q Do you know the difference between a political crime and a violation of the ordinary criminal statutes of a non-political nature?

PROSECUTION: I object on two grounds. Defense is going beyond the scope of my direct examination, and defense is arguing with the witness.

PRESIDENT: Objection sustained.

PROSECUTION: Furthermore, the witness, on several occasions, has answered the question concerning the duties of the Criminal Police. I believe that at least four times that question has been asked and answered.

DEFENSE COUNSEL: Sir, the answer had to do with the suppression of crime, but my question is important to us. I don't want to be contentious -- I hope I am not. I want him to answer with respect to political crimes, may it please the court, not crime in general, political crime. I would like permission to ask him what the function of the Criminal Police was with respect to the investigation and suppression of political crime.

PRESIDENT: Permission is granted to ask the question.

QUESTIONS BY DEFENSE COUNSEL:

Q What was the function of the Criminal Police with respect to the investigation and suppression of political crime?

A The Criminal Police must have had the mission to investigate and uncover political crimes in cooperation with the State Police.

(CONTINUED-Cross)

Q Were the regular police State Police?

A The Protective, or Order Police, was an integral part of the structure of the state, but was not called State Police.

Q Into how many subdivisions were the regular police divided?

A The regular police was under General Wunnenberg, who was in charge of main office, police headquarters, in Berlin.

DEFENSE COUNSEL: Would you be good enough to read my question?

(Thereupon the last question was read by the reporter.)

THE WITNESS: From the time I know the regular police, from June, 1934, the regular police was under command of General Wunnenberg, and under General Wunnenberg was the commander of regular civil police.

Q The security police were divided into three groups, the Gestapo, criminal police, and security service. Was the regular civil police subdivided into groups, and if so, into what groups?

A I don't know the organization of the headquarters of General Wunnenberg, but one of the important offices I know was the order office.

Q What office?

A Order office.

Q How do you spell that?

A O-r-d-e-r; order office. This was under General Flade and Bogalski.

Q Did you ever hear of a Schutzpolizei?

A Yes.

Q Where do they belong in that chart?

A The protective police belongs to the order police.

Q Did you ever hear of the Gendarmerie?

A Yes.

Q And where do they belong on the chart?

A Also to the order police.

Q Did you ever hear of the fire police?

A Yes. Fire security police.

Q Where do they belong on the chart?

A Also to the main office, police headquarters.

Q Did you ever hear of the air protection police?

A Yes.

Q And where do they belong?

A Also to the order police.

(Gunther - Cross)

Q Did you ever hear of the Gemeinde police--local police?

A Yes.

Q And where do they belong?

A They also belong to the main office, police headquarters.

Q Were all these subdivisions that we have recently mentioned important organizations in the police system of Germany?

A Yes.

Q And do they show on that chart anywhere at all?

A They are included in the term "order police".

Q Otherwise than by definition of the term "regular police", do they appear on the chart?

A No.

Q Coming down to the chart where it shows the word "Gauleiter" -- according to this chart the three gauleiters of Westmark, Hessen-Nassau, and Moselland are all under the command jurisdiction of General Stroop. Is that true?

A The gauleiters--the three gauleiters were not under the jurisdiction of General Stroop solely. The area of these three gauleiters were identical with the jurisdictional area of General Stroop.

DEFENSE COUNSEL: Would you read the question as I asked it, please?

PROSECUTION: I object to any further argument. That question was specifically answered.

DEFENSE COUNSEL: I am trying to find out. I don't remember how I asked the question. If I am being too long I would be glad to be told.

PRESIDENT: The court desires that you cut it down considerably, as much as possible.

DEFENSE COUNSEL: Does the court consider that answer as responsive to my question? I do not think it is.

LAW MEMBER: Will you read the question, please?

(Thereupon the question was read by the reporter as follows:

"Q Coming down to the chart where it shows the word 'Gauleiter' -- according to this chart the three gauleiters of Westmark, Hessen-Nassau, and Moselland are all under the command jurisdiction of General Stroop. Is that true?

QUESTIONS BY DEFENSE COUNSEL:

Q Did General Stroop have any command jurisdiction over gauleiters to any extent whatsoever?

LAW MEMBER: Read the answer back there, please.

(Thereupon the answer was read by the reporter as follows:

"A The gauleiters--the three gauleiters were not under the jurisdiction of General Stroop solely. The area of these three gauleiters were identical with the jurisdictional area of General Stroop.")

THE WITNESS: No command jurisdiction over the gauleiters.

QUESTIONS BY DEFENSE COUNSEL:

Q On the other hand, did the gauleiters themselves, by virtue of their position as Reich defense minister, have command jurisdiction over the police?

A The gauleiters had the possibility to give instructions to the police.

Q By the word "possibility" you mean authority?

A No.

Q What do you mean by the word "possibility"?

(Gunther - Cross)

A The gauleiters had the possibility to inform General Stroop of matters and ask that conditions be changed--request that conditions be changed.

Q Could the gauleiter, under any circumstance, in his capacity as defense minister issue direct orders to the police in his gau?

A No.

Q When were you relieved of your duties as a member of General Stroop's staff?

A I was with the staff of General Stroop to the end.

DEFENSE COUNSEL: What is that exhibit number, please?

PROSECUTION: You mean the large map?

DEFENSE COUNSEL: And the smaller representation.

PROSECUTION: The large map is 14.

QUESTIONS BY DEFENSE COUNSEL:

Q One other question: Did you know Cirke personally?

A No.

Q Did you ever see him while he was in the exercise of his duty or while he held office?

A I became acquainted with Cirke during a lecture where the various high police officers were present.

DEFENSE COUNSEL: May it please the court, the defense at this time moves to strike from the record Prosecution Exhibits 13 and 14, on the ground that from the testimony of the witnesses themselves it is obviously incomplete and very important on essential matters and does not accurately represent the entire chain of command with respect to the police system of Germany.

(Gunther - Cross)

PROSECUTION: The prosecution asks that the court accept it for the purpose for which it was offered and give it whatever probative value it deems fit.

PRESIDENT: The motion of the defense is overruled.

PROSECUTION: Any further questions?

DEFENSE COUNSEL: No.

PROSECUTION: No further questions by the prosecution, although the witness will be recalled. Any questions by members of the court?

PRESIDENT: No questions by the court.

PROSECUTION: We request that the witness be excused.

PRESIDENT: The witness is excused.

(Thereupon the witness was excused and withdrew.)

PRESIDENT: The prosecution will proceed with the trial.

(Prosecution Exhibit 15 was marked for identification.)

PROSECUTION: The prosecution offers in evidence, to be marked Prosecution Exhibit 15, a true and certified copy of document No. 062-PS, which was introduced in evidence as Exhibit No. USA 696 in the trial by the International Military Tribunal of Hermann Goering and others, commencing on 20 November 1945.

PRESIDENT: Any objection?

PROSECUTION: This document has been previously marked P-15 for identification.

DEFENSE COUNSEL: I enter a blanket objection to these on the grounds that they are not relative or germane to the issues in this case.

PRESIDENT: Objection overruled.

PROSECUTION: Permission is requested of the court to read the same.

PRESIDENT: Prosecution Exhibit No. 15 will be read.

PROSECUTION: It is also requested that this document be received in evidence and made a part of the record.

PRESIDENT: It will be made a part of the record.

(The document heretofore marked Prosecution Exhibit 15 for identification was received in evidence as Prosecution Exhibit 15, is attached hereto, and made a part of the record.)

(Whereupon the prosecution read Prosecution Exhibit 15, followed by the reading of the translation of Prosecution Exhibit 15 by the interpreter in the German language.)

(Prosecution Exhibit 16 was marked for identification.)

PROSECUTION: The prosecution offers in evidence, to be marked Prosecution Exhibit 16, a document which has been marked Prosecution Exhibit 16 for identification, being document No. 553-PS, which was introduced in evidence as Exhibit No. USA 500 in the trial of Hermann Goering and others, which commenced on 20 November 1945. I ask that it be made a part of the record.

DEFENSE COUNSEL: The same objection as to Exhibit 15.

PRESIDENT: Objection overruled. Prosecution Exhibit 16 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 16 for identification was received in evidence as Prosecution Exhibit 16, is attached hereto, and made a part of the record.)

PROSECUTION: The prosecution asks permission to read the same.

PRESIDENT: Permission is granted.

(Whereupon the prosecution read Prosecution Exhibit 16, followed by the reading of the translation of Prosecution Exhibit 16 by the interpreter in the German language.

PROSECUTION: Will you mark this document Prosecution Exhibit P-17, please?

(The document referred to was marked Prosecution Exhibit P-17 for identification.)

PROSECUTION: Prosecution offers in evidence, to be marked Exhibit 17, a document which has previously been marked Prosecution Exhibit P-17 for identification, which is document number C-179, and is a true and correct copy of the original which is held in the files of the British Admiralty. I ask that it be received in evidence and be made a part of the record.

[illegible] COUNSEL: Same objection, may it please the court.

PRESIDENT: Objection overruled. Prosecution Exhibit 17 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit P-17 for identification was received in evidence as Prosecution Exhibit P-17, is attached hereto, and made a part of the record.)

PROSECUTION: Permission is requested to read the same.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 17, followed by the reading of the translation of Prosecution Exhibit 17 by the interpreter in the German language.)

PROSECUTION: Will you mark this document Prosecution Exhibit P-18, please?

(The document referred to was marked Prosecution Exhibit P-18 for identification.)

PROSECUTION: Prosecution offers in evidence, to be marked Prosecution Exhibit Number 18, document number C-178, which was introduced as evidence as USA Exhibit Number 545 in the trial by the International Tribunal against Herman Goering and others, commencing on 20

November 1945. This document has previously been marked Prosecution Exhibit P-18 for identification.

DEFENSE COUNSEL: Same objection as made to Exhibit 15.

PRESIDENT: Objection overruled. Prosecution Exhibit Number P-18 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit P-18 for identification was received in evidence as Prosecution Exhibit P-18, is attached hereto and made a part of the record.)

PROSECUTION: Permission is requested to read same.

PRESIDENT: Permission is granted.

(Thereupon the prosecution read Prosecution Exhibit 18, followed by a reading of the translation of Prosecution Exhibit 18 by the interpreter in the German language.)

PROSECUTION: Will you mark this document Prosecution Exhibit P-19, please?

(The document referred to was marked Prosecution Exhibit P-19 for identification.)

PRESIDENT: Court will recess until 1330 hours.

(Thereupon the court recessed at 1200 hours until 1330 hours.)

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AFTERNOON SESSION

(Whereupon the Court reconvened at 1330 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court are present, all the members of the Prosecution and Defense are present, all the accused are present, the reporter and interpreter are present.

Prosecution offers in evidence a document to be marked Prosecution Exhibit 19. It is a document R-110 which was introduced into evidence as Exhibit USA 833 in the trial by the International Tribunal in the trial of Herman Goering et al commenced November 20, 1945. This document was previously marked Prosecution Exhibit 19 for identification.

DEFENSE COUNSEL: The same objection as to Exhibit 18, may it please the Court.

PRESIDENT: The objection is overruled. Prosecution Exhibit 19 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 19 for identification was received in evidence as Prosecution Exhibit 19, is attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission of the Court to read that document.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 19, followed by the reading of Prosecution Exhibit 19 by the interpreter in the German language.)

PROSECUTION: Will you mark this document as Prosecution Exhibit P 20 for identification?

(The document referred to was marked Prosecution Exhibit 20 for identification.)

PROSECUTION: Prosecution offers in evidence a true and correct copy of the original document introduced at the International Tribunal, document 725 PS. This document was previously marked Exhibit P 20 for identification.

DEFENSE COUNSEL: The same objection as to Exhibit 15, may it please the Court.

PRESIDENT: Objection overruled. Prosecution Exhibit 20 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 20 for identification was received in evidence as Prosecution Exhibit 20, is attached hereto and made a part of the record.)

PROSECUTION: Per lission is requested of the Court to read Exhibit 20.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution Exhibit 20, followed by the reading of Prosecution Exhibit 20 by the interpreter in the German language.)

PROSECUTION: Will you mark this document Prosecution Exhibit 21 for identification?

(The document referred to was marked Prosecution Exhibit 21 for identification.)

PROSECUTION: Prosecution offers in evidence, to be marked Prosecution Exhibit 21, a document 1776 PS, which was introduced as USA 554 in the trial of Hermann Goering, et al, by the International Tribunal commenced 20 November 1945. We ask that it be received in evidence and made a part of the record. The same document was marked Prosecution Exhibit 21 for identification.

DEFENSE COUNSEL: The same objection as to Exhibit 15.

PRESIDENT: The objection is overruled and Prosecution Exhibit 21 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 21 for identification was received in evidence as Prosecution Exhibit 21, is attached hereto and made a part of the record.)

PROSECUTION: Permission is requested to read Exhibit 21.

PRESIDENT: Permission is granted.

(Thereupon the Prosecution read Prosecution Exhibit 21 followed by the reading of Prosecution Exhibit 21 by the interpreter in the German language.)

Ta 18 1-13-47 30 pls

PROSECUTION: Will you mark this document Prosecution Exhibit 22 for identification.

(The document referred to was marked Prosecution Exhibit 22 for identification.)

PROSECUTION: Prosecution offers in evidence, to be marked Prosecution Exhibit 22, a certified copy of Document No. 057 PS, which was presented in evidence in the trial of Hermann Goering, et al, by the International Tribunal, commenced on 20 November 1945 as USA 329. This is a certified true copy of the same and has been marked P 22 for identification. We ask that it be made part of the record and received in evidence.

DEFENSE COUNSEL: Same objection as to Exhibit 15.

PRESIDENT: Objection overruled. Prosecution Exhibit 22 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 22 for identification was received in evidence as Prosecution Exhibit 22, is attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission to read the same.

PRESIDENT: Permission is granted.

(Thereupon the prosecution read Prosecution Exhibit 22 followed by the reading of Prosecution Exhibit 22 by the interpreter in the German language.)

PROSECUTION: Will you mark this document Prosecution Exhibit 23 for identification.

(The document referred to was marked Prosecution Exhibit 23 for identification.)

PROSECUTION: Prosecution offers in evidence, to be marked Prosecution Exhibit 23, certified true copy of Document 735 PS which was introduced as evidence in the trial of Hermann Goering, et al, by the International Tribunal as GB 151. This document was previously marked Prosecution Exhibit 23 for identification.

DEFENSE COUNSEL: Same objection as to Exhibit 15.

Ta 18 1-13-47 80 pls

PRESIDENT: Objection overruled. Prosecution Exhibit No. 23 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 23 for identification was received in evidence as Prosecution Exhibit 23, is attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission to read the same.

PRESIDENT: Permission granted.

(Thereupon the prosecution read Prosecution Exhibit 23 followed by the reading of Prosecution Exhibit 23 by the interpreter in the German language.)

PROSECUTION: Will you mark this document Prosecution Exhibit 24 for identification?

(The document referred to was marked Prosecution Exhibit 24 for identification.)

PROSECUTION: Prosecution offers in evidence, to be marked Prosecution Exhibit 24, a certified copy of Document No. 739 PS, the original of which is held in the files of the International Military Tribunal, and ask that it be received in evidence and made a part of the record. This document is offered as P 24 for identification.

DEFENSE COUNSEL: Same objection, may it please the court, as was made to Exhibit 15.

PRESIDENT: Objection overruled. Prosecution Exhibit No. 24 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 24 for identification was received in evidence as Prosecution Exhibit 24, is attached hereto and made a part of the record)

PROSECUTION: Permission is requested to read the same.

PRESIDENT: Permission is granted.

(Whereupon the Prosecution read Prosecution Exhibit 24 followed by the reading of Prosecution Exhibit 24 by the interpreter in the German language.)

PROSECUTION: I hand the reporter an instrument and ask that it be marked Prosecution's Exhibit 25 for identification.

(The document referred to was marked Prosecution Exhibit 25 for identification.

PROSECUTION: Prosecution offers in evidence to be marked Prosecution's Exhibit 25, a certified copy of document D-780, which was Exhibit C-R313 in the trial by the International Military Tribunal of Hermann Goering, et al, which began 20 November 1945, and request that this be received in evidence and made a part of the record.

DEFENSE COUNSEL: The same objection as to Prosecution's Exhibit 15.

PRESIDENT: The objection is overruled. Prosecution's Exhibit 25 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 25 for identification was received in evidence as Prosecution Exhibit 25, is attached hereto and made a part of the record.)

PROSECUTION: Permission is requested to read the same.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution's Exhibit 25, followed by the reading of Prosecution Exhibit 25 by the interpreter in the German language.)

PROSECUTION: I hand the reporter a document and ask that it be marked for identification as Prosecution's Exhibit 26.

(The document referred to was marked Prosecution Exhibit 26 for identification.)

PROSECUTION: Prosecution offers in evidence a document which has been marked for identification as Prosecution's Exhibit 26, a certified copy of document 2374-PS, the original of which is held in the files of the International Military Tribunal, and ask that it be received and marked for the record.

DEFENSE COUNSEL: The same objection as previously made.

PRESIDENT: Objection overruled. Prosecution's Exhibit 26 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 26 for identification was received in evidence as Prosecution Exhibit 26, is attached hereto and made a part of the record.

PROSECUTION: The Prosecution requests permission to read the same.

PRESIDENT: Permission granted.

(Thereupon the Prosecution read Prosecution's Exhibit 26, followed by the reading of Prosecution Exhibit 26 by the interpreter in the German language.)

PROSECUTION: The Prosecution calls Kurt Teil. The witness has been sworn.

PRESIDENT: You are reminded that you are still under oath.

KURT TEIL, recalled as a witness by the Prosecution, having been previously sworn, testified as follows: (Whereupon the proceedings were translated into the German language.)

REDIRECT EXAMINATION

QUESTIONS BY THE PROSECUTION:

Q Are you the same Kurt Teil who previously testified

in this case?

A I am.

Q Are you at present a United States Civilian employed by War Crimes Group Headquarters?

A I am.

Q Were you employed in that capacity on the 29th of October, 1945?

A No.

Q What date did you begin employment with War Crimes Headquarters?

A On the 18th of November, 1945.

Q As a part of your duties were you assigned to work on an investigating team in the present Superior Orders Case?

A About that time--about the middle of November, 1945.

Q And by that case I mean the case that is being tried before this Court.

A Yes, that's right.

Q Do you know the title given to that case by War Crimes Headquarters when you began working on it?

A Yes, it was Superior Orders Case, Wehrkreise 12.

PROSECUTION: I hand the reporter a document and ask that it be marked for identification as Prosecution's Exhibit 27, and the English translation thereof as 27A.

(The documents referred to were marked Prosecution Exhibits 27 and 27A for identification.)

End ta 19
ps fols

Q I show you Prosecution Exhibit P-27 for identification, and ask you to tell me whose signature appears on it.

A This is Jurgen Stroop's signature.

Q Would you recognize Jurgen Stroop if you saw him again?

A Yes.

Q If he is in the courtroom, identify him.

A Jurgen Stroop is No. 1.

PROSECUTION: Let the record show that the witness pointed to the accused, Stroop, No. 1.

QUESTIONS BY PROSECUTION:

Q What is this paper?

A It is a signed statement by Jurgen Stroop.

PROSECUTION: I offer it in evidence and ask it be marked Prosecution Exhibit P-27 and be made a part of the record.

DEFENSE COUNSEL: I assume it has to do with this case. If it has, we have no objection. No objection.

PRESIDENT: Prosecution Exhibit No. 27 is received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit P-27 for identification was received in evidence as Prosecution Exhibit P-27, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution offers in evidence a true and correct English translation of Prosecution Exhibit P-27, and asks that it be marked Prosecution Exhibit P-27-A and be made a part of the record.

PRESIDENT: Any objection?

DEFENSE COUNSEL: None whatsoever.

PRESIDENT: It will be admitted and made a part of the record.

(The document heretofore marked Prosecution Exhibit P-27-A for identification was received in evidence as Prosecution Exhibit P-27-A, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Prosecution Exhibit P-27-A.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit P-27-A.)

PRESIDENT: Court will recess for thirty minutes.

(Whereupon the court recessed at 1505 hours.)

Ta 21-po-80-1/13-1

(Whereupon the court reconvened at 1535 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all members of the court, all members of the prosecution, all members of the defense, all the accused, and the reporter and interpreter are present.

KURT TEXL, called as a witness by the prosecution, resumed the stand and being reminded that he was still under oath, testified as follows:

(Whereupon the proceedings were translated into the German language.)

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

(Whereupon the court interpreter read Prosecution Exhibit P-27 in the German language.)

PROSECUTION: I hand the reporter two documents and request that they be marked Prosecution Exhibits P-28 and P-28-A.

(The documents referred to were marked Prosecution Exhibits P-28 and P-28-A for identification.)

Q I hand the witness Prosecution Exhibit 28 for identification, and ask you to tell me whose signature appears on the bottom of it.

A It is Jurgen Stroop's signature.

Q Is that the same Jurgen Stroop that you have previously identified as an accused in this case?

A Yes.

Q Were you present when he signed the same?

A Yes.

PROSECUTION: I offer in evidence Prosecution Exhibit P-28 for identification, and ask that it be marked Prosecution Exhibit P-28 and be made a part of the record.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 28 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit P-28 for identification was received in evidence as Prosecution Exhibit P-28, is attached hereto, and made a part of the record.)

PROSECUTION: I offer in evidence, to be marked Prosecution Exhibit P-28-A, a true and correct translation of Prosecution Exhibit P-28.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 28-A will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit P-28-A for identification was received in evidence as Prosecution Exhibit P-28-A, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Exhibit P-28-A.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 28-A, followed by the reading of Prosecution Exhibit 28 by the court interpreter in the German language.)

PROSECUTION: I hand the reporter two documents and request that they be marked Prosecution Exhibits 29 and 29-A for identification.

(The documents referred to were marked Prosecution Exhibits 29 and 29-A for identification.)

QUESTIONS BY PROSECUTION:

Q I hand the witness Prosecution Exhibit 29 for identification, and ask you to tell me whose signature appears at the end of that.

A Fritz Oirke's signature.

Q Would you recognize Fritz Oirke if you saw him again?

A Yes.

Q If he is in the courtroom, will you point him out?

A Fritz Oirke is No. 19.

PROSECUTION: Let the record show that the witness identified the accused Oirke, No. 19.

Q Were you present when he signed this instrument?

A Yes, I was.

PROSECUTION: I offer in evidence the sworn statement of Frits Girke, and ask that it be marked Prosecution Exhibit 29 and be made a part of the record. Any objection by the defense?

DEFENSE COUNSEL: None.

PRESIDENT: Prosecution Exhibit 29 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 29 for identification was received in evidence as Prosecution Exhibit 29, is attached hereto, and made a part of the record.

PROSECUTION: Prosecution offers in evidence, to be marked Prosecution Exhibit 29-A, a true and correct translation of Prosecution Exhibit 29.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 29-A will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 29-A for identification was received in evidence as Prosecution Exhibit 29-A, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Prosecution Exhibit 29-A.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 29-A, followed by the reading of Prosecution Exhibit 29 by the court interpreter in the German language.)

PROSECUTION: Prosecution has no further questions of this witness. Does the defense desire to cross examine?

DEFENSE COUNSEL: No.

PROSECUTION: Any questions by any member of the court?

PRESIDENT: No.

PROSECUTION: We request that the witness be excused.

PRESIDENT: The witness is excused.

(Thereupon the witness was excused and withdrew.)

PROSECUTION: I hand the reporter two documents and request that they be marked Prosecution Exhibits 30 and 30-A for identification.

(The documents referred to were marked Prosecution Exhibits 30 and 30-A for identification.)

PROSECUTION: Prosecution is about to offer a written statement of Heinz Hellenbroich, one of the accused in this case, to be marked Prosecution Exhibit 30. It has been stipulated by and between defense and prosecution that if the witness Gerald Coates, civilian employee, War Crimes investigator, were present in court, he would testify that the signature at the bottom of each page of this exhibit is the signature of the accused, Heinz Hellenbroich.

DEFENSE COUNSEL: No objection.

PRESIDENT: The stipulation is accepted.

PROSECUTION: Prosecution therefore offers in evidence the written statement of Heinz Hellenbroich, to be marked Prosecution Exhibit 30 and made a part of the record.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 30 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 30 for identification was received in evidence as Prosecution Exhibit 30, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution offers in evidence, to be marked Prosecution Exhibit 30-A, a true and correct translation of Prosecution Exhibit 30.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 30-A is received in evidence and will be made a part of the record.

Ta 21-pa-80-1/13-5

(The document heretofore marked Prosecution Exhibit 30-A for identification was received in evidence as Prosecution Exhibit 30-A, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Prosecution Exhibit 30-A.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 30-A, followed by the reading of Prosecution Exhibit 30 by the court interpreter in the German language.)

End ta 21
Mac fols

(Prosecution Exhibits 31 and 31-A were marked for identification.)

PROSECUTION: The prosecution is about to offer in evidence a statement of Hans Trummler, marked for identification as Prosecution Exhibits 31 and 31-A. It has been stipulated by and between the defense and the prosecution that if the witness Gerald Coates, U. S. Civilian examiner, War Crimes Headquarters, was present, he would testify that it is the signature of the accused Hans Trummler at the bottom of the exhibit.

DEFENSE COUNSEL: The defense subscribes to that stipulation.

PRESIDENT: The stipulation is accepted.

PROSECUTION: The prosecution offers in evidence the statement of Hans Trummler, to be marked Prosecution Exhibit 31 and to be made a part of the record.

PRESIDENT: Prosecution Exhibit 31 is received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 31 for identification was received in evidence as Prosecution Exhibit 31, is attached hereto, and made a part of the record.)

PROSECUTION: The prosecution offers in evidence a true and correct translation of Prosecution Exhibit 31, to be marked Prosecution Exhibit 31-A and made a part of the record.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 31-A will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 31-A for identification was received in evidence as Prosecution Exhibit 31-A, is attached hereto, and made a part of the record.)

PROSECUTION: The prosecution requests the court's permission to read exhibit P-31-A.

PRESIDENT: Permission is granted.

(Whereupon the prosecution read Prosecution Exhibit 31-A, the English translation of the statement of Hans Trummler, followed by the reading of Prosecution Exhibit 31, the statement of Hans Trummler, by the interpreter.)

DEFENSE COUNSEL: May it please the court, I have a motion I would like to make at this time before Gunther takes the stand. It deals with Prosecution Exhibits 27, 28, 29, 30 and 31, and raises a question, which so far as defense counsel knows, has not been raised before, at least so far as we are concerned. These five exhibits are evidence introduced by the prosecution from the very mouths of the accused, all under oath. This evidence introduced by the prosecution has all been under oath. It has gone far beyond the limits of confession; it includes exposition, explanation and descriptive matter relating to this case. And yet, may it please the court, these very same accused who have testified through these statements, when their own defense comes to be put on, will be denied the opportunity of testifying under oath. We believe, to permit the prosecution to introduce the evidence under oath which goes far beyond the limits of confession, and at the same time deny these same individuals a right to testify on their own behalf under oath, is a substantial violation of the rights of the accused and is tantamount to a denial of due process of law. Therefore, the defense moves that Prosecution Exhibits 27, 28, 29, 30 and 31 be stricken from the record. I should further add that the motion includes 27-A, 28-A, 29-A, 30-A and 31-A, which are the English translations.

PROSECUTION: May it please the court, the very question now brought up by counsel for defense was urged upon the court in the Malmedy case. It was urged in that case that sworn confessions cannot be introduced and received in evidence because they can only be rebutted by unsworn testimony. The court ruled adversely to that objection. We cite that case as a precedent along with other War Crimes cases in which that point has been brought up and decided.

DEFENSE COUNSEL: May I make just one more statement? These statements are far beyond confessions; they are explanatory and descriptive. And one more sentence -- the Malmedy case has not been reviewed and is not

a legal precedent binding on this court as perhaps the Nuernberg decision might be said to be.

LAW MEMBER: When all of these exhibits were offered there was no objection raised by the defense.

DEFENSE COUNSEL: It was the idea of the accused to take a couple of the exhibits and raise the issue on a couple of them rather than raise them on a single isolated statement. If the defense's contention is sound that it is a violation of due process of law, failure to object immediately would not deprive them of their right. Besides, I raised the issue reasonably soon.

PROSECUTION: These statements contained matters relative to the issues in this case. The rules provide that this court may accept and receive sworn statements of that nature. It is true that the accused may not take the stand and be sworn, but the rule further states that written statements, sworn or unsworn, may be received for whatever probative value the court sees fit to give them.

PRESIDENT: The court will recess in place.

(Whereupon the court recessed in place.)

(Thereupon the court reconvened.)

PRESIDENT: Court will come to order.

Court will adjourn until tomorrow morning at 0900 hours.

(Whereupon at 1645 hours the court adjourned until 0900 hours Tuesday, 14 January 1947.)

* * *

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

Particulars: ..... Einzelheiten: .....

Second Charge: ..... Zweite Anklage: .....

Particulars: ..... Einzelheiten: .....

The above charges are referred for trial to the *Summary / *Intermediate Military Court to be held / *General

Die Verhandlung wird vor dem *Einfachen / *Mittleren Militärgerichte / *Oberen

at ..... on ..... 194 .....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

Copy of above served on accused ..... 194 .....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

(3)

CASE RECORD.

109 - 179

Case No. Superior Orders

~~Summary~~

~~Intermediate~~ Military Court.

*General

Place DACHAU, GERMANY

Date 14 JANUARY 194 7

~~Members of Court~~

WITNESSES:

CAPTAIN WILLIAM M. HARRIS
HANS GUNTHER
REINHARD BREDER
FRANZ TRAEGER
JOHN STEGNER
CAPTAIN DONALD C. SMITH

Accused JURGEN STROOP, et al

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Mr. Rudolf M. Nathanson

Interpreter Mr. Rudolph H. Schubert

Reporter Patricia Stewart, Irving J. Hayett
Sally Rose Hayett, Imogene D. Butler
John McDonald, Paula Silverman

Address Sex Age

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term
  - Beginning 194
- Fine
  - Amount
  - To be paid before 194 or in case of default of payment to serve a *further term of imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES Versus JURGEN STROOP, ET AL

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

14 January 1946 Pages 109 - 179

TESTIMONY

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	COURT
CAPT. WILLIAM W. HARRIS	109	111			
HANS GUNTHAR (recalled)			118,149	133,146 150	
REINHARD BRAUER	152	159			
JOHN STEINER	164				
FRANZ THANNER (for pros.)	166	173			
(for def.)	174				
CAPT. DONALD C. SMITH	175				

EXHIBITS

NO.	DESCRIPTION	MARKED	RECD IN EVIDENCE
P-32	Document	165	166
P-32A	English Translation of P-32	165	166
P-33	Statement, Dr. Kurt Christmann	177	178
P-33A	English Translation of P-33	177	178
P-34	Supplemental, Statement, Dr. Kurt Christmann	179	179
P-34A	English Translation of P-34	179	179

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Dachau, Germany

14 January 1947

MORNING SESSION

(Whereupon the Court reconvened at 0900 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all the members of the Prosecution, all the members of the Defense, all the accused, the reporter and interpreter are present. At the close of the last session I believe there was a motion pending before the Court.

PRESIDENT: The motion of the Defense to strike Prosecution Exhibits 27 through 31, both inclusive, is overruled.

DEFENSE COUNSEL: In as much as towards the end of the session something was said by the Court about the fact that the motion might have been to some extent diligent or have been improperly made, in view of the fact that when the Exhibits first went in no objection was made, I would like a ruling from the Court as to whether or not the time the motion was made played a part in the decision of the Court.

PRESIDENT: The time of making the motion played no part in the decision of the Court.

PROSECUTION: The Prosecution has been informed that the psychiatrist has completed his examination of the accused Moller, Number 9, the Prosecution calls as its next witness Captain Harris who made the examination.

CAPTAIN WILLIAM M. HARRIS, U.S. Army, called as a witness by the Prosecution, being first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Will you please state your full name?

A William M. Harris.

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Q What is your rank?

A Captain.

Q What is your branch of service?

A Medical Corps.

Q Medical Corps of the Army of the United States?

A That is correct.

Q What is your present assignment to duty?

A Chief of the Neuro-psychiatric section of the 98th General Hospital.

Q Where?

A Munich.

Q On Friday, 10 January 1947, at the request of this Court, did you make an examination of one Hermann Moller an accused in this case?

A I did.

Q Did you make that examination here at Dachau?

A I did.

Q Will you tell the Court, how you conducted that examination and what your findings were?

A The examination was by interview. The findings of the examination essentially were that the accused has a chronic, moderate tension state; he is of average intelligence and the chronic tension has been present all his life. There was no history that would indicate that this man was at any time insane. It is my opinion that this man can understand the proceedings of the trial and is fully capable, at this time, of understanding the trial.

Q Captain, how long have you been in the medical department of the Army?

A Two years.

Q Prior to entering the service, will you tell the Court your experience as a medical man?

A I graduated from the University of Maryland Medical School in 1943. Following graduation I took a nine months internship and following that I entered the U.S. Army.

Q What type of work have you been doing as a medical officer in the Army?

A I have been in psychiatric work since my entrance into the Army.

Q The accused Hermann Moller, in this case, is alleged to have committed a crime on 22 February 1945, was he, in your opinion, sane on that date?

A It is my opinion that he was.

Q In your opinion, on that date, was he able to tell the difference between right and wrong?

A He could tell the difference between right and wrong.

Q Thank you.

PROSECUTION: That is all. You may cross examine.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q During the period of your medical studies did you specialize to any extent in psychiatric work or was your student career the normal medical studies?

A In medical school students take a rather rigidly prescribed course and there is little opportunity for specializing in any one particular field.

Q During your term in the medical school, how much work did you have, under instruction, in psychiatrics?

A In the University of Maryland we take work in psychiatry for approximately two hours a week throughout our four years of school.

Q Was your internship in a psychiatric ward or was that a general internship?

A It was a rotating internship.

Q That meant that during the nine months you might be for one period in surgical, for one period in medical and so on and so on, is that correct?

A That is true.

Q During the rest of your medical history, which has been in the Army, your knowledge of psychiatry has been picked up through the inperical method, is that correct?

A I attended a three months course at Columbia University when I officially entered the Army and since that time I have worked under Board men and have learned considerably from them.

Q I would like to ask you very frankly, Captain, in normal, civilian life, with your background and experience, would you be considered an expert in psychiatry? As a medical man, would you consider yourself as such? I realize that that is a hard question to answer but I am asking it of you frankly.

A It is my opinion that I would be qualified to give expert testimony on psychiatric cases.

Q My question was: As a medical man would you consider yourself an expert in psychiatry? You can answer that yes or no.

A I do not consider my training complete but neither do many doctors consider their training complete.

Q Yes or no, Captain, would you consider yourself an expert? Please answer yes or no.

A Well-

PRESIDENT: That question has been answered satisfactorily as far as the Court is concerned.

(Harris-cross)

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DEFENSE COUNSEL: My exception, if it please the Court.

QUESTIONS BY DEFENSE COUNSEL:

Q How long did you interview this man?

A Approximately three quarters of an hour.

Q Of what did that examination consist?

A The examination consisted of an interview and mainly questions on my part and answers by the accused.

Q What was the basis of your opinion that back in 1945 this man was sane?

A It is my opinion that the man was sane at that time because at no time in his history did he give me any information that would indicate that even possibly a condition of insanity might exist.

Q In other words, that opinion is purely objective and is based entirely on medical information given to you by the subject?

A It is not a purely objective opinion in that some force is lent by evaluating and observing the patient in the time I had with him, noting that there was no insanity present at this time and the nature of the condition, which is a moderate anxiety and then again, the lack of any objective evidence that would indicate that he was insane at that time.

Q Will you please state in lay language just what you mean by "chronic moderate tension state"?

A By that I mean that this man has a moderate degree of nervousness which has been present since childhood.

Q Does that cause nerve deterioration?

A No. That has nothing to do with deterioration, that is a functional thing.

Q Take a man like the subject of our discussion here who has this condition, would that man be more inclined to do as he was told by his superiors than a normal individual who did not suffer from this condition?

(Morris-cross) 113

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PROSECUTION: I object to that question. I believe that we are going far afield from the purpose of the direct testimony. The purpose of this testimony is to determine whetheror not the man knew the nature and quality of his acts and whether or not he knew the difference between right and wrong, whether or not he was insane and whether or not he was under compulsion to obey orders or less likely to obey orders under certain conditions.

PRESIDENT: The objection is sustained.

DEFENSE COUNSEL: Then may I ask the Court that the witness be held available for use by the defense?

PROSECUTION: May it please the Court (reading):

"The Government is not required to prove the insanity of the accused by positive and direct evidence. Presumptions often stand for proof until rebutted. The presumption of law that everyone is sane, which holds good, is the full equivalent of expressed proof and stands until it is rebutted and will be sufficient to sustain the burden of proving the prisoner's sanity, where the evidence of the Government suggests nothing to the contrary. If the Government shall prove, even prima facie, that the accused committed an act which is criminal by law and no other evidence is given, his sanity will be presumed and if the prisoner in the defense made by him offers no evidence or offers unconvincing or unsatisfactory evidence on this point his sanity may be regarded as proved."

The Defense has offered no evidence of insanity and the presumption still exists. We had him examined at the requestof the Court. The expert here was obtained from the 98th General Hospital with permission from the commanding officer of the hospital to have the officer stay here for this period of time only. It would be inconvenient to the Government to retain this witness for any length of time further than the testimony this morning. I might suggest to the Defense that if the witness is desired to be brought back to court, arrangements be made with the hospital by the Defense. The Prosecution therefore, at this time, moves that the Court make a decision as to whether or not the accused, Hermann Moller, Number 9, under the nature of the charges against him and the proceedings of this court -- whether or not at the time of the commission of the alleged offense he was sane.

DEFENSE COUNSEL: I have two things in mind in addressing the Court. One is that the purpose of my examination, I think, has been misunderstood. Once the Court stopped me in my questioning as to the qualifications of the witness, I assumed the Court was satisfied in its mind one way or the other as to the qualifications of the witness as an expert. However, I am certain, in my mind, that this Court in ajudicating sentence, assuming there is a finding of guilty, will unquestionably give some weight to a man's mental condition and responsiveness to pressure from the outside. I thought that as long as the witness is here and was introduced as an expert, I would put that evidence in now, as to what this witness thought would be the reaction of this particular accused to outside pressure and thus avoid the necessity of bringing him in again. That is all I had in mind when I went with my question and the motion was made that it was premature, has no place, is not called for by the procedure; whether the Court thinks the man is liable and knows right from wrong will be determined by the Court's findings at the end of the case and is not to be made at this time.

Spare

PROSECUTION: The reason the motion was made at this time is that if the accused is insane he should be removed from the dock and not be allowed to continue in the case. Has the Defense any further questions of the witness?

DEFENSE COUNSEL: That depends on the ruling of the Court to my first suggestion that I be allowed to continue with the witness rather than bring him back. If the Court says no, I have no further questions.

PRESIDENT: You may continue with the witness, providing you keep your questions on the subject at hand.

DEFENSE COUNSEL: On the question of sanity or insanity, I have no further questions; on his response to outside pressure, I have.

PRESIDENT: You may ask the questions.

PROSECUTION: I object to that, may it please the Court, this is no time for the Defense to raise any questions in defense of superior orders, this is the Prosecution's case.

PRESIDENT: The ruling of the Court is that you may ask the questions, Colonel Berman.

DEFENSE COUNSEL: Will the reporter please read the last questions put to this witness by me?

(Thereupon the reporter read the questions as follows:

"Q Take a man like the subject of our discussion here, who has this condition; would that man be more inclined to do as he was told by his superiors than a normal individual who did not suffer from that condition?")

PROSECUTION: I object to the question, on the grounds previously stated.

PRESIDENT: The objection is overruled.

THE WITNESS: In order to avoid any confusion I would first like to restate my first opinion that this man is sane and can distinguish right from wrong. Now, the question was, I believe, is the man more apt to be influenced by a direct order from a superior.

Q My question was: Was an individual suffering from this sort of condition more likely to lean on superiors and follow instructions.

A In this man's history there are findings that he is a rather weak, nervous, dependent individual and in this type of individual he is more easily influenced and suggestible than a man free of any tension or other personality inadequacies such as this man presents.

DEFENSE COUNSEL: I have nothing further, thank you, sir.

PROSECUTION: Nothing further by the prosecution. Any questions by any members of the court?

PRESIDENT: The court would like to have the answer that the witness just gave read.

(Whereupon the reporter read the last answer.)

PRESIDENT: No further questions by the court.

PROSECUTION: Request that the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

PROSECUTION: Prosecution renews its application for a finding with respect to the accused, Moller.

PRESIDENT: The court is satisfied that the accused, Hermann Moller, is not insane, that he is able to understand the nature of the charges against him and the proceedings of the court, and the court so rules.

PROSECUTION: Will the court also rule as to whether or not the accused was sane or insane at the time of the offense, 22 February 1945?

DEFENSE COUNSEL: The defense objects to the request, may it please the court.

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

The court further rules that in the absence of evidence of insanity at the time the alleged crime was committed, the accused, Moller, was sane at the time of the alleged offense.

PROSECUTION: Prosecution recalls Hans Gunther.

PRESIDENT: You are reminded you are still under oath.

HANS GUNTHER, recalled as a witness by the prosecution, having been previously duly sworn, resumed the stand and testified further through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Are you the same Hans Gunther who previously testified in this case?

A Yes.

Q What was your rank in May 1944?

A First of May 1945?

Q 1944.

A I was First Lieutenant of the Army.

Q At that time were you in the Wehrmacht or the Waffen SS?

A I was a member of the Wehrmacht, of the Army.

Q Were you later transferred to the Waffen SS and if so, when?

A Yes. On paper I was transferred only in September, October 1944 but actually I reported to Wiesbaden already the end of May, beginning of June 1944, with the higher SS and police leader.

Q What was your rank in September, 1944?

A Captain of the Waffen SS.

Q Now, in September 1944, what was your assignment to duty in General Stroop's command?

A My duties were to keep the already existing Security Plan up to date in regard to the forces, their weapons and munitions. Furthermore,

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It was my duty to organize two railroad anti-aircraft batteries and one river anti-aircraft battery.

Q Did your organization have liaison with the Air Force?

A Yes.

Q Did you have liaison with the Twelfth Army Command within [illegible] AAA?

A Yes, the very closest liaison.

Q After your assignment as I-A on the staff of Gen. Stroop, were you given any special duties or missions?

A Yes. Furthermore was my duty to organize in the beginning the Undertaking "Balduin" and the Undertaking "A".

Q What do you mean by the Undertaking "A"?

A General Stroop had the intention, after discussion with General Fruetzmann and the Gauleiters, to organize the Undertaking which was similar to the Maquis in France.

Q Did you complete the organization of Undertaking "A"?

A No.

Q Why not?

A General Stroop relieved me of my duties with the Undertaking "A" because he was not satisfied with my performance.

Q Did he tell you why?

A Yes. I brought to the attention of General Stroop at the beginning of the Undertaking "A" that, in view of the unclear conditions for the purpose of the Undertaking and the unclear question of leadership in which the various government offices try to mix in, would have serious difficulties in regard to Geneva Convention, and that the only remaining possibility would be this one -- to organize a battalion of engineers in

(Continued next)

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Q [illegible] at the [illegible] of General Stroop, [illegible] in the [illegible] plans for [illegible] in closest relationship with the General Command, and I had taken up already discussions with the General Command in this respect, and the plans of the General Command in regard to demolitions which were guarded by the engineers of the General Command and which were already prepared for demolition in order to relieve these units of the General Command through units of the Command Stroop.

Q At the time you were relieved from duty to organize the Undertaking "W", did General Stroop say anything about your moral principles?

A Yes. General Stroop said at that time with my fatuul, technical legal objections, with my weak, lax attitude, he couldn't do anything. He He would look for another man who would continue this Undertaking.

Q Just what purpose did General Stroop have in mind in the organization of this so-called enterprize "W"?

A General Stroop intended to organize Undertaking "W" in such a way that the men trained in the Undertaking "W" would let themselves fall behind the enemy's lines and then would start the fight against the enemy's supply lines [illegible]

Q [illegible]

(Cunther-redirect)
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A [illegible]

Q [illegible]

A [illegible]

Q [illegible]

(Cunther-Cross)

Q If you know, was it the intention of General Stroop, as expressed to you in the preparation of plans for this Enterprise "W" to bring about violations of the Geneva Convention?

DEFENSE COUNSEL: I object.

DR. RAU: I object. First, this question is not important for our case, and secondly this question is a leading question--a suggestive question.

PROSECUTION: This question deals with a matter that is relative to the issue, the general, all around, combined conspiracy and plan to bring about violations of rules of warfare. It has probative value and will help the court discover the facts; and, although it is leading in some respect, the Prosecution requests the Court to permit the question.

PRESIDENT: The objection is overruled.

PROSECUTION: Do you remember the question?

WITNESS: I answer the question yes. The possibility was taken into account.

QUESTIONS BY THE PROSECUTION:

Q How long were you engaged in preparing the plans for the Enterprise "W"?

A From the beginning of the organizing work, approximately three weeks.

Q Had the plans been fully completed when you were relieved from that assignment?

A No.

Q Who completed the plan?

A Captain Keller and Major Best.

Q Would you recognize Major Best if you saw him again?

A Yes.

Q If he is in the court room, identify him.

A Yes, Number 14.

PROSECUTION: Let the record show that the witness identified the accused Best, Number 14.

QUESTIONS BY THE PROSECUTION:

Q Who relieved you from that assignment to complete the Enterprise "W"?

A General Stroop relieved me of this duty.

Q At the time he relieved you, did you have any conversation with him about it?

A Yes.

Q Tell the Court what that conversation was.

A I brought to the attention of General Stroop that all members of the Wehrwolf first of all had to be uniformed. Furthermore, they had to get pay books and a clear leadership, and that all other organizations which played around with this organization like the party and the Hitler Youths had to be excluded.

Q Did he say anything to you about your moral attitude?

A Yes.

Q What did he say?

A With your technical, legal attitude and objections, and your weak, your lax attitude, you are no man for me. With your legal, formal objections, and your weak, soft, lax

attitude, you are not the right man for me. I will have to seek for some other man.

Q After you were relieved from the assignment to organize the Enterprise "W", what duties were you assigned?

A Then I had to take care only of the security plan, and the coordination and subordination of all units under the command of the General of the General Command 12th.

Q You mentioned the word "Wehrwolf". Is that the word for which the letter "W" stood for when you said "Enterprise 'W'"?

A Later on we found out that "W" was an abbreviation for "Wehrwolf".

Q Was that word a code word?

A Yes, it was a code word.

Q Now, you speak about the formulation of so-called security plans. When were those plans first drawn up?

A First, these plans were worked out through my predecessors in February, March, 1944.

Q In preparation for the making of the plans, were there any conferences held in General Stroop's Headquarters in Wiesbaden?

A I can't say that because at that time I wasn't in Wiesbaden as yet.

Q Were there any conferences held in General Stroop's office when you were there on duty?

A Yes.

Q Were they concerned with the preparation of these so-called security plans?

A Yes.

Q Do you recall any conferences in July or August,

1944?

DEFENSE COUNSEL: May it please the Court, I not only object, but I would like to have a ruling by the Court as to whether my objection should be passed on before translated into German. It is leading, it puts the dates of alleged conferences in the man's mouth. That's my objection to the question, and I should like a ruling as to whether or not I should object prior to the translation into German.

PRESIDENT: Objection overruled. Your objection should be made prior to the translation into German.

DR. RAU: May I ask that an exception be made for the German attorneys. I think the question should, as far as the German counsel are concerned--should first be translated into German before they can decide whether an objection has to be raised or not.

DEFENSE COUNSEL: A division of authority here. That vitiates the purpose of my asking the question. The question is asked and the value of my question is gone. I am sorry, I will have to speak to the defense counsels as to when it's to be made.

PROSECUTION: I will restate the question. Do you recall any conferences in General Stroop's Headquarters in July or August, 1944?

WITNESS: Yes.

QUESTIONS BY THE PROSECUTION:

Q Do you recall who was present at that conference?

A Yes.

Q Who?

A The Commander of the Security Police; the Commander of the Regular Police; the Chief of Staff with the Commander of the Order or Regular Police; Colonel of the SS Schluma; and the Secretary of General Stroop, Miss Hoecker, and myself.

Q Did you ever hear of a Colonel Niemann?

A Yes.

Q Is he present?

DEFENSE COUNSEL: I pray the Court's attention. He is not an accused. I do not see what he has to do with the case.

PROSECUTION: I think it is relevant to name the people who were present at any conference about which testimony is going to be offered against the accused--especially if the accused was present also.

PRESIDENT: The objection is overruled.

QUESTIONS BY THE PROSECUTION:

Q Was the accused Trummler there?

A Yes.

Q In preparation for the so-called security plans, approximately how many conferences did you attend in General Stroop's Headquarters?

A On discussions on meetings about the Security plan itself, I participated appreximately 15 times in so-called chief meetings.

Q At the conferences you attended, were the people you have mentioned before always present?

A Yes. Sometimes, one or the other of the gentlemen was absent. Furthermore, there were individual conferences

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between the commanders and General Stroop directly--sometimes on the same day--sometimes on other dates.

Q Now, directing your attention to the middle or latter part of October, 1944, was there any conference held at that time in General Stroop's Headquarters?

A Yes.

Q Did General Stroop preside over that conference?

A Yes.

Q Did that also take place in his Headquarters at Wiesbaden?

A Yes.

Q Tell the Court exactly what transpired and what took place at that conference.

A At this conference first the security plan and the cooperation of the General Command was up for discussion. Furthermore, the organization of a cavalry unit of the SS Motorized Unit 12th; then, General Stroop brought up the question of the fliers; and he complained very much to Colonel Niemann about the attitude of the regular police. Contradictory to existing orders, the regular police would help very actively in the protection of fliers. It would make impression that the regular police is already weak and tired of the war. In the future, he would see to the most severe punishment of all members of the regular police who would aid in the protection of fliers. Furthermore, he was of the opinion that in principle the fliers should be handed over to the Security Police. Colonel Niemann

objected to this very vehemently and brought to the attention that it would be impossible for a member of the regular police to watch that fliers who had parachuted would be lynched and the assignment of the regular police to see for peace and order.

PRESIDENT: The Court will recess for 15 minutes.

(Whereupon at 1015 hours the Court recessed.)

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(Whereupon the court reconvened at 1030 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all members of the court, all members of the prosecution, all members of the defense, all the accused, the reporter and the interpreter are present.

HANS GUNTHER, recalled as a witness by the prosecution, having been previously duly sworn, resumed the stand and testified further through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

PROSECUTION: I believe the defense counsel has an application.

PRESIDENT: The ruling of the court that the objections be made before the translation of the question is rescinded and the court rules that an objection can be made at any time, but all of the proceedings will be translated.

DEFENSE COUNSEL: I think that anticipates what I was going to ask, may it please the court. I was going to suggest that the American counsel be allowed to make them before the translation, the German counsel subsequent to the translation, but I think the ruling of the court covers that. Thank you.

QUESTIONS BY PROSECUTION:

Q I believe you said that General Stroop gave instructions that captured fliers would be turned over to the police, is that correct?

A That the captured fliers should be handed over to the Security Police.

Q Did General Stroop say anything else in this connection?

A Yes. He said, "In the future, I will take the strongest steps against these ideas of humanity. These drivers in the air who are shooting at women and children do not deserve any pity. The enemy does not live up to the Geneva Convention any more. For this reason, there is

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no necessity for me to obey, to follow, the rules of the Convention."

Q Did you know at that time a Captain Kaleske?

A Yes.

Q Who was he?

A He was adjutant of General Stroop.

Q Directing your attention to the month of November, 1944, did you have any conversations with Kaleske?

DEFENSE COUNSEL: I pray the court's judgment as to what conversations with an adjutant, not in the presence of the accused.

PROSECUTION: I believe this question will be made relevant, if the court will permit me to connect it.

PRESIDENT: Objection overruled.

QUESTIONS BY PROSECUTION:

Q Where did you have these conversations with Kaleske?

A In the anteroom to General Stroop.

Q Did these conversations concern the instructions given by General Stroop?

A Yes.

Q What did Kaleske say to you and what did you say to him?

DEFENSE COUNSEL: I object, may it please the court.

PRESIDENT: Objection overruled.

QUESTIONS BY PROSECUTION:

THE WITNESS: Captain Kaleske told me that a police officer in Altenkirchen had taken part in the saving of a dropped flier and had transferred this flier in his car to an office of the Wehrmacht. General Stroop then requested a most severe punishment of this officer. I told Captain Kaleske the police officer behaved entirely right. A flier who came down is definitely a prisoner of war, and has to be treated as such, as this could be read from the Geneva Convention, which was made the preamble of the security plan. I had made this preamble myself and had made it part

of the security plan.

Q Directing your attention to September, 1944, do you recall any reports made to General Stroop by Gauleiter Sprenger concerning captured fliers?

A Yes.

Q Tell the court about that.

A I had a letter from Gauleiter Sprenger in my hands, a letter in which Gauleiter Sprenger first discussed the question of transfer of the auxiliary police of the Ukraine and countries into the People's Guard. In the second paragraph of this letter, Gauleiter Sprenger mentioned that on several occasions, German police officers had taken part in the protection of fliers against existing orders, and he requested immediate steps against this behavior.

Q Do you know what, if anything, Stroop did in connection with that report from Sprenger?

A I discussed this letter with General Stroop.

Q What did you say to General Stroop and what did he say to you?

A I told General Stroop that from now on, the Party would try to take great influence on military matters as well as police matters, and that we should resist such efforts as much as possible. Furthermore, we are bound by the Geneva Convention. General Stroop then told me, "All these are formal legal objections, and, furthermore, this is none of your business. You take care of your security plan."

Q Directing your attention to the month of January, 1945, do you recall seeing a report concerning five American soldiers found dead in Trier on the Moselle?

A Yes.

Q Tell the court about that.

A Through the chain of command, from the general command, we received

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a report from the Army high command No. 1, in which this gave the following facts: five American fliers who had last been seen accompanied by members of the Security Police had been found dead by members of this Army. The Army high command asked for what reason these soldiers had been shot, and requested a detailed report. [illegible] in that paper by Goebbels concerning [illegible]

Q Did you see the report yourself?

A Yes.

Q What did you do with it? [illegible]

A I gave this report immediately to General Stroop, and suggested to Colonel Trummler that we should request immediately exact information in [illegible]

Q To make it clear to the court, when I referred to your seeing the report, I meant the original inquiry made from the high command, [illegible] all [illegible]

A Yes. [illegible]

Q Did you so understand it? [illegible]

A Yes.

Q You say you forwarded it to General Stroop? What did General Stroop say to you about it? [illegible] the article in the paper [illegible]

A General Stroop didn't make any reply, but he let the inquiry be forwarded to Colonel Trummler. [illegible]

Q After that, did you have any conversations with Trummler about that matter? [illegible] from Obersturmbannführer Strenger.

A Yes. [illegible] Stroop say to you about it?

Q When and where? [illegible]

A In the anteroom of General Stroop, about the end of February, 1945.

Q Tell the court what that conversation was.

A Since this matter was of interest to me, and was also considered extraordinary in our business affairs, I asked Colonel Trummler why is this report had not been completed yet, since the Army high command was waiting for this report. [illegible] the end of May.

Q What did Trummler say? [illegible]

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A Colonel Trumler told me not to bother about such petty matters, probably a few tried to escape. "Furthermore, that is none of your business."

Q Were you familiar with the German publication known as Das Reich?

A Yes.

Q Did you ever see any articles in that paper by Goebbels concerning American fliers?

A Yes.

Q What were these articles, if you recall?

A This article intended to send the German people to acts which to would have meant violation of international law. I discussed this article in connection with the letter of Gauleiter Sprenger with General Stroop, and brought to his attention that now the political leadership is trying by all means, with disregard whether the means were allowed or not, or men would have to be sacrificed without any use, finally to take over the military leadership.

Q I show you a document which is Prosecution Exhibit P-21, and is a newspaper article, and direct your attention to the article in the paper by Dr. Goebbels, and ask you whether you have ever seen that before.

A Yes, in the publication Das Reich.

Q Did you and General Stroop have any conversation about that article?

A Yes, in connection with the letter from Gauleiter Sprenger in July.

Q What, exactly, did General Stroop say to you about it?

A "You can't win a war with humanitarian feelings. These are formal legal objections. All of you are already tired of the war. It is high time that I take exemplary steps."

Q Gunther, when were you first apprehended by the American forces?

A May, 1946.

Q When did you see Stroop for the first time after that?

A In the prison at Wiesbaden about the end of May.

Q At that time, did you have any conversation with him about this case?

Q When did you first report to General Stroop for duty?

A End of May, beginning of June.

Q In that conversation, did you speak to him about the instrument you have testified to, with respect to the report from the Gauleiter made to Stroop in September?

A Yes.

Q What did Stroop say to you about that?

A Stroop told me, "Gunther, you are right. I should have better listened to you. I have done you wrong with your activities in Wiesbaden. It would have been better for me if I would have rode on my horses than to bother with these matters."

PROSECUTION: No further questions. You may cross examine.

RECROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Yesterday I asked you when Somann was relieved from his office as inspector, and I believe you said sometime in September, is that correct?

A Yes.

Q And this morning, you were testifying to a conference held in Stroop's office in July or August, at which Trummler was present, is that correct?

A No. This was referring to the conference in October.

Q Who was present at this conference which you said took place in July or August?

A Not July or August, I didn't mention any particular conference. I mentioned only that starting July, I participated on conference.

Q You testified that about three weeks after you reported for duty with General Stroop, you were relieved of participation in Plan W?

A Yes.

Q About what time would that be that you were relieved?

A End of September, beginning of October.

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Q When did you first report to General Stroop for duty?

A End of May, beginning of June.

Q When were you first assigned to work on Plan W?

A The order for the undertaking W was given approximately July or August. I first left this matter on my desk and specially did not do anything about the plans, since I couldn't see clear yet. In this connection, General Stroop admonished me severely at the end of the preparations for the undertaking W, and mentioned that in the section west of General Guttenberger, already great progress had been made, and he wouldn't like for me, a little captain of the SS, to get a bad name with Himmler.

[illegible] you discussed the security plan?

[illegible] end of June; beginning of July, I guess.

[illegible] Trumler present at that meeting?

[illegible] No.

[illegible] that was the first meeting at which Trumler was present?

[illegible] one of the meetings at which Trumler was present.

[illegible] this Werwolf organization you discussed in your evidence, was that a headquarters proposition or was that troop's proposition?

[illegible] that is now a proposition of headquarters at Berlin, but later it will also [illegible] troop with this matter in personal matter.

End ta 27
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[illegible] you have described them in connection with troops or was that from higher authorities?

[illegible] from higher authority were ordered.

[illegible] you have this list here in my hand and ask you to examine it and tell me if you have ever seen it before.

(Witness examines)

Q You testified under examination of a meeting in October at which the question of fliers first came up, and, you also testified to a general meeting which took place, prior to the October meeting. At the time the paper was presented to the witness and objected to it entered by the court Q You testified that there were about fifteen meetings at which you were present at which the security plan was discussed. Is that correct?

A Yes.

Q What was the date of the first conference in which you discussed the security plan?

A End of June; beginning of July, I guess.

Q Was Trummler present at that meeting?

A No.

Q What was the first meeting at which Trummler was present?

A End of September; beginning of October.

Q This Wehrwolf organization you discussed in your evidence, was that a headquarters proposition or was that Stroop's proposition?

A First it was a proposition of Headquarters at Berlin, but like in all measures Stroop made this matter his personal matter.

Q Were his actions as you have described them in conformance with orders received from higher authority?

A At my time no orders from higher authority were existing.

Q I show you this thing I have in my hand and ask you to examine it and tell me if you have ever seen it before.

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PRESIDENT: Proceed.

(Argument)

PRESIDENT: The motion to strike from the record, concurred in by both prosecution and defense is sustained, and all that has been said from the time the paper was presented to the witness and objected to is ordered by the court to be physically stricken from the record as being immaterial to all issues.

[illegible] Upon examination of this instrument it turns out that this was a statement made to the accused in pre-trial preparation by the prosecution. The prosecution turned it over to the translator and it accidentally got into the hands of the defense. The defense has no right to have [illegible] and if they do use instruments, which in this case happens to be in question-and-answer form, they are in effect violating the rule that has been laid down that they cannot interrogate our witnesses.

[illegible] I cannot just very big but the witness has testified; he has been turned over for cross examination. Now, the prosecution has in its possession something in writing from this witness, which is a completion interview which he has said was direct examination. It seems to me, in the interest of simple justice, our procedure was such a document which would be of assistance to the defense in bringing out the issues, we have a right to see for it and I [illegible].

PRESIDENT: Court will recess in place.

(Whereupon the court recessed at [illegible].)

(Whereupon the court reconvened.)

PRESIDENT: Court will come to order.

[illegible] I will [illegible] to grant the formal motion to [illegible] examination - exhibit which is in the statements

[illegible] PRESIDENT: Proceed. [illegible] witness risen in open court.

DEFENSE COUNSEL: I will now ask for that paper which I had, since it seems to have been a copy of an interrogation made by the prosecution in preparation for its case. Rather than run the risk of violating the rule, I have returned it to Colonel Dwinell and I will now ask him to return it to me for the purpose of cross examining the witness in question. Do you remember to identify?

PROSECUTION: Upon examination of this instrument it turns out that these are statements made by the accused in pre-trial preparation by the prosecution. The prosecution turned it over to the Translation Section and it accidentally got into the hands of the defense. The defense has no right to take instruments from us to be used in evidence, and if they do take instruments, which in this case happens to be in question-and-answer form, they are in effect violating the rule that has been laid down that they cannot interrogate our witnesses [illegible] orders.

DEFENSE COUNSEL: May I comment just very briefly? The witness has testified; he has been turned over for cross examination. Now, the prosecution has in its possession something in writing from this witness, which in our opinion impeaches that which he has said upon direct examination. It seems to us, in the interest of simple justice, if the prosecution has such a document which could be of assistance to the defense in bringing out the issues, we have a right to ask for it and I so do. [illegible] next [illegible]

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.) [illegible]

(Whereupon the court reconvened.) [illegible].

PRESIDENT: Court will come to order. [illegible] for your life and death [illegible]

DEFENSE COUNSEL: I will now ask the court to order Colonel Dwinell to let me have for examination a paper which contains statements

impeaching the testimony of this witness given in open court.

PRESIDENT: The request of the defense is denied.

QUESTIONS BY DEFENSE COUNSEL:

Q You have testified that General Stroop on occasion threatened the strongest punishment to any person subject to his command who failed to carry out the orders with respect to treatment given captured allied air personnel. Do you remember so testifying?

A Yes.

Q What powers of punishment did General Stroop possess to punish those under his command whom he considered violators of his orders or orders of higher authority with respect to treatment to be given to captured allied air personnel?

A On one occasion General Stroop threatened me with imprisonment or execution and I assume that the same punishment would have been applicable against any other officer who acted against Stroop's orders.

Q Had General Stroop power of life and death over those who were subject to his command jurisdiction?

A Yes, he was the higher appointing and reviewing judicial authority.

Q Did each and every member subject to General Stroop's command know of General Stroop's power of life and death over him?

PROSECUTION: I object on the ground that the witness would not be able to know all these things. He is in no position to know what everyone knows.

DEFENSE COUNSEL: -- so far as you know?

PRESIDENT: Objection overruled.

THE WITNESS: General Stroop was the master over life and death but it is possible that in the Security Police the matters were organized in a different manner. I don't know about that.

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Q We are talking now about these people who were subject to General Stroop's command jurisdiction. It is over these people, is it not -- those who were members of his command and subject to his command jurisdiction -- that he had the power of life and death, is that not correct? In your opinion or so far as you know, did these unlimited powers [illegible]?

A That's right. I for myself was present at the execution of an SS man who was sentenced to death and I was forced to look at it in order to get strong nerves when the attempt was made to assassinate Hitler. Did General Stroop have the power of life and death over Semmum for failing to obey orders?

Q I don't know that's [illegible] office at that time?

A Did he have it over Frummler?

A This too is unknown to me. Did Stroop have the power of life and death over -- when did he have the power of life and death among these defendants whose names you have mentioned?

A Over all members of the regular police and the SS, who was a [illegible]. Now, assuming that Semmum was a member or the Ordinance Police or a member of the SS, would Stroop have the power of life and death over Semmum? Would he have the power of life and death over Giss, who was a lieutenant? Since this would have concerned a higher SS rank I assume the consent of the Reichsfuehrer SS would have been necessary.

Q How about Girth? Would he have the power of life and death over Girth? Sir?

A No, I don't think so.

Q Where, in the chain of command of people over whom Stroop had command jurisdiction did this power of life and death begin, -- at what level of command? Um, yes.

A Here you have to consider the entire situation as it existed around the middle and end of 1944.

A Yes.
(Gunther-Koross)

(Gunther-Koross)

Tk 29-erh-Jan 11-50

Q Let us limit the question to the period beginning September 1944 [illegible] of allied air personnel. What, so far as you know,

A [illegible] I think that at this time already General Stroop had unlimited powers from Himmler. [illegible] Stroop would have been

Q When, in your opinion or so far as you know, did these unlimited powers first begin? [illegible] It is almost twelve o'clock. This discussion

A After the 20th of July 1944. [illegible] question. [illegible] I ask the court to

Q Was that at the time when the attempt was made to assassinate Hitler? [illegible] Court will recess until 1330 hours.

A Yes. [illegible] at 1130 hours the court recessed until 1330 hours.

Q Was Seyss still in office at that time?

A Yes.

Q Beginning with July 1944, did Stroop have the power of life and death over Michely, who was a private?

A Yes, no doubt.

Q Would he have the power of life and death over Fuehr, who was a chauffeur in the SS?

A I don't know that because Fuehr was a member of the Gestapo.

Q Would he have the power of life and death over Goss, who was a lieutenant in the SS?

A No doubt.

Q Would he have the power of life and death over Best, who was a major in the SS?

A Yes.

Q And the power of making decisions involving life and death was absolutely uncontrolled, is that correct?

A At that time, yes.

Q That time begins with July 1944 and continues until the end of the war, is that correct?

A Yes.

Q Suppose Stroop had refused to obey Himmler's orders about the treatment of allied air personnel. What, so far as you know, would have happened to Stroop? [illegible] Court, [illegible] know

A. As far as I know Himmler, I suppose Stroop would have been liquidated. [illegible]

DEFENSE COUNSEL: It is almost twelve o'clock. This discussion has disturbed my thinking on cross examination. Could I ask the Court to recess now? It is ten minutes to twelve.

PRESIDENT: Court will recess until 1330 hours.

(Thereupon at 1150 hours the court recessed until 1330 hours.)

Q During the time that Stroop was in Nieuwerm, is it not true that he was in solitary confinement?

A Yes, that is true. He was in solitary confinement.

Q Will you explain to the Court how it is that you were able to have a conversation with him?

A I was in the cell next to Nieuwerm and it was able to conversation.

Q Were you permitted to talk back and forth with him?

A It was not forbidden.

Q Then was the means of the [illegible] in which you and he were confined?

A Prison Nieuwerm.

Q Do you know on what charge it was?

A No. I don't know any charge.

Q Do you know whether it was on Gitanski's request?

A The name "Gitanski, Giovanni" is known to me but whether he [illegible] there, I don't know.

Q By whom were you captured on May 1945?

A I don't know the name of the American officer.

Q Do you know for what reason you were taken prisoner?

A No. Until my transportation it was not known to me.

(Continued)

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AFTERNOON SESSION

(WHEREUPON the Court reconvened at 1330 hours.)

PRESIDENT: The Court will come to order.

PROSECUTOR: May it please the Court, let the record show that all the members of the Court, all the members of the Prosecution, all the members of the Defense, all the accused, the reporter and the interpreter are present.

HANS GUNTHER, recalled as a witness by the Prosecution, having been previously sworn, resumed the stand and testified further through an interpreter as follows:

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q During the time that Streep was in Wiesbaden, is it not true that he was in solitary confinement?

A Yes, that is true. He was in solitary confinement.

Q Will you explain to the Court how it is that you were able to have a conversation with him?

A I was in the cell next to Streep and it was able to communicate.

Q Were you permitted to talk back and forth with him?

A It was not forbidden.

Q What was the name of the prison in which you and he were confined?

A Prison Wiesbaden.

Q Do you know on what street it was?

A No. I don't know the street.

Q Do you know whether it was on Albrecht Strasse?

A The name "Albrecht Strasse" is known to me but whether the prison is located there, I don't know.

Q By whom were you captured on May 1945?

A I don't know the name of the American officer.

Q Do you know for what reason you were taken prisoner?

A No. Until my interrogation it was not known to me.

(Continued)

tm 30 LJH
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Q Have you ever heard of a publication called the "Mitteilungen des Hauptamt SS Gericht"?

A No.

Q Do you know whether or not there was a publication which only contained the judgments of the SS Courts?

A I did not see one but I assume that one existed.

Q Have you ever seen any SS publications?

A Please ask me more specifically what publications are meant?

Q Have you ever seen any publications which were commonly distributed periodically among the SS personnel?

A No.

Q Do you know whether or not there was a special code of discipline which existed for members of the SS?

A Yes.

Q Was there anything about the discipline among the personnel of the SS which was peculiar to the SS itself?

A PROSECUTION: May it please the Court, I object on the grounds that the question goes beyond the scope of direct examination.

A PRESIDENT: The objection is sustained.

A DEFENSE COUNSEL: It really is not cross examination of direct testimony. I thought that so long as the witness was on the stand I would elicit as much information as I could. If that is objectionable and the Court says so, I will have to stop.

A PRESIDENT: The objection is sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q Now, you have testified to various differences of opinion between General Stroop and yourself, have you any prejudices against him?

A No. General Stroop was not known at all to me when I came to Wiesbaden, the differences began only in the course of our work together.

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Q You testified to hearing Streep talk about the alleged murder by Allied air personnel of women and children in the fields. You remember giving such testimony, do you not?

A About the murder of women and children in the fields, no. Only about air attacks on women and children.

Q During these conversations in which the subject was air attacks upon women and children in the fields and on the roads, what specific incidents were mentioned as to where such an event took place?

A General Streep talked about it only in general.

Q Do you personally know of any cases of low flying strafing by Allied airmen or personnel of German nationals working in the field or walking peacefully on the roads?

A I myself did not see it but it was general talk.

Q By whom?

A Travelers who had experienced it themselves.

Q Did you hear any of these travelers?

A Yes.

Q How many times?

A Only when I rode to Heidelberg into the hospital. It happened possibly twice.

Q Did these people tell you just exactly what had happened to them?

A I cannot remember the details anymore.

Q Will you tell the Court just what you do remember?

A Among the civilian population of travelers it was talked in general about the fact that strafing attacks on trains had taken place whereby some women and children had been injured.

Q So that, according to what was talked about by the general public, what was said by Goebbels in his newspaper was true, was it not?

QUESTIONS BY DR. RAU:

A To what extent it was the truth, I cannot say but in the opinion
Q [illegible]
of the population, Goebbels made reference to incidents that had taken place.
[illegible]

Q This man that was shot whose killing you had to witness, for what
A [illegible]
reason was he shot, if you know?
[illegible]

A I was not present at any killing of any man.
[illegible]

Q Did you not testify this morning that you were compelled to
A [illegible]
witness the shooting of an SS man?
[illegible]

A The shooting of an SS man and not of a flyer. The question here
[illegible]
is about flyers.
A [illegible]

Q For what reason was the SS man shot?
[illegible]

A Because of desertion and cowardice before the enemy.
[illegible]

DEFENSE COUNSEL: I believe there is one member of my associates
A [illegible]
who wishes to cross examine, Dr. Rau.
[illegible]
QUESTIONS BY DR. RAU:
[illegible]

Q Was this SS man shot because of a sentence pronounced by the
[illegible]
accused Stroop or on whose sentence was he shot?
[illegible]

A As far as I remember the sentence was pronounced by General Stroop.
[illegible]

Q Have you ever heard that there was such a thing as SS police courts?
A [illegible]

A Yes.
[illegible]

Q What was the mission of these courts? I am supposing that because
[illegible]
you were the operations officer of a high SS leader that you will know the
[illegible]
answer.
[illegible]

PROSECUTION: I object to that, May it please the Court, as going
[illegible]
beyond the scope of direct examination.

PRESIDENT: The objection is sustained.

DR. RAU: I believe it is in connection with the testimony of the
witness that he has stated that General Stroop had power over life and death.

QUESTIONS BY DR. RAU:

Q On the basis of what regulations did General Stroop have the power over life and death of his people, in your opinion?

A General Stroop continuously let it be known that he was under Himmler and that he had received all including powers from Himmler himself.

Q What do you understand by "all including powers"?

A By the manner in which General Stroop talked about it, it was perfectly clear to everyone that he included everything in it.

Q Were there no courts-martial provided for the SS?

A Yes, there were such.

Q How do you believe it possible then that General Stroop could make these decisions without recourse to these Courts?

A I had the intention to complain about having been ordered to witness the shooting of an SS man and I therefore talked to the SS judge Dr. Neuberger. Dr. Neuberger answered me, "It is no sense to do anything at all you cannot prevail against General Stroop".

Q Was it not only a disciplinary matter or, in your opinion, was it not a court matter?

A I considered it an affront to my soldierly honor to be ordered to witness the shooting of an SS man to harden my nerves after I had done my duty as a soldier at the front.

Q But apparently you did not feel under such great pressure so that you could not complain about the directives of your superior, is that correct?

PROSECUTION: I object to the question as being argumentative.

PRESIDENT: The objection is sustained.

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QUESTIONS BY DR. RAU:

Q If I remember correctly, for three weeks you worked on the matter Wehrwolf, is that correct?

A Yes.

Q Is it not correct that for this undertaking a special person-in-charge was appointed?

A Another person was appointed to the post because great differences had appeared between us.

Q How do you know that this other person was appointed only because there were differences between you?

A Because General Stroop himself told me that I was too weak and too slack in my opinions and he had to look for a new man for the post.

Q Who was the man that after you was in charge of the Undertaking Wehrwolf?

A For a short time, Captain Keller, and later, Major Best.

Q On what matters did you work during your time besides the Undertaking Wehrwolf?

A On the establishment of two anti-aircraft batteries, an anti-aircraft boat group, and the Undertaking Baldwin.

Q Did Major Best work on anything else besides the Underteking Wehrwolf?

A No.

Q So his entire time was taken up to work on the Operation Wehrwolf, is that right?

A Yes.

Q But since you were working on several other missions, you could not have worked effectively on the Operation Wehrwolf, is that correct or is it not?

A The Operation Wehrwolf would have come into effect as it was planned, it would have been built into the Security Plan and a normal pioneer battalion

could have come into existence.

Q I believe you did not answer my question. I asked you whether, besides your other work, you could have worked on Operation Wehrwolf or not?

A It would have been possible.

Q How do you explain, then, that after you the Operation Wehrwolf took up all the time and working ability of an officer?

A Because the training course of the SS pursuit groups had prior under different formations as came later on under Major Best.

Q If I understand you correctly then, your successor on the Operation Wehrwolf had other missions to work on besides the Operation Wehrwolf, is that correct?

A No. Major Best came originally to Wiesbaden to inspect the trained men and was put into this office against his will by General Stroop. That means, against the will of Major Best.

Q Were you, too, transferred into this office against your will?

A Yes.

Q Were you a member of the SS before 1944?

A Yes.

Q In what period?

A I was in the General SS from 1934 'till 1939.

Q When you were transferred from the Army to the SS, to which part of the SS were you first transferred?

A To the SS Personnel Main Office in Berlin.

Q And from there?

A And from there I was detailed to General Stroop.

Q Is it not correct that you volunteered for this post?

(Gunther-recross)

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A No. I was supposed to be a welfare officer first because I was a severely injured officer. In spite of my continued interventions, General Stroop left me in Wiesbaden, and the entire staff can bear witness to that.

Q Do you know whether or not General Stroop was a reviewing authority?

A Yes.

Q Do you know also what his duties were in this connection?

A In detail I cannot say that.

PROSECUTION: I object.

PRESIDENT: Just a minute, did you object?

PROSECUTION: The question has been answered. My objection was entered in the record too late.

QUESTIONS BY DR. RAU:

Q While you worked on the Operation Wehrwolf, you got the impression that the Geneva Convention was to be disregarded?

A Yes.

Q In what details did you see a disregard of the Geneva Convention?

A General Stroop was of the opinion that the men of Operation "W" could begin undertaking also in civilian clothes.

Q In that you saw a disregard of the Geneva Convention, if I understand you correctly?

A It is clear that if men in civilian clothes without any insignia of any kind operate, that that is a disregard of the Geneva Convention.

Q Did you ever read the Geneva Convention?

A Yes, I even made it a part of the Security Plan.

Q And you are of the opinion that rules are provided in the Geneva Convention about that, is that correct?

A Yes, in the Geneva Convention the usages of war are detailed.

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Q That is something regulated in the Rules for Land Warfare of the Hague, is not known to you?

A That is also known to me.

Q What is your civilian occupation?

A Bank clerk.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Gunther, you said that in your opinion Stroop had all-exclusive power, is that correct?

A Yes.

Q Was it also your opinion that in the use of those powers Stroop was excessive?

DEFENSE COUNSEL: I pray the court's judgment.

PROSECUTION: Opinion evidence has been permitted the defense, it should be permitted the prosecution.

PRESIDENT: Just a minute. We are not getting some of these things up here. Will you repeat that.

(whereupon the reporter read the objection of the Defense Counsel and reply of the prosecution.)

THE INTERPRETER: Pardon me. The accused specifically requested the arguments be translated for him. Is that agreeable with the court or should I dispense with translating the arguments?

PRESIDENT: It is agreeable. Objection overruled.

THE WITNESS: Yes. Stroop was very hard and he insisted that his measures were carried out.

PROSECUTION: No further questions.

DEFENSE COUNSEL: I have just a few more that have occurred to me.

(Gunther-redirect)

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RECROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q You say here, Gunther, that Stroop was very hard in his decisions. Are you able to give this court any information as to the extent to which Stroop's character and opinions on these matters were known to those under his command?

PROSECUTION: I would like to ask the court to warn the defense that character evidence is now being produced.

PRESIDENT: The question is now bordering upon the question of showing character of the accused.

DEFENSE COUNSEL: I should like to comment to the court that in my examination I very carefully used, throughout, the word "power" and avoided carefully any questions about the exercise of the power. It was the prosecution who asked, over my objection which was overruled by the court, whether Stroop abused his power, so that field was opened, not by us but by the prosecution over my objection. Now, I am merely asking whether or not the underlings under Stroop knew of Stroop's power and his attitude. That is all I am asking. Rather than run the risk that the defense may open this line of questioning, I request permission to withdraw my last question.

PRESIDENT: Permission granted.

QUESTIONS BY DEFENSE COUNSEL:

Q I believe I asked you here, Gunther, before, but I have forgotten your answer -- was there a special discipline invoked among members of the SS which was particularly rigorous?

PROSECUTION: I object on the ground it goes beyond the scope of direct and redirect examination.

PRESIDENT: Objection sustained.

(Gunther-recross)

DEFENSE COUNSEL: I have just one more question which I think will also be objected to along the same grounds.

QUESTIONS BY DEFENSE COUNSEL:

Q Was it not a cardinal principle in the SS to instill into all its members that strict obedience to orders was the first principle?

PROSECUTION: I object on the grounds previously stated.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: My associate wants to ask one more question. I personally am through.

QUESTIONS BY MR. RACHAEL:

Q Mr. Gunther, you have been testifying to opinion, let me ask you this -- Is it your opinion that punishment by death for a military person who disobeys an order of his superior officer during time of war, is excessive?

PROSECUTION: I object to that question on the grounds previously stated.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: Defense has nothing further.

PROSECUTION: Prosecution has nothing further. Does the court desire to ask the witness any questions?

PRESIDENT: No.

PROSECUTION: Request that the witness be excused.

PRESIDENT: Witness is excused.

(Whereupon the witness was excused and withdrew.)

PROSECUTION: Prosecution calls as its next witness, Reinhard Breder on behalf of the prosecution. Captain Vance will conduct the direct examination.

(Gunther-recross)

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REINHARD BREDER, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q State your full name.

A Reinhard Breder.

Q What is your present status?

A I am a prisoner here in camp.

Q What is your home address?

A Winkel in Rheingau, Hindenburgstrasse.

Q How old are you?

A 35 years.

Q Before the war what was your civilian occupation?

A I was first a student and then I took my first and second law examinations.

Q Were you a lawyer?

A No, I was a court assistant, I was a judge.

Q Were you a member of the Allgemein SS after the war began?

A Yes, since 1933.

Q What were your duties from September 1943 until March 1945?

A I was drafted the end of August 1939 and came to the SD. I first was in Cologne and then in Hamburg, then in Dusseldorf. Since 1943 in Frankfurt-Main.

(Breder-direct/
end Ta 31 idb fols

Q What was your position in Frankfurt since September, 1943?

A I was the leader of the State Police for the Government District Wiesbaden.

Q Is that commonly known as the Gestapo?

A Yes.

Q So you were the Chief of the Gestapo in Frankfurt, is that correct?

A That's correct.

Q Now, in September, 1943, when you became Chief of the Gestapo in Frankfurt, who was your next superior?

A The local immediate superior was the Inspector of the Security Police Somann.

Q Do you know Somann's first name?

A Otto.

Q How long did Otto Somann remain to be your next superior officer?

A Until August, 1944.

Q After that date who was your next superior officer?

A Trummler.

Q Do you know his first name?

A Hans.

Q If you were to see Otto Somann at this time, would you recognize him?

A Yes, of course.

Q Will you look around the court room and see if he is present in court? If so, point him out.

(Breder-Direct)

A It's number 3.

CAPTAIN VANCE: May it please the Court, let the record show that the witness has indicated the accused Otto Somann wearing placard number 3.

QUESTIONS BY CAPTAIN VANCE:

Q Would you recognize Hans Trummler if you were to see him at this time?

A Yes.

Q If he is present in Court, will you indicate which man is Hans Trummler?

A He wears the number 2.

CAPTAIN VANCE: Let the record show that the witness has indicated the accused Hans Trummler, wearing placard number 2.

QUESTIONS BY CAPTAIN VANCE:

Q During this period of time, where was Somann's office located?

A In Wiesbaden in Paulinen Strasse.

Q After Somann left and Trummler took over, did he occupy the same office?

A Yes.

Q During the period of time that you were Chief of the Gestapo in Frankfurt, were you ever called to the Headquarters in Wiesbaden for any conferences?

A Yes, several times.

Q What were these conferences about, and who held them?

A Continuous matters of the Security Police were

being debated. The conferences were held by the Inspector--first by Somann and later on by Trummler.

Q Did you ever attend any conferences held by Somann where the treatment to be given allied fliers was discussed?

DEFENSE COUNSEL: That's certainly a leading queation, the Defense submits, may it please the Court.

PRESIDENT: Objection overruled.

WITNESS: In June, or possibly the beginning of July, 1944, in the Kurhaus in Wiesbaden, a conference of all leaders of offices of the Gestapo, Criminal Police and SD in the District Rhein-Westmark was held. In the course of this conference, an order was read by Somann which he had gotten from Himmler over Kaltenbrunner. In this order it said the following: It is not the mission of the police to protect allied fliers who had jumped when they were attacked by the German civilian population. The police should keep themselves back. This order was to be made known to all members of the Security Police and SD hourly.

QUESTIONS BY CAPTAIN VANCE:

Q Do you recall who was present at this conference you are talking about?

A Yes, for example, Berger, the Chief of the Criminal Police in Frankfurt; also Dr. Jaskulsky, the Chief of the SD in Frankfurt; further the Chief of the State Police in Koblenz; Dr. Christmann; who was there from the police in Darmstadt I am not sure anymore, but I believe it was Girke; also the Chief of the SD in Koblenz, Wiebens was present, and several other office leaders of the Criminal Police whose names I do not remember.

Q Was General Stroop present at this conference?

A He came later in the course of the debate with several members of his staff.

Q Did General Stroop have anything to say at this conference?

A In the main he was here as a guest only--only later he voiced his opinion to some of the lectures given.

Q Do you know General Stroop and would you recognize him if you were to see him today?

A Yes.

Q If he is present in Court, will you indicate which man is General Stroop?

A He wears the number 1.

CAPTAIN VANCE: Let the record show that the witness has indicated the accused Jurgen Stroop, wearing placard number 1.

QUESTIONS BY CAPTAIN VANCE:

Q Can you recall any other conferences that you attended in Wiesbaden?

A Yes, there were several conferences that took place approximately every six or eight weeks. Sometimes they were in different places, for example in Muedesheim.

Q Now, Ireder, did you ever receive any written orders telling you what should be done with allied fliers that bailed out in your district?

A The general orders from the time when the war started existed which said that the police was to deliver prisoners to the air force. Later I remember an order that arrived in about September, 1944. This order came from Berlin--from the Security Main Office in Berlin--and was

said that allied fliers had been found that had weapons secretly hidden on them, and our officers should be careful and have a weapon in readiness. In the spring of 1945, after the incidents in Eltvielle, an order arrived from Trummler, who stated the same thing.

Q Breder, have you ever talked to Hans Trummler about this matter of treatment to be given to allied fliers?

A Yes.

Q What did he say should be done with allied fliers?

A He said that he thought it right that allied fliers who were taken prisoners should be shot.

Q Now, I believe you said that your office was located in Frankfurt, is that correct?

A Yes, my main office, but I also had sub-offices in Wiesbaden, Limburg and Wetzlar.

Q Who was your subordinate in charge of your Wiesbaden branch office?

A From the fall of 1944 until February, 1945, it was Criminal Officer Luckard. From February until the arrival of the Americans, it was Commissioner Bueth.

Q Did you ever have a discussion with Bueth about the treatment to be given captured, allied fliers?

DEFENSE COUNSEL: I object, may it please the Court. He is not an accused; he is not even shown to be associated with the accused.

CAPTAIN VANCE: May it please the Court, I propose to show a conversation that took place between

Breder and Dr. Trummler, and under the procedure of this Court hearsay is admissible if it has probative value, and we say that it has.

PRESIDENT: Objection overruled.

WITNESS: In march, 1945, Bueth reported to me, during an official conversation, the following: He had gotten the order from Trummler that he was to shoot allied fliers that were sent to him by Trummler or the police. He asked me whether this order was justified and how he should conduct himself. I answered him that he did not have to carry out that order, but should deliver prisoners to the nearest Army installation. Bueth told me that that wasn't possible because the Army refused acceptance of such prisoners, and returned them to the police. Thereupon, I instructed him to deliver prisoners to the main office in Frankfurt so that we could send them to the camp in Oberursel. I added to that that he should carry out these instructions without talking about them, because at that time I did not want to have any clash with Trummler, but if any serious questions arise that I would cover him.

QUESTIONS BY CAPTAIN VANCE:

Q Breder, earlier in your testimony, you mentioned that Fritz Girke may have been present at this conference in Wiesbaden. If you were to see this Fritz Girke at this time, would you recognize him?

A Yes.

Q If he is present in Court, will you indicate which man is Fritz Girke?

A He wears the number 19.

(Breder-Direct)

CAPTAIN VANCE: Let the record show that the witness indicates the accused Fritz Girke, wearing placard number 19. That's all for the Prosecution. Would the Defense care to examine this witness?

CROSS EXAMINATION

QUESTIONS BY THE DEFENSE COUNSEL:

Q You stated that Somann was your immediate superior until some time in August, 1944. Can you give the Court a closer date than that?

A I believe it was in the beginning of August.

Q If you were told, Mr. Breder, that Somann was relieved from office on the 28th of July, would you accept that as the date he gave up his office as Inspector?

A Of course, I do not remember the exact day. I recall to my memory that it was in the beginning of August, but it is possible that it was in the last few days of July.

Q Certainly the latest day in 1944 upon which he was released was some time in the early part of August, is that correct?

A Yes.

Q And was there some intermediate person who took command between Somann and Trummler?

A Yes, there was for a short time, temporarily, SS Lt. Colonel Wiebens from Koblenz.

Q How long did he exercise command?

to all the members of the police, is that correct?

A Until Trummler arrived.

Q And when was that? After the order was read

A It may have been on the 18th or 20th of September, 1944.

Q So that this command was held by this Wiebens for something like six weeks?

A Yes.

Q This meeting that took place in the Kurhaus in which the order was delivered that you testified to--how long before Schmann was relieved was that meeting held?

A It may have been four weeks perhaps or more or less. So well I cannot remember that.

Q Now that order was in writing, was it not?

A Yes, he read it. He held it in his hand. It had come by way of Kaltenbrunner from Himmler.

Q Was it signed?

A I did not see the order. It was only read to me.

Q And that order was the so-called "non-interference" order, is that correct?

A Yes, that's correct.

Q And at that meeting Schmann read the order which told the police not to interfere with the civilian population, is that correct?

A Yes, it was the general order.

Q After reading the order, you then said that Schmann directed that the contents of that order be made known orally

(Broder-Cross)

(Broder-Cross)

of in command with the SD?
to all the members of the police, is that correct?

A [illegible] Inspector of the Customs Service Division.

A Yes, that's correct.

Q And outside of the fact that the order was read and the additional fact that Somann said everybody should be told about the order, that was all that was said during that meeting about treatment of allied air personnel, is that correct?

A Yes, it was supposed to be made known to everyone all over.

Q But those were the only two things that were done, is that correct? About fliers? I will withdraw the question and start over. During that meeting, the only thing that happened which dealt with captured allied personnel was first the reading of the order and second Somann's order that everybody should be informed about that. Was that all that was done at that meeting or said at that meeting about captured allied personnel, is that correct?

A Yes.

Q Then any other orders which you received or which you heard about which were published after this meeting, you heard after Somann had been relieved, is that correct?

A Yes, that's correct.

Q And the only order which dealt with captured allied air personnel that you know about--that you heard about--from Somann was the one order you talked about--the so-called "non-interference" order, is that correct?

A That is correct. More, I did not hear from Somann.

(Breder-Cross)

Q Do you know where Somann went after he was relieved

Te [illegible]-1/ah-1

of his command with the SD?

A Yes, he went to Berlin as General Inspector of the Custom Border Protection.

Q And so far as you know, how long did he remain in that capacity?

A As far as I know until the end of the war.

DEFENSE COUNSEL: I can think of nothing further now, may it please the court, but before committing ourselves, may we have the recess to think it over?

PRESIDENT: The Court will recess for 20 minutes.

(Whereupon at 1505 hours the court recessed.)

were ever called to your attention of alleged low flying straffing by Allied air personnel of civilians in the fields and the woods?

CAPTAIN WAGES: May it please the court, we object on the ground it goes beyond direct examination. This witness will be available to the defense at any time they care to bring him back to the witness stand. He is here ordered in Madison at the present time.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: I agree, that is true. I just thought that perhaps for the sake of the few questions I had to ask, we might save time by doing it now. That is the only reason.

No further questions.

I am informed that Associate Defense Counsel has one or two questions.

CROSS EXAMINATION BY DR. [illegible]:

Q Mr. Breder, you were the legal leader of the Gestapo at Frankfurt?

A Yes.

Q As you have the same position in Mr. Hirka [illegible] at Darmstadt?

A Yes.

Q Have you ever got the order saying that all American fliers which were paraquited [illegible] to be killed [illegible]?

Ta 33-ps-80-1/1Lt-1

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all members of the court, all members of the prosecution, all members of the defense, all of the accused, the reporter and the interpreter are present.

REINHARD BREDER, called as a witness by the prosecution, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q During the course of your duties in Frankfurt and elsewhere, were ever cases called to your attention of alleged low flying shooting by Allied air personnel of civilians in the fields and the roads?

CAPTAIN VANCE: May it please the court, we object on the ground it goes beyond direct examination. This witness will be available to the defense at any time they care to bring him back to the witness stand. He is here confined in Dachau at the present time.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: I agree, that is true. I just thought that perhaps for the sake of the few questions I had to ask, we might save time by doing it now. That is the only reason.

No further questions.

I am informed that associate German counsel has one or two questions.

QUESTIONS BY DR. TROST:

Q Mr. Breder, you were the local leader of the Gestapo at Frankfurt?

A Yes.

Q So you have the same position as Mr. Girke had at Darmstadt?

A Yes.

Q Have you ever got an order saying that all American fliers which were parachuted have to be killed in a written order?

A Written I did not get an order.

Q Would it be possible that one of the local Gestapo leaders would get such a written order, or was it the rule that all local Gestapo leaders got the same order in the same way?

CAPTAIN YARED: We object on the ground the question is speculative and asks for a conclusion which this man couldn't give.

LAW MEMBER: Read the question and repeat in connection with. (Whereupon the last question was read by the court reporter.)

A PRESIDENT: Objection overruled.

QUESTIONS BY DR. THOMPSON: After two [illegible] and marked [illegible] they are marked Prosecution

THE WITNESS: It was the rule that all orders went at the same time to all. It is, however, possible that in a local place, like for Prosecution Exhibits 32 and 32-A example Wiesbaden, a letter may have been dispatched, but then it can only concern an individual matter and not a general decree. [illegible] and ask you to [illegible]

DR. THOMPSON: No further questions at before.

A CAPTAIN YARED: No further questions by the prosecution. Does the court desire to examine this witness? [illegible] knowledge [illegible] instrument was from? PRESIDENT: No.

A CAPTAIN YARED: We request the witness be excused. [illegible] witness at Nuernberg. PRESIDENT: Witness excused.

(Whereupon the witness was excused and withdrew.) [illegible] Prosecution exhibit [illegible]

JOHN STEGNER, called as a witness by the prosecution, being a duly first duly sworn, testified as follows: a part of the record.

(Whereupon the proceedings were translated into the German language.)

[illegible] The same objection [illegible] was now made to

DIRECT EXAMINATION

Exhibit 15 and a document marked, as shown [illegible].

QUESTIONS BY PROSECUTION:

[illegible] Objection overruled. Prosecution Exhibit 32 [illegible]

Q State your full name.

A John J. Stegner.

[illegible] document here [illegible] marked Prosecution

Q Are you a United States civilian employee employed at War Criminal Evidence as Prosecution Exhibit 32, is Headquarters in Augsburg? marked herein and made a part of the record.

Ta 33-ps-80-1/11-3

A I am.

Q Have you been employed as investigator-examiner on the case now being tried in this court?

A I have.

Q For how long a period?

A For how long a period have I worked for War Crimes?

Q No, how long have you been working and employed in connection with this case?

A I estimate about three months.

Q I hand the reporter two documents and request that they be marked Prosecution Exhibits 32 and 32-A for identification.

(The documents referred to were marked Prosecution Exhibits 32 and 32-A for identification.)

Q I hand you Prosecution Exhibit 32 for identification and ask you to tell me whether you have ever seen that before.

A I have. I recognize the instrument.

Q Can you tell the court of your own knowledge where this instrument came from?

A This instrument came from the International Military Tribunal at Nuernberg, Document Center.

PROSECUTION: Prosecution offers in evidence to be marked Prosecution Exhibit 32 the document testified to by the witness, and asks that it be made a part of the record.

DEFENSE COUNSEL: The same objection that has been made to Exhibit 15 and subsequent exhibits, may it please the court.

PRESIDENT: Objection overruled. Prosecution Exhibit 32 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 32 for identification was received in evidence as Prosecution Exhibit 32, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution offers in evidence to be marked Prosecution Exhibit 32-A a true and correct translation of Exhibit 32, and asks that it be made a part of the record.

DEFENSE COUNSEL: Same objection as to the original in German.

PRESIDENT: Objection overruled. Prosecution Exhibit 32-A is received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 32-A for identification is received in evidence as Prosecution Exhibit 32-A, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Prosecution Exhibit 32-A.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 32-A.)

PROSECUTION: Does the defense desire to cross examine this witness?

DEFENSE COUNSEL: I was going to move to strike the exhibit, inasmuch as there is no way to identify the source, it mentions none of the accused, prefers none of the charges here.

PROSECUTION: The instrument has the title of the headquarters, of the issuing office, and the date.

PRESIDENT: Objection is overruled.

PROSECUTION: Does the court desire to examine this witness?

PRESIDENT: No.

PROSECUTION: May the witness be excused?

PRESIDENT: Witness is excused.

(Whereupon the witness was excused and withdrew.)

(Whereupon Prosecution Exhibit 32 was read by the court interpreter in the German language.)

FRANZ TRADLER, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

Ta 33-ps-80-1/14-4

QUESTIONS BY PROSECUTION:

Q State your full name.

A Franz Traeger.

Q Where do you live?

A Frankfurt/Main.

Q How old are you?

A 27 years.

Q In 1944, where were you employed?

A I was sent to forced service from the university in Frankfurt, during the winter 1944, to the SD, Frankfurt, please the court.

Q What did you do there?

A I did general office work as a forced service student.

Q As a student in what headquarters?

A In the office of the SD Sector, Frankfurt/Main.

Q Were you employed in the regional office of the security service in Frankfurt?

A Yes, in the district building.

Q What was your next superior headquarters, and where was that?

A The superior headquarters of the SD Sector, Frankfurt, was the commander of the Security Police and SD, Wiesbaden. Later, to that was added the commander of the Security Police and SD, but that was to be used only in a given case. It was not used in practice.

Q At that time, who was the commander of the security service of the Rhein-Westmark area?

A As far as is known to me, a Dr. Trumpler.

Q Did you ever know a man in 1944 by the name of Kurt Kaerger?

A Yes.

Q Who was he?

A He was the chief of the SD Sector, Frankfurt/Main.

Q Directing your attention to December, 1944, did you attend a conference in Frankfurt, in the Frankfurt office of the security service?

A Yes. Objection must stand.

Q Who was present at that conference?

A The entire office of the sector Frankfurt/Main, that is, as far as nobody was sick.

Q Were all the members of the staff of the Frankfurt SD office present?

A Yes, just with that one exception I have made just now myself.

Q Was Knorger present?

A Yes. I that during air attacks, Traubler himself was lying on the

Q Tell the court what happened at that conference.

DEFENSE COUNSEL: I object, may it please the court, record an

PRESIDENT: On what grounds?

DEFENSE COUNSEL: Nothing to show it has anything to do with these charges, with the accused, that any of the accused were present or anybody associated with them was present. I assume it came from Traubler. You

PRESIDENT: Objection overruled.

QUESTIONS BY PROSECUTION:

Q Tell the court what happened at that conference.

A That was one of the usual official conferences. Matters of discipline and office matters were talked about.

Q Was anything else talked about?

A Yes. SS Captain Knorger made known an order whereafter all Allied fliers had come down were to be rendered harmless on the spot.

Q Anything else?

A Because they do not deserve human protection because of their deeds as gangsters and pirates in that sense..

Q Did Knorger mention from whom the order came?

A Not specifically, but his superior was Wiesbaden.

DEFENSE COUNSEL: I ask that be stricken from the record as completely non-responsive to the question.

(TRABUER-Direct)

PRESIDENT: Objection sustained.

QUESTIONS BY PROSECUTION:

Q Did you have any conversations with anybody concerning the source of that order?

A All members of the office talked about it afterward in a general way, but I am of the belief that it came from the office of Trummler himself, because one of the members of the office, whose name I do not remember now any more, mentioned that during air attacks, Trummler himself was lying on the roof or somewhere in the field with a weapon ready to shoot.

DEFENSE COUNSEL: I ask that that be stricken from the record as completely non-responsive.

PROSECUTION: That is entirely relevant. The man accused, Trummler, is on trial for those very things.

DEFENSE COUNSEL: He simply assumes it came from Trummler. You asked him if he talked with anybody about the source of the order, and he said he assumed it came from Trummler because once Trummler was lying in the field ready to shoot.

PROSECUTION: I ask the court to take it for whatever probative value it has.

LAW MEMBER: Read the last question and answer.

(Whereupon the last question and answer were read by the court reporter.)

PRESIDENT: Objection overruled.

QUESTIONS BY PROSECUTION:

Q Did you ever hear of a man by the name of Karl Stoll?

A Yes.

Q Who was he?

A He was a member of the Kreisleitung labor front and secret state police in Frankfurt.

Q After the conference in Frankfurt that you have testified about, did you have any conversations with this man Karl Stoll?

Ta 33-ps-80-1/11-7

A Often, yes.

Q When?

A I really knew the man permanently until he was later on arrested.

Q Did you have any conversations with him in January, 1945?

A Yes.

Q What about?

A It was about all sorts of things, also about the shootings there. He mentioned in a large circle that he had to get vengeance for seven family members, and that he had taken care of that already to the extent of four; that is, that he had finished off four enemies.

[illegible] have been too [illegible] during the transport and custody taking of allied pilots.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

End ta 33
Mac fols

[illegible]

(TRAEGER-Direct)

Q You say you were a student at the security service headquarters; is that correct?

A No, I was not a student at the SD. I was a student at the University of Frankfurt, but I, having studied law, was forced to serve with the SD in Frankfurt.

Q Do you know of any cases brought to the attention of the security service in which members of the Wehrmacht were reported for protecting fliers?

A Yes. That is, not the cases of members of the Wehrmacht but incidents where the Wehrmacht was considered to have been too humane during the transport and custody taking of Allied pilots.

Q How do you know about these cases?

A They were reported by V-men--agents of the SD--and were worked on in the SD.

Q Were these official reports which you read?

A Yes.

Q Tell the court what some of these reports contained.

A Am I to mention one?

Q Yes.

A For example, several shot down pilots were transported in the Frankfurt main railroad station. A captured pilot requested a light for a cigarette from the escorting sergeant, and thereupon the crowd wanted to go against him because that was no behavior to an enemy, but it could be prevented because the sergeant pointed out his duties and retreated behind the station barriers.

PROSECUTION: The prosecution has no further questions. You may cross examine.

(Traeger - Direct)

PROSECUTION: May I say one thing before the defense begins cross-examination? I would like to ask the court permission to conclude the testimony of this witness at this session, inasmuch as he is suffering from a bad stomach wound, has been taken to the hospital several times, and we would like to excuse him permanently at the conclusion of his testimony.

Q PRESIDENT: Any objection to excusing him permanently?

A DEFENSE COUNSEL: I would much prefer, if it please the court, to postpone that decision for the next few minutes until I have a chance to consult with my associates. I would like, first of all, to make a motion to strike from the record the testimony of this witness with respect to conversations he had with a man by the name of Stoll. In that conversation, as I remember, it only stated that Stoll claimed that seven members of his family got liquidated and he had gotten even on to the extent of four. That is not tied up in any way at all with the case of the accused, and we ask that that portion of his testimony be stricken from the record on, the prosecution has no ob

PROSECUTION: May it please the court, the testimony indicated that Stoll was a policeman, and we would like to point out again to the court that this testimony is relevant to because it proves, among other things, a criminal conspiracy.

him on the

PRESIDENT: Motion denied. The court will recess in place. If I wanted to [illegible] the court so desires I will (Whereupon the court recessed in place.)

PRESIDENT: Court will come to order. As a defense witness he is bound by whatever the witness says.

[illegible]: The court so orders.

(Traeger - Direct)

(Traeger - Cross)

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q This man Stoll that you say was employed at the Kreisleitung: In what capacity was he employed?

A As far as I know within the framework of the German Labor Front.

Q In other words, would you say he was a civilian?

A He wore a brown uniform.

Q A member of the labor front, though?

A Yes, but that was in connection with the use of the political units for the security service. He had the identity card of a Gestapo agent that he used to show.

DEFENSE COUNSEL: In order for us to agree to the permanent discharge of the witness I will have to touch on some matters that were not touched upon on direct examination.

LAW MEMBER: Does the prosecution agree to that?

PROSECUTION: I agree to this extent: If the defense wants to go beyond direct examination, the prosecution has no objection to the defense calling this witness at this time and making him its own witness.

DEFENSE COUNSEL: It does not make any difference to me, may it please the court, but I was just going to examine him on the one point that had to do with low-flying strafing. That is all I wanted to touch upon. If the court so desires I will do it.

PROSECUTION: The only difference is as a defense witness he is bound by whatever the witness says.

PRESIDENT: The court so orders.

(Traeger - Cross)

FRANZ TRAEGER, called as a witness by the defense, having been previously duly sworn, testified further through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q While in the course of your duties in this sector were cases of low-flying strafing by Allied air personnel of workers in the fields and people walking on the country roads brought to your attention?

A Yes.

Q Will you tell the court in just what way instances of this kind came to your attention?

A Reports of that kind came through official channels. from V-men, that is, agents from the field.

Q What would these reports contain?

A Individual incidents. The same channels through which messages were passed.

Q Describe the contents of one of these reports.

A Of what kind do you mean now?

Q We are talking about reports of low-flying strafing by Allied air personnel of German civilian workers in the fields and walking on the country roads.

A More I can't say. That is already the content of these reports.

Q Would these reports say where these things happened?

A Yes.

Q Would they give a date?

A Yes.

Q Would they say who was involved?

A Yes.

FRANZ TRAEGER, called as a witness by the defense, having been previously duly sworn, testified further through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q While in the course of your duties in this sector were cases of low-flying strafing by Allied air personnel of workers in the fields and people walking on the country roads brought to your attention?

A Yes.

Q Will you tell the court in just what way instances of this kind came to your attention?

A Reports of that kind came through official channels. from V-men, that is, agents from the field.

Q What would these reports contain?

A Individual incidents. The same channels through which messages were passed.

Q Describe the contents of one of these reports.

A Of what kind do you mean now?

Q We are talking about reports of low-flying strafing by Allied air personnel of German civilian workers in the fields and walking on the country roads.

A More I can't say. That is already the content of these reports.

Q Would these reports say where these things happened?

A Yes.

Q Would they give a date?

A Yes.

Q Would they say who was involved?

A Yes.

Q Would they mention whether or not anybody was killed or wounded?

A Yes.

Q Would it mention the names of people concerned?

A Too, yes, as far as they were known.

DEFENSE COUNSEL: Nothing further.

PROSECUTION: The prosecution has nothing further. Questions by any member of the court?

PRESIDENT: No.

PROSECUTION: I request that this witness be permanently excused.

PRESIDENT: The witness may be permanently excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: Call Captain Smith as a witness.

CAPTAIN Donald C. Smith, called as a witness by the prosecution, being first duly sworn, testified as follows:

(Whereupon the proceedings were translated into the German language.)

DIRECT EXAMINATION

Questions by Captain VANCE:

Q Will you please state your name, rank, and organization.

A Captain Donald C. Smith, Air Corps, Headquarters War Crimes Group, Augsburg.

Q Captain Smith, have you been assigned to duties in connection with the trial of this case to try to locate and bring to court witnesses both for the prosecution and the defense?

A I have.

Q Have you tried to locate one Gregor Hradetsky and bring him to court here as a witness for the prosecution?

A I have.

Q Is he present here today in court?

A He is not.

Q Will you tell the court what efforts you have made to obtain this witness?

A C-2 reports have been put out for this man from that branch, and one of the reports has been entered in the Rogues Gallery list. He was detained at Camp Marcus Orr in Austria. We have been negotiating with USFET to get him back. So far they have not given us that permission.

Q Have you been trying to obtain a witness at the request of the prosecution by the name of Dr. Kurt Christmann?

A I have.

Q Will you tell the court what efforts have been made to locate Dr. Christmann?

A Dr. Christmann was at one time detained here at Dachau. He escaped on the 4th of November. Wanted reports were again issued. The provost marshal was contacted. The team in the area that he was last known to be in has interrogated his friends and relatives--everyone who might have knowledge of his whereabouts--in an effort to reapprehend him, to date with no results.

Q Captain Smith, have you made an effort to obtain one August Schaper as a witness for the prosecution in this case?

A I have.

Q Is he present here to testify before the court?

A He is not.

Q Will you tell the court what efforts have been made to obtain the presence of this witness?

A The same methods have been used--wanted reports issued and his last known location ascertained, which was in the French Zone. A request for extradition to the French has been made. A team in that area has been notified to help locate him when the French clear him to be brought up, as yet without any result.

Q Were you requested to obtain a witness by the name of Jakob Boesen to appear before this court?

A I was.

Q Is he present?

A No, he is not.

Q Will you tell the court what efforts have been made to obtain the presence of this witness?

A The same methods used, that is, last location ascertained, request for extradition made on the French. However, they will not release him to us for trial.

CAPTAIN VANCE: No further questions by the prosecution. Does the defense desire to cross examine this witness?

DEFENSE COUNSEL: I have no questions of the witness.

CAPTAIN VANCE: Any questions by the court?

PRESIDENT: No.

CAPTAIN VANCE: Request the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

(Prosecution Exhibits 33 and 33-A were marked for identification.)

PROSECUTION: The prosecution offers in evidence, to be marked Prosecution Exhibit 35, a written sworn statement of Dr. Kurt Christmann. I ask that it be received in evidence and

(Smith - Excused)

made a part of the record. This statement is dated 15 July 1946, and was taken in Wiesbaden, Germany.

DEFENSE COUNSEL: If I remember rightly, that is the requested witness that the witness testified had escaped and could not be found. He is not in the French Zone. We have no objection.

PRESIDENT: Prosecution Exhibit 33 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 33 for identification was received in evidence as Prosecution Exhibit 33, is attached hereto, and made a part of the record.)

PROSECUTION: The prosecution offers in evidence, to be marked Prosecution Exhibit 33-A, a true and correct translation of Exhibit 33, and asks that it be received in evidence and made a part of the record.

DEFENSE COUNSEL: No objection, but I would like to have a copy of the German so my stenographers can follow it.

PRESIDENT: Prosecution Exhibit 33-A will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 33-A for identification was received in evidence as Prosecution Exhibit 33-A, is attached hereto, and made a part of the record.)

PROSECUTION: The prosecution requests permission to read Exhibit 33-A.

PRESIDENT: Permission is granted.

(Whereupon the prosecution read Prosecution Exhibit 33-A, statement of Dr. Kurt Christmann, followed by the reading of Prosecution Exhibit 33, statement of Dr. Kurt Christmann, by the interpreter in the German language.)

GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place
Ort

Date

PROSECUTION: Will you mark these documents Prosecution Exhibits P-34 and P-34-A for identification, please?

(The documents referred to were marked Prosecution Exhibits P-34 and P-34-A for identification.)

PRESIDENT: Let the record show that Colonel Ackerman has advised the President of the Court that he has read the record of evidence and proceedings of the trial for Friday, January 10th, made during his absence from the court.

Court will adjourn until tomorrow morning at 0900 hours.

(Whereupon at 1645 hours the court adjourned until 0900 hours Wednesday, 15 January 1946.)

Second Charge

* * *
* *
*

Particulars

The above charge is referred for trial to the

Die Verhandlung wird vor dem

in

at

am

Signature of person making charge

194

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: .....

Erste Anklage: .....

Particulars: .....

Einzelheiten: .....

Second Charge: .....

Zweite Anklage: .....

Particulars: .....

Einzelheiten: .....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at .....
in (Address of Court)
(Anschrift des Gerichtes)

on 194
am

at .....
um Uhr stattfinder.

By Order
Im Auftrage von

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

Copy of above served on accused 194
Abschrift dem Angeklagten zugestellt am

(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13

Legal Form No. 8

(4)

MILITARY GOVERNMENT COURT

CASE RECORD.

180 - 236

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 15 JANUARY 194 7

~~Members of Court:~~

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Mr. Rudolf M. Nathanson

Interpreter Mr. Rudolph E. Schubert
Patricia Stewart, Irving J. Hayett

Reporter Sally Rose Hayett, Imogene D. Butler
John McDonald, Paula Silverman

WITNESSES:
KARL KALESKE
ELSE HOECKER
GUNTHER NIEMANN
FRIEDRICH SCHLUIS

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES Versus JURGEN STROOP, ET AL

BY

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

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Camp Dachau, Germany

15 January 1947

MORNING SESSION

(Whereupon the Court reconvened at 0900 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all the members of the Prosecution, all the members of the Defense, all the accused, the reporter and the interpreter are present.

Now comes the Prosecution and offers in evidence documents which have been previously marked for identification as Prosecution Exhibits 34 and 34-A which are statements of Kurt Christmann, dated 12 September 1946 and the German translation thereof. I ask that they be received in evidence and marked Prosecution Exhibits 34 and 34-A and made a part of the record.

DEFENSE COUNSEL: Before announcing the position of the Defense and accused may I ask the Prosecution to refresh my recollection as to whether this man is one of those incarcerated in some zone.

PROSECUTION: This man is the witness who escaped from Dachau and who has not been located as yet.

PRESIDENT: Is there any objection?

DEFENSE COUNSEL: That raises just one other question, may it please the Court, these are all sworn statements and I take it for granted that the objection previously made to the admission of sworn statements, in view of the fact that the accused are not permitted to be sworn, will apply to all the sworn statements offered without taking the time of the Court to voice them. In other words we will object to them on the same ground without voicing the objection.

PRESIDENT: The objection will be overruled and the exhibits will be admitted. Prosecution Exhibits 34 and 34-A will be received in evidence

and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 34 and 34-A for identification were received in evidence as Prosecution Exhibits 34 and 34-A, are attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Exhibit 34-A.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution Exhibit 34-A, the English translation of the statement of Kurt Christmann followed by the reading of Prosecution Exhibit 34 by the interpreter.)

DEFENSE COUNSEL: The Defense, at this time, would like to ask the Prosecution, through the Court, if the Prosecution has in its possession or knows of the existance of any additional statements made by this man Christmann. If it has in its possession any such additional statements we would like to get them and if there are any in existance any that the Prosecution knows about we would like to get them.

PROSECUTION: The Prosecution does not have in its possession any other statements of Kurt Christmann and does not know of any other such statements. The Prosecution calls as the next witness, Karl Kaleske.

KARL KALESKE, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q State your full name?

A Karl Kaleske.

Q Where do you live?

A Wiesbaden.

Q How old are you?

A Forty four years.

Q Do you know a man by the name of Jurgen Stroop?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom point him out?

A Number 1.

PROSECUTION: Let the record show that the witness identified the accused Stroop wearing number 1.

QUESTIONS BY PROSECUTION:

Q Do you know a man by the name of Trumpler?

A Yes.

Q Would you recognize him if you saw him?

A Yes.

Q What is his first name?

A The first name is not known to me.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom point him out?

A Number 2.

PROSECUTION: Let the record indicate that the witness identified the accused Trumpler, number 2.

QUESTIONS BY PROSECUTION:

Q Do you know a man by the name of Somann?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom point him out?

A Number 3.

PROSECUTION: Let the record indicate that the witness identified the accused Somann, number 3.

QUESTIONS BY PROSECUTION:

Q Were you ever a member of the Schutzpolizei?

A Yes.

Q From when to when?

A From March 6, 1940 until the collapse.

Q Were you an officer?

A Yes.

Q What rank did you hold?

A Captain of the reserve of the Schutzpolizei, Captain of the Schutzpolizei.

Q What were your duties from April 1943 until the end of the war?

A In 1943 I was the adjutant of General Stroop.

Q Is he the same Stroop that you identified as an accused in this case?

A Yes.

Q I hand you Prosecution Exhibit 21 and direct your attention to an article of Dr. Goebbel's and ask you to tell the Court whether you have ever seen that before?

A These -- yes, that is an article I have read in the newspaper "Das Reich". I don't know whether this article is every word the same but in substance it is the same article.

Q Did you hear of that article from any other source?

A Yes, over the radio.

Q Do you know what radio station broadcast that story?

DEFENSE COUNSEL: I pray the Court's judgment, I think this is going far afield as evidence to bind the defendants on the charges of which they stand here accused. They cannot be held responsible for what is done by agencies beyond their control.

(Kaleske-direct)

PROSECUTION: Will the Court permit me to connect it up? I believe I will be able to show the Court that it is part of the conspiracy.

PRESIDENT: Objection overruled.

THE WITNESS: I personally heard this report from Station Berlin. It was so that every Friday the article appearing in "Das Reich" would be made known by the speaker of the Station Berlin.

QUESTIONS BY PROSECUTION:

Q Was that Station Berlin connected in any way with the Propaganda Ministry?

A As far as I know, the radio was under the Propaganda Ministry. The entire radio was under the supervision of the Propaganda Ministry.

Q After the publication of the newspaper articles you referred to and after the radio report on the subject, what if anything happened in connection with your duties under General Stroop?

A I remember a mission that was given to me by General Stroop in October 1944 according to which I had to order the leaders to a conference at the office.

Q Did you summon the leaders to that conference?

A Yes. I called the various offices, BDO, BDM but whether or not I spoke with the respective leaders, I do not know. I possibly talked to their adjutants.

Q Was Stroops's office, at that time, located in Wiesbaden?

A Yes.

Q Did that conference take place?

A Yes. That was at the end of October 1944.

Q Were you present at that conference?

A No. I sat in the ante room.

Q Did you know Colonel Niemann?

A Yes.

Q Who was he?

A He was in charge of the Order Police.

Q Was Colonel Niemann at that conference?

A Yes.

Q Was Trummler there?

A Yes.

Q Do you know Hans Gunther?

A Yes.

Q Who was he?

A He was the operations officer of General Stroop.

Q What happened then the conference was over?

A The gentlemen came out of the office of General Stroop and I asked Hans Gunther, "Well, what happened in this conference?"

Q What did he say to you?

A The treatment of shot down enemy fliers was talked about.

Q What else did he say?

A In the course of the conversation he expressed the fact that he was not in agreement with the measures that were spoken about in the course of the conference. That a severe argument had taken place between General Stroop and Colonel Niemann and that he especially had pointed to the keeping of the articles of the Geneva Convention.

Q Immediately after the conference did you have a talk with Colonel Niemann?

A Yes.

Q Tell the Court what that conference was?

A Colonel Niemann too expressed that he disagreed with the instructions that were given by General Stroop concerning the treatment

of Allied fliers because it was his opinion that it was the specific mission of the Order Police to maintain and protect the public order and security. Colonel Wiersum did not have a thought to carry out the orders in that form.

Q Were you permitted to go into that conference?

A No.

Q At a later date, did you have any other conversations with Gunther about this conference?

A It was quite natural that even at a later time we were talking about the problem of the treatment of shot down enemy fliers.

Q What was said about that?

A Gunther, time and again, stated that General Seyss insisted on the carrying out of the alleged orders. I myself did not see those orders.

Q Did you ever have a conversation with Gunther concerning a report made by Gauleiter Sprenger to Seyss?

A Yes. There was a letter in which Sprenger wrote about Volksturm matters and in the last part of the letter he complained about the fact that Order Police took a helping hand in the securing of Allied fliers.

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QUESTIONS BY PROSECUTION:

Q Did Gunther tell you what Stroop did about that report?

A No, that is not known to me. He did talk to Gunther about the matter again and Gunther again let General Stropp know that in his opinion it was the duty of the Order Police to protect these shot down fliers.

Q Do you know what General Stroop said to Gunther about that?

A Yes, I remember that very well because Gunther came out of the room very excited. Gunther came out of the room and told me that he had a clash with General Stroop and that he was especially angered by Stroop's remark that he is a soft SS man, since he had been on the front and had been decorated with the iron cross, first class and had been severely wounded. He felt insulted about this remark.

Q Now, directing your attention to sometime in October or November of '44, do you recall Colonel Niemann being ordered to Stroop's headquarters in connection with a flier incident in Altenkirchen?

A Yes.

Q What was that about?

A Colonel Niemann told me, after he came out of the office of General Stroop, that he had been called to explain his behavior concerning an incident in Altenkirchen. The matter was concerned with the fact that a gendarmerie First Lieutenant whose name I do not remember, had secured an allied flier and had taken him in his service car away and protected him from the population. The behavior of this First Lieutenant was remimanded by General Stroop and Colonel Niemann told me General Stroop demanded a punishment of this Lieutenant.

Q Do you know a lady by the name of Else Hoecker?

A Yes.

Kalenke-direct)

Q Who was she?

A She was the secretary of General Stroop.

Q From when to when?

A Miss Hoecker was taken over by General Stroop when he took office in October 1943, from his predecessor, from General Berkermann.

PROSECUTION: No further questions, you may cross examine.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Do you remember what date Somann was relieved as inspector?

A I can't name the exact date since I had nothing to do with the Office of the Security Police.

Q What is your best judgment?

A To that I can only say that Colonel Trummler took over the office of the commander of the Security Police, and that prior to him that Colonel Wiebens had this office before him. He held this office temporarily after Somann left.

DEFENSE COUNSEL: Did he say that Trummler took over in September?

MR. RACHAEL: Yes.

QUESTIONS BY DEFENSE COUNSEL:

Q Can you tell what part of September, whether it was the first or second half of the month?

A I cannot put myself down.

Q How long did Wiebens act as commander?

A According to my recollection fourteen days to three weeks, I believe, three weeks.

Q Do you remember when the order was first received at your headquarters that the Security Police would take charge of all captured allied personnel?

A I never saw orders or incoming mail. The mail came into the hands of the Chief of Staff, or if it was addressed to General Stroop personally, it was put on his desk in the envelope. For a while his secretary opened his mail and put it opened on his desk and later on General Stroop opened his own mail as far as it concerned secret or top secret matter.

Q When did you first hear about that order?

A What order?

Q That all captured allied personnel would be turned over to the Security Police?

A That could have been the beginning of '44, in the Spring of '44.

Q Was that before the order was issued that the police should not interfere with the civilian population?

A What police, the Schutzpolizei, the Order Police?

Q Did you ever hear of the so-called Bormann order?

PROSECUTION: I object to that. On direct examination this witness did not identify this order. He talked about a conference, what happened at the conclusion of the conference, Stroop's attitude concerning the Geneva Convention.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: As I remember, he did talk about certain conferences that were held on matters that dealt with allied fliers. I am trying to place, through him, the dates of the orders which were the subject of the orders handed down.

PROSECUTION: But the witness testified he was not present at conferences; he only testified as to what Gunther and Niemann said after the conferences were over.

PRESIDENT: Objection is sustained. There will be no further argument on that point.

DEFENSE COUNSEL: The defense moves that the testimony of this witness with respect to the control of the radio and the Goebbel's article be stricken from the record on the ground they have not been connected with these accused; it has not been shown that these accused had any control over these items; nor is it shown that they had anything to do with the control of these articles.

PROSECUTION: I will state the reason I previously stated -- this is all relevant to the criminal conspiracy and has probative value along these lines.

DEFENSE COUNSEL: May I make just one more statement. These accused have been charged with conspiring with certain prescribed individuals. Now, if the court is going to allow this radio business to come in, then every bit of evidence that went into the Nuremberg trial is competent in this case, all of it, there is no limit.

PRESIDENT: The motion to strike is overruled.

DEFENSE COUNSEL: Just one or two other questions, may it please the court.

QUESTIONS BY DEFENSE COUNSEL:

Q This Goebbel's article dealt with strafing by low flying allied aircraft of German civilians working in the field or working along country roads, is that true?

A As far as the article is concerned it generally talked about the air terror. Whether specific, detail cases were mentioned, I do not know.

Q In the course of your duties as Adjutant, did you hear of cases where it is charged that German civilians working in the field or walking along the road or engaged in civilian pursuits were strafed by low flying allied aircraft?

PROSECUTION: Objection to the question as going beyond the scope of direct examination.

DEFENSE COUNSEL: I will make him my witness for the purpose of that question.

PROSECUTION: This is not the time for the defense to call this witness. This is the prosecution's case.

DEFENSE COUNSEL: Then I will save it. I thought to save time but if the court --

PRESIDENT: Objection overruled.

THE WITNESS: Through official channels, no, however in conversations with comrades in the office or outside of the office.

QUESTIONS BY DEFENSE COUNSEL:

Q In these conversations with your comrades were specific cases mentioned where this sort of thing was alleged to have happened?

A Specific cases? No.

DEFENSE COUNSEL: I want the rest of what he said.

THE INTERPRETER: It was generally said by low flying airplanes.

QUESTIONS BY DEFENSE COUNSEL:

Q What was said, were names mentioned, were places mentioned, were dates mentioned, were other things mentioned?

A No.

DEFENSE COUNSEL: One of my associates would like to ask a question.

QUESTIONS BY DR. TROST:

Q In your testimony, what you know from your own knowledge, personally, about the directives which were given concerning the treatment of captured allied personnel, or the other directives which you spoke about --

PROSECUTION: I object to that question. The witness definitely stated he knew from Gunther and Niemann.

DEFENSE COUNSEL: I think, may it please the court, we are entitled to emphasize the fact by one question at least, that all his testimony is hearsay.

PRESIDENT: Will you read the question again, please.

(Thereupon the reporter read the question as follows:

"Q In your testimony, what you know from your own knowledge, personally, about the directives which were given concerning the treatment of captured allied personnel, or the other directives which you spoke about —")

DEFENSE COUNSEL: I think I will withdraw that question which is complicated in English and rephrase it.

QUESTIONS BY DEFENSE COUNSEL:

Q Is it not true that all the testimony that you have given to the court so far has all been based upon hearsay, what you have learned from others, and none of it based upon personal knowledge?

A When Gunther leaves the Operations Office of General Stroop immediately after the conference and tells me about what went on and tells me of his own position to it, then is that for me a statement that is absolutely to be believed.

DEFENSE COUNSEL: I ask that the answer be stricken as not responsive and I will have the question repeated.

(Thereupon the reporter read the last question.)

DEFENSE COUNSEL: I think the question may properly be answered yes or no, may it please the court.

PROSECUTION: I respectively submit that the answer was responsive.

PRESIDENT: Motion to strike is overruled.

QUESTIONS BY DEFENSE COUNSEL:

Q Did you personally hear any of these conversations between Niemann and Stroop, Gunther and Stroop, Gunther and Niemann, or any of the names you mentioned? Did you personally, with your own ears hear any of that?

(Kaleske-cross)

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PROSECUTION: I object to the question. I believe the Court should be reminded that any conversation had immediately after the happening of an event which is a criminal act, to wit, a conference where illegal orders were given, is part of the res gestae, part of the thing itself, and is admissible on these grounds.

PRESIDENT: Objection overruled. He will answer the question.

THE WITNESS: I personally heard the conversation between Gunther and Niemann in my ante room, while of course, I could not hear the conversations between General Stroop and Colonel Niemann and General Stroop and Captain Gunther, because they took place in the office of General Stroop where I wasn't present.

QUESTIONS BY DEFENSE COUNSEL:

Q And the conversation you heard between Niemann and Gunther was a conversation of something that was supposed to have happened in Stroop's office which you yourself did not hear, is that correct?

A Yes.

QUESTIONS BY DR. RAU:

Q What did you hear, what directions General Stroop had given concerning the treatment of allied fliers.

PROSECUTION: I object to that. That has been testified to on direct examination.

DEFENSE COUNSEL: I will withdraw the question, the defense withdraws the question.

QUESTIONS BY DR. RAU:

Q Do you know whether this First Lieutenant of the gendarmes who, apparently, was guilty of disobedience, has been punished by General Stroop?

A Whether or not General Stroop personally punished this Lieutenant

(Kaleske-cross)

I do not know. All I know is that Colonel Niemann told me that he, as Co mander of the Order Police, was supposed to punish this Lieutenant.

PRESIDENT: Will you repeat that answer please.

(Thereupon the reporter read the last answer.)

QUESTIONS BY Dd. RAB:

Q Do you know whether or not General Stroop had the authority to punish this Lieutenant of the gendarmes, with the exception of disciplinary punishment?

A In my opinion General Stroop could make out disciplinary punishment against this Lieutenant in his capacity as higher police and SS leader.

Q What extent did the power for disciplinary punishment have?

A That is not known to me.

DEFENSE COUNSEL: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q The defense asked you whether or not you recalled whether this article of Dr. Goebbel's talked about strafing women and children, is that correct?

A Yes.

Q You also recall that this article stated that the superior orders is not a defense?

A I do not remember the exact wordings.

PROSECUTION: No further questions.

DEFENSE: Nothing further, no.

PROSECUTION: Any questions by any members of the court?

PRESIDENT: No.

PROSECUTION: Request that the witness be excused.

PRESIDENT: Witness will be excused. Court will take a 15 minute recess. (Whereupon at 1000 hours the court recessed until 1015 hours.)

(Whereupon the Court reconvened at 1035 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court, and all members of the Prosecution, all members of the Defense, all of the accused, the reporter and the interpreter are present.

The Prosecution calls as its next witness Else Hoecker.

ELSE HOECKER, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY THE PROSECUTION:

Q Else, will you please tell the Court your full name?

A Else Hoecker.

Q And where do you live?

A In Wiesbaden.

Q Are you presently employed in Wiesbaden?

A Yes.

Q In what are you employed?

A I am at present secretary in the firm of Lisberg, Export-Import.

Q Else, what is your education?

A Nine years high school, one year high occupational school and one year language school.

Q Now were you employed in the year 1945?

A Yes.

Q By whom?

A SS Higher Sector Rhein-Westmark.

Q During that year were you ever employed by General Stroop?

A Yes.

Q From when to when?

A November, 1943 until 25, 26 March 1945.

Q Were you employed as his secretary during that time?

A Yes.

Q Is he the same General Stroop who is an accused in this case?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the court room, will you please point him out?

A One.

PROSECUTION: Let the record show that the witness pointed to the accused Jurgen Stroop, wearing number 1.

QUESTIONS BY THE PROSECUTION:

Q Now, during that period of time, where was General Stroop's Office?

A Wiesbaden, Uhlend Strasse 5.

Q Tell the Court what your duties as secretary to Stroop consisted of.

A I had to write letters for General Stroop.

Q Did you open his correspondence?

A Yes.

Q Did you open his personal mail?

A I opened the letters that came to the Higher SS and Police Commander Jurgen Stroop.

Q Did you ever hear of Lieutenant Colonel Moller?

A Yes.

Q Who was he?

A He was the Chief of Staff of the BDO, the Commander of the Order Police.

Q Was that in Wiesbaden?

A Yes, in Wiesbaden.

Q From when to when?

A When I took on the post as secretary, Moller was there already and remained there until the end.

Q Do you know Hans Trummler?

A Yes.

Q Would you recognize him if you saw him again?

A I believe, yes.

Q If he is in the court room, will you point him out?

A Two.

PROSECUTION: Let the record indicate that the witness indicated the accused Hans Trummler wearing number 2.

QUESTIONS BY THE PROSECUTION:

Q Now, Else, were you ever present at any conferences

held between Stroop and Trummler; and, if so, when and where?

A I was often present during meetings. These meetings took place several times during the week.

Q Were any conferences held between Stroop and Trummler in 1944 at which you were present?

A Yes.

Q How many conferences do you recall being held in 1944 between Stroop and Trummler, and if so when and where?

A I was often present during meetings. These meetings took place several times during the week.

Q Were any conferences held between Stroop and Trummler in 1944 at which you were present?

A Yes.

Q How many conferences do you recall being held in 1944 between Stroop and Trummler?

A Meetings took place often during the week.

Q Do you remember any conferences late in the year 1944?

A Yes.

Q Do you remember when Trummler was transferred to Wehrkreise 12?

A It can have been September.

Q That is of 1944?

A Yes.

Q Do you remember anything unusual happening to Trummler in June of 1944?

A I know that Trummler was one of the main agents who raided the Bernburger Street.

Q Now what was that about?

A Those were the offices who had prepared the attack on Adolf Hitler.

Q Was it after that that Trummler was transferred to Wehrkreis XII?

A Yes.

Q Now, at any time during 1944 did Stroop tell you anything about any conversations he had with Himmler?

INTERPRETER: During what time, sir?

PROSECUTION: 1944.

WITNESS: Yes.

QUESTIONS BY THE PROSECUTION:

Q What did he say?

A That the Reichsfuehrer SS wishes that in the future he remains as hard as he is used of him.

Q Do you know whether Himmler and Stroop had a conference together in 1944?

A Yes.

Q How many?

A I cannot say exactly.

Q Were there more than one?

A Yes.

Q Where were they held, if you know?

A I remember one taking place in the train Steiermark.

Q From whom did Stroop receive his orders directly, if you know?

A From the Reichsfuehrer SS, Kaltenbrunner, Wunnenberg, and the three Gauleiters.

Q In 1944 did you ever see General Wunnenberg

together with General Stroop?

A I did not see them together, but I do know that General Wunnenberg was with General Stroop.

Q When was that?

A That may have been in September, 1944.

Q Now, at any time in 1944, did Stroop say anything to you about the treatment of bailed out fliers?

A Yes.

Q What did he say?

A That they would be shot.

Q Did he say that he had received an order to that effect from anyone?

A As far as I remember it was after the order from Kaltenbrunner.

Q Did he tell you that?

A Yes.

Q Did you see the order?

A Yes.

Q What did you do with it?

A I gave a copy of that order to the Commander of the Security Police, to the Commander of the Order Police, and to the SS Standarten.

Q Was the order signed by Kaltenbrunner?

A As far as I remember, yes.

Q Now I read to you from Prosecution's Exhibit 26, as follows:

"Probably in July or August of 1944 the commanders and inspectors of the Sipo and SD. received an order by R.F. SS Himmler through the Chef of Sipo and SD. Dr. KALTENBRUNNER with the contents that

the members of all English-American commando groups should be turned over to the Sipo by the Armed forces. The Sipo was to interrogate these men and then shoot them after the questioning. The shooting was to be made known to the armed forces in the communique; saying that the commando force had been annihilated in battle."

Was that the order you were referring to?

A As far as I am able to remember, yes.

Q Do you know what happened to the original order?

A I gave the original order to the registry.

Q Do you know what happened to it afterwards?

A The orders were destroyed before leaving Wiesbaden.

Q Do you know who destroyed them?

A Colonel Schlums.

Q Who was Colonel Schlums?

A He was the Chief of Staff of the SS Sector.

Q Now I hand you Prosecution's Exhibit 19 and ask you if you have ever seen this before, and if so when?

A I saw this order in the year 1944.

Q Where?

A General Stroop had visitors and I had to get this order from the registry.

Q What was this order about, if you recall?

A It concerned the parachuted fliers.

Q I hand you Prosecution's Exhibit 22, and ask you whether you have seen this before, and if so when and where?

A I saw this order in the office of General Stroop.

Q Who signed that order?

A Bormann.

(Hoecker-Direct)

Q Tell the Court, if you know, who Bormann was?

A As far as I know, Bormann had the office of the Fuehrer.

Q Do you remember when that order arrived in Stroop's office?

A The last one here?

Q Yes.

A In the year 1944.

Q And after you first saw that order, did Stroop speak to you about it?

No.

Q Do you know whether he spoke about this order to the members of his staff?

A The principal orders were always debated in conferences.

Q Did you ever see this last order that I have shown you on Stroop's desk?

A Yes, I saw it in a file.

Q Do you remember a conference in October or November of 1944 at which Niemann, Koller, Gunther and Trummler were present?

A Yes.

Q Now, referring to the order that you said was sent to Stroop from Kaltenbrunner, was there ever any conferences in Stroop's office concerning that order?

A I do remember one such conference.

Q Was Trummler present?

A Yes.

Q Were you present?

A Yes.

Q What, if anything, did Stroop say at that conference?

A That the orders were carried out strictly.

Q Now, during the year 1944, do you know whether or not Stroop ever personally interrogated shot down fliers?

A Yes.

Q How often?

A It may have been three or four times that I know of.

Q Who was with him?

A Colonel Trummler.

Q Now, after he had interrogated these fliers, and after he returned from the interrogations, did he say anything to you?

A He brought along little things that had belonged to the fliers.

Q Are you familiar with any orders concerning shot-down fliers issued by the Gauleiters?

A Yes.

Q When were these orders issued, if you recall?

A As far as I am able to remember, they came after the Kaltenbrunner decree.

Q Were they issued in writing or orally?

A In writing.

Q Did you ever see any of them?

A Yes.

Q Where?

A I made copies of these orders for the Standarten.

Q What, in general, did those orders say, in general terms, if you can recall?

A They spoke about people's justice, about lynch justice.

Q What happened to the original orders?

A I put them into the registry.

Q Do you know what, if anything, happened to them?

A The orders were destroyed.

PROSECUTION: No further questions.

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CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Can you state just about when in September, 1944, Trummler first became the commander of the SD in Rhein-Westmark?

A No.

Q Can you remember whether it was in the early part of the month or the latter part of the month?

A I do not remember that.

Q How long after you heard of the Kaltenbrunner order was it that Trummler first became the commander?

A I do not know that.

Q Do you know when Somann ceased to occupy the office of inspector?

A As well as I am able to remember, it must have been in June, 1944.

Q Who was his successor, if you remember?

A As well as I am able to remember, it was Wiebens.

Q Which order came down first, the Bormann order or the order from Kaltenbrunner?

A I first saw the Bormann order.

Q How long a time was it between the time you saw the Bormann order and the time you saw the Kaltenbrunner order, as well as you remember?

A It may have been a few months.

Q When, as near as you can remember, did you first hear of the Bormann order?

A It may have been August, 1944.

Q So that as nearly as you can remember, you first heard of the Kaltenbrunner order sometime in October or November of 1944, is that correct?

A As far as I am able to remember, yes.

Q And if your memory of the time you first heard about the Bormann order and first heard about the Kaltenbrunner order is correct, then both of these orders came down after Somann had ceased to be inspector, is that

correct?

A As well as I am able to remember, yes.

Q You said that Stroop got his orders from Himmler, Kaltenbrunner, Wunnenberg and the three gauleiters. By that, did you mean that each of the persons named had authority to issue orders to Stroop which he was compelled to obey?

A I know that he received orders from those persons. Whether he had to carry them out, I do not know.

Q We will leave out of consideration now orders from Himmler, but we will take up Wunnenberg. Did you ever see orders directed to Stroop from General Wunnenberg?

A Yes. General Stroop received often letters from Wunnenberg.

Q Will you give the court, if you remember, one or two illustrations of the orders Stroop received from Kaltenbrunner?

A I cannot remember very well except the one.

Q Will you please give the one illustration of an order that Stroop received from Wunnenberg?

A That I can't do today any more.

Q Have you any memory at all of what that order referred to, what it dealt with?

A What order?

Q The one order that Wunnenberg sent to Stroop, that Stroop got from Wunnenberg. Just a moment, please.

LAW MEMBER: Read the last two questions.

(Whereupon the last two questions and answers were read by the court reporter.)

LAW MEMBER: Read the two questions before that.

(Whereupon the questions and answers referred to were read by the court reporter as follows:

"Q Will you give the court, if you remember, one or two illustrations of the orders Stroop received from Kaltenbrunner?

A I cannot remember very well except the one.

Q Will you please give the one illustration of an order that Stroop received from Wunnenberg?

A That I can't do today any more.")

DEFENSE COUNSEL: I think perhaps I am the one who is mixed up in this.

QUESTIONS BY DEFENSE COUNSEL:

Q Did you say that you saw copies of an order received by Stroop from General Wunnenberg?

A Yes.

Q Will you give the court, as nearly as you can remember, the substance of the contents of one of the orders Stroop received from Wunnenberg?

A I do remember one order by Wunnenberg that concerned that the police was not to interfere in these flier matters, in this flier justice, the treatment of the parachuted fliers.

Q Was that order from Wunnenberg directed to the Ordnungs police under his jurisdiction, or was that directed to General Stroop?

A I am no longer able to remember exactly.

Q Are you certain, however, that you saw orders from General Wunnenberg directed to General Stroop?

A As far as I am able to remember, these orders were not directed to General Stroop alone, but to several places.

Q But the order, in addition to being directed to several places, was also directed to General Stroop, is that correct?

A Yes, the envelope was directed to him personally, to his address.

Q Now, in addition to orders received by General Stroop from Wunnenberg, he also received orders, I think you said, from Kaltenbrunner, is that correct?

A Yes.

Q And you also said that you saw orders addressed to General Stroop from the three gauleiters, is that correct?

A Yes.

Q Were these three gauleiters the gauleiters of the gaus Westmark,

Hessen-Nassau and Moselland?

A Yes.

Q Can you tell the court the substance of any one order which General Stroop received from the gauleiter, say, of Westmark?

A General Stroop received orders often from the gauleiter of Westmark.

Q Do you remember any one of the orders which Stroop received from the gauleiter of Gau Westmark?

A I do not remember an individual gau.

Q Will you tell the court the substance of any order received by General Stroop from any one of the three gauleiters?

A I remember the substance of a decree concerning the treatment of parachuted fliers.

Q Were these decrees issued by the gauleiters, so far as you know, binding on General Stroop?

A I cannot judge that.

Q Do you know whether or not General Stroop had authority to issue orders to the Ordnungs police, the Schupo?

A I believe yes, because he was the highest police commander.

Q Did Kaltenbrunner have authority to issue orders to the regular police?

A I do not believe so.

Q Did Kaltenbrunner have authority to give orders to Stroop?

A I cannot judge that.

Q Do you know whether or not the gauleiters had any authority over the members of the police in their gaus?

A That I do not know.

Q This registry which you mentioned -- is that the place where all important orders were kept?

A All correspondence was kept there.

Q Now, you say that you made copies of orders issued by the gauleiters, is that correct?

A Yes.

Q And did you distribute copies of these orders received from the gauleiters to your subordinate commanders, or to those who were subordinate to General Stroop?

A As far as I remember, only to the SS Standarten.

DEFENSE COUNSEL: I would like a translation of that word, standarten.

INTERPRETER: I believe it is regiment, but I am not certain about this. It is used only for the SS.

QUESTIONS BY DEFENSE COUNSEL:

Q Were these orders or decrees issued by the gauleiters, copies of which you made and distributed to the standarten, for the information of the standarten or was it an order to the standarten, if you know?

PROSECUTION: I object to that on the ground it calls for a conclusion of this witness. This witness was merely a secretary, performed no administrative acts, and was not an expert on that subject.

PRESIDENT: Read the question.

(Whereupon the last question was read by the court reporter.)

PRESIDENT: The witness will answer the question, if she knows.

QUESTIONS BY DEFENSE COUNSEL:

THE WITNESS: As far as I remember, the orders of the gauleiters were passed on only for information.

Q Now, you say that these orders which you distributed spoke about lynch justice. By that, do you mean they referred to alleged cases of low strafing of the civilian population?

A I remember only the lynch justice of the population.

Q Do you know whether or not reports came to Stroop's office in which it was claimed that members of the German civilian population working in the fields, or walking along country roads, or engaged in civilian pursuits, were strafed by low-flying Allied aircraft?

A Yes.

Q Did you have occasion to see some of these reports?

A Yes.

Q From whom did these reports come?

A One I remember which came from Bormann.

Q I am not talking about general orders issued from higher authority. I have in mind whether you saw reports which came in from the countryside which said that such a thing happened.

A No.

Q Did you ever hear stories of where it is said that in such and such a place people were shot at by low-flying aircraft?

PROSECUTION: I object to that. That is entirely without the scope of the direct examination. It is an improper question.

DEFENSE COUNSEL: I will make her my witness.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: I was not heard. I said I would make the witness my witness for the purpose of that question.

PROSECUTION: I strenuously object to the defense putting their case in at the wrong time.

DEFENSE COUNSEL: All right, I will stop it.

PRESIDENT: The objection is sustained.

DEFENSE COUNSEL: I assume the witness will be held until the defense is through with her.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Referring to the order by Himmler which I showed you on direct examination, and the order by Kaltenbrunner about

which you testified, is it not possible that the Himmler order and the Kaltenbrunner could have been in Stroop's office a long time before you personally saw them?

DEFENSE COUNSEL: I think that is strictly a hypothesis, and I object.

PRESIDENT: Objection overruled.

THE WITNESS: It is possible.

PROSECUTION: No further questions. Any questions further by the defense?

DEFENSE COUNSEL: Nothing further. Yes, I am sorry.

RECROSS EXAMINATION

QUESTIONS BY DR. RAU:

Q Was a diary kept about the incoming orders?

A Yes.

Q Who kept this diary?

A Aichbauer.

QUESTIONS BY DEFENSE COUNSEL:

Q Did you have access to that diary?

A No.

PROSECUTION: Any questions by members of the court?

PRESIDENT: No.

PROSECUTION: Request that the witness be excused.

PRESIDENT: The witness is excused. Recess in place.

(whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

PROSECUTION: The prosecution calls Gunther Niemann.

GUNTHER NIEMANN, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q State your full name.

A Gunther Niemann. N-i-e-m-a-n-n.

Q How old are you?

A Forty-six years.

Q Where is your home address?

A Essen.

Q During World War II were you a member of the order police?

A Yes.

Q Tell the court your entire career in the police?

A In 1920 I went from the army into the then protective police. That was in Breslau in Silesia. I was taken over as a sergeant. I interrupted my duties for a short period to make my examination. In 1921 I was promoted to staff sergeant, and after I had taken part in a few courses I was promoted to lieutenant in 1924.

I was a short while in Breslau yet, and then in 1925 was transferred to Gleiwitz. I remained in Gleiwitz until 1927. I was promoted to first lieutenant. In 1930 I transferred to the then Prussian Gendarmerie. From 1930 until 1933 I was a first lieutenant of the gendarmerie in Prenzlau-Uckermark. In 1933 I was promoted to captain and at the same time transferred to Freienwalde-Oder. In the middle of 1933 I was detailed to the air protection school in Berlin. I remained there until the end of 1934. In 1935 and

1936 I was a captain in the gendarmerie school in Hildesheim. In the middle of 1936 I was sent as a captain to Berlin. In November 1937 I was promoted to major. In the middle of 1942 I was assigned as a commander of the order police in France. In November 1942 I was promoted to lieutenant colonel. I remained with the commander of the order police in France until October 1944. On the 10th of November, 1944, I was ordered to take over the duties of the commander of the order police in Wiesbaden. The 14th of October, 1944, I was promoted to colonel. I remained in Wiesbaden until we were ordered to retreat in the middle of March 1945.

Q Do you know Jurgen Stroop?

A Yes.

Q Who was he?

A He was the higher SS and police commander, my superior.

Q Would you recognise him if you saw him again?

A Yes.

Q If he is in the court will you point him out?

A He is No. 1.

PROSECUTION: Let the record show that the witness identified the accused Jurgen Stroop, wearing No. 1.

Q Do you know Hans Trummler?

A Yes.

Q Who was he?

A He was the commander of the security police.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom will you point him out?

A Number 2.

Q I hand you Prosecution Exhibit 21 and direct your attention to an article appearing in that paper and ask you to tell me whether you have ever seen it before (handing paper to witness)?

A Apparently it concerns the article by Dr. Goebbels. Whether or not I saw the paper I do not know, because at that time I did not stay in Germany, but the contents of the article are known to me.

Q At any time in the summer or fall of 1944 did you have a conference with General Stroop?

A Well, many conferences were ordered. Not in the summer, but after I took over my duties in the fall.

Q I am directing your attention to the early part of November 1944. Did you attend a conference in Stroop's office in Wiesbaden?

A Yes. In the first days of November.

Q Was Trummler present?

A Yes.

Q Was Stroop present?

A Yes.

Q Was Captain Gunther present?

A Yes.

Q Who was Gunther?

A SS Captain Gunther was the one aide, the operations officer, in the staff of General Stroop.

Q Tell the court what happened at that conference you spoke about that took place in November 1944.

A In that conference several matters were talked about which I do not remember, and then it w as talked about the so-called noninterference decree.

Q What was said about that?

A General Stroop blamed the order police that it did not carry out the noninterference decree strictly enough.

Q Did you say anything to him about that?

A I told him that this noninterference decree was made known by my predecessor, General Fille, and through regular command channels, and that therefore all the members of the order police must be aware of this order.

Q Did you talk to him or say anything to him about the nature of that order?

A In this conference I said approximately the following: That is dangerous. I was supposed to make this order known once again. And I said thereupon that I considered it a dangerous procedure, because I, as the commander of the order police, was responsible for security and order, and we could not let the population do things today which would be punished tomorrow. I also stated that the men under my command were mostly from the reserve forces, and that these were people whom you could give clear and unquestionable service orders, but you could not tell them to let things go today and then enforce them tomorrow.

Q What did Stroop say about that?

A General Stroop did not consider my remarks valid, and said it had to be carried out.

Q Did Stroop say anything to you about making any inspections in the area and the results of those inspections?

A I do not understand the question.

Q I will rephrase the question. Did Stroop ever comment to you about his having traveled around the area and making notes of what the police were doing concerning the Himmler order?

A Yes. That was the reason for the reprimand given me by General Stroop, because on his travels he had noted that the personnel under my command of the gendarmerie did not carry out the order as it was desired.

Q At that conference did Stroop say what was to be done to fliers that had been captured?

A This question was mentioned too. The regulations that were valid for us said that these prisoners had to be delivered. We of the order police were not allowed to interrogate this personnel or make any inquiries. We were solely allowed to search them for weapons, take their papers off them, and deliver them to the nearest air force or army installation. Most of the fliers came down in the country areas. The gendarme who had no transportation was, of course, glad to get rid of them. Either the air force or the army or the state police, whoever came first, got them.

Q Did Stroop change that and direct that they be turned over to the security police?

A Yes. In this conference it was said that the fliers were to be handed over to the security police.

PRESIDENT: The court will recess until 1:30.

(Whereupon the court recessed at 1200 hours until 1330 hours.)

(Niemann - Direct)

AFTERNOON SESSION

(Thereupon court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and the interpreter are present.

DEFENSE COUNSEL: May I address myself to the court for a minute or two? It is with respect to the question of discipline in the courtroom so far as the accused are concerned. There seems to be a difference of opinion between the security elements in the courtroom and myself as to whether or not the accused should be allowed to hold discreet whispered conversations as to matters concerning their defense. I should like the court to guarantee them that right. I want to make it plain that I mean very discreet, quietly spoken, very brief words between one of the accused and another on matters which involve their defense, conducted in such a way as not to interfere with the decorum of the court. I am relying upon the power and my knowledge of the willingness and readiness of the court to enforce proper decorum in the court. It seems, so far as this question is concerned, some of the accused tell me when they want to say a word to one another the guards do not permit that. That, of course, is aside from writing out brief notes, which is not involved in my request at all.

PROSECUTION: Prosecution joins with the defense in making that application to the court.

PRESIDENT: Request is granted.

DEFENSE COUNSEL: I trust, of course, that the people in charge of the security understand the position of the court.

PROSECUTION: I believe there is a sergeant in charge back there.

PRESIDENT: Recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

HERMANN GUNTHER, called as a witness by the prosecution, having been previously duly sworn, resumed the stand and testified further through an interpreter as follows:

DIRECT EXAMINATION (Continued)

QUESTIONS BY PROSECUTION:

Q Just before the recess ended you were testifying about a conference that took place in Wiesbaden in General Streep's office in November 1944.

A Yes.

Q At the conclusion of that conference was there any conference held in the anteroom outside of Streep's office between you and Trummler?

A It wasn't a real official conference like usually. After a conference you leave the room of the chief and then in the end room you discuss the matters which were discussed during the conference.

Q Did you have any discussions then with Trummler?

A Yes, Trummler was there, Kaleske, his adjutant, Gunther, and Lieutenant Colonel Mueller.

Q Did you say anything to Trummler at that time concerning the matters that had been taken up at the conference?

A Yes, we discussed once more the matter which was discussed in the conference and we members of the regular police or order police, Lieutenant Colonel Mueller and myself again represented in a friendly way the attitude which we had taken during the conference.

Q What did you say?

A I cannot say correctly any more, only what we meant. I told them that as an old policeman who had served his country in the police for more than twenty years I had a certain feeling how to take care of

certain matters. I was of the opinion, and Trummler as well as Gunther agreed with me that this non-interference order would create rather unrest among the population and since I was responsible for peace I was of the opinion that this order was wrong. All my comrades out there in the end room agreed with me.

Q Did Trummler then tell you to go ahead and force the order nevertheless?

DEFENSE COUNSEL: I object. That is definitely a very leading and dangerous question.

PROSECUTION: I will withdraw the question, although the question is permissible because it has probative value.

QUESTIONS BY PROSECUTION:

Q What did Trummler say to you in reply to what you said to him and concerning the enforcement of the order?

A He told me, "This is right. We will take care of this matter the way we think it is right and the way we can take the responsibility for it."

Q Were you ever a member of the SS?

A No.

Q What organizations did you belong to?

A I was a member of the Nazi Party from the 1st of April 1933, of the National Socialistic Welfare Organization from 1933 and the Reichs organization of the German Civil Service employees through my membership in the organization of the German policeman.

Q Were any allied personnel captured while you were a colonel in the police in the Wiesbaden district?

A I knew of one case in Alsey.

Q Tell us about that incident.

A I don't know exactly the time any more but it must have been the beginning of January 1945. There I got through channels from General Stroop a report of the Security Service. The report of the Security Service was as follows: One of my first lieutenants of the Rural Police, and this means kreisleader of the Rural Police of the County Alzey, had with his rural policemen taken prisoner an American airman who had parachuted. He was taken into custody on some open field at night. As far as I can recall, the flyer had been hurt while parachuting to earth. As far as I can recall, he got injured on his foot. The first lieutenant took this flyer into a car and took him to the next city to be medically attended to. Then the report of the Security Service continued that this act of the first lieutenant was considered wrong. I got orders in this letter from General Stroop to relieve this first lieutenant from his duties, to imprison him, to investigate the matter and to report on it. According to the regulations of my office I was not entitled to any of these steps. I investigated the matter and then cleared the facts as I had told them before. I made a report to General Stroop in which I declared that I could not admonish the first lieutenant since he had acted in accordance with his instructions. General Stroop was not satisfied with my attitude. I received the report back to investigate this matter once more. I did not change my opinion and in my reply I put down in writing that it would not be in accordance with my idea of my duties to let this man down. This first lieutenant was a man of about 56- to 58 years, who had worked himself up from sergeant. Already, in the first world war he had received for heroism before the enemy the Iron Cross First Class. Furthermore, he had been advanced during the first world war for heroism faster than he was supposed to. He had two sons who were fighting at the front and I could not treat a man like this in such a manner. I requested this matter should be considered as closed.

Q What reply did you receive from General Stroop?

A General Stroop replied a few days later that in view of my report and the personal history of this man it would be satisfactory only to admonish the man.

Q Did he say anything about what instructions should be given about the future?

A No, orders of a general nature were included therein.

Q Referring again to the conference in Wiesbaden in Stroop's office, was there anything said about an order issued by Himmler?

A Yes, non-interference order came from Himmler.

Q Did Stroop make any further comment about that order?

A That it should be executed.

PROSECUTION: No further questions. You may cross examine.

DEFENSE COUNSEL: No questions.

PROSECUTION: Are there any questions by any members of the court?

PRESIDENT: No.

PROSECUTION: Request that the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

PROSECUTION: Prosecution calls as its next witness Friedrich Schlums.

FRIEDRICH SCHLUMS, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q State your full name.

A Friedrich Schlums.

Q How old are you?

A I was born on the 26th of January 1892.

Q Are you a civilian internee in Dachau?

A I came here as a prisoner of war. Then I was discharged as a prisoner of war and now I am here as a civilian internee.

Q Were you a member of the German armed forces during World War II?

A I was a member of the Waffen SS since the 22nd of March 1945.

Q Were you chief of staff to General Stroop from November 1943 to the end of the war?

A I was staff leader of the Allgemeine SS and I was in fact, but not legally I was chief of staff.

Q What rank did you hold?

A SS colonel.

Q I show you Prosecution Exhibit D-19 and ask you if you have ever seen that before and tell the court what it is.

A I know this order from the publication "Das Reich" and already during my interrogation on the 15th of January 1946 I made the following statement: It was said in this order that it isn't the job of the German police and the German armed forces, parachuted enemy fliers to protect before the well justified furor of the people and in view of this article I assumed that with hundred percent certainty an order either from the Reichsfuehrer SS or from the chief of the regular police or from the chief of the Security Police or from all three of them came with the instructions that the lower government department should be instructed accordingly.

Q I show you Prosecution Exhibit D-22 and ask you if you have seen that before?

A This last sentence I know well, -- this last sentence which says, "No police or criminal action was taken against the citizens which participated in the above actions."

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Q Colonel Schlume where did General Stroop keep all secret documents?

A During my interrogation I was not exact when I said I had three, I really had four safe vaults; one in the room of the adjutant, two safes in the filing department and one safe in my office in which I kept the daily incoming mail before I gave it to General Stroop in case it was not take care of yet.

Q Did you personally have access to any of these secret documents?

A Yes. I had the keyes to all four safes. The key to the safe in the adjutant's room I gave to the adjutant approximately in the fall of 1944.

Q Were there any secret documents received by Stroop, if you know, to which you did not have access?

A No. In these safes there were only secret documents which had gone through the filing department.

Q Did Stroop keep secret documents in any other place except the safes?

A That is quite probable and for the following reasons: The secret letters arrived with the following address "Higher SS"and "Police Leader" these letters were opened by me. But when the letters were addressed "Jurgen Stroop" then these letters were put on General Stroop's desk sealed and his secretary opened them. Most of these letters I received back later on because the address was given only by mistake. Certainly there were letters among them, the contents of which, I did not hear about. Just the same as letters were sent out the contents of which I did not know.

Q Is it a usual thing for the Chief of Staff not to be permitted to see all secret documents? The secret documents of headquarters.

A These must have been letters which referred to matters of which the Fuehrer said nobody who had nothing to do with this matter should know anything about it.

Q Did you attend any conferences in 1944 with General Stroop at his office in Wiesbaden?

A I participated in practically all conferences but sometimes I entered the conferences only at the end when the great policy was laid down. I would like to add something. Meetings which General Stroop had with the commanders of the Security Police also took place without witnesses just the same as when he acted in his capacity as the appointing and reviewing authority or court authority. Then sentences were signed and passed on only with the court.

Q I believe you said something about a meeting at which the great policy was laid down, is that a meeting that took place in Stroop's office in October or November of 1944?

A I have participated in so many conferences since August 1943, that I cannot recall any particular conference.

Q Do you recall any conference at which the so called non-intervention order was discussed?

A In many conferences we discussed matters concerning fliers because in the final analysis our entire public, civilian and private life was under the influence of these terrific air attacks and for that reason I cannot say whether on any one particular conference this non-interference order was discussed or not.

Q Was anything said at any of these conferences about the treatment of Allied fliers?

A Already during my interrogation I mentioned two cases where the treatment of Allied fliers was the basis.

Q Tell the Court about those two cases?

A The first case: A corporal had treated a parachuted enemy flier too friendly and had been severely admonished by the commander of the regular police.

Q What was the second instance?

A In this case, on orders of General Stroop, the decision was changed so that the admonishment was retracted and the policeman was handed over to

the higher SS Police Court.

Q If I told you that there was in evidence in this case a document which was a G-2 document of the Supreme Allied Headquarters and that in that document this statement was made --- I want you to tell me whether or not you agree with it. Answer yes or no and only yes or no. Remember confine your answer to yes or no.

A Yes.

Q Can you agree with this statement: "Stroop was a little Himmler and Krumbler was his field commander"?

DEFENSE COUNSEL: I pray the court's judgment, that is practically character testimony in fact we submit it is character testimony.

PROSECUTION: The question has been ruled upon before. The term "Little Himmler" is a term indicating the extent of power and has nothing to do with character.

DEFENSE COUNSEL: You cannot limit definitions of something that is currently understood to be a characterization.

PRESIDENT: Objection overruled.

THE WITNESS: I can answer it with only one condition: "Little Himmler" is said too little.

PROSECUTION: No further questions. Just one or two more please.

QUESTIONS BY PROSECUTION:

Q Would you recognize Stroop if you saw him again?

A Yes.

Q If he is in the court will you point him out?

A Here (indicating), number 1.

PROSECUTION: Let the record show that the witness has identified the accused Jurgen Stroop, number 1.

QUESTIONS BY PROSECUTION:

Q Would you recognize Hans Krumbler if you saw him again?

A Yes.

Q If he is in the courtroom point him out?

A He is number 2.

PROSECUTION: Let the record show that the witness has identified the accused Hans Traumler, number 2. No further questions.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q I show you Prosecution Exhibit 19.

A It was shown to me before. That is the same article in the publication "Das Reich".

Q When you were shown that Exhibit 19 before, you testified that when you saw it you knew that it had been issued from the headquarters of the regular police, the security police, or by Himmler himself. Do you remember saying that?

A Yes.

Q By coming from the regular police, do you mean directly from the office of General Wannenberg and by coming from the office of the security police did you mean directly from the office of General Kaltenbrunner?

A Yes.

Q All right.

PROSECUTION: No further questions.

DEFENSE COUNSEL: We have nothing further.

PROSECUTION: Any questions by any member of the Court?

PRESIDENT: No. The witness is excused.

(Whereupon the witness was excused and withdrew.)

PROSECUTION: Will you mark these documents Prosecution Exhibits 36 and 36-A for identification?

(Whereupon the documents referred to were marked Prosecution Exhibits 36 and 36-A for identification.)

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PROSECUTION: I now offer in evidence documents which have been marked for identification as Prosecution Exhibits 35 and 35-a and ask that they be attached to the record and made a part thereof. They are statements of August Schaper, dated 21 September 1945 and are sworn.

DEFENSE COUNSEL: May I ask to have my memory refreshed as to whether this man is one of those incarcerated in Allied hands?

PROSECUTION: I am not quite certain of that. Regardless of that fact, Captain Smith testified that the witness was not available and that efforts were made to secure him. I would like to call the Court's attention to the rule appearing on page 110 of the Manual for Trial of War Crimes and Related Cases. Does the Court desire that I read the rule?

DEFENSE COUNSEL: I had asked to have my memory refreshed. Frankly I had forgotten what was said about the availability of this man.

LAW MEMBER: "French Zone, not yet located."

DEFENSE COUNSEL: Isn't that the case that was in the custody of the French and there was some trouble getting him out?

PROSECUTION: This man is also in the French Zone and efforts have been made but were not successful.

DEFENSE COUNSEL: If he has not been located then that is a different category and I raise no question then.

PRESIDENT: Prosecution Exhibits 35 and 35-A will be received in evidence and made a part of the record.

PROSECUTION: Permission is requested to read the exhibits.

PRESIDENT: Permission is granted.

(Whereupon Prosecution read Prosecution Exhibit 35-A the English translation of a statement of August Schaper followed by a reading of Prosecution Exhibit 35 by the interpreter in the German language.)

Ta 43 1-15-47
pls 30

PRESIDENT: Court will take a half hour's recess.

(Whereupon the court at 1500 hours recessed until 1530 hours.)

* * * *

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show all the members of the prosecution and defense, all the accused, the reporter and interpreter, and all the members of the court are present.

I hand you two documents and ask that they be marked Prosecution Exhibits 36 and 36A for identification.

(The documents referred to were marked Prosecution Exhibits 36 and 36A for identification.)

PROSECUTION: Prosecution offers in evidence documents which have been marked for identification as Prosecution Exhibits 36 and 36A, which are sworn statements of Gregor Hradetsky, and bearing no date, but which were taken at Camp Markus in Salzburg, Austria and ask that they be received in evidence and made a part of the record.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibits No. 36 and 36A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 36 and 36A for identification were received in evidence as Prosecution Exhibits No 36 and 36A, are attached hereto, and made a part of the record.)

PROSECUTION: For the record, Exhibit 36A is a true and correct translation of Exhibit 36. Prosecution requests permission to read Prosecution Exhibits 36 and 36A

Ta 43 1-15-47
pls SO

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 36A, the English translation of a statement of Gregor Hradetsky, followed by a reading of Prosecution Exhibit 36 by the interpreter in the German language.)

PROSECUTION: I hand you two documents and ask that they be marked Prosecution Exhibits 37 and 37A for identification.

(The documents referred to were marked Prosecution Exhibits 37 and 37A for identification.)

Prosecution offers in evidence documents which have been marked for identification as P-37 and P-37A and ask that they be made a part of the record. These are sworn statements of Jakob Boesen dated September, 1945, taken at Koblenz. Document P-37A is a true and correct copy of document 37.

DEFENSE COUNSEL: That, if I remember correctly, is the witness who is in the custody of the French.

PROSECUTION: That is correct.

DEFENSE COUNSEL: The defense rests on its right to have oral testimony produced unless it is physically impossible so to do or can be accomplished only under extra ordinary difficulty. As far as we know, it should be perfectly possible to obtain witnesses from the French zone. I'd like to add one thing more, may it please the court, to support that contention. Normally, on the basis of my experience, statements produced under these circumstances have been obtained by War Crimes teams which are made up of one man who examines and one man who is charged with the obligation of cross examining the witness so there is at least a semblance of an attempt made to get a statement by examination and by cross examination. Here we have nothing but an examination made someone without any cross examination made by anybody and we cannot make any cross examination either. In view of the hardship that imposes, I think no oral statement should be

received by the court unless it is just impossible to get the witness.

PROSECUTION: The witness, Captain Smith, testified that Gregor Hradetsky was requested from Camp Markus in Austria but so far permission was not received. So far as Bo sen is concerned, permission was requested of the French and so far not received. I again call the court's attention to the rule appearing on Page 110 of War Crimes Trial Manual that is referred to as Section 280 in the Trial Guide.

DEFENSE COUNSEL: I should like to add one more brief statement. We do not know when this witness was requested. It might be that a reasonable time to get him has not elapsed yet. We are entitled to have the benefit of all doubt on these matters.

PRESIDENT: Objection is overruled.

PROSECUTION: I would like to offer P-37 and P-37A in evidence.

PRESIDENT: Prosecution Exhibits No. 37 and 37A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 37 and 37A for identification were received in evidence as Prosecution Exhibits No 37 and 37A, are attached hereto, and made a part of the record.)

PROSECUTION: Permission of the court is requested to read Prosecution Exhibits 37 and 37A.

PRESIDENT: Permission is granted.

(Whereupon the prosecution read Prosecution Exhibit 37A, the English translation of a statement by Jakob Boesen, followed by a reading of Prosecution Exhibit 37 by the interpreter in the German language.)

PRESIDENT: The Court will recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, up to this point proof offered to the Court has been principally in support of Charge Number 1. It is the intention of the Prosecution at this time to begin to offer evidence principally in support of Charge Number 2. We would like to call the Court's attention, however, that throughout this entire case, right up to the end, we will continually, from time to time, offer evidence in support of Charges 1 and 2.

At this time the Prosecution asks the Court to take judicial notice of Control Council Law Number 10; and, for the convenience of the Court, I have copies of Control Council Law Number 10 from the official gazette of the official Control Council for Germany.

PRESIDENT: The Court will take judicial notice of Law Number 10.

PROSECUTION: I call the Court's attention to Charge Number 2, which, among other things, is based upon violations of paragraph 1, subparagraph D of Article 2 of Control Council Law Number 10. Is it the desire of the Court that the German translation of German Control Council Law Number 10 in whole or in part be read to the accused? The Prosecution particularly desires that paragraph 1, sub-paragraph D of Article 2 be read to the accused.

DEFENSE COUNSEL: It merely appears to us, may

it please the Court, that so long as it is taken judicial notice of, and then if it becomes a part of the evidence, for the sake of the record since everything else is read to the accused, that perhaps that better be read to the accused, particularly if part of it is going to be read. I have no strong feeling on it--that is merely a suggestion to the Court. I wish I could be sure, I think we had it read to them as a part of our general defense, but I am not sure.

MAJOR SAXON: I am pretty sure, Colonel.

DEFENSE COUNSEL: I think we had that Nuernberg extract read to them--that is quite lengthier than this.

PRESIDENT: The Court orders that the entire paper be read in German.

(Whereupon the Interpreter read to the accused in German Control Council Law Number 10.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution's Exhibit 38 for identification.

(The document referred to was marked Prosecution Exhibit 38 for identification.)

PROSECUTION: Prosecution now offers in evidence a document which has been marked Prosecution's Exhibit 38 for identification, which is an extract from the official transcript of the judgment of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering, et al, sitting at Nuernberg, Germany, on 31 August 1946, Lord Justice Lawrence, presiding,

and ask that it be received in evidence and made a part of the record.

DEFENSE COUNSEL: That's that four-power organization, isn't it?

PROSECUTION: That's right.

PRESIDENT: Any objections?

DEFENSE COUNSEL: No, sir.

PRESIDENT: Prosecution's Exhibit 38 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 38 for identification was received in evidence as Prosecution Exhibit 38, is attached hereto, and made a part of the record.)

PROSECUTION: Does the Court desire this evidence to be read? This discusses the charter provisions under which the military tribunal proceeded.

PRESIDENT: The Court desires the evidence read.

DEFENSE COUNSEL: May I suggest that so far as the Defense is concerned, we will waive the reading of it in English.

PROSECUTION: I believe if the Court would like to hear it, it will help in the matter of Charge Number 2.

PRESIDENT: Proceed with it.

(Whereupon the Prosecution read Prosecution Exhibit 38.)

PROSECUTION: I am going to offer another extract, and the translation of both these extracts is contained in one book, and I would like to have the court's permission to have them both translated at the same time. It will be more convenient, because the translation is contained in an

officially translated booklet.

PRESIDENT: Are there any objections to that?

MAJOR SAXON: No objections.

PRESIDENT: Permission is granted.

LAW MEMBER: Are you offering a translation of this?

PROSECUTION: I will if the Court desires.

MAJOR SAXON: The books are going in evidence, aren't they?

PROSECUTION: I will put them in after I offer this next exhibit, because they are contained in one book. I hand the reporter a document and request that it be marked Prosecution's Exhibit 39 for identification.

(The document referred to was marked Prosecution Exhibit 39 for identification.)

PROSECUTION: The Prosecution now offers in evidence a document which has been marked Prosedution's Exhibit 39 for identification to be received in evidence as Exhibit 39; and being a second extract from the official judgment of the International Military Tribunal and ask that it be admitted in evidence and made a part of the record.

PRESIDENT: Any objection by the Defense?

MAJOR SAXON: No, sir.

PRESIDENT: Prosecution's Exhibit 39 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 39 for identification was received in evidence as Prosecution Exhibit 39, is attached hereto and made a part of the record.)

PRESIDENT: The Court will recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: The Court will come to order.

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution's Exhibit 40 for identification.

(The document referred to was marked Prosecution Exhibit 40 for identification.)

PROSECUTION: The Prosecution offers in evidence a document which has been marked Prosecution's Exhibit 40 for identification, which is a true, correct and official translation of the extracts of the judgment of the International Military Tribunal which were received in evidence as Prosecution's Exhibits 38 and 39, and ask that it be received in evidence and made a part of the record.

DEFENSE: The Defense has no objections except that I might suggest that the record indicate the pages on which the translation began. It begins at page 97, I think, and goes to 114.

PROSECUTION: The translation of Prosecution's Exhibits 38 and 39 begins on page 11 and ends on page 14 and begins on page 95 and ends on page 114 of the translation document.

PRESIDENT: Prosecution's Exhibit 40 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 40 for identification was received in evidence as Prosecution Exhibit 40, is attached hereto and made a part of the record.)

LAW MEMBER: Have you waived the reading of this in German?

DEFENSE COUNSEL: Yes, sir, I thought I had.

PROSECUTION: Let the record show that the Defense has agreed to waive the reading of the German translation of Exhibits 38 and 39. Will the Defense indicate whether or not the translation has been previously read to the accused in German?

DEFENSE COUNSEL: That portion of the book from page 95 to page 114 has, to my knowledge, been read.

PRESIDENT: The Court will adjourn until tomorrow morning at nine o'clock.

(Whereupon at 1645 hours the Court adjourned until 0900 hours, 16 January 1947.)

CA/GI 13

Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

237 -291

Case No. Superior Orders

*~~Summary~~
*~~Intermediate Military Court~~
*General

Place Dachau, Germany

Date 16 JANUARY 1947

~~Members of Court:~~

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Rudolph H. Schubert

Reporter Patricia Stewart, Irving J. Hayett, Sally Rose Hayett, Imogene D. Butler John McDonald, Paula Silverman

WITNESSES:

ERNST KUENK HEINRICH HOMBERGER FRITZ FEIX

ERNST KOHN ARTHUR TRENKNER HEINRICH SPANNASSER

AUGUST WAGNER ERTY FRESS JULIA EISENMANN

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

~~[illegible] [illegible] thereof~~ 237 239

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 16 JANUARY 1947

16 January 1947 Pages 237 - 291

T E S T I M O N Y

WITNESSES:	Direct	Cross	Redirect	Recross	Court
ERNST MUEHR	242	247			
ERNST KOHN	250	254			
AUGUST WAGNER	255	256			
HEINRICH MOMBERGER	258	261			
ARTHUR TRENKNER	262	264			
JIMMY PRESS	270	273			
FRITZ PEIX	277				
HEINRICH SPARBAUER	278				
JULIA EISENMANN	287	291			

E X H I B I T S

No.	Description	Marked	Received in Evidence
P-41	Affidavit of Jurgen Stroop	237	239
P-41-A	English translation thereof	237	239
P-42	Affidavit of Hans Trummler	237	239
P-42-A	English translation thereof	237	239
P-43	Affidavit of Otto Sommm	237	239
P-43-A	English translation thereof	237	239
P-44	Affidavit of Arthur Fuehr	237	239
P-44-A	English translation thereof	237	239
P-45	Affidavit of Wilhelm Hoehler	237	239
P-45-A	English translation thereof	237	239
P-46	Affidavit of Georg Best	237	239
P-46-A	English translation thereof	237	239
P-47	Affidavit of Erwin Goss	237	239
P-47-A	English translation thereof	237	239
P-48-	Affidavit of Heinrich Michely	237	239
P-48-A	English translation thereof	237	239
P-49	Affidavit of Julius Lasak	237	239
P-49-A	English translation thereof	237	239
P-50	Affidavit of Fritz Dirks	237	239
P-50-A	English translation thereof	237	239

EXHIBITS (Cont'd)

No.	Description	Marked	Received in Evidence
P-51	Affidavit of Heinz Hellenbreich	237	239
P-51-A	English translation thereof	237	239
P-52	Affidavit of Karl Franz Stattmann	237	239
P-52-A	English translation thereof	237	239
P-53	Affidavit of Michael Reef	237	239
P-53-A	English translation thereof	237	239
P-54	Picture of Heinrich Hemberger	259	260
P-55	Order for burial	264	264
P-55-A	Translation of P-55	264	264
P-56	Statement of Julius Lasenk	266	266
P-56-A	Translation of P-56	266	266
P-57	Statement of Julius Lasenk	267	267
P-58	Statement of Leonard Brunner	268	269
P-58-A	English translation of P-58	268	269
P-59	Sworn testimony of Johann Wagner	274	275
P-60	Statement of Burgomeister Capello	276	276
P-60-A	Translation of P-60	276	276
P-61	Statement of Lieselotte Pfial	284	285

MORNING SESSION

(Whereupon the court reconvened at 0925 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and interpreter are present.

At this time, the prosecution requests the court to take judicial notice of the judgment of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering, et al, defendants, sitting at Nuernberg, Germany, on 31 August 1946, Lord Justice Lawrence presiding, and in particular, that part of the judgment that declared the following organizations criminal: the Leadership Corps of the former German Reich, the Gestapo, the SS, the SD.

DEFENSE COUNSEL: May the defense at the same time request the court's attention to certain portions of that decision which state that those who had technical membership in one of those organizations, but who occupied only clerical, administrative, janitorial or menial labors, were not to be considered members of criminal organizations purely because of the nature of the work they did, unless they assisted and furthered the criminal purposes of the organization itself. There is another provision in that judgment which states that enforced membership was not to be considered as membership unless also the person whose membership was enforced actually furthered the work of the organization.

PRESIDENT: The court will take judicial notice of the judgment at Nuernberg as requested by the prosecution and defense.

PROSECUTION: I hand the reporter 26 documents and request that they be marked for identification Prosecution Exhibits 41 to and including 53-A.

(The documents referred to were marked Prosecution Exhibits 41 through 53-A for identification.)

PROSECUTION: Prosecution now offers in evidence thirteen affidavits and translations which have been marked for identification beginning with Prosecution Exhibit 41 to and including 53-A, which are affidavits of the accused Stroop, Trummler, Sommer, Fuchs, Moehler, Best, Goss, Michaly, Lassak, Girke, Hellenbroich, Stattmann and Raaf, and asks that they be received in evidence, given those numbers, and be made a part of the record.

PRESIDENT: Any objection by the defense?

PROSECUTION: These are affidavits dated 9 December 1946, in which the accused state the organizations to which they belonged.

DEFENSE COUNSEL: The defense objects to all of them, may it please the court, on the ground previously urged and overruled, namely, to wit, that this is the introduction by the prosecution of sworn testimony by the accused, from the accused, by material matters, wherein they themselves are denied the privilege of testifying under oath. That is a blanket objection to all of them.

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: On this ground, too, that if this offered to prove membership in some organization or another — the reason I ask, may it please the court, is this: there are at least one I have in mind which shows membership in an organization of a man who was a janitor, and under the Nuernberg decision, that membership in that capacity would not make him a member of a criminal organization within the purview of the decision itself. I therefore ask a ruling from the court at this time whether or not the burden is not on the prosecution to show, in each of these cases, that the membership was of the kind of membership which the decisions stamped as criminal in its nature, and not the kind of membership which the Tribunal

(The documents referred to were marked Prosecution Exhibits 41 through 53-A for identification.)

PROSECUTION: Prosecution now offers in evidence thirteen affidavits and translations which have been marked for identification beginning with Prosecution Exhibit 41 to and including 53-A, which are affidavits of the accused Stroop, Trummler, Seemann, Fuchs, Koehler, Best, Geos, Michaly, Lasnak, Girke, Hellenbreich, Stattmann and Rauf, and asks that they be received in evidence, given those numbers, and be made a part of the record.

PRESIDENT: Any objection by the defense?

PROSECUTION: These are affidavits dated 9 December 1946, in which the accused state the organizations to which they belonged.

DEFENSE COUNSEL: The defense objects to all of them, may it please the court, on the ground previously urged and overruled, namely, to wit, that this is the introduction by the prosecution of sworn testimony by the accused, from the accused, by material matters, wherein they themselves are denied the privilege of testifying under oath. That is a blanket objection to all of them.

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: On this ground, too, that if this offered to prove membership in some organization or another -- the reason I ask, may it please the court, is this: there are at least one I have in mind which shows membership in an organization of a man who was a janitor, and under the Nuernberg decision, that membership in that capacity would not make him a member of a criminal organization within the purview of the decision itself. I therefore ask a ruling from the court at this time whether or not the burden is not on the prosecution to show, in each of these cases, that the membership was of the kind of membership which the decisions stamped as criminal in its nature, and not the kind of membership which the Tribunal

excluded as being criminal.

PROSECUTION: It is, of course, the intention of the prosecution to prove the particular part they played.

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

Let the record show that Prosecution Exhibits Nos. 41 through 53-A will be received in evidence and made a part of the record.

PROSECUTION: Does the court desire these exhibits read? The prosecution waives the reading of them. I have extra copies for the court.

PRESIDENT: The exhibits will be read.

DEFENSE COUNSEL: We waive the reading, too, may it please the court.

(Whereupon the prosecution read Prosecution Exhibits 41-A, 42-A, 43-A, 44-A, 45-A, 46-A, 47-A, 48-A, 49-A, 50-A, 51-A, 52-A, and 53-A, followed by a reading of Prosecution Exhibits 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53 by the court interpreter in the German language.)

End ts 45
Mae fols

DEFENSE COUNSEL: May it please the court, the defense understands that these exhibits which have been read into the record--so-called exhibits showing membership in organizations--were introduced to show membership in organizations declared criminal by the Nuernberg decision. Under that assumption, I move to strike out from the record at this time the statement of membership by one Heinrich Micholy--I am sorry I cannot give you the exact exhibit number--on the ground that the exhibit does not show membership in any criminal organization whatsoever, but is confined solely to organizations not declared criminal, and on the ground that the evidence is immaterial and irrelevant. It is Exhibit 48, I am told.

The two organizations mentioned are the Hitler Youth, which of course is completely outside the scope of the Nuernberg decision, and the second organization mentioned is the Waffen SS, which is a strictly military organization and not mentioned in the Nuernberg decision either. The Nuernberg decision refers entirely to the Allgemeine SS, a political organization, and not to the Waffen SS or the Cavalry SS, which was strictly military and completely separate and apart from the Allgemeine SS.

PROSECUTION: The only answer I can give to that is that if the court reads that extract of the judgment the contrary appears. The SS is mentioned. The Allgemeine SS is treated as a separate organization and called the SA, but the SS is definitely declared as one of the criminal organizations, and the Waffen SS is nothing but the SS.

DEFENSE COUNSEL: I invite the court's attention to page 15 of the extract from the Nuernberg decision, which has been introduced as an exhibit. I am sorry that I cannot give you the exhibit number, but it is on page 15 and is a long extract which deals with the composition of the four organizations declared criminal, and the word used is "Schutzstaffeln". It is the German word for the Allgemeine SS, and there is just no question about that. There is no word about the SA at all. In fact, there is some reference to the SA in an entirely different place. It shows it as something entirely separate and apart. And, finally, the SA is specifically found not to be criminal.

PROSECUTION: Page 20 of the extract reads:

> "Conclusions: The SS was utilized for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labor program and the mistreatment and murder of prisoners of war. The defendant Kaltenbrunner was a member of the SS implicated in these activities. In dealing with the SS the Tribunal includes all persons who have been officially accepted as members of the SS including the members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbaende and the members of any of the different police forces who were members of the SS."

DEFENSE COUNSEL: That was limited, may it please the court, to those members who were working at these particular camps, and not to the general membership.

PROSECUTION: Of course, it will be part of the prosecution's proof to show what part each of the accused played in these organizations.

DEFENSE COUNSEL: May I ask the reporter to read back the last statement of Colonel Dwinell.

(Whereupon the reporter read the last statement of the prosecution.)

DEFENSE COUNSEL: By that you mean these criminal organizations?

PROSECUTION: That is correct.

PRESIDENT: The motion is denied.

PROSECUTION: May it please the court, the prosecution has concluded the presentation of its proof directed principally to the support of Charge II. We repeat that all during this trial we will continually offer evidence to support the charges I and II.

We now begin to present the principal evidence in support of Charge III. Captain Vance will conduct the direct examination. Is it the desire of the court, in view of the fact that it is about one minute to ten, to recess now, or will we begin with the proof?

PRESIDENT: Continue.

ERNST MUENK, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Please state your full name.

A Ernst Muenk. M-u-e-n-k.

Q What is your address?

A Bad Nauheim, Ries Street.

Q What is your civilian occupation?

A Police master.

Q In which city?

A In Bad Nauheim.

Q How old are you?

A Forty-nine years.

Q Where were you living in the month of October 1944?

A In Giessen.

Q I direct your attention to on or about the third day of October, 1944, and ask you where you were at that time.

A At the police main office at Giessen.

Q Did anything unusual happen in Giessen on that day?

A Over Giessen and Wieseck several two-motor airplanes fell down.

Q Did you have occasion to see any American fliers on that date?

A Yes.

Q Where did you see them?

A In the neighborhood of my home. I was called because in the neighborhood of my home there were several buildings on fire. I ran home first to see whether anything had happened there. There somebody called me and said--called me while I was in the air raid shelter--that they were going to take fliers out of the city. I ran over there immediately. It was about 100 meters from my home. There was an excited crowd of twelve men and women, and they walked around the flier. I said immediately, "The flyer is under my protection and will be brought to police headquarters."

Q How many fliers were there?

A One flyer.

Q What was your business at that time, Mr. Muenk?

A I was on duty.

Q As what?

A Police master.

Q Continue.

A Since the crowd was very excited, a man who lived in my house, Mahr, offered to help me. I took the shortest route to my police headquarters, since the air raid alarm was still on. Everybody was in the air raid shelters. In front of the entrance was a police director Lassak. Lassak told me to take the flier down in the cellar.

Q This man Lassak that you are talking about, if you were to see him today would you recognize him?

A Yes.

Q If he is present in the court here will you point out which man is Lassak?

A No. 18 (indicating).

CAPTAIN VANCE: Let the record show that the witness has identified the accused Lassak, wearing placard No. 18.

Q What was Mr. Lassak's position there in Giessen?

A He was police director, SS colonel.

Q What occurred after you got to the police station?

A I went with the flyer to the basement. In the hallway it was half dark, and we moved only slowly. Lassak followed us, and since we moved slowly he pushed the flyer to the side and opened the door so that we could enter the orderly room.

Q What do you mean by "he pushed the flyer to the side"? Be more definite.

A The hall is very narrow, and he wanted to pass between us, so he pushed him to the side so that he could pass us.

Q Then what happened?

A So I entered the room and the entire staff was waiting there. I intended to report to the commander that I had taken the flyer at Marburger Street from the people, but I was told immediately to leave the room again. At this moment something flew against the table. I turned around and saw that the flyer had been pushed by Lassak, who wanted to pass by. I left the room immediately then with the flyer and waited outside with the flyer. A short while later Mr. Lassak came out again and said, "He comes, the flyer comes to the Gestapo for interrogation." Since we were still standing in the narrow hallway, he told the flyer, "Get out of my way", and went up the stairs. Approximately six, seven, minutes later he called into the cellar the flyer should come upstairs. I went upstairs with the flyer, and there was an employee of the Gestapo, and Lassak said, "This is the man." And the man had walked already a few steps--the flyer had walked already a few steps--and since he was alone and turned around once, so I thought maybe the crowd was still excited, so I thought it is better I accompany him to the Gestapo. At the Gestapo I went with him up to the stairs, and there I saw they were already waiting for him, and they said, "He will be brought to Branner. I stayed at the stairs and Branner asked me whether he was searched already for arms. I said, "No." They put him against the wall and immediately started to search him. Since with me on the stairs were a few other men, and through the open door we could look into the room, they now closed the door so that

(Muenk - Direct)

we couldn't see anything anymore.

Q Mr. Muenk, this man Branner you are talking about: Do you know his first name?

A No, I don't know the first name.

Q What was his position, or who was this man Branner?

A Branner was criminal secretary at the Gestapo office in Giessen.

Q If you were to see this man Branner at this time, would you recognize him?

A Yes.

Q Is he present in the courtroom? If so, indicate him to the court.

A No. I can't see him.

Q How long did you remain at the Gestapo headquarters after you delivered this American flyer?

A As soon as they closed the door I returned to my own office.

Q Approximately what length of time were you with this American flyer from the time you first took him until you left him at the Gestapo headquarters?

A Approximately half an hour it might have been.

Q Did this flyer have any weapons on his person?

A I didn't search him. I didn't notice anything.

Q Did this flyer try to escape or make any attempt to escape while in your custody?

A No. I didn't even think of it, because he had very heavy boots. He had this combination jacket and he had the parachute under his arm.

Q You have talked about an American flyer. How do you know he was an American?

A Because later on it was found out that these were American planes which had come down.

Q Do you know the name of this flyer?

A No.

Q Have you seen this flyer since the date you left him at Branner's office?

A No.

Q Do you know what happened to this flyer?

A A few weeks later I heard that he had been shot by Branner.

CAPTAIN VANCE: No further questions. Does the defense desire to cross examine?

MAJOR SAXON: May it please the court, I would like to object to and ask that the last answer given by this witness be stricken as purely hearsay.

PRESIDENT: The objection is overruled.

CROSS EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q This place that you referred to as the cellar: Will you just tell the court what that actually was?

A That was the orderly room of police headquarters during air raid alarms.

Q It was an air raid shelter then; is that correct?

A It was an air raid shelter with rooms completely built up.

Q Did you have a telephone in this shelter?

A Several telephones.

Q You mentioned that Mr. Lassak pushed this flyer as he walked by him. Can you tell us where Mr. Lassak was headed at that time?

A He went to the central telephone office.

Q Was there a telephone booth right in this same room that you have referred to?

A Yes.

Q Did you wait there while he went and used the telephone?

A No, I immediately left the room.

Q Do you know whom he called at that time?

A No.

Q Did Mr. Lassak tell you whom he was going to call?

A No.

Q You have mentioned on three different occasions here that Mr. Lassak pushed this flyer. Do you mean to tell the court here that he did it with the idea of hurting the flyer?

A No.

Q It was merely to get by to perform his duties there, is that correct?

A Yes, because there were narrow hallways.

Q Who instructed you to take the flyer over to the Gestapo headquarters?

A Mr. Lassak said he will be brought over to the Gestapo, and then he called from upstairs when the man was to be picked up.

Q You mean he called on the telephone?

A No, no, not on the phone. He called from upstairs down the staircase.

Q Did Mr. Lassak tell you why he was to be taken to the Gestapo headquarters?

A He said, "He comes to the Gestapo for interrogation."

Q Did I understand that you did not search the flyer at all in your headquarters?

A No.

Q The flyer suffered no personal injury or threat in your headquarters, did he?

A No.

PRESIDENT: Court will recess for fifteen minutes.

(Whereupon at 1015 hours the court recessed until 1030 hours.)

(Muenk - Cross)

(Whereupon the Court reconvened at 1030 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all the members of the Prosecution, all the members of the Defense, all the accused, the reporter and interpreter are present.

MAJOR SAXON: I have no further questions.

CAPT. VANCE: Request the witness be excused if there are no questions by the Court.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPT. VANCE: Call the witness Ernst Kohn.

ERNST KOHN, called as a witness for the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPT. VANCE:

Q Please state your full name?

A KOHN, Ernste, Herman, Friedrich. Ernst, Herman, Friedrich, Kohn.

Q What is your address?

A In Giessen.

Q What was your civilian occupation?

A I was a criminal policeman. A member of the criminal police.

Q For how long a time?

A I was with the police from 1920 to 1945.

Q How old are you?

A Fifty four years.

Q What is your status at the present time?

A I am in the special camp here, cage one, as a prisoner right now.

Q Where were you living in October 1946?

A In Giessen.

(Kohn-direct)

Q Where were you working at that time?

A I worked with the outer office of the Gestapo headquarters at Giessen.

Q Were you present in the Gestapo office on or about 8 October 1944 when an American flyer was brought there?

A Yes.

Q Who brought the flyer there?

A A policeman Ernst Muenk from the police headquarters at Giessen.

Q Who was with Muenk when he delivered the American flyer?

A There was a Criminal Official Wintzer, Criminal Secretary Schneider, Criminal Secretary Brenner and myself.

Q What happened when Muenk brought the flyer there?

A He was searched by the Criminal Secretary Brenner for weapons but he had none with him.

Q Did any conversation take place with regard to this flyer by anyone present?

A Yes. I said, "This isn't our business. I will call. We have to give him to the armed forces. I will call the airfield and they will send two men to pick him up."

Q Who did you say that to?

A I said it to all who were present.

Q Did anybody else say anything?

A Yes. Mr. Brenner said, "He will be picked up, I take him away".

Q After Brenner said this did he take the flyer away?

A Yes.

Q Did Brenner say anything when he left with the flyer?

A Yes. He said something but I do not recall exactly anymore. I don't know every word that he said. Something about "To pay a bill" but I don't remember exactly anymore.

(Kohn-direct)

Q The best you can remember, what was said by Brenner?

A I don't know it word for word exactly how he said it and in which connection he used the words and how he meant it and the words I cannot recall anymore.

Q After Brenner left with this flyer, when is the next time you saw Brenner?

A It was approximately 15 to 20 minutes, I guess.

Q Did Brenner come back?

A Yes.

Q When Brenner returned did he have the flyer with him?

A No.

Q Have you seen the flyer since that time?

A No.

Q What did Brenner do or say when he came back?

A He went up to the second floor where he had his room and I went up with him, when he came to the end room, Criminal Official Wintzer came out of his room and asked, "How, how is it?" Brenner said, "Everything is taken care of, he is --" and then he made a move like this (indicating).

CAPT. VANCE: Let the record show that the witness made a sign by taking his right hand and sweeping it in a circle to the right of his body.

QUESTIONS BY CAPT. VANCE:

Q Was anything else said?

A No.

Q Do you know what Brenner meant by that remark he made to Wintzer?

A Yes. It was a little bit funny to me and therefore I went downstairs to the first floor and there I heard Brenner was calling on the phone the cemetery administration at the Philosophen Forest there would be a dead flyer and they should go over there and pick him up.

Q Do you know the first name of this man Branner you have been talking about?

A Yes.

Q What is it?

A We called him "Leo" but whether his name was Leo or Leonard, I do not know.

Q If you were to see this man Branner today would you recognize him?

A Yes.

Q Look around the courtroom and state whether or not he is present in court?

A No.

Q When this pilot was brought to the Gestapo Headquarters, did he have any weapons?

A No.

Q When Branner left with the pilot did the pilot have any weapons?

A No, he couldn't.

Q About how long was the pilot kept there in Gestapo Headquarters?

A Only a few minutes.

Q Did the pilot try to escape during the period of time he was at Gestapo Headquarters?

A No.

Q When Branner left with the pilot, did Branner have any weapons?

A Yes. He had a pistol.

Q Do you know the name of this pilot?

A No.

Q Do you know where the Philosophen Forest is?

A Yes.

Q About how far is it from Gestapo Headquarters?

A There are two paths leading to the forest; one through the meadow and one passed along the ice field and that is the shortest way. It takes you about eight to ten minutes to walk it this way.

Q You mean eight to ten minutes to walk itone way?

A Yes, only one way.

Q It would then take about 15 to 20 minutes to walk it both ways, is that correct?

A Yes.

Q You said that Leonard Brammer was gone about 15 to 20 minutes, is that correct?

A Yes, approximately. I did not look at my watch.

CAPT. VANCE: No further questions.

CROSS EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q What position did this man Mintzer have, that you mentioned?

A He was in charge of the outer office Giessen and he was Criminal counselor.

Q Were you a member of the Gestapo and serving under Mintzer there at that time?

A Yes.

Q Were you there in Mintzer's office when he received the phone call regarding the flyer?

A No.

Q Regarding Brammer taking the flyer away, were the orders given to Brammer by Mintzer or what orders were given?

A I don't know that.

MAJOR SAXON: That is all.

CAPT. VANCE: Are there any questions by the Court?

PRESIDENT: No.

CAPT. VANCE: Request that the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

(Kohn-cross)

CAPT. VANCE: Call August Wagner.

AUGUST WAGNER, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPT. VANCE:

Q State your full name?

A August Wagner.

Q What is your address?

A Eder Street 2, Giessen.

Q What is your occupation?

A I was traveling salesman and at the end I was drafted into the Auxiliary Police.

Q What is your present occupation?

A I rent a parking lot for cars.

Q How old are you?

A Fifty two.

Q Whatwas your occupation in October 1944?

A I was a Sergeant of the Police.

Q Where?

A Giessen.

Q Calling your attention to about the 3rd of October 1944, I will ask you to state whether or not you had occasion to see an American flyer in Giessen?

A Yes.

Q Under what circumstances did you see this American flyer?

A He was taken by a comrade of mine, Munk, to headquarters.

Q Where did you see him with Mr. Munk?

A I came along the street one way and Munk came along the street at an angle of 90 degrees.

Q Do you remember the date that you are talking about?

A It was on the 3rd of October 1944.

Q Have you ever seen this American pilot since that date?

A The next day I went to Wiesack on duty there and I met three women up near the forest and they told me there was a dead soldier in the forest.

Q Did you go to the forest to see the dead soldier?

A I took the three women along to show me the place.

Q Then did you see the dead soldier?

A Yes.

Q Had you ever seen that dead soldier before?

A Yes. I think, with 90% certainty, that it was the same soldier that I saw with Muenk.

Q You saw him with Muenk the day before, is that correct?

A Yes.

Q After y u saw the body, what did you then do?

A Then I went to my duty at Wiesack.

CAPT. VANCE: I have no further questions.

CROSS EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q You stated you were 90% sure this was the same person you saw with Muenk the day before, what causes you to have some doubt in your mind as to whether it is or not?

A Since I had never seen the soldier before in my life and I saw him only from a distance of 20 to 25 meters.

Q What I want to know is whether there was something different about the man when you saw him in the forest then when you saw the man with Muenk?

A He was a tall, slender fellow and it was the same man Muenk had brought down.

Q What did he wear when you saw him in the forest?

A The uniform - I didn't look at it so closely.

Q Did you notice whether he had on a flyer's coat or not?

A I can't say that anymore.

Q Do you know whether he had flyer's boots on?

A I think he had no more boots.

Q Was he lying face down or face up?

A Face up.

Q What time of day was it that you saw the body in the forest?

A It was around noon time- one o'clock or one thirty, I cannot say.

Q After you saw the body what did you do then regarding the body, if anything?

A I went to Wiesaek and as soon as the man who was on duty returned I made a report to him.

Q Did you arrange to have the body moved?

A No. I only reported this to my superior officers.

Q Do you know what was done with the body, yourself?

A No.

Q When you first saw this flier with Muenk, the day before, what time of day was it?

A That might have been eleven or eleven thirty, I cannot say exactly.

Q How far away was Muenk from you when you saw them?

A I already said before about 20 to 25 meters.

Q How much time did you have to observe the flyer?

A They came from one direction and I passed them at an angle of 90 degrees and there we met on the street and I could look at him.

(Wagner-cross)

Q When you saw the flyer on the first day, with Muenk, what was the man wearing then?

A This I cannot tell you exactly either but he had his parachute under his arm.

Q You cannot tell us what kind of clothing he was wearing?

A I cannot say that exactly because I saw him just while passing by.

Q But it is possible that it was not the same man that you saw in the forest that you saw walking with Muenk the day before, is that right?

A I claim it was the same man I saw the day before with Muenk.

MAJOR SAXON: That is all.

CAPT. VANCE: Any questions by the Court?

PRESIDENT: No. The witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPT. VANCE: Call Heinrich Momberger.

HEINRICH MOMBERGER, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPT. VANCE:

Q What is your name?

A Heinrich Momberger.

Q What is your address?

A Giessen-Wieseck.

Q What is your occupation?

A Retired policeman.

Q How old are you?

A Sixty two.

Q What was your occupation in October 1944?

A I was in charge of the police station at Wieseck.

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Q Directing your attention to about the 4th day of October 1944 I will ask you if you had occasion to see an American soldier's body on that day near Giessen?

A Yes. Near the Philosophen Forest.

Q How did you learn that the American's body was in the Philosophen Forest?

A This day I came from my home in Giessen where I had lived before and was on my way to my office at Wisseck and my way took me through the forest; close to the former labor service camp I met a group of policemen under the leadership of 1st Lt. Flum, who came from Giessen. The entire group was on bicycle.

Q Did you go to look at the body?

A I followed this group and went with them.

Q Did you look at the body?

A Yes. The body was lying face up.

Q Did you notice any wounds on the body?

A Yes. The corpse had blood near the nose to the mouth.

Q After you looked at the body what did you do then?

A Then I returned to my office at Wisseck.

Q Had you ever seen this American prior to the time you saw the body in the forest?

A No.

Q Do you know the name of this dead American flyer?

A No.

Q After the American soldiers arrived in Giessen did you go with anyone to the scene where you found this body?

A Yes. I went by car there with an investigating officer and a picture was taken of me at the same spot where the flyer had been found.

CAPT. VANCE: Will you mark this as Prosecution Exhibit 84 for identification.

(The document referred to was marked Prosecution Exhibit 54 for identification.)

QUESTIONS BY CAPT. VANCE:

Q You say a picture was taken where the body was found?

A Yes, in the forest.

Q I show you a picture which has been marked Prosecution Exhibit 54 for identification and ask you to state if this is the picture that was taken?

A Yes.

Q Do you appear in the picture?

A Me?

Q Yes.

A Yes.

Q What are you pointing to with your hand?

A Where the corpse was laying.

CAPT. VANCE: If it please the Court I offer in evidence a photograph which has been marked Prosecution Exhibit 54 for identification.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 54 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 54 for identification was received in evidence as Prosecution Exhibit 54, is attached hereto and made a part of the record.)

Questions BY CAPT. VANCE:

Q Do you know what disposition was made of this body?

A The body was picked up by Trenkner on October 4. He has a funeral home.

Q Was that in the year 1944?

A Yes. 4 October 1944.

Q Do you know where the flyer was buried?

A No. I heard only that this man took him to the cemetery.

Q At the time that you saw the body of the dead American were there any weapons on it?

A No, nothing anymore.

Q All right.

CAPT. VANCE: I have no further questions.

CROSS EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q When did you see this body, was it the 3rd or the 4th?

A The 4th.

Q What time of day was it?

A Approximately 1500 o'clock.

Q That is all.

CAPT. VANCE: Are there any questions by the Court?

PRESIDENT: No. The witness is excused.

(Thereupon the witness was excused and withdrew.)

CAPT. VANCE: Call Arthur Trenkner.

ARTHUR TRENKNER, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPT. VANCE:

Q Please state your full name?

A Arthur Trenkner.

Q What is your address?

A Giessen.

Q What is your occupation?

A I am the owner of a funeral home.

Q How old are you?

A Fifty two.

Q What was your occupation in 1944?

A I had a funeral home.

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Q In what city?

A In Giessen.

Q Did you have occasion on the 4th day of October 1944 to go to the Philosophen Forest near Giessen?

A Yes. I was ordered there.

Q Who ordered you there?

A The Airfield at Giessen.

Q After you received the orders did you go to the forest?

A Yes.

Q What did you find there?

A An American soldier.

Q Was the American soldier alive or dead at that time.

A Dead.

Q Did you look at the body?

A Yes. I put the body into the coffin.

Q Then what did you do?

A Then we loaded the coffin onto a cart and took it to the cemetery at Giessen.

Q I show you a photograph which is in evidence as Prosecution Exhibit 54 and ask you if you can recognize that photograph?

A Yes.

Q What is that?

A That is the Philosophen Forest.

Q Is that where you found the body?

A Yes.

Q What disposition was made of this body?

A The body was brought to the cemetery and there I delivered it to the cemetery administration.

Q Which cemetery?

A The new cemetery in Giessen.

Q Did you see any papers or any identification on this dead body?

A Yes

Q Do you know the name of this dead flyer?

A No.

Q Were you paid for your services to bury the body?

A Yes.

Q Who paid you?

A The airfield.

Q How long have you been engaged in the undertaking business?

A Let's say forty years.

Q Have you had lots of experience in examining and seeing dead bodies?

A Yes.

Q Could you express an opinion as to how long the body was lying there or had been dead at the time you removed it from the forest?

A Well --

DEFENSE COUNSEL: I pray the Court's judgment, that is purely a medical question.

CAPT. VANCE: May it please the Court, I asked him if he can. I do not know whether he is qualified or not. He has been an undertaker for forty years.

DEFENSE COUNSEL: If he is going to express an opinion, my objection is that he is not qualified to express an opinion.

PRESIDENT: The objection is overruled and the witness will answer the question.

THE WITNESS: It might have been 8, 10 or 12 hours.

CAPT. VANCE: Will you mark these as Prosecution Exhibits 55 and 55-A for identification.

(Whereupon the documents referred to were marked Prosecution Exhibits 55 and 55-A for identification.)

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CAPT. VANCE: May it please the Court, I have in my hand a burial order which has been marked Prosecution Exhibit 55 and the English Translation which has been marked 55-A for identification. This witness has testified that he was paid by the airport in Giessen. We offer the airports order of burial in evidence and ask it be received and made a part of the record.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibits 55 and 55-A will be received in evidence and made a part of the record.

(hereupon the documents heretofore marked Prosecution Exhibits 55 and 55-A for identification were received in evidence as Prosecution Exhibits 55 and 55-A, are attached hereto and made a part of the record.)

CAPT. VANCE: Permission is requested of the Court to read this Exhibit.

PRESIDENT: Permission is granted.

(Whereupon Prosecution read Prosecution Exhibit 55-A the English translation of the order for burial followed by the reading of Prosecution Exhibit 55 by the interpreter in the German language.)

CAPT. VANCE: I have no further questions.

CROSS EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q What day was it that you received the phone call to bury this flyer?

A On the 4th of October.

Q What time of day was it?

A It was in the afternoon.

Q Do you know what time in the afternoon?

A This day we had fourteen flyers and I cannot give you the exact hour.

Q You had occasion to bury 14 flyers that day?

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A Yes.

Q Did you get the order to bury all 14 of them from the airport?

A Yes.

Q Do you know what time you went out to get the body of this particular flyer?

A It might have been between four and five.

Q As I understand it, you testified here that you are satisfied that this flyer had been dead from eight to twelve hours, is that correct?

A Yes.

Q Did the air attack that took place on Giessen take place the day before, 3 October?

A Yes.

Q There was no air attack on the 4th October?

A No.

Q Do you know how many planes came down to earth on the 3rd October?

A According to hearsay, two.

Q You were out there sometime between four and five oclock to get the body of this man, he would then have to have been killed sometime that day according to your judgment of the length of time he had been dead, is that correct?

A It is possible. I guess, I figure it that way.

Q Would it be your opinion that this flyer we are now referring to was killed sometime around six or seven o'clock that morning of 4 October?

A That is possible, yes.

Q What is your opinion about that, is that correct or not?

A It might be right. I cannot say it exactly.

Q Did you examine the body of this flyer before you buried him?

A No.

Q Then you do not know in what manner he died?

A No.

Q Was the burial fee for all the bodies that you buried paid for by the airport?

A Yes. Not the expenses for the burial. Only the expenses for the coffins. I had nothing to do with the burial itself.

MAJOR SAXON: That is all.

CAPT. VANCE: Are there any questions by the Court?

PRESIDENT: No. The witness is excused.

(Thereupon the witness was excused and withdrew.)

CAPT. VANCE: Will the reporter please mark these documents Prosecution Exhibits 56 and 56-A for identification.

(Whereupon the documents referred to were marked prosecution exhibits 56 and 56-A for identification.)

CAPT. VANCE: I have in my hand documents which have been marked Prosecution Exhibit 56 and 56-A for identification. Exhibit 56 is a statement written by the accused Julius Lassak in his own handwriting at Giessen 11 July 1946. The other, Exhibit 56-A is a true and correct translation from German into English. I offer these documents in evidence, ask they be received and made a part of this record.

DEFENSE COUNSEL: Major Saxon.

MAJOR SAXON: This is objected to for the reasons heretofor given by the Chief Defense Counsel, Colonel Berman, namely that the sworn statement of this accused has no right to come in and not be refuted by sworn testimony from the witness stand.

PRESIDENT: The objection is overruled. Prosecution Exhibits 56 and 56-A will be received in evidence and made a part of the record.

(The documents heretofor marked Prosecution Exhibits 56 and 56-A for identification were received in evidence as Prosecution Exhibits 56 and 56-A, are attached hereto and made a part of the record.)

CAPT. VANCE: Permission is requested to read these exhibits?

PRESIDENT: Permission granted.

(Trenkner-cross)

(Thereupon the prosecution read Prosecution Exhibit 56A, the English translation of a statement by Julius Laesak, followed by a reading of Prosecution Exhibit 56 by the interpreter in the German language.)

CAPTAIN VANCE: I hand you a document and ask that it be marked Prosecution Exhibit 57 for identification.

(The document referred to was marked Prosecution Exhibit 57 for identification.)

CAPTAIN VANCE: If it please the court, the prosecution offers in evidence the document which has been marked Prosecution Exhibit 57 for identification, which is the testimony of Julius Laesak, taken at Wiesbaden, Germany, 5 August 1946, by Civilian Joseph B. Zinn, Investigator-Examiner, War Crimes Group, US Army, and ask that this be accepted and marked Prosecution Exhibit 57 and made a part of the record.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit No. 57 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 57 for identification was received in evidence as Prosecution Exhibit 57, is attached hereto and made a part of the record.)

CAPTAIN VANCE: I might ask the defense counsel if he wants the first page read showing the qualifications of the interpreter, etc.

DEFENSE COUNSEL: No, we do not.

CAPTAIN VANCE: I will commence with the testimony.

(Thereupon the prosecution read Prosecution Exhibit 57, a statement by Julius Laesak.)

PRESIDENT: Court will adjourn until 1:30.

(Thereupon at 1230 hours the court recessed until 1330 hours.)

AFTERNOON SESSION

(Whereupon the Court reconvened at 1330 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court, all members of the Prosecution, all members of the Defense, all of the accused, the reporter and interpreter are present.

(Whereupon the Interpreter translated Prosecution's Exhibit 57 into the German language.)

CAPTAIN FANCE: I hand the reporter two documents and request that they be marked Prosecution's Exhibits 58 and 58A for identification.

(The documents referred to were marked Prosecution Exhibits 58 and 58A for identification.)

CAPTAIN VANCE: May it please the Court, I have a document in my hand which has been marked Prosecution's Exhibit 58 for identification, and another document marked Prosecution's Exhibit 58A for identification. This is a statement written on the 17th of June 1946 by the accused Leonhard Braner by himself on a typewriter. We offer this statement in evidence and ask that it be accepted as Prosecution's Exhibit 58, and we have an English translation which has been marked Prosecution's Exhibit 58A for identification, and ask that it be received in evidence and both be made a part of this record.

PRESIDENT: Any objections by the Defense?

DEFENSE COUNSEL: I was just asking my associate, may it please the Court. We have no way of knowing whether

or not that is Braner's signature. Do you know that it is? I have no way of checking it.

CAPTAIN VANCE: The statement is signed in front of a witness--the witnessing officer here.

DEFENSE COUNSEL: Who is it signed in front of?

CAPTAIN VANCE: Signed and sworn to before First Lieutenant James T. Hatcher, Investigating Officer.

DEFENSE COUNSEL: As a matter of record, I will object to it because it hasn't been identified.

PRESIDENT: Objection overruled. Prosecution's Exhibit 58 and 58A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 58 and 58A for identification were received in evidence as Prosecution Exhibits 58 and 58A, are attached hereto and made a part of the record.)

CAPTAIN VANCE: I ask permission to read this exhibit.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution Exhibit 58A, the English translation of the statement of Leonhard Braner, followed by the reading of Prosecution Exhibit 58, the statement of Leonhard Braner, by the interpreter.)

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CAPTAIN VANCE: May it please the court, at this time the prosecution will begin presenting evidence in support of charges IV and V. Since some of the accused are named in both charges, and the witnesses are the same, they will be presented at one time. Of course, it will still be evidence introduced in support of charges I and II.

FRAU PRESS, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Will you please state your full name?

A Frau Press.

Q What is your present address?

A Langenhain, Taunus.

Q What is your occupation?

A Housewife.

Q What is your age?

A 47 years.

Q Miss Press, where were you living in the year 1944?

A Until March, I lived in Frankfurt, and after March, in Langenhain.

Q Do you speak and understand the English language?

A Yes.

Q Would you prefer that I question you in English, or in German?

A I would rather testify in German, because I may not understand one of the other terms.

Q Where did you learn your English?

A In America.

Q How long did you live in America?

A From 1926 to 1938.

Q Miss Press, do you recall an occasion when an American flier parachuted in the neighborhood of Langenhain?

A Yes.

Q When was that?

A It was in December, on the 28th or 29th of December, 1944.

Q Where did you first see this American flier?

A On the way to the mayor's office.

Q Who was with the flier when you first saw him?

A There was the son of the ortsgruppenleiter and a sergeant of the wehrmacht.

Q After you saw this flier, where did you go?

A I went with him to the mayor's office.

Q What was the occasion, or the reason, for your going to the burgomeister's office?

A I was supposed to act as an interpreter there.

Q Do you recall who was present at the burgomeister's office when you arrived?

A There was the mayor, the ortsgruppenleiter, the son of the ortsgruppenleiter, a police helper, a secretary, the flier and I.

Q Do you know a man by the name of Johann Wagner?

A Yes.

Q Who is Mr. Wagner?

A He is the police helper.

Q Was he present there on this occasion?

A Yes.

Q Did you act as the interpreter in the interrogation of the flier?

A Yes.

Q Did you ask the flier his name?

A Yes.

Q Do you remember his name?

A Yes.

Q What is it?

A Robert Garrison.

Q Did he state what his Army rank was?

A No.

Q Did you notice any insignia that would signify his rank?

A Yes.

Q What did you see in the way of insignia?

A I saw on his left sleeve three stripes.

Q Did this man Robert Garrison tell you where he came from, where his home was?

A No.

Q Tell the court, if you will, anything that you and this Robert Garrison talked about or discussed during that interrogation.

A He said that he wanted to be interrogated by a German officer, or he would say nothing. Then I talked to him privately, and he asked me where I had learned to speak English, and I told him that I had lived in South Bend, Indiana, for thirteen years, and he told me that he knows the University of Notre Dame there. After I asked him whether he knows Notre Dame, he told me that he knew practically all of America.

Q Did Robert Garrison show you or anyone else his identifications?

A Yes, he showed them to me.

Q What did he show you?

A He showed me a disc which he carried on a chain around his neck.

Q Did his name and number appear on that disk?

A Yes.

Q Do you recall how Robert Garrison was dressed?

A Yes. He wore a fliers' uniform and heatable -- felt boots that could be heated.

Q Did he carry any weapons?

A No.

Q About what length of time were you in the presence of Robert Garrison?

A One and a half hours, possibly two hours.

Q During this period of time, did he attempt to escape?

A No.

Q Who left the burgomeister's office first, you or Robert Garrison?

A I left first.

Q Did you see Robert Garrison any more afterwards?

A Yes.

Q What was the occasion of your seeing him the second time?

A I had been called back to tell him that he should not make an attempt to escape, because he is under guard, which was standing outside.

Q Who was that guard?

A The police helper.

Q Is that Wagner?

A Yes.

Q Did you tell Robert Garrison not to attempt to escape?

A Yes.

Q What did he say?

A Nothing. He just laughed; he just smiled.

Q Where was this Robert Garrison the last time you saw him?

A In the mayor's office.

Q On what date was that?

A The 28th or 29th of December. I am not sure what, but I believe it was the 29th.

CAPTAIN VANCE: No further questions.

PRESIDENT: Any questions by the defense?

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Were you present when he was searched?

A No, I was only supposed to ask him whether he had a a watch yet with him. Everything else had been taken away from him already.

Q How do you know?

A It was laying on the desk.

DEFENSE COUNSEL: Nothing further.

CAPTAIN VANCE: Questions by the court?

PRESIDENT: No.

CAPTAIN VANCE: Request the witness be excused.

PRESIDENT: Witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: May it please the court, it has been stipulated by and between the prosecution and the defense and the accused that if the witness Captain Smith -- who has previously testified as to why certain witnesses were not here -- if he were present in court, he would testify that he has made efforts to obtain the witness Johann Wagner to appear and testify before this court. He would further testify that this man Johann Wagner is a very old man, that he is sick at this time, and that it is not practicable to bring him a distance of about 200 miles to this court. Is that stipulation joined in by the defense?

DEFENSE COUNSEL: We so stipulate that the witness would so testify.

PRESIDENT: The stipulation is accepted.

CAPTAIN VANCE: I hand the reporter a document and request that it be marked Prosecution Exhibit 59 for identification.

(The document referred to was marked Prosecution Exhibit 59 for identification.)

CAPTAIN VANCE: May it please the court, in view of the testimony of Captain Smith that the witness Johann Wagner is not present in court for the reasons stated, we offer a sworn statement of the witness Johann Wagner, dated the 21st of November, 1945, which sworn testimony is sworn to before Edward B. Lee, 1st Lt. CMP. This document has been marked Prosecution Exhibit 59 for identification, and we ask it be accepted in evidence and made a part of the record.

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DEFENSE COUNSEL: May it please the court, the defense objects to the receipt of this proffered exhibit on the ground that there is no single reference in it to any one of the accused, the reference to place is not the place mentioned in either of charges IV or V, none of the names mentioned are parties to this case, and it appears to be in its entirety completely divorced from anything that has to do with any of the ten charges or particulars. To receive it would just pile still more picture into this case, which is enough of a picture, we submit, already.

CAPTAIN VANCE: May it please the court, if the prosecution didn't think this testimony was relevant to this case, we wouldn't offer it. We submit this is a witness vital to the chaining of this testimony. The witness who just left the stand testified this witness was present at this interrogation. We would like to bring out what part he played in this chain of events.

PRESIDENT: Objection overruled. Prosecution Exhibit 59 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 59 for identification was received in evidence as Prosecution Exhibit 59, is attached hereto, and made a part of the record.)

CAPTAIN VANCE: We ask permission to read Prosecution Exhibit 59.

PRESIDENT: Permission granted.

CAPTAIN VANCE: Is it agreeable if I dispense with the reading of the formalities contained on the first sheet?

DEFENSE COUNSEL: Yes.

(Whereupon Captain Vance read Prosecution Exhibit 59, followed by a translation of the same into the German language by the court interpreter.)

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(Prosecution Exhibits 60 and 60-A were marked for identification.)

CAPTAIN VANCE: May it please the court, the witness Johann Wagner, who just testified through Prosecution Exhibit 59, was shown a document marked Exhibit A, which he identified as being a list made by the Burgomeister Capelle as to articles taken from this flyer. This document has now been marked Prosecution Exhibit 60 for identification, and a translation into the English language has been marked Prosecution Exhibit 60-A for identification. We offer both of these documents into evidence and ask that they be accepted and made a part of the record.

PRESIDENT: Any objection by the defense?

DEFENSE COUNSEL: No, sir.

PRESIDENT: Prosecution Exhibits 60 and 60-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 60 and 60-A were received in evidence as Prosecution Exhibits 60 and 60-A, are attached hereto, and made a part of the record.)

CAPTAIN VANCE: I ask permission to read this exhibit.

PRESIDENT: Permission is granted.

(Whereupon the prosecution read Prosecution Exhibit 60-A, statement of Burgomeister Capelle, followed by the reading of Prosecution Exhibit 60 by the interpreter.)

CAPTAIN VANCE: The prosecution calls as its next witness Fritz Feix.

FRITZ FELIX, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q State your full name.

A Fritz Felix. F-e-l-x.

Q What is your present address?

A Eppstein-Taunus.

Q What is your present occupation?

A Administration employee.

Q How old are you?

A Forty-nine years.

Q Where were you living in the year 1944?

A In Eppstein-Taunus.

Q And what was your business at that time?

A The same.

Q Do you know a man named Johann Wagner?

A Yes.

Q Who is he?

A He is the police helper of Langenhain.

Q Do you remember the occasion when Johann Wagner brought an American flyer into Eppstein?

A Yes.

Q When was that?

A End of December, 1944.

Q Where did Mr. Wagner bring the American flyer to?

A Into my office, and at that time the gendarme Goeppel happened to be there and he handed him over to this man.

(Felix - Direct)

Q How long was the flyer kept there?

A That was from the evening at 6 o'clock until the next morning about 8 o'clock.

Q What happened to the flyer the next morning at 8 o'clock?

A Goeppel took him in the car to Wiesbaden.

Q Have you seen the flyer since that time?

A No.

CAPTAIN VANCE: No further questions.

DEFENSE COUNSEL: No questions.

CAPTAIN VANCE: Any questions by the court?

PRESIDENT: No.

CAPTAIN VANCE: Request the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: Call the witness Heinrich Sparwasser.

HEINRICH SPARWASSER, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q What is your name?

A Heinrich Sparwasser.

Q Where do you live?

A In Eppstein-Taunus.

Q How old are you?

A Fifty-five years.

Q Where were you living in the year 1944?

A In Eppstein-Taunus.

Q Where did you work at that time?

A In the tinfoil factory.

Q Did the tinfoil factory have an automobile?

A Yes.

Q Who was the driver?

A Until the war started in 1939 we had a chauffeur. After that I drove the car.

Q Did you know the official Goeppel in Eppstein?

A Yes.

Q Did you ever have occasion to drive Mr. Goeppel from Eppstein to Wiesbaden?

A Yes.

Q When was that?

A It was in December 1944.

Q Who else made the trip beside you and Mr. Goeppel?

A An American soldier.

Q Do you know the approximate time you left Eppstein?

A It was in the forenoon shortly after 9 o'clock.

Q About what time did you arrive in Wiesbaden?

A It may have been about 10 o'clock in the forenoon.

Q Was this American soldier armed?

A No.

Q Was Mr. Goeppel armed?

A I did not pay attention whether or not he carried a pistol, but it is to be taken for granted.

DEFENSE COUNSEL: I ask that the last part be stricken from the record--the part that says "it is to be taken for granted".

(Sparwasser - Direct)

CAPTAIN VANCE: We will agree to that.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q Were you carrying any pistol or any weapon?

A No.

Q During this trip from Eppstein to Wiesbaden did the soldier try to escape?

A No.

Q When you arrived in Wiesbaden where did you go with the soldier?

A First we stopped twice in the Wilhelmstrasse in Wiesbaden. Goeppel did not know where to deliver this soldier, so he asked a policeman. The first policeman could not give him exact information, so we drove to the second policeman and stopped and asked him. When Goeppel came back he said, "We have to go into the Frankfurterstrasse and then left into Paulinen Street.

Q Did you go into Paulinenstrasse?

A Yes.

Q Did you stop the car in Paulinenstrasse?

A Yes.

Q Did anyone get out of the automobile?

A Yes. We drove a ways into Paulinen Street, and then Goeppel got out of the car without the soldier.

Q Where did Goeppel go?

A Goeppel went back into the direction from which I had come, and returned only after a time of about 10-15 minutes.

(Sparwasser - Direct)

Q What was the number of the building on Paulinenstrasse near where you stopped?

A I did not pay any attention to that. I did not get out of the car.

Q Do you know if No. 9 Paulinenstrasse is in that block where you stopped?

A No.

Q When Mr. Goeppel left the car who guarded the flyer?

A There was nobody else there beside me.

Q Did the flyer try to get away from you?

A No.

Q How long was Mr. Goeppel gone until he returned?

A Approximately 10 to 15 minutes.

Q What did he say when he came back?

A When he came back he got the soldier.

Q Did he say anything?

A No.

Q Did he take the soldier from the car?

A He opened the door and the soldier came out.

Q Do you know where he took the soldier?

A He went back the same way again.

Q How long was Mr. Goeppel gone on this occasion?

A It may have been 15 to 20 minutes.

Q Then did he come back to the car?

A Then he came back alone.

Q Have you seen that American soldier since that time?

A No.

Q You are sure that you left him somewhere on Paulinenstrasse; is that correct?

A He remained in Paulinenstrasse, because Goeppel couldn't go in that short time anyplace else, in my opinion.

CAPTAIN VANCE: No further questions.

DEFENSE COUNSEL: No questions.

CAPTAIN VANCE: Any questions by the court?

PRESIDENT: No.

CAPTAIN VANCE: Request this witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

PRESIDENT: Court will recess for 30 minutes.

(Whereupon at 1500 hours the court recessed until 1530 hours.)

(Whereupon court reconvened at 1340 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Mr. Rachael, who is absent on business of the defense, all of the accused, the court reporter and interpreter are present.

DEFENSE COUNSEL: May it please the court, with the knowledge of the prosecution I would like to ask the court now when it adjourns tonight that it adjourn until Monday morning, which means cancelling a half day of business. The reason is the fact that we have been progressing so fast with this case, much faster than either the prosecution or the defense anticipated, that the defense just cannot keep up with its preparation and could use that extra day with Saturday to do some work with its witness and with the accused. I think that the prosecution has no objection.

PROSECUTION: No objection by the prosecution.

PRESIDENT: The request that the court be adjourned this evening until Monday morning is approved. Inasmuch as the court members and members of the prosecution and defense are ordered to the hospital for a physical examination tomorrow afternoon, only one-half day will be lost.

CAPTAIN VANCE: If it please the court, it is stipulated between the prosecution, the defense and the accused that if the witness Captain Donald C. Smith were present in court he would testify as follows: That a witness by the name of Liesselotte Pfiel has been requested by the prosecution. That this witness at the present time resides somewhere unknown in the British Zone. That approximately six weeks ago a

request was made from the British authorities that they locate this woman and approve her removal from the British Zone to Dachau to testify in this case. In addition, he would testify that an American team has gone to her last known address in the American Zone and that this lady has moved and they could not locate her. That the British authorities have been unable to locate her at this time. He would testify that they are still continuing and will continue until the end of this trial to try to locate this woman but that she is not available at the present time.

DEFENSE COUNSEL: We will so agree.

PRESIDENT: The stipulation is acceptable.

CAPTAIN VANCE: Will you mark this document Prosecution Exhibit Number 61, please?

(Whereupon the document referred to was marked Prosecution Exhibit No. P-61 for identification.)

CAPTAIN VANCE: If it please the court, at this time prosecution offers in evidence a statement made under oath by the witness Lieselotte Pfiel, which was made at Mulheim, Germany on the 21st day of January 1946, and sworn to before Captain Edward V. Lee, investigating officer. This statement has previously been marked Prosecution Exhibit Number 61 for identification. We ask that it be received in evidence and be made a part of this record. I am not offering this document in full. There are certain portions of this document which talk about matters that are not relevant to the case being tried. I am offering that portion which is not bordered by a red mark on the lefthand margin of the document. That part is not offered in evidence.

DEFENSE COUNSEL: We have agreed that if the document is received in evidence that the parts to marked out should be excluded.

I am not objecting to the receipt of this exhibit because the defense realizes it is absolutely futile to do so in view of the stipulation. However, may it please the court, this particular document brings to a head a problem which may become increasingly acute for the defense.

We have had cases of witnesses who were ill, one, at least, and one in the custody of the French police, and here is one in the British Zone, who cannot be found. This frankly hurts, and for that reason we are just as anxious as the prosecution can be to get a hold of this witness so that we might cross examine her. It is possible that she may be apprehended or found at a time too late to have her brought into court for this trial. My thought was this: If in this case or in any similar cases a witness whose statement has been introduced because a witness could not be produced, I could arrange for a member of the defense staff to go up there with the attendance of a member of the prosecution staff and we might cross examine by deposition in the presence of the accused.

I am presenting this problem to the court so that if such a situation will arise the court will okay such an arrangement. I am going to try to do that.

CAPTAIN VANCE: If it please the court, we have no objection to what defense counsel has to say. We have used every effort to obtain this witness because she is important. At this time I would like leave of the court if this woman can be produced at any time before the end of this trial, to be permitted to place her on the stand.

PRESIDENT: I have no objection.

PRESIDENT: Both the requests made by the defense and the prosecution are acceptable to the court.

Only that part of the exhibit directly pertaining to this case is admitted in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit No.61 for identification was received in evidence as Prosecution Exhibit P-61, is attached hereto, and made a part of the record.)

CAPTAIN VANCE: I ask permission of the court to read this document.

PRESIDENT: Permission granted.

CAPTAIN VANCE: May I skip the formalities of the first page?

DEFENSE COUNSEL: We agree.

(Whereupon Captain Vance read Prosecution Exhibit No. P-61, followed by a reading of the German translation by the interpreter in the German language.)

CAPT. VANCE: Call the witness Julia Eisenmann.

JULIA EISENMANN, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

Q Will you please state to your name?

A Julia Eisenmann.

Q Where do you live?

A In Pallau.

Q What is your occupation?

A Housewife.

Q How old are you?

A Forty seven.

Q Are you the wife of Eugene Michael Eisenmann?

A Yes.

Q Were you living with your husband in the year 1944?

A Yes.

Q What was his business in 1944?

A He was a sergeant of the gendarmes.

Q In what place?

A In Pallau.

Q I call your attention to October 1944 and will ask you if you had occasion to have some visitors to call at your house one night hunting for your husband?

A Yes.

Q Who came to your house?

A The men from the Gestapo.

Q Do you know their names?

A No, I do not know their names.

Q You say two men from the Gestapo - did they tell you that?

A Yes.

Q Did they say from which Gestapo they came?

A From Wiesbaden.

Q Do you remember the approximate date these men came to your house?

A No. I only know that it was in October.

Q Do you remember about what time of day or night these men came?

A In the evening between seven and seven thirty.

Q Tell the Court as best you can remember what the two Gestapo men said and what you said when they came to your house?

A They--

DEFENSE COUNSEL: I think, may it please the Court, that these two men should be identified with the accused before an alleged conversation with two Gestapo is brought into this case.

CAPT. VANCE: I will withdrew the question.

QUESTIONS BY CAPT. VANCE:

Q If you were to see either of these two Gestapo men who came to your house on that night again, would you recognize them?

A Approximately. I don't know so well because I saw them only for a short while.

Q Will you look around the courtroom and see if you can identify anyone as having come to your house on that night?

A I believe this man (indicating).

Q What number is he wearing?

A Number four.

CAPT. VANCE: Let the record show that the witness has identified the accused Fuehr wearing placard number 4.

QUESTIONS BY CAPT. VANCE:

Q Do you recognize the other man that came to your house that night?

A No, I do not see him.

Q Will you relate the conversation which you said took place, what you said and what the Gestapo said that night in October when they came to your house?

A Two men came into our house and they asked if a policeman was living here and thereupon I said, "Yes". They asked me for my husband and I told them that my husband was on a duty trip. They asked me where he had gone to and I told them that he had gone to Breckenheim. They asked me then whether they can make a call and I said, "Yes" and they went ahead and made a call to the mayor in Breckenheim. They couldn't reach my husband there and one of them then said, "We absolutely have to get ahold of your husband because the matter has to be finished tonight". Then they left.

Q After these two men left did they return to your house anytime that night?

A No. On that day not.

Q Did your husband return home that night?

A No. He came back at one o'clock at night.

Q Do you mean one o'clock the following morning?

A Yes.

Q Did you tell your husband that these two Gestapo men had been hunting him?

A Yes. When he came home I told him so and he said, "I know already".

Q Did your husband tell you what the two Gestapo men wanted?

A Yes. I asked him but he told me that's none of my affair, I should tend to my kitchen.

Q I will ask you whether or not at a later date you had occasion to see these two Gestapo men again?

A Yes. Again in the month of December of the year 1944 they came to us again.

Q Was it the same two men?

A Yes, the same came again.

Q About what time of day or night did they come to your home?

A They came between 7:30 and 8:00 o'clock.

Q Tell the Court what happened when those two men came to your house that night in December?

A They knocked on the door and my husband said, "Come in" and they opened the door and stepped inside and then my husband said, "Oh, you are here again already". There was an air alert. They came in and remained approximately one half hour with us. Mr. Sandmann and Mr. Fuhrmann, Auxiliary Gendarmes were also with us. I left the room and took the children to bed and later I went into the room again.

Q The conversation that you have related which transpired between your husband and the two Gestapo men -- did you hear any more of that conversation?

A No I didn't hear.

Q About how long did these two Gestapo men stay in your house?

A I said already about one half hour to three quarters of an hour.

Q At the end of that time did the two Gestapo men leave your house?

A Yes. They went away alone.

Q At any time that night did your husband leave the house?

A Ten minutes later my husband together with the other two, left the house also.

Q About how long was your husband gone from the time he left until he returned that night?

A He returned during the night about 3:30 in the morning, he returned to the house.

Q Did he tell you where he had been and what he had been doing?

A No. He did not tell me anything and I did not ask any questions.

Q You have mentioned a man by the name of Sendmann, who is Mr. Sendmann?

A He is also here.

Q That was his job?

A He was also with the police, with the gendarmes.

Q You mentioned a Mr. Fuhrmann, who is he?

A He was also a gendarme but he is dead now.

CAPT. VANCE: I have no further questions.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Are you certain that the two men who came back in December were the same two men who were there in October?

A Yes. My husband said, "You are coming back again, already?"

Q I am not asking you what your husband said, I am asking you of your own knowledge are you personally, yourself sure that the two men who came in December were the same men who were there in October?

A Yes. They were the same.

DEFENSE COUNSEL: I have nothing further.

CAPT. VANCE: Any questions by the Court?

PRESIDENT: No.

CAPT. VANCE: Request the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

PRESIDENT: The Court will adjourn until 0900 hours tomorrow morning.

(Thereupon at 1645 hours the Court adjourned.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on .....194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

(6)

Pages 292 - 345 Incl.

Case No. Superior Orders

Prosecutor Lt. Col. Dwinell

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Defence Counsel Lt. Col. Berman
Mr. Rudolf E. Nathanson

Place DACHAU, GERMANY

Interpreter Mr. Rudolph H. Schubert

Date 20 JANUARY 1947

Reporter Patricia Stewart, Irving Hayett, Sally Rose Hayett, Imogene Butler, John McDonald, Paula Silverman

~~Members of Court~~:

WITNESSES:

MICHAEL EUGEN EISENMANN
JAKOB KLEINHANS
GEORG ECKARD
HEINRICH SANDMANN
MARTHA GELBRECH
FRANZISKA METER
WILHELMINA BUEDINGER

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
    or in case of default of payment to serve a *~~further~~ term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

20 January 1947 Pages 292 - 345 Incl.

TESTIMONY

WITNESSES:	Direct	Cross	Redirect	Recross	Court
MICHAEL EUGEN EISENMANN	293	298			
JAKOB KLEINHANS	299				
GEORG ECKARD	303				
HEINRICH SANDMANN	305				
MARTHA GELDREICH	315	319			
FRANZISKA MEYER	326	332	334		
WILHELMINA BUEDINGER	335	341			

EXHIBITS

No.	Description	Marked	Received in Evidence
P-62	Pathologist's report	308	309
P-63	Pathologist's report	309	310
P-64	Statement of Arthur Fuehr	311	311
P-64-A	English translation of P-64	311	311
P-65	Statement of Arthur Fuehr	312	312
P-65-A	English translation of P-65	312	312
P-66	Statement of Wilhelm Hoehler	314	314
P-66-A	English translation of P-66	314	314
P-67	Statement of Mrs. Elisabeth Gantner	321	324

Ta 54 1-2 -47
pls 50

Camp Dachau, Germany
22 January, 1947

MORNING SESSION

(Thereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and interpreter, are present.

CAPTAIN VARGA: Call the witness Major Eisenmann.

DEFENSE COUNSEL: May it please the court, before the witness is sworn, I should like to call the court's attention to exhibits 43 and 43 A with respect to a matter I called to the attention of the prosecution last Saturday. 43 is a signed statement by the accused, Otto Bosmann, No. 3, and 43 A is an English translation thereof. The original Item 4 in the handwriting of the accused says he was the man with the Zollgrenzschutz, olizei. The English omits the word "custom". It is a matter of vital importance to us because the Nuernberg decision excludes from the criminal organization the custom border police and includes the border police. The custom border police, as I understand it, were interested solely in customs were really an agency of the Finance Department, and the Border Police were something entirely different and I request the change be made on Exhibit 43 A so that the translation will conform to the original German. I do not know whether this 43 A could be written upon, but if it could, I would request the word "custom" be inserted on the exhibit before the words "Border Police".

PROSECUTION: The defense is correct in its contention. We agree on the correction.

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PRESIDENT: The record will be so corrected. The exhibit will also be corrected.

MICHAEL EUGEN EISENMANN, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Will you please state your full name?

A Michael Eugen Eisenmann.

Q What is your present address?

A Mallau-Taunus.

Q What is your present occupation?

A I am working on the clearance work in Wiesbaden.

Q How old are you?

A 50 years.

Q Mr. Eisenmann, where were you living in the year 1944?

A I lived in Mallau in 1944.

Q And in the year 1944 what was your occupation?

A I was an official in the gendarmerie in 1944.

Q Mr. Eisenmann, are you the husband of the witness, Julie Eisenmann, who testified before this court on last Thursday?

A Since November I am divorced.

Q Well, in October 1944 were you married and living with your wife at that time?

A Yes.

Q Mr. Eisenmann, I direct your attention to about the 19th of October 1944 and ask you if you recall any incident to your house burning for you about that time?

A Yes.

(Eisenmann-direct)

Q ...n the night they called at your home were you at home?

A No.

Q Did you see these men at any time on that night?

A These men met me while I was on the duty way between Wallau and Breckerhelm.

Q What was your mode of transportation at that time?

A We had a regular duty trip. The Gendarme Kleinhans and I, we went on a bicycle.

Q Where did you meet these men you are talking about?

A A car came along from the direction of Wallau and this car had headlights on. There was a clear alert and there had already been an attack on Mainz. This car was travelling at that fact. Apparently they recognized me in the lights of the headlights because I wore a uniform. The vehicle came close, stopped, and somebody called to me, "Mr. Eisermann" or something like that. I stepped close and it was said to me, "We have to talk to you urgently."

Q Now, when the car stopped, did you talk to anyone in the car?

A Yes, a man talked out of the car.

Q Did you see that man?

A I saw him but I did not recognize him because it was dark.

Q Could you see him at all?

A Yes, when I stood close to the car I saw somebody talked out of the car.

Q If you were to see that man at this time, would you be able to recognize him?

A I don't believe that I could recognize him now.

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How many shots were in this burst?

A Well, when they have a rifle out under the bridge, as far as I remember I saw only two.

Tell the conversation that took place between you and the two men.

[illegible] I object, [illegible] conversation with two unidentified men -- [illegible]

[illegible] which if it looks like sound, will connect it up. I expect to show these people said, 'We have been [illegible] looking for you and your wife telling us would meet you on this road', and that will connect the [illegible] being the ones that were there previously.

[illegible] Objection overruled.

By [illegible] I followed the car under the bridge, the car had driven under the bridge because there was [illegible] anti-aircraft artillery. A little official, a little man said, 'We are from the State Police'. He told us that they had had a transport from Wiesbaden to Hessencael. They told us that they had had a conflict at the underpass, that is on the street from Wiesbaden, that is, mountain of the street from Wiesbaden to Frankfurt.

[illegible] that not a monument instead of a mountain.

[illegible] A stone, a stone monument.

[illegible] and the prisoner had escaped and we had made use of our weapon and he was killed.

[illegible]

Q Did they want you to do about it?

A The Western man gave the order to arrange with the mayor that the body was to be brought in and buried and I told these officials, 'You have to show me where it is, else I cannot find it.'

Q Did they show you where the body was?

(Direct-cross)

A Yes, when the danger from the air had somewhat diminished, I told them to drive back to Mallau and wait at my house and I would come after them. To split the work I told the Wendsmo Kleinhans to go to the mayor and tell him of the order by these men and that I rode in that automobile to the spot where the body was lying and there were two men in the car.

Q Now, you have been talking about the Gestapo men. How did you know they were Gestapo men?

A They told me they are Gestapo men.

Q Did they tell you where they had come from?

A Yes.

Q From where?

A From Wiesbaden.

Q What disposition was made of the body?

A After they had shown where the body was, I rode back with them to the inn, Wandersmann, and here I waited for a vehicle on which the dead could be transported away.

Q Was the body buried?

A It was taken away and buried in the cemetery of Mallau.

Q Now, I want to direct your attention to about the 30th of December 1944 and ask you if you saw these two men again about that time?

A It was in December, I could not state the date exactly but it must have been in the beginning or middle of December. I was sitting at home one evening and with me was another gendarme. Somebody knocked on the door, I heard that somebody came. After I said, "Come in", the door opened and two men came in. I immediately recognized these two men again as the two from October.

Q What was the occasion of these men visiting your house?

(Biermann-direct)

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A When they came in I said, "Well you are coming again, what are you bringing at such a late hour?" The official told me again "One got away from us on the transport, we need our weapon and the man is dead." I asked the official, "where did that take place?" He gave me an exact description. He told me that where the stone monument is on the Sandersmann, across there is a sign "detour" and that's where the dead is lying. The official ordered me to get in contact with the mayor and see to it that the body was brought in and immediately buried and that I was to make a report the next morning about the incident.

Q Did you go to where this body was supposed to be?

A After the officials came away I got the other gendarme by the name of Seemann and together we went to the competent mayor, that is, the mayor of Dalkenheim, and we brought the order of the Gestapo to the mayor.

Q Did you go where the dead body was?

A Yes, we searched with the flashlight and found him.

Q Was it an American soldier?

A I could not ascertain because it was dark.

Q Was the body wearing a uniform?

A He had something like a uniform?

Q He had something like a uniform on, something like a combination.

Q Was this second body that you found in December, was it buried?

A It was taken to the cemetery in Dalkenheim and there buried.

Q Who did you say was at your house in December when the two men came, I have forgotten?

A The Gendarme Fuhrmann was there and my wife and afterward I had the Gendarme Seemann called.

(Siemann-direct)

Q Where is Mr. Fuhrmann now?

A Mr. Fuhrmann was killed in combat during the night of 8th to 9th of May on the date Armistice took place with Russia.

Q Now, Mr. Eisenmann, you have testified that you were with two Gestapo men in October and with the same two Gestapo men in December. I want you to look around the courtroom and see if you can recognize either of these two men you have been talking about. You can get out of your chair if you want to.

A Here, No. 4.

Q Do you recognize the other man?

A The man is not in my memory.

CAPTAIN VANCE: It it please the court, let the record show that the witness identified the accused, Fuehr, wearing placard No. 4. No further questions by the prosecution.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q You told the court, in answer, to questions by the prosecution, that you had no recollection of what the two men looked like when first they called at your house in October, is that correct?

CAPTAIN VANCE: I object. He did not testify he saw the men in October, his wife saw them and he was not at home. I think the question is misleading.

DEFENSE COUNSEL: I am sorry, I did not mean it to be.

QUESTIONS BY DEFENSE COUNSEL:

Q You testified you could not recognize the two men you met on the road or talked with on the night of October 19th, is that correct?

A But then I recognized the man because I was sitting next to him in the car. I thought, that is the man I sat next to, he was a chauffeur.

Q How does it happen you could not identify him the first time?

A Because it was dark.

Q I means my my question to ask how does it happen that when you were asked by the prosecution if you could identify the man you saw on the night of October 19th, you said, no.

A But because he sat next to me I recognized him.

Q Were you riding in the front seat?

A Next to the chauffeur, directly next to him?

Q Where did the second man ride?

A He sat in the back.

Q What seat do you mean?

A In the rear.

DEFENSE COUNSEL: I have n thing further.

PROSECUTION: Any questions by the court?

PRESIDENT: No.

PROSECUTION: Request the witness be excused.

THE PRESIDENT: Witness will be excused.

(Thereupon the witness was excused and withdrew.)

JAKOB KLEINHANS, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Will you state your name?

A Jakob Kleinhans.

(Kleinhans-direct)

Q What is your address?

A Frankfurt-Main, Heddenheim.

What is your present occupation?

A Stationery dealer.

How old are you?

A 47 years.

Q Where were you living in the year 1944?

A In Mallau-Taunus.

Q In 1944 what was your business?

A I was auxiliary policeman.

Do you know the policeman, Mr. Biermann?

A He was my superior.

Q You were working for him in October 1944?

A Yes.

Q I will ask you if you were with Mr. Biermann on the night that he met two men from Wiesbaden during an air raid?

A Yes.

Where did you meet these two men?

A On the road from Breckenheim to Mallau.

Q Tell what transpired between Mr. Biermann and these two men.

A On this day in question we rode from Nordenstadt to Breckenheim. We were on blackout patrol. There was a air alert and we hurried to get to our place of duty. We had taken shelter on the way and as we were on the street from Breckenheim to Mallau we encountered a car coming in the opposite direction. We were on bicycles and the car passed us and a man in the car opened the door and shouted, "Biermann". Biermann turned

(K: ihmann-direct)

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around and rode to the car. I drove slowly on to Mallau but the anti-aircraft artillery started to shoot again and I went back and there I found the car, Eisenmann and two men under the overpass. Because the anti-aircraft was shooting, I went up and watched the defense against air attack while Eisenmann was talking to these two men.

Q Did you see the two men that Eisenmann was talking with?

A Yes, I saw them from a distance of five meters and it was already dark.

Q Would you be able to recognize these two men if you were to see them today?

A I don't think so. I only saw the difference in height, one tall and one small man.

Q Did you hear the conversation that Mr. Eisenmann had with these two men?

A No.

Q After Mr. Eisenmann finished his conversation with the two men, what did you do and what did Mr. Eisenmann do?

A After the two men left, Eisenmann came up to me and he said the following words, "Those are two Gestapo men and I am supposed to remove their dirt."

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Q What else did he say?

A He said that these two Gestapo men had had a transport and on this transport an American soldier was shot who was supposed to be lying on the Wandersmann, and he should have him taken away and buried.

Q Did you obtain a cart or a wagon to transport the dead body in?

A Yes, on order of Kleinmann.

Q And did you go where the dead body was?

A With the vehicle at 12 o'clock at night.

Q Did you see the body?

A Yes.

Q What did you do with the body?

A I only rode along. The body was already lying on the vehicle when I got there.

Q Well, what was done with the body?

A It was taken to the cemetery in Wallau and there buried.

Q Were there any weapons on this dead body?

A No.

CAPTAIN VANCE: No further questions.

DEFENSE COUNSEL: No questions.

CAPTAIN VANCE: Any questions by the Court?

PRESIDENT: No.

CAPTAIN VANCE: Request the witness be excused.

PRESIDENT: Witness excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: The Prosecution calls as its

next witness Georg Eckard.

GEORG ECKARD, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Will you please state your name?

A Georg Eckard.

Q Your address?

A Nieder-Saulheim.

Q What is your occupation?

A Barber.

Q How old are you?

A 34 years.

Q What was your occupation in October, 1944?

A I was a medical non-commissioned officer in the Engineer Replacement and Training Battalion 33.

Q Where were you stationed in October, 1944?

A In Wallau.

Q I call your attention to about the 19th of October, 1944, and ask you if you assisted in the burial of an American soldier at that time?

A Yes.

Q Who instructed you to bury this soldier?

A My former chief, Captain Doctor Koerber.

Q Did he tell you where to go get the body?

A No, he didn't say that.

Q Well, how did you know where to go get the body?

A I was told I should wait--that the police sergeant would take me along.

Q Did the policeman take you along?

A Yes, the auxiliary policeman Keinhans.

Q Where did you go?

A As we came out of the house there was an engineer's vehicle--a horse-drawn vehicle--there, and we rode to the place of the accident.

Q What did you find there?

A We found on the Frankfurter Strasse about one to one and a half kilometers distant from Wallau, approximately five meters off the road, a dead American flier soldier.

Q Was Mr. Eisenmann with you on this occasion?

A Yes, while we were on the way to the place of the accident, Mr. Eisenmann joined us on the vehicle.

Q What disposition was made of this American soldier's body?

A We lifted the body on the vehicle and buried it down in the cemetery in Wallau.

Q About what time did you bury this body?

A Approximately 12 or 12:30 at night.

CAPTAIN VANCE: No further questions. Any questions by the Court?

PRESIDENT: No.

CAPTAIN VANCE: Request the witness be excused.

PRESIDENT: The witness is excused.

CAPTAIN VANCE: I would like permission to ask one more question, if I might, may it please the Court.

PRESIDENT: Permission granted.

CAPTAIN VANCE: Do you know whether or not at a later date this body was removed from the Wallau cemetery by the American authorities?

WITNESS: That is not known to me.

CAPTAIN VANCE: No further questions.

DEFENSE COUNSEL: None.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: The Prosecution calls as its next witness Heinrich Sandmann.

HEINRICH SANDMANN, called as a witness by the Prosecution, being first duly sworn, testified through an interpeter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q State your name.

A Heinrich Sandmann.

Your address.

A Wallau-Taunus.

Q What is your occupation?

A Mason.

Q How old are you?

A 46 years.

Q What was your occupation on 30 December 1944?

A At that time I was with the air protection.

Q Do you know a man named Eugen Eisenmann?

A Yes.

Q Did you work for him or under him?

A I worked under him as a gendarme, beginning first of December, 1944.

Q Now, Mr. Sandmann, I direct your attention to 30 December 1944 and ask you if you received any instructions from Mr. Eisenmann on that date in regards to the burial of an American flier?

A Yes.

Q What did he tell you?

A We will now drive to Dalkenheim to bury an American soldier.

Q What did you do then?

A We rode to Dalkenheim, and there Eisenmann informed the mayor.

Q Now on that occasion did you see any man with Mr. Eisenmann?

A Yes, at Wallau in the apartment of Eisenmann.

Q Do you know where these men had come from?

A From Wiesbaden.

Q Do you know where these two men worked or were employed?

A They were employedwith the Gestapo--that is what they said.

Q Did you hear a conversation that took place between these two men and Mr. Eisenmann?

A No, I didn't hear the conversation--I hadn't been there yet.

Q Now, if you were to see these two men at this time, would you be able to recognize them?

A Yes.

Q If they are present in court, will you point them out to the Court?

A Here.

CAPTAIN VANCE: What's the answer?

INTERPRETER: "Here, the number 4."

CAPTAIN VANCE: Let the record show that the witness has identified the accused Fuehr, wearing placard number 4.

(Sandmann-Direct)

QUESTIONS BY CAPTAIN VANCE:

Q Are you able to recognize the second man that you saw at Eisenmann's house on that occasion?

A The second man did not face men when he sat, and I only saw him for about 10 minutes.

Q Who left Mr. Eisenmann's house first--you or the two Gestapo men?

A I left first, and the Gestapo man followed.

Q Where did you go?

A We, that is, Eisenmann and I, rode on our bicycles to Delkenheim.

Q What did you do in Delkenheim?

A Eisenmann went to the mayor in Delkenheim and reported the incident. Of course, what he said I don't know, because I was not present.

Q All right, after you left the mayor's house, where did you go?

We left the village, and he ordered a driver, and we went to get the dead.

Q Did you go get the dead body that night?

A Yes.

Q Where was that body buried?

A In the cemetery of Delkenheim.

Q Now, Mr. Sandmann, do you know whether or not that body is still in the Delkenheim cemetery or was it been removed to some other cemetery?

A The body was exhumed in December, 1945, or January, 1946.

(Sandmann-Direct)

Q Was that by the American authorities?

A Yes.

Q Now there was a body buried in Wallau cemetery on 19 October 1944. Do you know whether or not that body was removed?

A Yes, at the same time the body from Wallau was removed.

CAPTAIN VANCE: No further questions.

DEFENSE COUNSEL: No questions by the Defense.

CAPTAIN VANCE: Any questions by the Court?

PRESIDENT: No.

CAPTAIN VANCE: Request the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: I hand the reporter a document and request that it be marked Prosecution's Exhibit 62 for identification.

(The document referred to was marked Prosecution Exhibit 62 for identification.)

CAPTAIN VANCE: May it please the Court, it is stipulated by and between the Prosecution, Defense and the Accused that if the witness Captain Smith who has testified previously in regard to obtaining witnesses were present in Court that he would testify that Major Max Berg was an officer in the Medical Corps serving with the Army here in Europe, but at this time he has returned to America and has been discharged from the Army. For that reason he is not in Court. Is that stipulated and agreed to?

DEFENSE COUNSEL: We will accept that statement.

PRESIDENT: The stipulation is accepted by the Court.

CAPTAIN VANCE: May it please the Court, I hold a document which has been marked Prosecution's Exhibit 62 for identification, which is a pathologist's report prepared by Major Max C. Berg; and we offer this report in evidence and ask that it be accepted and made a part of this record.

PRESIDENT: Any objection by the Defense?

DEFENSE COUNSEL: No.

PRESIDENT: Prosecution's Exhibit 62 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution's Exhibit 62 for identification was received in evidence as Prosecution's Exhibit 62, is attached hereto and made a part of the record.)

CAPTAIN VANCE: I ask permission of the Court to read Prosecution's Exhibit 62.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution's Exhibit 62, the pathologist's report, followed by a translation into the German language by the interpreter.)

CAPTAIN VANCE: I hand the reporter a document and request that it be marked Prosecution's Exhibit 63 for identification.

(The document referred to was marked Prosecution Exhibit 63 for identification.)

CAPTAIN VANCE: May it please the Court, the Prosecution offers the second pathologist's report, which was made by the same officer, Major Max Berg, which has been marked Prosecution's Exhibit 63 for identification, and we ask that this evidence be accepted by the Court and made a part of the record.

PRESIDENT: Any objections by the Defense?

[illegible] Counsel: The one point, if it please the Court, to which I have been unable to find anything in here that ties this up is the pathologist's report on the soldier who reportedly killed around 19 October. That is the objection I have, and only such objection. The only thing I find in the reference to the cemetery Pelkenheim--there has been a mistake about that.

CAPTAIN [illegible]: This shows the date that an American soldier was buried and where he was buried and what he says connects with that this last witness has testified to--the place and date of burial.

[illegible]: Objection overruled. Prosecution's Exhibit 63 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 63 for identification was received in evidence as Prosecution Exhibit 63, is attached hereto, and made a part of the record.)

Counsel for Defense: May it please the Court, if it meets with the approval of the Defense Counsel, much of this report is the same as the other report--about the qualifications of this medical officer--and I would like to dispense with the reading of the exhibit except as to what his findings were.

[illegible]: So agreed.

[illegible]: The reading of the exhibit will be dispensed with, with the exception noted.

(Whereupon the prosecution read that portion of prosecution's exhibit 63 as noted, followed by a translation by the interpreter.)

CAPTAIN VANCE: I hand the reporter two documents and request that they be marked Prosecution Exhibits 64 and 64A for identification.

(The documents referred to were marked Prosecution Exhibits 64 and 64A for identification.)

CAPTAIN VANCE: May it please the Court, I have a document here which has been marked Prosecution's Exhibit 64 for identification, and its translation into the English language as Prosecution's Exhibit 64A for identification. This is a statement written in the handwriting of the accused Arthur Fuehr, at Wiesbaden, Germany, on 4 February 1946. I offer this document into evidence as Prosecution's Exhibit 64, and Prosecution's Exhibit 64-A, which is the English translation of this document.

MAJOR SAXON: No objections.

PRESIDENT: Prosecution's Exhibits 64 and 64A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 64 and 64A for identification were received in evidence as Prosecution Exhibits 64 and 64A, are attached hereto, and made a part of the record.)

CAPTAIN VANCE: I ask permission to read this exhibit.

PRESIDENT: Permission granted.

MAJOR SAXON: May it please the Court, Number 10 here feels ill and would like to leave the court room.

PRESIDENT: Permission is granted.

(Whereupon the accused Goehrendt was excused and left the Court room.)

(Whereupon the Prosecution read Prosecution's Exhibit 64A, the English translation of the statement of the accused Arthur Fuehr, followed by the reading of Prosecution's Exhibit 64 by the interpreter.)

CAPTAIN VANCE: May it please the Court, let the record show that the accused Goehrendt, Number 10, has returned to the Court room. I hand the reporter two documents and request that they be marked Prosecution's Exhibits 65 and 65A for identification.

(The documents referred to were marked Prosecution Exhibits 65 and 65A for identification.)

CAPTAIN VANCE: The Prosecution now offers an additional statement written in the handwriting of the accused Arthur Fuehr, 4 February 1946, which has been marked Prosecution's Exhibit 65 for identification, and a document marked Prosecution's Exhibit 65A for identification, which is the English translation, and ask that both these documents be received in evidence and made a part of the record.

PRESIDENT: Any objections?

DEFENSE COUNSEL: None.

PRESIDENT: Prosecution's Exhibits 65 and 65A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 65 and 65A for identification were received in evidence as Prosecution Exhibits 65 and 65A, are attached hereto, and made a part of the record.)

PRESIDENT: The Court will recess until one o'clock.

(Whereupon at 1040 hours the Court recessed.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1320 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Frost, who is absent on business of the defense, all of the accused, the reporter and interpreter are present.

CAPTAIN VANCE: May it please the court, at this time I read Prosecution Exhibit 65-A.

(Whereupon the prosecution read Prosecution Exhibit 65-A, the English translation of the statement of Arthur Fuehr, followed by the reading of Prosecution Exhibit 65, the statement of Arthur Fuehr, by the interpreter.)

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CAPTAIN VANCE: I hand the reporter two documents, and request that they be marked Prosecution Exhibits 66 and 66-A for identification.

(The documents referred to were marked Prosecution Exhibits 66 and 66-A for identification.)

CAPTAIN VANCE: May it please the court, prosecution offers an undated statement, written in the handwriting of the accused Wilhelm Koehler, which was made by this accused. This document has been identified as Prosecution Exhibit 66. We ask that it be received in evidence and made a part of the record, and also an English translation, which has been marked Prosecution Exhibit 66-A for identification.

PRESIDENT: Any objection?

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibits 66 and 66-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 66 and 66-A for identification were received in evidence as Prosecution Exhibits 66 and 66-A, are attached hereto, and made a part of the record.)

CAPTAIN VANCE: I ask permission to read this exhibit.

PRESIDENT: Permission granted.

(Thereupon Captain Vance read Prosecution Exhibit 66-A, followed by a reading of Prosecution Exhibit 66 by the court interpreter.)

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CAPTAIN VANCE: May it please the court, that is all the testimony the prosecution will introduce at this time as to Charges IV and V.

COLONEL DWINELL: May it please the court, the prosecution will offer further proof in connection with Charge I. We will call a witness who was sick last week. We had intended to call her at that time. Mr. Friske will conduct the direct examination.

MARTHA GELBRECH, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. FRISKE:

Q What is your name?

A Martha Gelbrech.

Q Where do you live?

A Gross-Umstadt, in Hesse.

Q Were you employed by the police from 1938 to 1945, and, if so, in what capacity?

A Yes. From 1938 until 1935 I was employed by the Gestapo at Darmstadt.

Q During that period of time who was your immediate superior?

A From 1938 until 1939, police counselor Schwinn, and then following, in 1940, government counselor Herbst, and following, government counselor Fenst, and further following them, government counselor Dr. Schamer-Fiefrada, and following him government counselor Kohr, and since June 1944, government counselor Girke.

(Gelbrech - Direct)

Q What were your official duties in these offices?

A I was stenographer-typist and did general office work.

Q You have mentioned the name of Girke. What was Girke's first name?

A Fritz.

Q Would you recognize Girke if you saw him again?

A Yes.

Q Will you take a look at the prisoners in the dock and see if he is among them?

A Number 19.

Q You also say that your superior was Girke from 1944 until March of 1945?

A Yes.

Q What office did Girke hold in the police at that time?

A He was in charge of the office.

DEFENSE COUNSEL: May it please the court, I ask the court to caution the prosecutor's assistant not to lead the witness so much. When he asked her to look at the prisoners and see if she could find him, I kept quiet, but when he asks her "What was his official police duty?" I think it is going too far.

PROSECUTION: May it please the court, I instructed the assistant to do that. During the whole two and a half months of the Malmedy trial it was conducted that way. That was the method that was used with the approval of the court.

DEFENSE COUNSEL: The question was: "What position did he occupy with the police?" There is no testimony from the witness that he was with the police. I think that is very

definitely a leading question, and as I commented to the court, when he asked the witness to look at the accused to see if she could pick him out among the prisoners, I did not object, though I think that is definitely wrong too. But I thought the second question was going too far.

MR. FRISKE: May it please the court, I think there has been reference to the fact that she was a stenographer-typist in this police department.

PRESIDENT: Proceed with your questions.

LAW MEMBER: Did you put that in the form of an objection?

DEFENSE COUNSEL: No, sir. I just asked the court to instruct him not to do so much leading with his questions.

MR. FRISKE: Will you read the last question and answer, please?

(Whereupon the reporter read the last question and answer as follows:

"Q What office did Girke hold in the police at that time?

"A He was in charge of the office.")

QUESTIONS BY MR. FRISKE:

Q. Did he have an assistant during that time?

A Yes.

Q Who was that?

A Criminal counselor Hellenbroich.

Q What was his first name?

A Heinz.

Q Would you recognize him if you saw him again?

A Yes.

(Gelbrech - Direct)

Q Will you look around the courtroom and see if you can recognize that person?

A Number 20.

Q In connection with your duties as stenotypist-secretary, did you have access to any correspondence or orders that passed through Girke's hands?

DEFENSE COUNSEL: I pray the court's judgment. I think that is definitely a leading question, and strongly leading.

PRESIDENT: Will you read that question, please?

(Whereupon the last question was read by the reporter.)

PRESIDENT: Objection overruled.

THE WITNESS: Yes.

QUESTIONS BY MR. FRISKE:

Q In 1944, do you know of any secret decree or secret state matter in Girke's office in Darmstadt pertaining to shot-down fliers?

A During this time I once registered one secret state matter. It was marked regarding enemy parachute agents.

Q Did you actually register this decree yourself?

A Yes. I entered it in a special book.

Q What would you name this special book?

A Diary GRST--secret state matters.

Q Who gave you this book to write in?

A I always was in possession of this book.

Q Who gave you the order to register this document?

A The criminal counselor Hellenbroich.

Q Did you note on the secret order or decree who the sender was?

A As far as I can recall it came from the chief of security police at Berlin.

Q Who was the chief of the security police?

A Kaltenbrunner.

MR. FRISKE: You may cross examine.

CROSS-EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Did you read the order to which you just referred as the one you yourself entered in the register?

A No.

Q Did you at any time learn the contents of that order?

A I heard about parachute agents, but I don't know whether this was the content of this order.

DEFENSE COUNSEL: Nothing further.

MR. FRISKE: Any questions by any member of the court?

PRESIDENT: No.

MR. FRISKE: May the witness be excused?

PRESIDENT: The witness is excused.

DEFENSE COUNSEL: I would like to ask again if that just means excused from being present in court at the present time. I ask because this particular witness is one

(Gelbrech - Excused)

of the witness on the defense list, too.

PROSECUTION: Do you desire that she be kept here in the witness barracks?

DEFENSE COUNSEL: I think so, because the way the prosecution's case is going they are going to be finished pretty soon. I cannot speak for them, but that is my estimate.

PROSECUTION: We have no objection, but we would like to have the defense make some arrangement for hospitalization or treatment.

DEFENSE COUNSEL: If she goes home and comes within that general agreement we made the other day, that the prosecution produce all their witnesses for us on 48 hours' notice, then under that arrangement I am willing that she go home, if that is what they intend to do here.

DEFENSE COUNSEL: Any witness that the defense desires and is not here at Dachau, we will notify the apprehension section of the War Crimes Group at Augsburg and they will immediately send out and get the witness.

DEFENSE COUNSEL: We had a definite arrangement, if I remember rightly--and in view of the fact that I was not allowed to cross examine them--that the prosecution would produce all their witnesses for us.

PROSECUTION: That is correct, but I am not going out and get them personally.

DEFENSE COUNSEL: I take that for granted. I am sorry.

PROSECUTION: May the witness be excused?

PRESIDENT: The witness is excused.

(Prosecution Exhibit 67 was marked for identification.)

CAPTAIN VANCE: May it please the court, at this time I will start introducing evidence primarily directed at Charges VI and X. These two charges will be tried at the same time because the accused are the same. I have quite a large chart here to set up before the court. I ask the court if it would take about a five-minute recess in place or in the chambers, whichever is convenient, so that I can set up this chart.

PRESIDENT: Recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

DEFENSE COUNSEL: May it please the court, Mr. Rachael of defense counsel will conduct the defense with respect to these two charges.

CAPTAIN VANCE: May it please the court, it has been stipulated by and between the prosecution, the defense and the accused that if Captain Smith, the witness who has been responsible for obtaining the witnesses, were present in court, he would testify that Mr. Elizabeth Gantner is sick at this time and not able to come to Dachau to court. Is that stipulation agreed to by the defense?

MR. RACHAEL: If it please the court, I would like to state at this time that I have in my possession a brief summary of what that witness would have testified to had she been present. Her testimony is not consistent with the facts as I know them.

CAPTAIN VANCE: May it please the court, this document has not been offered. We are talking about a stipulation between Captain Smith and you.

MR. RACHAEL: I was coming to that, and for that reason I will not stipulate.

DEFENSE COUNSEL: That stipulation was made by the defense counsel in good faith, and we will have to keep it.

CAPTAIN VANCE: I can produce in time a certificate from her doctor. I do not have it physically here in the courtroom, but if the defense calls on us we will produce it.

DEFENSE COUNSEL: What happened was that Major Eason agreed that that was how Captain Smith would so testify, and of course I feel bound by the arrangement he made.

MR. RACHAEL: I would like to make a statement for the record. I believe the prosecution is laying a foundation for the introduction of a statement by a witness.

CAPTAIN VANCE: That is right.

MR. RACHAEL: It is my belief that I will be deprived of my right to cross examine that witness if the prosecution is permitted to introduce her statement into evidence over my objection. Therefore, I would like to advise the court and the record that it is my opinion that the testimony of this witness is not consistent with the facts, and that I will be deprived of my right to cross examine her by the introduction of such statement into evidence.

DEFENSE COUNSEL: Of course, Mr. Rachael makes a good point, may it please the court, and in justice I must say it. We do not know as to what date Captain Smith would testify that she was sick. Perhaps she is recovered now. I do not know. And while I feel bound and will be bound by the stipulation, I feel obliged to bring that point to the

attention of the court.

CAPTAIN VANCE: May it please the court, it is not clear to me whether they have agreed to the stipulation or not. That is the only thing before the court.

DEFENSE COUNSEL: The stipulation was made by Major Saxon. The defense accepts the stipulation and subscribes to it. I thought I made that plain. If I have not, I state it categorically now, but at the same time, as long as the issue is raised, I think the court definitely ought to have it in mind, and that the prosecution, when it presents a certificate from a witness who is sick, ought to be prepared to say that she is ill as of the present time. The testimony might go back a week or ten days or perhaps longer. I don't know. I am not trying to renege on a thing.

PRESIDENT: Recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: The Court will come to order.

CAPT. VANCE: If it please the Court, the Prosecution offers in evidence a sworn statement of Mrs. Anna Elisabeth Gantner, taken at Darmstadt, Germany on the 18th of April 1946. This has been marked Prosecution Exhibit 67 for identification. We offer this statement except those portions which are bordered on the lefthand margin in red, which portions of the statement are not material to the issues in this case. I would like to state that continued efforts are still being made to obtain this witness. If she should arrive here before the conclusion of this case we ask leave of the Court to withdraw the statement and place the witness on the stand. With that statement we ask the Court to accept this document in evidence and make it a part of the record.

MR. MACHALS: Defense objects to the statement on the ground that it contains evidence as to the character of certain of the accused which evidence has not been put in issue by the Defense as yet. Furthermore it contains evidence concerning matters extraneous to the issues in this case which might prejudice the Court and is therefore against the substantial rights of the accused to a fair and just trial.

CAPT. VANCE: I do not remember anything in the statement that touches the character of any of the accused. If so, the Court would be proper in excluding it after hearing what is in it upon the motion of the Defense.

PRESIDENT: The objection is overruled. Prosecution Exhibit 67 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 67 for identification was received in evidence as Prosecution Exhibit 67, is attached hereto and made a part of the record.)

CAPT. VANCE: Permission is requested to read Exhibit 67.

PRESIDENT: Permission granted.

(Thereupon the prosecution read prosecution exhibit 67, an extract of Anna Elisabeth Gantner, followed by a translation into the German language of prosecution exhibit 67 by the interpreter.)

PRESIDENT: Court will take a half hour recess.

(Thereupon at 1500 hours the court recessed until 1530 hours.)

* * * *

(Thereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Dr. Trost who is absent on business of the defense, all the accused, the interpreter and reporter, are present.

CAPTAIN WALSH: Call the witness, Mrs. Vater.

MR. MACHAN: Before the witness is called to the stand I would like to state the grounds for the objection I made will be found on page 15. At this time I move to strike from the record on the grounds stated on my original motion in objection to the statement.

CAPTAIN WALSH: I would like for counsel to point out where on page 15 he is talking about.

MR. MACHAN: The whole page.

PRESIDENT: Court will recess in place.

(Thereupon the court recessed in place.)

PRESIDENT: Court will come to order. Motion to strike is overruled.

FRANZISKA VATER, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

Ta 60 1-20-47
S[illegible]ple

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Will you please state your name?

A Franziska Meier.

Q Where do you live at the present time?

A Mannheim.

Q What is your occupation, Mrs. Meier.

A Housewife.

Q How old are you?

A 41.

Q Where did you live in the year 1945?

A In Bensheim.

Q What was your occupation at that time?

A I was an employee, business employee.

Q Employed by whom?

A Office of the Gestapo at Bensheim.

Q When did you commence to work for the Gestapo at Bensheim?

A 3rd of November 1944.

Q When did you finish your employment with them?

A 17th of March 1945.

Q During the period of time that you worked for the Gestapo in Bensheim, who was the chief?

A Fritz Girke.

Q Who was the person second in command?

A Heins Pellenbroich.

Q Do you know a man, Karl Stattmann?

A Yes.

(Meier-direct)

Q Do you know where he was working during the period of time you were working for the Gestapo?

A At the same office.

Q Do you know a man named Michael Graf?

A Yes.

Q Do you know where this man was working during January, February and March 1945?

A At the same office.

Q If you were to see Clarke at this time would you be able to recognize him?

A Yes.

Q If he is present in the court will you point him out to the court?

A Clarke, No. 19.

CAPTAIN VANCE: Let the record show that the witness has identified Clarke as wearing placard No. 19.

CROSS EXAMINATION BY CAPTAIN VANCE:

Q If you were to see Heinz Hollenbroich at this time would you recognize him?

A Yes.

Q If he is present in the court, point him out.

A No. 20.

CAPTAIN VANCE: Let the record show that the witness identified Heinz Hollenbroich wearing placard No. 20.

CROSS EXAMINATION BY CAPTAIN VANCE:

Q If you were to see Karl Stattman at this time, could you recognize him?

A Yes.

Q If he is present in court, will you point him out?

A No. 21.

(Peter-direct)

[illegible]
[illegible]

[illegible]

[illegible] identified [illegible]
[illegible] marked for [illegible] No.

[illegible] we give to you, [illegible]

[illegible] give [illegible] for [illegible] today?

Yes. [illegible]

If we [illegible] present, [illegible] point [illegible]

[illegible] 22. [illegible]

[illegible] that the second sheet [illegible] Michael [illegible] marked No. 22. [illegible]

[illegible] we give to you, [illegible]

Mr. Weir, what was located on [illegible] 52 [illegible] Miller Street in [illegible]

Selective Office, Nuremberg. [illegible]

Was that the office where you, Sirica, Gallagher [illegible] Littleton and [illegible] worked back in 1945?

Yes. [illegible]

What were your principal duties while you were on [illegible] at the [illegible]

[illegible] the [illegible] and files.

Was your [illegible] on the 15th day of [illegible] 1945?

Yes. [illegible]

Did you [illegible] at the [illegible] office on that day?

Yes. [illegible]

Tell the [illegible] Court.

[illegible], Sirica, [illegible] and I [illegible] in the office [illegible]

All, [illegible]?

[illegible]

(Continued)

Ta 6c. 1-20-47
50 pls

A I was interested in him like all other female employees and I looked at him a little bit closer.

Q Can you describe him?

A Yes.

Please do so.

A He was pretty tall, one meter eighty-two to one meter eighty-five. He had a little short dark brown jacket and pink officer's trousers. On his left wrist he had a wrist watch and he had brown low shoes. He had pretty dark brown hair, good teeth and he had a clean, open face. His age was approximately twenty-six to twenty-eight.

Q Now, where was this American prisoner when you first saw him?

A In the first floor in the office of Stattman .

Q Do you remember who else was present at that time?

A Yes.

Q Who?

A Criminal Counselor Hellenbroich, Stattman , Dengler and Miss Buedinger and Administration employee Freudenberger.

Q What was the American prisoner doing or what was being done to him?

A He was questioned, he was being questioned.

Q Who was asking the questions?

A Criminal Counselor Hellenbroich.

Q Was he speaking German or English?

A English.

Q Did the American say anything?

A He gave a short reply in English.

Q About how long did the entire interrogation take?

A One and a half minutes.

(Noter-direct)

Ta GO 1-2-47
GO ole

[illegible] interruption, what next happened?

[illegible] left the room [illegible] to the base.

At that time was the Heidenbrecht [illegible]

[illegible]

Now, at Heidelberg did you have occasion [illegible] see the base, did he leave [illegible]

Yes.

[illegible]

A I can't know that.

[illegible] to the [illegible]

Q Was it [illegible]

A It was difficult.

Q Now, after you left [illegible] prisoner war, did you later, at any time, see the [illegible]

A Once [illegible]

Q Where did you see him?

A He left the [illegible]

Q Do you say he left the "Stalag", or you mean left our [illegible] office?

A Yes.

Q How was your work with [illegible] the time you were [illegible] this camp?

A I was stationed [illegible] officer [illegible] along with [illegible]

Q Did you [illegible]

A [illegible]

(Recross-direct)

Ta 60 1-3C-47
20 pls

. Do you know why the two men were in uniform with the American?

A [illegible] Now times only from the back.

. What type of uniform were these two men wearing?

A I can't describe the uniforms today.

. Did Stattman and Ast wear a uniform when they were on duty?

A Yes.

. Were these two men we [illegible] same type of uniform that Stattman and Ast were or were they wearing some other type of uniform?

A [illegible] it was the same uniform.

. In what direction were the two men going with the American?

A They went in the direction of [illegible]

. About what length of time were you in the room with the American?

A Four minutes.

. Did the American have any weapon?

A [illegible]

. Did the American attempt to escape while you were looking at him?

A [illegible]

. Now you see the American being accompanied by two men in uniform did the American have a weapon at that time?

A I didn't see any weapons.

. Is the one man who were accompanying the American have any weapons?

A Yes, one of them had a [illegible] pistol.

. Since the time you saw the American prisoner being taken away by the two men in uniform, have you seen that American since that time?

A No.

(Peter-direct)

Q Do you know what happened to that American?

A No.

Q Do you know the name of that American?

A No.

CAPTAIN TAYLOR: No further questions.

CROSS EXAMINATION

QUESTIONS BY MR. RACHMAN:

Q Do you know if he was an American?

A I thought so.

Q Do you think he might have been an Englishman?

A It might have been the way the interrogation was evaluated, because he had a white handkerchief and twenty English pounds with him.

Q Would that lead you to believe he was an Englishman?

A I was wondering because I thought if he were an American he should have dollars in his pocket.

Q How many Gestapo people were employed in that headquarters?

A Thirty to forty people.

Q Did they all wear uniforms?

A Five or six in civilian clothes.

Q And about how many would you say did wear uniforms?

A Thirty-five.

Q Would you say it could have been anybody of those thirty-five people whom you saw walk out with this flier?

A Yes.

Q You didn't search the flier yourself, did you?

A Me personally, no.

Q The prosecutor asked you when you saw the flier in the room, whether he was armed, and you said he was not armed, is that right?

A I said no, yes.

(Meier-cross)

Ta 6C 1-20-47
3? pls

Q Did you search the flier?

A Yes. No.

Q How do you know he wasn't armed?

A He had nothing around his hip.

MR. RACHAEL: No further questions. If it please the court, Mr. Yan, the Korean defense counsel, would like to ask a question.

QUESTIONS BY MR. YAN:

Q If I remember right, you said that the prisoner was one eighty-two to one eighty-five tall, is that right?

A That's right.

Q How tall were the Koreans who escorted him?

A One sixty-five.

Q Both of them?

A One was smaller, one was taller.

Q How tall was the smaller one?

A One sixty-five.

Q And the taller one?

A One seventy.

Q Do you know whether Asaf was wearing a uniform that day?

A I don't know whether I saw Asaf on this day.

Q Wasn't he there every day?

A I can't say that. My office room was somewhere else.

QUESTIONS BY MR. ALBRIGHT:

Q You said you were approximately four minutes in the room, is that right?

A Yes.

(Cross-cross)

Q Furthermore, you said the interrogation of Hellenbroich took approximately a minute and a half, is that right?

A It was the period of time in which Hellenbroich asked a short question and the flier answered it.

Q Was Hellenbroich already in the room when you entered the room?

A Yes.

Q The other person you mentioned, too?

A Yes.

Q Do you know whether the flier had been interrogated before?

A I don't know that.

Q When you entered the room the interrogation of the flier was just going on?

A Yes.

Q What was the flier being asked?

A I don't know that, it was done in English.

MR. RACHAEL: That is all.

REDIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mrs. Meier, the two men that you saw accompanying the American you have stated you could not recognize. Do you mean by that answer the two men were strangers to you or do you mean you were not in a position to observe their faces?

A I saw only their backs.

CAPTAIN VANCE: No further questions. Questions by the court?

PRESIDENT: No.

CAPTAIN VANCE: Request the witness be excused.

PRESIDENT: Witness is excused.

(Whereupon the witness was excused and withdrew.)

Ta 60 1-20-47
80 pls

WILHELMINA BUEDINGER, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q What is your name?

A Wilhelmina Buedinger.

Q What is your present address?

A Lorch, in Hessen.

Q What is your present occupation?

A Stenotypist.

Q How old are you?

A 24.

Q Where were you living in February 1945?

A In Loch, too.

Q Is Loch near Bensheim, Germany?

A Yes.

Q Where were you employed in 1945?

A I was at the Gestapo office at Darmstadt which was at that time in Bensheim.

Q For what period of time did you work for the Gestapo in Bensheim?

A I have worked for the Gestapo office at Darmstadt from the 1st of July 1940 until the end.

Q Now, you speak of the Gestapo office at Darmstadt. Do you mean you were first at Darmstadt and later in Bensheim, is that correct?

A Yes.

Q Was it the same office in Darmstadt that you had in Bensheim or were they two separate organizations?

A That was the same office only after we were bombed out at Darmstadt the office was taken to Bensheim.

Ta 6C 1-20-47
SJ pls

. When did the office move to Bensheim?

A September 1944.

. Do you know a man named Fritz Girke?

A Yes.

. Do you know what position or what occupation Fritz Girke followed in 1945?

A He was in charge of the Gestapo office Darmstadt and he was Major of the SS and Government Counselor.

. After the office moved to Bensheim, was he still the chief?

A Yes.

. If you were to see Fritz Girke today would you recognize him?

A Yes.

. If he is present here in the courtroom, will you point him out to the court?

A In the second row, the fourth last man, No. 19.

CAPTAIN VANCE: Let the record show the witness identifies the accused, Fritz Girke, wearing No. 19.

QUESTIONS BY CAPTAIN VANCE:

. Do you know a man named Heinz Hellenbroich?

A Yes.

. Back in 1945 what was his business?

A He was the assistant to Mr. Girke. He was SS Major and Government Counselor, too. I was mistaken, he was Criminal Counselor, not Government Counselor.

. If you were to see Heinz Hellenbroich today would you be able to recognize him?

A Yes.

If you see him present in the courtroom, point him out.

A In the second row, the accused, No. 20.

(Buedinger-direct)

Ts 60 3-10-47
SO fls

CAPTAIN VANCE: Let the record show that the witness has identified the accused, Allenbrelch, wearing No. 20.

DIRECT EXAMINATION BY CAPTAIN VANCE:

Q Do you know a man named Karl Franz Stattmann?

A Yes.

Q What was his business in 1943?

A He was working in the department of Dr. Demler.

Q Who was Dr. Demler?

A He was Criminal Secretary.

Was that in the Gestapo in Bensheim?

A Yes.

If you were to see him today would you recognize him?

A Yes.

Q If Stattmann is present in court, will you point him out?

A In the second row, the second last gentleman.

Q What number is he wearing?

A No. 21.

CAPTAIN VANCE: Let the record show the witness identifies the accused, Karl Stattmann wearing No. 21.

DIRECT EXAMINATION BY CAPTAIN VANCE:

Q Do you know a man named Michael Haas?

A Yes.

Q Whom did he work for in 1943?

A I don't know that right now. I think Criminal First Secretary, Schmelzer.

Q What business or organization was he employed by?

A For the Gestapo, Darmstadt.

Q And was he with the Gestapo when it moved to Bensheim?

A Yes.

(Buedinger-direct)

Q If you were to see him today would you recognize him?

A Yes, the accused No. 22.

CAPTAIN WANCH: Let the record show the witness has identified Michael Graf, the accused wearing No. 22.

QUESTIONS BY CAPTAIN WANCH:

Q What was the address of the headquarters of the Gestapo in Bensheim?

A Adolf Hitler Street. I don't know the number anymore.

Q Do you know a lady named Franziska Peter?

A Yes.

Q Did she work for the Gestapo during the time you did?

A Yes.

Q Do you know a woman, Katerina Seiler?

A Yes.

Q Did she work there?

A She was cleaning woman there.

Do you know a man, Marion Kaminski?

A Yes.

Q Who is Marion Kaminski?

A He is a Pole and at the time we were at Bensheim he worked around the house there.

Q Were you present for work at Gestapo Headquarters on the 15th of February 1945?

A Yes.

(Redirect-direct)

Q Did anything unusual take place on that day?

A Yes, an American was at the office.

Q Where did you see this American?

A I saw him in my office when I entered the room.

Q What was the American doing?

A Several other members of the office were there and he was supposed to be interrogated about his personal data and his unit.

Q Was he interrogated?

A Yes.

Q Who interrogated him?

A The leading man was Ciuirel Counselor, Hellenbroich.

Q Was Hellenbroich talking to the American in English or in German?

A German, and English as good as he could.

Q Do you know what they were talking about?

A Yes. I said before he was interrogated about his personal data -- whether he had any orders and from which unit, rather, to which unit he belonged.

Q Who was present during the interrogation besides Hellenbroich?

A Mr. Dengler, Stattman, Reisinger, Freudenberger who worked as an interpreter, and a few others which I can't mention by name anymore.

Q Now, when the interrogation was finished did Hellenbroich leave?

A Yes.

Q Do you know why he left or where he went to?

A I don't know that.

Q How long were you in the presence of the pilot?

A The entire time the flier was in the room, perhaps one hour or an hour and a half.

Q At any time during this interrogation, while you were in the presence of the American, was there a telephone call received in your office?

A Yes, a telephone call I came which called Mr. Raaf and Mr. Stattman upstairs.

Q About how long were Stattman and Raaf gone?

A Approximately fifteen minutes or a little bit longer, I don't know exactly.

Q Did Stattman and Raaf come back to where the American was?

A Yes, they came and right afterwards they took the flier out of the room.

Q During the hour or so time that you were with the American, did he at any time attempt to escape?

A No.

Q Did the American have any weapons?

A No, I didn't see any weapons.

Q When Stattman and Raaf came back and left with the American were they armed?

A Yes, they took their cap and their belt and on the belt, of course, there was a pistol.

Q Was Stattman and Raaf both wearing uniforms on that day?

A Yes.

Q Where did Stattman and Raaf take the American?

A I don't know that.

Q Have you ever seen that American since that time?

A No.

Q Where were the American and Stattman and Raaf the last time you saw them?

A When they left our office at the office building.

Q Did you see Stattman and Raaf anymore that day?

A Yes.

Q About how long after you saw them leave with the American?

A Approximately thirty minutes later or a little bit more.

(Questioning continued)

- at that time did they have the American with them?

A No.

- were they still armed with their pistols at this time?

A Yes, the pistol was part of their uniform.

Did you see either Stettbacher or Graf where they had taken the flier?

A Yes, I asked later on Mr. Stettbacher and he told me he had transferred him to the Reichsmarschall to the Army.

- I have no further questions.

CROSS-EXAMINATION

QUESTIONS BY MR. RICHARDS:

You mentioned that a Dr. Gundermann was present at the interrogation, is that correct?

A Yes, as a fellow who had just finished High School he was called for this interrogation because they thought he could speak English better.

Q And you testified that both German and English were used in the interrogation?

A Yes, it was very difficult for them to understand each other.

Q And you testified that the interrogation lasted between an hour and an hour and a half?

A No.

How long did the interrogation last?

A I for instance only, don't interpret the room.

During the time that you were present, did Vollenbroich leave the room?

A Yes.

How long was he gone?

A Then as far as I can recall he didn't enter the room anymore.

(Proceedings continued)

[illegible] leave [illegible] die out [illegible]

Yes.

If I were to tell you that witnesses testified that there was [illegible] interruption, [illegible] by Hollenbrook of the prisoner and that while the [illegible] Hollenbrook left to see his boss and then returned, would that be the same interruption to which you are referring?

MR. [illegible]: I object, may it please the court, that is not proper cross examination.

THE COURT: Objection sustained.

BY MR. [illegible]:

How many times was this prisoner interrupted, if you know?

He was interrogated once, just a few minutes after I had entered the room.

How long were you on duty on that day?

A I came a little bit later to the office because my train was late, [illegible] I stayed until twelve o'clock, until the reporting records, and then, of course, the prisoner wasn't there anymore.

Is it possible that there might have been another person interrogated by the detectives that day?

A Yes, possibly but not in my presence.

But they did report to the office?

A [illegible] at one o'clock.

Is this the person who was being interrogated?

A No.

Do you understand Yiddish?

A A little bit.

[illegible] to the prisoner and what he [illegible]

(Continued)

Ta 60 1-20-47
pls 30

A Yes, the prisoner was asked about his personal data, his unit, whether he had an order, as I said before. The prisoner was very reticent.

Q You seem to have a good memory about what happened there, do you not? Do you remember anybody asking the prisoner what his name was?

A Very probably, I can't state definitely.

Q Your memory is still good. What was the name of the prisoner?

A I don't know that.

Q Do you remember whether or not they asked the prisoner what his serial number was?

A I can't recall that.

Q If your memory is still good, what was his serial number?

CAPTAIN WANCA: If it please the court, I object. He is arguing with the witness. She said she didn't know.

PRESIDENT: Objection sustained.

QUESTIONS BY MR. RACHAEL:

Q Did you notice whether Stathaar and Raaf carried machine pistols?

A I can't recall that.

Q You say the pistols they carried were part of their uniforms, is that right?

A Yes, the little pistol was hanging on the belt.

Q Do you think you might mistake a machine pistol for a little pistol that might be hanging on the belt?

A No.

MR. RACHAEL: No further questions. If the court please, Dr. Ruerger would like to interrogate.

QUESTIONS BY DR. RUERGER:

Q Where was the office of Raaf?

A In the second next office.

(Ruedinger-cross)

Ta 6: 1-[illegible]47
SD rls

Q Was Gaaf present in your room during the interrogation?

A I don't know.

Q When the telephone call came in was Gaaf in your room or did he have to be called from his office?

A He was not in my room and I assume that Stattman took him along in his way.

Q Do you still remember who made the telephone call?

A No, I don't know that.

Q If I remember right, you said before that Gaaf and Stattman after a short while, approximately fifteen minutes, returned to your office, is that right?

A Yes.

Q Did these two men say anything about an order they had received?

A No, they only got dressed, took their caps and belts and left the room.

Q Can you still remember the American prisoner?

A Very badly, only that he was a very tall, still young man.

Q How tall did you estimate him?

A I can't do it, perhaps one eighty or one ninety.

DR. [illegible]: Thank you.

CROSS EXAMINATION BY MR. AMEDMAN:

Q This morning when you came to the office building, did you enter your office for the first time this day?

A Yes.

Q If I understood you right, you said before the American was in your room already?

A Yes.

Q The other men you mentioned before, Hellenbroich, Stattman, Essinger, Freudenberger, were they in your room already?

A Yes.

Ts 60 1- 6-47
SO nle

Q You said under cross examination that the interrogation in your presence took about five minutes, is that right?

A Yes, it might have been a little bit more.

Q Did you hear this interrogation going on when you entered the room?

A Yes.

Q In addition to Hellenbrach and Freudenberger did anybody else participate in the interrogation while you were present

A I don't know exactly, it might have been Dengler.

Q Do you know whether Mrs. Oster was in the room during this interrogation?

A I don't know exactly.

MR. BURGER: That is all.

PROSECUTION: Any questions by the court?

THE COURT: No.

PROSECUTION: Request the witness be excused.

PRESIDENT: Witness is excused.

(Thereupon the witness was excused and withdrew.)

PRESIDENT: Court will adjourn until tomorrow morning at nine o'clock.

(Thereupon at 1700 hours the court adjourned until 0900 hours, 21 January 1947.)

End Ts 60
Butler els

(Buedinger-cross)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place
Ort .....

Date
Datum .....

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on .....194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....

(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

(7)

Pages 346 - 375 Incl.

Case No. Superior Orders

~~*Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 21 JANUARY 1947

~~Members of Court~~

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf W. Nathanson

Interpreter Rudolph H. Schubert

Reporter Patricia Stewart, Irving Hayett, Sally Rose Hayett, Imogene Butler, John McDonald, Paula Silverman

WITNESSES:

Katering Seitz

Accused JUERGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
    or in case of default of payment to serve a *furtner term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

21 January 1947 Pages 346 - 375 Incl.

TESTIMONY

WITNESSES:	DIRECT	CROSS
KATARINA SEITZ	346	352

EXHIBITS

No.	Description	Marked	Received in Evidence
P-68	Statement of John A. Barnett	354	355
P-69	Map of Adolf Hitler Strasse 52	355	355
P-70	Wall Chart (Copy of P-69)	355	356
P-71	Photograph	356	357
P-72	Photograph	357	357
P-73	Statement of Marion Heinrich Kaminski	358	358
P-74	Photograph of Frita Cirke	360	363
P-75	Photograph of Franz Karl Stattman with booklet	360	363
P-76	Photograph of Gestapo Garden	360	363
P-77	Photograph of two bodies	360	363
P-78	Photograph of body of Lt. Forman	360	363
P-79	Photograph of two bodies	360	363
P-80	Photograph of two clothed bodies	360	363
P-81	WD AGO Form 65-1 of Lt. Forman	360	363
P-82	Photograph of Heinz Hellenbreich	360	363
P-83	Booklet containing photograph	360	363
P-84	Photograph of building	360	363
P-85	Photograph of courtyard	360	363
P-86	Photograph of witness, Kaminski	360	363
P-87	Photograph of witness, Kaminski	360	363
P-88	Photograph of witness, Kaminski	360	363
P-89	Photograph of Gestapo Garden	360	363
P-90	Testimony of witness Michael S. Simaon, Special Agent, 7th Army, CIC	363	363
P-91	Testimony of Special Agent George A. LeFevre	364	364

EXHIBITS (continued)

No.	Description	Marked	Received in Evidence
P-92	Report of Reburial of May F. Herrmann	365	366
P-93	Statement of Major Leo V. Bishop	366	367
P-94	Social Security Registration Card of Lt. Forman	366	367
P-95	Immunization Record of Robert MacDonald	366	367
P-96	Soldier's Pay Record of Robert MacDonald	366	367
P-97	Officers Pay Data Card, Lt. Forman	366	367
P-98	Immunization Record of Lt. Forman	366	367
P-99	Photographs of two bodies	366	367
P-100	Statement of Major Charles P. Jarson	369	370
P-101	Shirt Collar in envelope	369	371
P-102	Bullet in envelope	369	
P-103	Statement of Karl Franz Stattman	373	374
P-103A	English translation of P-103	373	374

MORNING SESSION

(Whereupon the Court reconvened at 0900 hours.)

PROSECUTION: May it please the Court, let the record show that all members of the Court, all members of the Prosecution and allmembers of the Defense, all of the Accused, the reporter and interpreter are present.

DEFENSE COUNSEL: May it please the Court, the accused Hoehler, Number 5, has expressed a desire to go on sick call, and permission is requested, with the stipulation that the evidence may proceed as though he were present.

PROSECUTION: No objections by the Prosecution.

PRESIDENT: Permission granted.

DEFENSE COUNSEL: Will the guard take the accused Hoehler?

PROSECUTION: May it please the Court, let the record show that the accused Hoehler, Number 5, has left the court room. The Prosecution will continue with the proof in connection with Charges 6 and 10.

CAPTAIN VANCE: The Prosecution calls as its next witness Katherina Seitz.

KATERINA SEITZ, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Will you please state your full name?

A Katerina Seitz.

Q What is your address?

A Mensheim.

PRESIDENT: The Court will recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: The Court will come to order.

QUESTIONS BY CAPTAIN VANCE:

Q What is your present occupation, Mrs. Seitz?

A Housewife.

Q How old are you, please?

A 45.

Q Where were you living during the year 1945?

A In Bensheim.

Q At what place in Bensheim?

A Adolf Hitler Street, 58.

Q Was that the building where the Headquarters of the Gestapo in Bensheim was located?

A Yes.

Q And who were you working for at that time?

A For the Gestapo.

Q And what kind of work were you doing?

A I was a cleaning woman--scrub woman.

Q Did you live and work with the Gestapo for the entire time that the Gestapo was located in Bensheim?

A Yes, I worked from the end of September, 1944, until the end of February, 1945.

Q Were you at the Gestapo Headquarters on the evening of March 24, 1945?

A Yes.

Q Did anything unusual occur at the Gestapo Headquarters on that evening?

A Yes.

Q Tell the Court what happened that evening.

A Late in the evening, I went along the hallway, and in the first room there was a so-called orderly room, and in there were two men standing, both in uniform; both men had their hands up. Hellenbroich was standing close to one of the men and looked at his wrist band.

Q What do you mean by a wrist band?

A It was a broad band which looked like silver.

Q Did it have any writing or engraving on the band?

A I can't say that. I was standing outside in the hallway and just looked into the room.

Q Was there anyone else present there besides Hellenbroich?

A No.

Q What did Hellenbroich do?

A I saw only when he looked at that.

Q How long did Hellenbroich stay there with the two men in uniform?

A I can't say that--it was just a moment.

Q Did Hellenbroich go away any place, or did he remain there, or what happened?

A He went back in the hallway and called for Haaf and Stattman.

Q When he called for Haaf and Stattman, did Haaf and Stattman come in?

A Yes, then they came.

Q Now, after Haaf and Stattman came, what did you do?

A I went to the cellar then.

(Seitz-Direct)

Q Now this man Kaaf that you have just spoken about, would you know him if you were to see him today?

A Yes.

Q If he is present in the court room, will you point him out to the Court?

A Yes, that's the one--at the corner he is sitting, number 22.

CAPTAIN VANCE: Let the record show that the witness has identified the accused Kaaf, wearing number 22.

QUESTIONS BY CAPTAIN VANCE:

Q Now the man Stattman that you have referred to, would you recognize him if you were to see him?

A Yes.

Q If he is present in Court, will you point him out?

A Yes, over there, number 21.

CAPTAIN VANCE: Let the record show that the witness has identified the accused Stattman, wearing number 21.

QUESTIONS BY CAPTAIN VANCE:

Q Now you testified you saw a man named Hellenbroich on this occasion. Would you recognize him if you were to see him?

A Yes.

Q Will you point him out to the Court?

A Number 20.

CAPTAIN VANCE: Let the record show that the witness has identified the accused Hellenbroich wearing number 20.

QUESTIONS BY CAPTAIN VANCE:

Q Do you know who was the Chief of the Gestapo at this time?

A Yes.

Q Who was it?

A Girke.

Q Would you recognize him if you were to see him now?

A Yes.

Q If he is in the court room will you point him out?

A Yes, number 19.

CAPTAIN VANCE: Let the record show that the witness has identified the accused Girke wearing number 19.

QUESTIONS BY CAPTAIN VANCE:

Q Now, at this time, Mrs. Seitz, did you hear the conversation between Hellenbroich and Stattman and Raaf?

A No.

Q When you saw these two men in uniform, state whether or not they were carrying any weapons.

A Yes, they had belts with pistols on them.

Q Which men are you talking about?

A I mean the employees of the Gestapo.

Q Is that Stattman and Raaf?

A Yes.

Q Now what about the other two men in uniform that you saw with their hands raised above their heads--did they have any weapons?

A No, I didn't see anything.

(Seitz-Direct)

Q I believe you testified that after Raaf and Stattman came that you went to the cellar or basement, is that right?

A Yes.

Q Did you ever see these two men in uniform again? Now I am referring to the men you saw with their hands above their heads.

A No.

Q Later, did you hear any strange noises around Gestapo Headquarters?

A Yes, when I came out of the cellar, it might have been 10 or 15 minutes, I went over to my apartment; I heard two shots.

Q Could you tell from the sound of the shots whether they were fired on the inside of the building or the outside of the building?

A They were not fired inside the building.

Q Now when was the next time you saw Stattman and Raaf?

A Approximately half an hour or three quarters of an hour or even more, later.

Q Did you talk to either Stattman or Raaf on this occasion?

A Yes, I spoke with Raaf.

Q What did Raaf tell you?

A I was standing outside the building. There were a few steps--I was standing on the second step, and Raaf said, "Mrs. Seitz, we just finished two fellows."

Q Did he tell you anything else?

A Yes, I asked them "where", and he said, "In the

garden."

Q What else was said?

A I said then, "Did you bury them?" and he said, "Yes."

Q Did he say where he buried them?

A He said, "Back in the garden."

Q Mrs. Seitz, do you know a man named Marion Kominski?

A Yes.

Q Who was he?

A He was a prisoner.

Q A prisoner of whom?

A He was in the Gestapo building.

Q Do you mean he was a prisoner held by the Gestapo?

A I assume so.

Q What was his nationality, if you know.

A Polish.

CAPTAIN MARCH: No further questions.

CROSS EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Mrs. Seitz, how do you happen to remember the date 24 March 1945?

A That's the day when the Gestapo moved from there.

Q And that is the day when all this transpired, is that correct?

A Yes.

Q You are positive it was not the 15th of February?

A No.

MR. RACHAEL: No further questions.

CAPTAIN VANCE: Any questions by other Defense Counsels?

MR. MACHAEL: If the Court please, I believe the German counsel, Dr. Aschner, would like to interrogate the witness.

CROSS EXAMINATION

QUESTIONS BY DR. ASCHNER:

Q You said before you saw the two soldiers only for a short time through the door, is that right?

A Yes, I saw them shortly.

Q How long was this, approximately?

A That wasn't long at all.

Q Can you say a minute, half a minute, two minutes?

A It might have been two minutes.

Q Do you know whether the prisoners were already for a long period of time in the Gestapo building when you saw them?

A I had never seen them before.

MR. MACHAEL: That's all.

CAPTAIN VANCE: Any questions by the Court?

PRESIDENT: None.

CAPTAIN VANCE: Request the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: May it please the Court, it has been stipulated by and between the Prosecution, the Defense and the Accused that if Captain Smith from Augsburg were present he would testify substantially as follows: That the Prosecution had requested the following witnesses:

Captain John A. Barnett, Marion Kaminski, Michael B. Simon, George A. LeFevre, Major Leo V. Bishop, and Major Charles P. Larson. He would testify that none of these witnesses are present for trial for the following reasons: That Captain Barnett, Michael B. Simon, a former CIC agent, and George A. LeFevre, a former CIC agent, have all left the theater and returned to the ZI, and some of these--I am not sure which ones, have been discharged from the Army. None of these witnesses are in the theater at this time. He would testify that the witness Marion Kaminski is a Polish citizen, and he has not been located--that the Liaison Detachment from the Polish Government was notified six or eight weeks ago that we wanted this witness. They have exhausted every effort and he has not been located. Is that stipulation agreed to by the Defense?

DEFENSE COUNSEL: The Defense will so stipulate that Captain Smith would so testify.

CAPTAIN VANCE: I hand the reporter a document and request that it be marked Prosecution's Exhibit 68 for identification.

(The document referred to was marked Prosecution Exhibit 68 for identification.)

CAPTAIN VANCE: This is the testimony of Captain John A. Barnett of the War Crimes Investigating Team 6823 given by him at Darmstadt, Germany, on 19 April 1945. We ask that this document be received in evidence and made a part of the record.

MR. RACHAEL: No objections by the Defense.

PRESIDENT: Prosecution's Exhibit 68 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 68 for identification was received in evidence as Prosecution Exhibit 68, is attached hereto, and made a part of the record.)

CAPTAIN VANCE: I ask permission to read this exhibit.

PRESIDENT: Permission granted.

(Thereupon the Prosecution read Prosecution Exhibit 68, followed by a translation into the German language by the interpreter.)

CAPTAIN VANCE: I hand the reporter a document and request that it be marked Prosecution's Exhibit 69 for identification.

(The document referred to was marked Prosecution Exhibit 69 for identification.)

CAPTAIN VANCE: Now, if it please the Court, the Prosecution offers a plat designated "Exhibit B", which plat this witness has testified he prepared after pacing off the distance. For this trial, this map has been marked Prosecution's Exhibit 69 for identification. We offer it in evidence and ask that it be accepted and made a part of this record.

MR. RACHMEL: No objections.

PRESIDENT: Prosecution's Exhibit 69 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 69 for identification, was received in evidence as Prosecution Exhibit 69, is attached hereto and made a part of the record.)

CAPTAIN VANCE: I ask the reporter to mark the wall chart Prosecution's Exhibit 70 for identification.

(The wall chart referred to was marked Prosecution Exhibit 70 for identification.)

CAPTAIN VANCE: Now, if it please the Court, for the convenience of the Court, a large wall chart has been made of this exhibit which we offer in evidence as Prosecution's Exhibit 70, to be used for the convenience of the Court. It is large enough to be seen by all, and we ask permission of the Court, due to the size of the chart, that we be permitted to withdraw it at the end of the trial.

MR. RACHAEL: No objections.

PRESIDENT: Prosecution's Exhibit 70 will be admitted in evidence and permission is granted for the withdrawal of Prosecution's Exhibit 70 at the end of the trial.

(The wall chart heretofore marked Prosecution's Exhibit 70 for identification, was received in evidence as Prosecution's Exhibit 70.)

CAPTAIN VANCE: I hand the reporter a document and request that it be marked Prosecution's Exhibit 71 for identification.

(The document referred to was marked Prosecution Exhibit 71 for identification.)

CAPTAIN VANCE: May it please the Court, the witness Barnett has testified to and identified an exhibit which was shown to him marked Exhibit "Larson 1". For the purpose of this trial, for identification this exhibit has been given the number Prosecution's Exhibit 71 for identification. We now offer this in evidence and ask that it be admitted in evidence.

MR. RACHAEL: No objections.

PRESIDENT: Prosecution's Exhibit Number 71

will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 71 for identification, was received in evidence as Prosecution Exhibit 71, is attached hereto and made a part of the record.)

CAPTAIN VANCE: I hand the reporter a document and request that it be marked Prosecution's Exhibit 72 for identification.

(The document referred to was marked Prosecution Exhibit 72 for identification.)

CAPTAIN VANCE: Prosecution offers in evidence a photograph which has been marked Prosecution's Exhibit 72 for identification. This photograph was identified by the witness when he referred to the exhibit "Larson Number 2". We ask that it be accepted and made a part of this record.

MR. RACHAEL: No objections.

PRESIDENT: Prosecution's Exhibit 72 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution's Exhibit 72 for identification was received in evidence as Prosecution's Exhibit 72, is attached hereto, and made a part of the record.)

End Ta 61,
ps fols

CAPTAIN VANCE: I hand the reporter a document and request that it be marked Prosecution Exhibit 73 for identification.

(The document referred to was marked Prosecution Exhibit 73 for identification.)

CAPTAIN VANCE: May it please the court, at this time the prosecution offers the written sworn testimony of the witness Marion Heinrich Kaminski, given at Darmstadt, Germany, on 17 April 1945. This document has been marked Prosecution Exhibit 73 for identification. We ask it be accepted by the court and made a part of this record.

MR. FACHAKL: If the court please, the defense objects to this statement, this exhibit, on the ground that it contains material which is not the best evidence; on the further ground that it contains material not at all related to the charges in the case which might prejudice the minds of the court against the accused and injuriously affect their right to a fair, just and impartial trial.

CAPTAIN VANCE: I might add, may it please the court — I meant to in the beginning — I do not offer this statement in its entirety. There are certain portions that are immaterial to this trial, and those portions have been marked on the left border by a red pencil, and these portions of the statement are not offered in evidence.

PRESIDENT: Objection overruled. Prosecution Exhibit 73 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 73 for identification was received in evidence as Prosecution Exhibit 73, is attached hereto and made a part of the record.)

CAPTAIN VANCE: I ask permission to read this exhibit to the court.

PRESIDENT: Permission granted.

(Whereupon Captain Vance read Prosecution Exhibit 73, followed by a translation of the same into the German language by the court interpreter.)

CAPTAIN VANCE: May it please the court, let the record show that the accused Hoehler, wearing Placard No. 5, is now returning to the courtroom.

Ta 62-ps-50-1/21-2

PRESIDENT: Court will recess for fifteen minutes.

(Whereupon the court recessed at 1015 hours.)

End ta 62
Mac fols

(Whereupon the court reconvened at 1030 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution and the defense, all of the accused, the reporter, and the interpreter are present.

(Whereupon Captain Vance continued the reading of Prosecution Exhibit 73, the statement of Marion Kaminski.)

(Prosecution Exhibits 74 through 89 were marked for identification.)

CAPTAIN VANCE: Before the reading of this in German, I would like an opportunity to introduce the exhibits which have been identified by this witness. If it please the court, the prosecution has exhibits which were identified by the witness Kaminski. These exhibits were described and identified by the witness as being Exhibits A, B, C, G, H, I, J, F, N, O, LeFevre 1, LeFevre 2, Kaminski 1, Kaminski 2, Kaminski 3, and Kaminski 4. These exhibits have been marked for identification purposes as Prosecution Exhibits 74 for identification through 89 for identification, inclusive. We now offer these documents in evidence and ask that they be given their respective numbers, received in evidence, and made a part of this record.

PRESIDENT: Any objection by the defense?

MR. RACHAEL: If it please the court, I object to the introduction of these exhibits into evidence, and, furthermore, I wish to call the attention of the court to the fact that the prosecution has read to the court approximately three pages of matter out of a statement made by Marion Kaminski, which statement has not been received in evidence by this court.

The prosecution did offer in evidence, which was received by the court over the objection of the defense, a statement made by Marion Kaminski, started the 17th of April, 1945, signed by Kaminski and concluded. In view of the fact that the court has received evidence which has not been offered to the court and which has not been given to the defense for an opportunity to object to same, I respectfully submit that the matter should be entirely stricken from the record, on the further ground that the rights of the accused have been prejudiced by the receipt of the court of such matter from the prosecution.

CAPT. VANCE: I offered all of Kaminski's testimony, if it please the Court, except that testimony bordered in red. This statement was so thick that one of those metal stickers would not go through the whole thing. That testimony was taken on various dates that were announced when the recesses occurred. It is all one interrogation. The part that is not stapled is part of the same statement. It is merely unattached because the stapling machine was not big enough to bind it all. It was all offered in evidence and all accepted by the Court.

MR. RACHAEL: The reason just now given by the Prosecution seems to me to be ridiculous because not only does this one set of papers bear two holes but the other set also bears two holes on top and if they were one and the same statement they could have very easily been tied together. The second statement containing three thin pages could very easily have been put on the original with the same staples. I am most certain now that the second statement is not a part of the first statement and notice that the first statement I am referring to is signed separately from the second statement. They bear two separate and distinct attestation clauses.

CAPT. VANCE: As far as the staples are concerned, I received these papers in two big folders of about 12 inches and I stapled the papers myself. They are all one interrogation that occurred between certain dates. I intended to offer them all and if I did not, at this time, I wish to state to the Court that I intended to offer them all, the entire testimony of Marion Kaminski except those parts bordered in red pencil which were eliminated.

MR. RACHAEL: I have a motion addressed to the Court.

PRESIDENT: The objection is overruled and the motion to strike is overruled. Prosecution Exhibits numbered 74 to 89 inclusive will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 74 to 89, both inclusive for identification were received in evidence as Prosecution Exhibits 74 to 89, both inclusive, are attached hereto and made a part of the record.)

PRESIDENT: The Court will take a short recess in place.

(Thereupon the Court recessed in place.)

PRESIDENT: The Court will come to order.

CAPT. VANCE: By agreement between the Prosecution and the Defense it has been agreed that the reading of this long statement of the witness Marion Kazuski will not be read in the Korean language until tomorrow morning. Is that correct?

DEFENSE COUNSEL: That is correct.

PRESIDENT: That will be satisfactory to the Court.

CAPT. VANCE: Will the reporter please mark this document Prosecution Exhibit 90 for identification?

(Thereupon the document referred to was marked Prosecution Exhibit 90 for identification.)

CAPT. VANCE: If it please the Court, Prosecution offers in evidence a document which has been marked Prosecution Exhibit 90 for identification and is the testimony of the witness Michael S. Simmon, Special Agent, 7th Army, C.I.C., made at Augsburg, Germany, on the 27th of May 1945. We ask that this exhibit be received in evidence and made a part of the record.

MR. MACHAL: No objection.

PRESIDENT: Prosecution Exhibit 90 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 90 for identification was received in evidence as Prosecution Exhibit 90, is attached hereto and made a part of the record.)

CAPT. VANCE: Permission is requested to read Exhibit 90.

PRESIDENT: Permission granted.

CAPT. VANCE: If it please the Court, the rest of this case is going to be reading matter, do you wish to read them all in English and then have them all read in the Korean language at one time?

tn 64 IJ"I 3
121 80

PRESIDENT: The interpreter will read this exhibit after you read it in English.

(Thereupon the Prosecution read Prosecution Exhibit 90 followed by a translation into the German language by the interpreter.)

CAPT. VANCE: Will the reporter please mark this document Prosecution Exhibit 91 for identification.

(The document referred to was marked Prosecution Exhibit 91 for identification.)

CAPT. VANCE: If it please the Court, the Prosecution offers in evidence the testimony of Special Agent George A. Le Fevre, which has been marked Prosecution Exhibit 91 for identification. So that there cannot be any misunderstanding this interrogation appears to have been taken from the 23rd of May 1945 until the 27th of May 1945. We offer every bit of this testimony in evidence and ask that it be made a part of the record.

DR. KAUFMANN: In view of the fact that there is no misunderstanding now the Defense has no objection.

PRESIDENT: Prosecution Exhibit 91 will be received in evidence and made a part of the record.

(Thereupon the document heretofore marked Prosecution Exhibit 91 for identification, was received in evidence as Prosecution Exhibit 91, is attached hereto and made a part of the record.)

CAPT. VANCE: Permission is requested to read the exhibit.

PRESIDENT: Permission is granted.

(Thereupon Prosecution read Prosecution Exhibit 91 followed by a translation into the German language by the interpreter.)

PRESIDENT: Court will recess until 1:30 this afternoon.

(Thereupon the court at 1200 hours recessed until 1330 hours.)

Ta 65 1-21-47
SO pls

(Thereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the prosecution; all the defense except Colonel Lerman, who is absent on business of the defense; all the accused; the reporter and interpreter, are present.

May it please the court, there is a new interpreter to be sworn.

(Werner Otto Ingo Dilcats, German National, was sworn as court interpreter.)

CAPTAIN VANCE: I hand the reporter a document and ask that it be marked Prosecution Exhibit 92 for identification.

(The document referred to was marked Prosecution Exhibit 92 for identification.)

CAPTAIN VANCE: Now, if it please the court, the prosecution offers in evidence a Report of Burial by the 46th Quartermaster Grave Registration Company of the body of Ray F. Herrmann, Serial Number O-675168. This document has been marked Prosecution Exhibit 92 for identification, and I ask that it be accepted in evidence and made part of this record.

PRESIDENT: Any objections?

MAJOR SAXON: No objections.

PRESIDENT: Prosecution Exhibit No. 92 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 92 for identification was received in evidence as Prosecution Exhibit 92, is attached hereto and made a part of the record.)

CAPTAIN VANCE: If it please the court, I don't think it is necessary to read this standard form showing the body was moved from Bensheim civilian cemetery to U. S. Military Cemetery at Bensheim.

PRESIDENT: The reading will be dispensed with.

Ta 65 1-21-47
GO pls

CAPTAIN VANCE: I hand the reporter seven documents and ask that they be marked for identification.

(The documents referred to were marked Prosecution Exhibits 93, 94, 95, 96, 97, 98 and 99 for Identification.)

crd Ta 65
Butler file

MR. RACHAEL: If the Court please, on the question of probative value I wish the Court would give to the statement of George A. LeFevre, the Defense would like to advise the Court that the statement is not signed by the person making the statement.

CAPTAIN VANCE: I would like to call the Court's attention to these exhibits that we have eliminated the formal part of them. They were all sworn before the testimony was given.

LAW MEMBER: It is not signed?

CAPTAIN VANCE: No, sir, none of them are signed--not just this one.

PRESIDENT: The court will take cognisance of that fact.

CAPTAIN VANCE: May it please the Court, the Prosecution has had marked for identification as Prosecution's Exhibit 93 the testimony of Major Leo V. Bishop of the 45th Division Headquarters, G-2, APO 45, U. S. Army, which testimony is sworn to. We ask that this document be given number P-93 , be received in evidence and made a part of this record.

PRESIDENT: Any objections by the Defense?

MR. RACHAEL: No objections.

PRESIDENT: Prosecution's Exhibit 93 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 93 for identification was received in evidence as Prosecution Exhibit 93, is attached hereto and made a part of the record.)

CAPTAIN VANCE: I ask permission to read this document.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution Exhibit 93, followed by a translation into the German language by the interpreter.)

CAPTAIN VANCE: Now, if it please the Court, the documents which Major Bishop identified have now been marked for identification in this case as Prosecution's Exhibits 94 through 99. Prosecution's Exhibit 94 for identification was marked Exhibit "Birschner 6". This is a registration certificate where William Howard Forman registered for the draft on 21 October, but I can't read the year. The exhibit which was marked exhibit "Wimmer 2" is now marked Prosecution's Exhibit 95 for identification, which is the immunization register of Robert MacDonald. The exhibit which was marked exhibit "Wimmer 1" is now marked Prosecution's Exhibit 96 for identification. This is a pay data status book of Robert T. MacDonald, serial number 32 773 939. The exhibit which was exhibit "Birschner 8" has been marked Prosecution's Exhibit 97 for identification, which is an officer's pay data card of Second Lieutenant William H. Forman. The instrument which was marked originally exhibit "Birschner Number 4" has now been given the number Prosecution's Exhibit 98 for identification. This document is an immunization register of William H. Forman. The photograph which was originally marked as "Birschner 1" has now been given the number Prosecution's Exhibit 99 for identification. This is a photograph of the two bodies that were exhumed in the yard

of the Gestapo building. We now offer these exhibits bearing identification numbers from 94 through 99, inclusive, in evidence and ask that they be accepted and made a part of this record.

PRESIDENT: Any objections by the Defense?

MR. RACHAEL: No objections.

PRESIDENT: Prosecution's Exhibits 94 through 99 will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 94 through 99, inclusive, were received in evidence as Prosecution Exhibits 94 through 99, inclusive, are attached hereto and made a part of the record.)

CAPTAIN VANCE: I hand the reporter three documents and request that they be marked Prosecution's Exhibits 100, 101 and 102, respectively, for identification.

(The documents referred to were marked Prosecution Exhibits 100, 101 and 102, respectively, for identification.)

CAPTAIN VANCE: May it please the Court, the Prosecution has a document here which has been marked Prosecution's Exhibit 100 for identification. This is the sworn testimony of Major Charles P. Larson taken at Darmstadt, Germany on 19 April 1945. We offer this document in evidence and ask that it be accepted and made a part of the record.

PRESIDENT: Any objections by the Defense?

MR. RACHAEL: No objections.

PRESIDENT: Prosecution's Exhibit 100 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 100 was received in evidence as Prosecution Exhibit 100, is attached hereto and made a part of the record.)

CAPTAIN VANCE: Shall I read the document at this time?

PRESIDENT: How long will it take?

CAPTAIN VANCE: Twenty minutes, probably.

PRESIDENT: The Court will recess for 30 minutes.

(Whereupon the Court recessed at 1455 hours.)

End ta 65, ps fols

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Colonel Berman and Dr. Rau, who are absent on business of the defense, all the accused, the reporter and interpreter are present.

CAPTAIN VANCE: At this time, we would like to read Prosecution Exhibit 100.

PRESIDENT: Proceed.

(Whereupon Captain Vance read Prosecution Exhibit 100.)

CAPTAIN VANCE: If the court please, prosecution offers in evidence an exhibit which has formerly been marked Exhibit K, which has now been given the number P-101 for identification. This exhibit is a piece of cloth taken from the shirt collar of one of the victims, as described by Major Larson. We ask that it be received in evidence and attached to the record of trial.

PRESIDENT: Any objection by the defense?

MR. MACHAEL: No objection.

PRESIDENT: Prosecution Exhibit 101 will be received in evidence and made a part of the record.

(The article heretofore marked Prosecution Exhibit 101 for identification was received in evidence as Prosecution Exhibit 101, is attached hereto, and made a part of the record.)

CAPTAIN VANCE: Prosecution has in its hand an instrument which has been called heretofore Exhibit L, which Major Larson testified about, and which has now been given Prosecution Exhibit 102 for identification. This exhibit is the bullet which Dr. Charles P. Larson testified that he extracted from the body of one of these victims, and which he testified he wrapped in cotton and placed in an envelope bearing the mark Exhibit L. We

offer this object in evidence and ask that it be accepted and attached to the record.

PRESIDENT: Any objection by the defense?

MR. RACHAEL: If the court please, we haven't seen it.

CAPTAIN VANCE: I haven't seen it either. I have no objection to the defense looking at it, if he would like to.

May it please the court, I would like for the record to show that this exhibit, Prosecution Exhibit 102 for identification, is being opened in open court by the defense counsel.

MR. RACHAEL: If the court please, the defense objects to the introduction of this into evidence on two grounds: one, it is not in the container which the Prosecution Exhibit P-100 says it was put into; and secondly, it is not as described in Prosecution Exhibit P-100.

CAPTAIN VANCE: I challenge the remark of the defense counsel and ask him to show the court on what he bases that statement.

MR. RACHAEL: If the court please, the bullet was supposed to have some lands and grooves. I don't see any on it.

CAPTAIN VANCE: Are you an expert?

MR. RACHAEL: I don't see any. If the court please, I was in the army myself, and I am familiar with lands and grooves on a bullet. I fail to see any on that.

CAPTAIN VANCE: I have no objection to defense counsel being sworn and taking the stand and testifying about this, but I object to him talking about it. He made the remark that it was not in the package which the doctor said he had put it in, which would insinuate that someone had removed it and put it in another package. I ask him for the basis of that statement.

MR. RACHAEL: If the court please, Prosecution Exhibit P-100 says, "The bullet is a metal jacketed lead type bullet, approximately 7.65 mm in diameter. It has six lands and six grooves and a right hand twist. The

lands measure approximately 1.2 mm in width. The depth of this cannot be measured without a micrometer." Prosecution Exhibit P-100 also says that the bullet had been placed in cotton wadding, inserted in a Kodak film container on which appear the words "Exhibit I." That is not a Kodak film container. That is an envelope.

PRESIDENT: Will you pass the wrappings, all of them, to the court?

Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

The court finds that the bullet is as described. However, the wrapping is not as described. Objection sustained.

CAPTAIN VANCE: May it please the court, the ruling is not clear to me. Was the document refused or received?

MAJOR SAXON: The objection was only directed, you know, to the exhibit in question; that is, the bullet. That is what I understand the court is sustaining.

CAPTAIN VANCE: That is, the bullet will not be accepted in evidence?

PRESIDENT: The bullet will not be accepted in evidence.

MR. RACHAEL: If the court please, at this time the defense moves to strike from the record Prosecution Exhibit P-100, on the ground that it is incomplete.

PRESIDENT: Motion overruled.

(Whereupon Prosecution Exhibit 100 was translated into the German language by the court interpreter.)

CAPTAIN VANCE: I hand the reporter two documents, and request they be marked Prosecution Exhibits 103 and 103-A for identification.

(The documents referred to were marked Prosecution Exhibits 103 and 103-A for identification.)

CAPTAIN VANCE: May it please the court, I have a document which

has been marked Prosecution Exhibit 103 for identification. This is a signed sworn statement of the accused Franz Karl Stattmann, made at Wiesbaden, Germany, on the 17th of October, 1946. I have a document which has been marked Prosecution Exhibit 103-A for identification, which is a true and correct translation of the German into the English language. I offer both of these documents in evidence, and ask that they be accepted and made a part of the record.

PRESIDENT: Any objection by the defense?

MR. PACHAEL: The only objection we have, if the court please, is the objection on the ground that this accused's statement was sworn to, which right he will not have if and when he will take his place on the witness stand; on the ground that the statement itself would have more probative value than the witness himself would have if he takes the stand, due to the fact that it is sworn.

PRESIDENT: Anything further?

CAPTAIN VANCE: May it please the court, I would like to state that at the time this statement was made by the accused and these other accused, they were not accused. At that time they were witnesses in an interrogation which was going on, and all witnesses were sworn.

PRESIDENT: Objection overruled. Prosecution Exhibits 103 and 103-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 103 and 103-A for identification were received in evidence as Prosecution Exhibits 103 and 103-A, are attached hereto, and made a part of the record.)

CAPTAIN VANCE: I ask permission to read this exhibit to the court.

PRESIDENT: Permission granted.

(Whereupon Captain Vance read Prosecution Exhibit 103-A.)

MR. RACHAEL: If the court please, before the translation, I would like to move to strike the statement from the record on the ground

the stated Military Government Regulations, Title No. V, Legal and Penal Administration, Section 5-332, says that no witness shall be required to incriminate himself. There is no evidence whatsoever that the accused Stattman was advised of his rights not to make any statement that might incriminate himself, in view of the fact that the prosecution has stated that he was interrogated here as a witness.

CAPTAIN VANCE: I would like to call the court's attention to the last paragraph here which I have just read. That is all I care to say about the matter.

PRESIDENT: Court will adjourn until nine o'clock tomorrow morning.

(Whereupon the court recessed at 1655 hours.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

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.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194 .....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194 .....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13

Legal Form No. 8

MILITARY GOVERNMENT COURT

Court

CASE RECORD.

376 - 411, Inclusive

(8)

Case No. Superior Orders

Prosecutor Lt. Col. Dwinell

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Rudolph H. Schubert

Place DACHAU, GERMANY

Date 22 JANUARY 1947

Reporter Patricia Stewart, Irving Hayett, Cally Rose Hayett, Imogene Butler, John McDonald, Paula Silverman

~~Members of Court~~

WITNESSES:

✓ Peter Schrod

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *~~further~~ term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*~~Strike~~ out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES VERSUS JUPCEN STROOP, ET AL.

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

22 JANUARY 1947 Pages 376 - 411 Inc.

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COURT
PETER SCHROD	399	401			

EXHIBITS

No.	Description	Marked	Received in Evidence
P-104	Supplemental statement of Karl Franz Stattman	378	380
P-104A	English translation	379	380
P-105	Statement of Michael Paaf	381	382
P-105A	English translation	381	382
P-106	Statement of Heinz Hellenbroich and Michael Paaf	382	383
P-106A	English translation	382	383
P-107	Statement of Fritz Girke	384	387
P-107A	English translation	384	387
P-108	Photograph of police station	400	401
P-109	Map of Offenbach	405	

1-22-47;JGMcD;1

Dachau, Germany

22 January 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court except Colonel Bechtold, Colonel Pierce, and Colonel Robertson, who are excused by the appointing authority for this morning's session, all the members of the prosecution, all the members of the defense except Dr. Rau, who is absent on business of the defense, all of the accused, the reporter, and the interpreter, are present.

I believe that at the close of the session last evening there was an application by the defense pending before the court. The prosecution would like to be heard.

CAPTAIN VANCE: May it please the court, Prosecution Exhibit 103, which was a confession made by Franz Karl Stattman, was received in evidence. It was read in the English language, whereupon the defense made a motion to strike it on the ground that the accused was sworn at the time he made this statement and that at the present trial he will not be permitted to swear to his testimony and refute what is in there.

Now, back in October 1946, the court could determine that Stattman was a witness at that time during a regular investigation or else that he was an accused at that time. Either one is immaterial. I will not take the court's time to argue the question, but I will just call the court's

attention to the Manual for Trial of War Crimes and Related Cases, page 109, which goes into the rights of a witness. It discusses the privilege of a witness not to incriminate himself, and then it says this: "These privileges are personal to a witness, and except when claimed by the witness are not allowed." If this man was a witness at that time he did not claim any privileges against self-incrimination, but, on the contrary, he said that the statement made was the whole truth, "confirmed under oath by my signature. I have made these statements without duress or any promises of favors. They represent the most complete and whole truth." It was a voluntary statement on his part.

He definitely was not an accused at that time, but suppose the court says that he was a prospective accused at that time. Then the guide says that an accused has no privilege against self-incrimination and will not be warned of his rights.

PRESIDENT: The motion before the court is apparently based on the theory that the accused is being required to testify if his sworn statement made previous to his being accused is received in evidence. The court does not regard the receiving in evidence of the accused's statement as requiring the accused to testify, and section 5-332, Title 5, Military Government Regulations, cited by the defense, is not applicable. The written statement placed in evidence by the prosecution is regarded by the court as an admission against interest, and the contents of the statement itself show the statement was voluntarily made and accused need not have been

cautioned that his statement might be used against him. Even if the statement were regarded as a confession, it would be extra-judicial and admissible under the rule.

Motion of the defendant is overruled.

CAPTAIN VANCE: May it please the court, at yesterday's session Prosecution Exhibit 73, which was the testimony of Marion Kaminski, was introduced in evidence, received by the court, and read in English. It was not read in German at that time, and we ask that it be read in German at this time.

PRESIDENT: Proceed with the reading.

(Whereupon Prosecution Exhibit 73, statement of Marion Kaminski, was read in the German language by the interpreter.)

PRESIDENT: The court will recess for 15 minutes.

(Whereupon at 1015 hours the court recessed until 1030 hours.)

(Whereupon court reconvened at 1050 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, except the three officers who were excused this morning, are present, all the members of the prosecution, all the members of the defense, except Dr. Rau, who is absent on business of the defense, all the accused, the reporter and interpreter are present.

CAPTAIN WARDE: If it please the court, at yesterday's session prosecution exhibits 103 and 103-A were received in evidence. They are the statement of Franz Karl Stattman and the English translation. The English was read but the German was not read at that time. We ask that it be read.

PRESIDENT: The German translation will be read.

(Whereupon the interpreter read Prosecution Exhibit 103, the statement of Franz Karl Stattman, in the German language.)

CAPTAIN WARDE: Will you mark these Prosecution Exhibits 101 and 104-A, please?

(The documents referred to were marked Prosecution Exhibits 104 and 104-A for identification.)

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that Colonel Wechtold, Colonel Pierce and Colonel Robertson, who were excused from the morning session have resumed their places with the court. I would also like the record to show and note that during the absence of these court members the only matters that transpired were the reading of two German statements that were previously received in evidence.

MR. RACHAEL: At this time the defense moves to strike prosecution exhibit P-103 from the record. The statement of Stattman, which is prosecution exhibit P-103, offered and received in evidence, is not the complete statement of Stattman. I have here a supplement to that statement signed by Stattman which was not offered by the prosecution. It is the contention of the defense that these statements must be offered in their entirety and not in part.

CAPTAIN VANCE: In answer to the defense, the prosecution is holding that supplemental statement in his hand and is offering it right at this time.

PRESIDENT: The motion to strike is overruled.

CAPTAIN VANCE: Prosecution offers in evidence a document which purports to be a statement written by the accused Franz Karl Stattman in his own handwriting in longhand, made in Wiesbaden on the 25th day of October, 1946, which statement is also written in German on a typewriter and signed by this accused Franz Karl Stattman. This document has been marked prosecution exhibit 104 for identification. Prosecution also offers in evidence a correct English translation which has been marked prosecution exhibit 104-A for identification. We offer both of these documents in evidence and ask that they be received and made a part of this record.

MR. RACHAEL: The defense objects to this on the ground that the statement which the prosecution is now offering is part and parcel and cannot be separated from prosecution exhibit P-103 and it is respectively submitted to the court that the record will show cumulative exhibits which do not exist in fact against the defendants.

PRESIDENT: Objection is overruled. Prosecution exhibits numbers 104 and 104-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits P-104 and P-104-A for identification were received in evidence as Prosecution Exhibits P-104 and P-104-A, are attached hereto, and made a part of the record.)

CAPTAIN VANCE: Prosecution asks permission to read this document.

PRESIDENT: Permission granted.

(Thereupon Captain Vance read Prosecution Exhibit No. 104-A, followed by a reading of Prosecution Exhibit No. 104 in the German language by the interpreter.)

MR. RACHAEL: If the court please, the defense would like to move the court to strike Prosecution Exhibit P-104 from the record on the ground that it refers to the execution of a "Worms flier", a crime which is not part and parcel of either Charge 6 or Charge 10 and will prejudice the minds of the court against the accused in that it brings into effect an additional, or rather, a crime which is not part of this case.

CAPTAIN VANCE: If it please the court, that is the most ridiculous motion I have ever heard made before a court. If defense counsel has been listening to the prosecution witness on the stand he has heard them testify that this flier was brought from Worms.

MR. RACHAEL: If the court would listen to the prosecution's exhibit made by Kaminski the court would have known that Kaminski referred to six fliers.

PRESIDENT: The argument will stop. The objection to strike Prosecution Exhibit P-104 is overruled.

CAPTAIN VANCE: Will you mark these documents Prosecution Exhibits 105 and 105-A for identification?

(The documents referred to were marked Prosecution Exhibits 105 and 105-A for identification.)

CAPTAIN VANCE: If the court please, the prosecution offers in evidence a statement by the accused Michael Raaf made in Wiesbaden on 1 November 1945. This statement is written in the handwriting of

the accused and signed by him and has been marked Prosecution Exhibit P-105 for identification. Prosecution also offers in evidence the English translation of this statement, which has been marked Prosecution Exhibit P-105-A. We ask that both of these exhibits be accepted and made a part of the record.

MR. PACHAR: The defense objects for the same reason as that stated to Prosecution Exhibit P-103, the statement of Franz Karl Stattman.

PRESIDENT: The objection is overruled. Prosecution Exhibits Numbers P-105 and P-105-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 105 and 105-A for identification were received in evidence as Prosecution Exhibits 105 and 105-A, are attached hereto, and made a part of the record.)

CAPTAIN VANCE: Prosecution asks permission to read this document.

PRESIDENT: Permission granted.

(Whereupon Captain Vance read Prosecution Exhibit 105-A, followed by a reading of Prosecution Exhibit 105 in the German language by the interpreter.)

CAPTAIN VANCE: Will you mark these documents Prosecution Exhibits P-106 and P-106-A for identification?

(The documents referred to were marked Prosecution Exhibits 106 and 106-A for identification.)

CAPTAIN VANCE: May it please the court, prosecution offers a statement dated 30 August 1946, Dachau. This statement is signed by both the accused Michael Maaf and the accused Heinz Hellenbroich. It is written in the German language and signed by these people. This exhibit has been marked Prosecution Exhibit P-106 for identification, which we offer in evidence. Prosecution also offers in evidence a

document which is a correct English translation of this document, which has been marked Prosecution Exhibit P-106-A for identification. We ask the court to receive these documents in evidence and that they be made a part of the record.

MR. BACHAM: The defense objects for the same reasons as stated for Prosecution Exhibit P-103, the statement of Stattman.

PRESIDENT: The objection is overruled. Prosecution Exhibits 106 and 106-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 106 and 106-A for identification were received in evidence as Prosecution Exhibits 106 and 106-A, are attached hereto, and made a part of the record.).

CAPTAIN VANCE: Prosecution asks permission to read this document.

PRESIDENT: Permission granted.

(Whereupon Captain Vance read Prosecution Exhibit 106-A.)

PRESIDENT: Court will recess until one-thirty.

(Whereupon at 1150 hours the court recessed until 1330 hours.)

AFTERNOON SESSION

(Whereupon court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and interpreter are present.

(Whereupon the interpreter read Prosecution Exhibit 106 in the German language.)

CAPTAIN VANCE: Will you mark these documents Prosecution Exhibits 107 and 107-A for identification?

(The documents referred to were marked Prosecution Exhibits 107 and 107-A for identification.)

CAPTAIN VANCE: If it please the court, the prosecution now offers a sworn statement of the accused Richard Fritz Oirke, which is written in the German language and is signed by this accused, which has been marked Prosecution Exhibit 107 for identification. Prosecution also offers another document which is a true and correct translation from German into the English language, which has been marked Prosecution Exhibit 107-A for identification. We ask that both of these documents be received in evidence and be made a part of the record.

MR. MACFAIL: Defense objects to the statement, if the court please, on the ground that this statement was made on 12 December 1946, subsequent to 3 December 1946, the date of the charges in this case, when it was very well known that Fritz Oirke was a defendant. The statement is sworn to and I respectfully submit that under the rules of evidence, sworn statements of an accused may not be received by this court.

CAPTAIN VANCE: I would like to call the court's attention to the fact that the charges were served on the accused on the 11th day of December 1946. The original charge sheets are in evidence.

MR. RACHAEL: If the court please, at the time the statement of Stattman was introduced into evidence the prosecution put forth the argument that in October Stattman was a witness and was examined as such. They are now blowing hot and cold that on the 3rd of December 1946 Girke was named as a defendant, he was not a witness.

PRESIDENT: Court will recess in place.

(Thereupon the court recessed in place.)

PRESIDENT: Court will come to order.

CAPTAIN WINCE: If it please the court, it is an elementary principle of law that a man becomes an accused, I haven't the authorities here with me but I think the defense counsel will bear me out, when he is served with process. These charges, as shown by the charge sheet, were served the 14th day of December. This statement of confession was obtained on the 12th. We will go farther than that to state that even if this statement had been obtained since the beginning of this trial, no error was committed. Suppose one accused wanted to take the stand and confess. Would you say the court would not take his confession? Even if any of these accused decide to make a confession at this time it would become a judicial confession which would be stronger than extra judicial confession made prior to the date of service or prior to the date trial commenced. In either case, this document is admissible because in the document the accused says he made it himself, voluntarily, without any coercion or any force. We say it is admissible.

DEFENSE COUNSEL: I should like to add just a brief word. What an accused does in open court, having been warned by the court as to the consequences of taking the stand, is a totally different matter. Frankly, I am surprised it was advanced as an argument for the admission of this particular statement. If an arbitrary date upon which papers are served is the controlling issue, then the prosecution could extend at its will, the power to continually examine prospective, using the word advisedly, accused, and continue to get statements from them ad infinitum. It seems to us that the decisive date is when the government has determined that certain people will go to trial on certain specified charges. In support of the motion made by my associate, I will ascertain

to the court and will prove it by evidence, if the court deems it advisable, that on the 12th of December and for some time prior thereto, the personnel of the prosecution in this case knew who the defendants were going to be in this case and what the charges were, and we ask the judgment of the court.

PROSECUTION: May it please the court, the prosecution has one more statement. The defense cannot read into the mind of the government or the prosecution their intentions until those intentions are carried out by the indictment. Conceivably it has been done many times -- the district attorney or prosecutor for the government, the very moment before the charges were served, withdrew the name of an accused from the charge sheet. If I, as prosecutor, sit in my office and draw up a list of defendants, that does not make them accused. Only when the government carries that act out by service of the process does that event take place.

PRESIDENT: Objection is overruled. Prosecution Exhibits No. 107 and 107A will be accepted in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 107 and 107A for identification were received in evidence as Prosecution Exhibits No. 107 and 107A, are attached hereto, and made a part of the record.)

CAPTAIN VANCE: I ask permission to read Prosecution Exhibit 107.

PRESIDENT: Permission is granted.

(Thereupon the prosecution read Prosecution Exhibit 107A followed by a reading of Prosecution Exhibit 107 by the interpreter in the German language.)

CAPTAIN VANCE: That concludes the evidence to be presented in support of Charges VI and X.

BRIGADIER GENERAL: May it please the court, the rapid approach of the main part of the prosecution's case as evidenced by the fact that there

remain only three charges, brings to the fore two questions, both of which are known to the prosecution, concerning which the defense now requests the judgment of the court. I should like permission to bring them now to the court's attention.

PRESIDENT: Proceed.

DEFENSE COUNSEL: One of these has to do with the witnesses the defense desires. The court may remember, and I shan't take the time now to refer to the recess in the record, that when the first witnesses for the prosecution appeared, the defense attempted to cross examine them on matters outside the scope of direct examination and was stopped from so doing by objection of the prosecution which was sustained by the court. The defense then made the point that if we were allowed to cross examine them while they were here on the witness stand, that much time and effort would be saved if that procedure were adopted rather than bring them back and put them on the stand. However, since that procedure was overruled in one or two cases, the defense adopted the witness as a defense witness and proceeded to examine him. This was also stopped on objection by the prosecution as an interference with the orderly presentation of their case and that objection was sustained by the court.

As a result, an agreement was entered into between the prosecution and defense and approved by the court, whereby the prosecution undertook to produce for the defense, prosecution witnesses on forty-eight hours notice by the defense. This morning, actions showing that the prosecution's main case was coming to an end, I gave or caused to be given to Colonel Darnall, a list of witnesses, prosecution witnesses, which the defense wanted for the conduct of the case by the defense. That list was not an accurate list, not a good list, because it included names of personnel who had been excused from appearing before this court. For instance, those who were in America. However, I now have a revised list, consisting

of twenty-nine names of people who have actually appeared in court testifying for the prosecution. I think perhaps from that list must be stricken one or two names of people whom I was allowed to cross examine at the very early stages of the trial. For instance, the man who was excused because he had severe abdominal complaints of some kind. However, this is the point, I am not going to attempt to quote the prosecution except to state the problem on my mind and I prefer Colonel Dwinell to speak for himself.

It appears that the prosecution does not feel it is bound in any way by the agreement which we made in court to produce these witnesses. Apparently, administrative procedure requires that a formal requisition be made for these witnesses which I have completed and I am perfectly willing to sign and put into the Office of the Administration and have these witnesses processed in that way. However, there is another question beyond the question of administrative procedure. I don't quite understand it so I prefer to have Colonel Dwinell, as I have said, speak for himself. There has been some talk made to me about Colonel Dwinell's position, either by himself or a position which he states the prosecution is taking, and that is in connection with the list. Assuming the defense assumes the burden of getting these witnesses, with the list of witnesses I am required to furnish a brief statement as to what I expect to prove by these witnesses. In other words, there seems to be some kind of burden thrust upon the defense to show it is not engaging upon a fishing expedition in bringing these witnesses. I am simply stating this to the court and ask the court to define the right of the witnesses with respect to those who have testified, when they asked to be excused and were told "no" and who were held here. All these people have been here and gone home. I'd

like to add this -- that I can say definitely, upon inquiry by the court, or anybody else, that the sum total of the type of evidence I hope to get from these witnesses is the legal basis of the defense which we are going to put in, but I can't tell, for instance, if John Doe is going to give me the evidence to substantiate that defense because I haven't had a chance to ask him. And so to that extent it might be said that if you are going to deny it thirty people in the hope that ten or fifteen might help you, there is nothing else we can do about it.

One further point and I am through. It will be obvious to the court that when a man testifies on the stand certain things are elicited to counsel by way of defense or possible defense, which I couldn't ask him because it was outside the direct examination and if I had to sit here and tell somebody now what those things are now, I couldn't do so to save my soul. In order to be more particular we have to go through the entire record in order to refresh my own recollection as to what I had in my own mind. I pray the indulgence of the court and I'd like to have Colonel Purnell state the position of the prosecution's side on that.

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PROSECUTION: The Prosecution has no objection to whatever this present application might be. I am bound by my stipulations, as far as it's possible to carry them out. It is my intention to use the apprehension team of the Prosecution's section to recall to Dachau the witnesses that the Defense desires, and I discover now; and I have been told by the Chief of the Dachau Detachment that I went beyond the scope of my authority in making that stipulation. I was reminded that that was the function of the Counsel Section here and certain security rules had been made requiring the Defense as well as the Prosecution to fill out certain forms in quadruplicate and submit them through the Chief Counsel's Investigations Office, and then the matter will be processed in the normal way. I certainly will do everything I can to expedite that; and, as a matter of fact, I took the Defense list and furnished him with the addresses of the witnesses that I knew, and will stand ready to do anything else that can be done to expedite the matter. Apparently it is the policy of the Counsel Section to ask the Defense whether or not he is going on a fishing expedition or whether he has some affirmative defense of some kind or other for which he needs those witnesses. It was not the intention, I am sure, of the Counsel Section, to ask the Defense to disclose their case. The Defense says that "we have an affirmative defense of reprisal"--that is apparently all they need to know.

DEFENSE COUNSEL: If, may it please the Court, all we need to do is to submit this list which is prepared

and sign it by myself with a statement that these people are wanted by the Defense in preparation of their case, I make no further issue of the matter at this time, but my impression was that I had to particularize what I wanted each witness for, and that I couldn't do.

PROSECUTION: May I suggest to the Court that it might solve the problem if the Defense will submit this list saying this witness is needed for an affirmative defense in connection with certain charges--one, two or three, or whatever it may be.

PRESIDENT: The Court will recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: The Court will come to order.

DEFENSE COUNSEL: I should like to add as a final statement, may it please the Court, that the Defense has no wish, if it can avoid it, to take advantage of the position the Prosecution finds itself in; and, in the attempt to cooperate with the Prosecution in carrying out the stipulation which was made in open Court, the Defense will present a formal request for the 29 witnesses we want, signed by the Defense Counsel, and will accompany that request with a signed statement, which I will quote: "These witnesses are needed in the affirmative defense of one or more of the accused in one or more of the charges." We will do that with the understanding that if any question should arise we will come back to the Court and ask the Court to exercise the power inherent in the Court, that these witnesses

be ordered here by the Court itself.

PRESIDENT: The Court will recess for 30 minutes.

(Whereupon at 1455 hours the court recessed.)

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(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and interpreter are present.

PRESIDENT: The court appreciates that both the prosecution and the defense have acted in good faith in this entire matter, and the stipulations were made for the purpose of expediting the trial, which was approved of by the court. The court desires that every effort be made to secure the necessary witnesses in order that the accused will have ample opportunity to make their defense.

DEFENSE COUNSEL: May it please the court, now I would like to bring up the second matter. It is one that normally we would make at the end of the prosecution's case. It has to do with a continuance by the defense for the preparation of the defense. I am making it now at the suggestion of the Executive Officer of the Dachau Detachment.

In preparing our case, we have, for instance, a witness known to the prosecution who is ill in Nuernberg, and whose appearance here cannot be expected for a number of weeks, so if the mountain won't come to Mahomet, Mahomet will go to the mountain. We have asked for orders to cover that and other cases, including a trip by Major Saxon to Berlin. It appears for some reason unknown to me that in making the necessary request for Major Saxon to visit Berlin, it is a matter of importance for the executive side of the detachment to know how long a continuance, if any, will be granted by the court, and that is the reason I am making it now instead of waiting for the normal time. When the prosecution's main case is over, the defense intended at that time to ask for a continuance of two weeks. It asks for that continuance now, in anticipation of the time when the prosecution's main case will be over.

I suppose it is unnecessary for the defense to assure the court, and will let its actions speak for itself, or for themselves, that they have tried in every way to expedite the trial of this case. But I will give the court our assurance that in asking for two weeks we did not follow the usual practice of lawyers in trying to settle an accident case by putting up two weeks as an asking figure. We talked it over very seriously among ourselves, and two weeks is the figure we think we need as the minimum. I should like to take just a few moments to indicate to the court the problems we face, to substantiate our request.

In mentioning dates and times, we have no desire to make a comparison between the time the prosecution has had to prepare its case and the time the defense has had to prepare its defense, because normally prosecution always has more time than defense. The charges in this case were served on the accused on Saturday, December 14th, which was the first time that any member of the defense knew whom the accused were going to be or the nature of the charges. We went to trial January 10th, not because we thought we were ready at that time, because the defense stated it was not, but because we were told that that was the day set and the date upon which the trial would have to start. I do not say that by way of criticism, or for any reason whatsoever except by way of clarification of our position. We thought that we could prepare our case in part, at least, from day to day as the prosecution case went in, and that we have tried to do. Unfortunately, from that objective, the prosecution's case has gone much faster, I think, than either side anticipated.

I think I may properly remind the court that the defense is not permitted to interrogate witnesses who are prosecution witnesses, even though some of them are likewise defense witnesses. It so happens that some of the most important defense witnesses are also prosecution witnesses, and they have not even been called yet, so that our opportunity to examine

the prosecution witnesses who have already appeared here whom we want to investigate presents a problem with which, of course, the court is familiar, since we have just been talking about these things. One of the first things we did, of course, was to ask the accused in the very first days that we had the case whom they desired as witnesses. They gave us a list of witnesses whom we asked for, and many of whom we have already interviewed. However, the court will understand that as the case goes on, other witnesses, important witnesses, suggest themselves directly to the accused or to counsel themselves, not the names of the witnesses, but certain categories of witnesses. These, as they have suggested themselves, or as they have come to the minds of the accused, have already been requested. However, very few of them have been examined or interrogated by counsel.

We also ran into the problem of the fact that the Christmas season came in during the period we had for defense, and we found it practically impossible to procure the help of any German counsel, since none of them wanted to work during the Christmas season, which is quite lengthy with them, so that the assistance which we got from the German counsel became effective by their presence in Dachau the third or fourth, even the fifth or sixth of January.

There is just one other matter that would normally consume perhaps a day, which we would have to do anyway, and that is to present to the court at the end of the prosecution's case certain motions which we had in mind to present at that time. My first plan was to ask for a day in which to prepare these motions for presentation, and then to ask for the continuance after the motions had been presented. My present plan is to take advantage of such continuance as the court may give us to give a more adequate preparation to these motions which we have in mind to present, and to present them the first thing at the end of the continuance as may be granted to us. That, also, is a time-consuming proposition. Some of these motions will be quite lengthy, since it will involve a reference to certain

types of evidence which has come into the case from time to time. These we had planned, of course, and intended to reduce to writing so that they may be presented to the prosecution and to the Law Member of the court prior to the reconvening of the court.

There is also -- and this is final -- the fact that we have to re-examine all these accused now in the light of these statements and the evidence which has come in, which will take us a couple of days to do. I want to thank the court for listening to me, and I think I have presented our situation sufficiently fully to warrant a decision by the court.

Now, it occurred to me, and I so indicated to Colonel Doherty, that the court might be reluctant to commit itself at this time as to what it might do when the prosecution's case is over tomorrow, or the day after, or the day after that, and he suggested that if the court were unwilling to commit itself or to consider and make a final decision now and wanted to wait until prosecution's case was over, that perhaps the court might be willing to give some indication of what it might be willing to do, for his benefit in processing Major Saxon's request to go to Berlin.

PROSECUTION: The prosecution desires to inform the court that it is definitely desirous of being fair to the accused, but to help the court in making a decision in this matter, we would like to point out the following: We have given, and promptly gave, to the defense counsel a synopsis of the expected testimony of all of our prosecution witnesses. That was done in a timely manner. We received the case analysis from War Crimes headquarters on or about the sixth of December. We studied the case, and then served the accused on the fourteenth of December. Thereafter, we made photostatic copies of all confessions and other pertinent documents and served two copies of each of those that were to be offered in evidence on the 17th, 20th, 23rd and 27th of December, comprising the bulk of those documents.

Furthermore, we would like to remind the court that the rule

works both ways, that we have also been restricted, and will be restricted, from interrogating any of the defense witnesses until their case is completed. I think that the prosecution, in having from the sixth of December to the tenth of January, shortly over one month, has had very little more than has been made available to the defense. We therefore ask the court to take these matters into consideration, and believe it would still be fair to the accused if no more than seven days be permitted for an adjournment. If the motions papers will be prepared in writing, and I assume they will be by the defense, for movement of the defense to dismiss, or whatever other motions they have, we ask the court to direct that they give us a reasonable time to study their motion papers and give us copies at least two days in advance.

DEFENSE COUNSEL: May I add just one statement? The defense takes no exception to any statement of fact just made by the prosecution as to timely giving us the papers, etc. I have no doubt they gave them to us as fast as they could, and it was done reasonably and seasonably by them. However, I think the comparison of the time they had to prepare their case with the time we had to prepare ours is slightly out of line. I said that they were entitled to have more time than we had, and I meant that, but gossip says that higher authority was working on this case for one solid year before they sent it down here for trial. It is one thing for us to build a defense ab initio, from the very rock bottom than to present a case where statements are prepared by people in the field and lawyers, etc., etc.

PRESIDENT: Court will be closed.

(Whereupon the court was closed at 1550 hours.)

(Whereupon the court was opened at 1610 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter, and the interpreter are present.

PRESIDENT: On the application of the defense, the court will grant a continuance at the conclusion of the prosecution's case of eight days, exclusive of Sunday.

PROSECUTION: May it please the court, the prosecution will now offer evidence principally in support of Charge VII. The court is again reminded that throughout the balance of the case there will be evidence submitted from time to time in support of Charges I and II. Call the witness Peter Schrod.

PETER SCHROD, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q State your full name.

A Peter Schrod.

Q Where do you live?

A Offenbach-Bieber, Maurerfeld Street 13.

Q How old are you?

A Thirty-four.

Q During World War II were you a member of the German Army?

A Yes.

Q Were you ever a member of the SS?

A No.

Q Directing your attention to the month of February 1945, what rank did you hold in the army?

A I was corporal.

Q In February 1945, what were your duties and where were you stationed?

A I was on furlough in Bieber.

Q To what organization in the army did you belong?

A I was a member of the mountain riflemen--driver.

Q Directing your attention again to the month of February 1945, do you remember anything unusual happening in Bieber concerning an American flyer?

A End of February 1945 an American pilot was brought to the police station at Bieber.

(Prosecution Exhibit 108 was marked for identification.)

Q I show you a photograph which has been marked for identification as Prosecution Exhibit 108 and ask you to look at it and tell me what that is a picture of?

A That is the police station in Bieber.

Q Is that the police station that you were talking about?

A Yes.

Q How far from this police station do you live?

A I live across the street.

PROSECUTION: I offer in evidence a photograph which has been marked Prosecution Exhibit 108 for identification, and ask that it be received in evidence and marked Exhibit 108 and made a part of the record.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 108 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 108 for identification was received in evidence as Prosecution Exhibit 108, is attached hereto, and made a part of the record.)

QUESTIONS BY PROSECUTION:

Q You say a flyer was brought to the police station. Continue and tell the court what happened.

A There were many children--a great crowd. Afterwards a passenger car arrived.

Q When you say there were many children and a great crowd, where did this take place?

A On the street.

Q Was that anywhere near the police station?

A Yes.

Q How near the police station?

A On the street in front of the police station. On the other side is the pharmacy.

Q What is the name of the street on which the police station is located?

A That is the Maurerfeld Street.

Q Now, you say that referring to some day in February 1945. Was it the beginning or the end of February?

A End of February.

Q About what time of the day?

A I can't say that. In the afternoon.

Q Continue with the story.

A Out of this passenger car I saw come out a tall man in a brown overcoat. Somebody else was with him. I don't know who it was.

Q What did you do?

A I saw all this from my window. Then the car disappeared. It drove away. Then a short while later you heard a noise and calls "the flier will be shot."

Q Where did that take place?

A On the street.

Q Then what happened?

A Then the pilot was taken away. I don't know where. I was in my apartment. My conscience bothered me, because we didn't know any orders like this on the front.

Q Whom are you referring to as "we"?

A No, I mean the front soldiers.

Q Then what happened?

A I went on my bicycle and looked where they went. First I went in the wrong direction. Then children informed me through the field to the woods.

Q Before that had you had an opportunity to observe the flyer?

A No. I saw him only when he was brought to the police station.

Q When he was brought to the police station did you have an opportunity to observe him?

A No. He was inside of the police station.

Q Continue with your story.

A When I arrived at the forest, at a pass which led through the forest where formerly a little railroad was running from a gravel pit. There I saw on this pass, inside the forest, the pilot, two policemen, and one first lieutenant.

I came up to the first lieutenant. I asked him where he wanted to go with this man. He told me to a prisoner camp. Then I told him, approximately with these words, "You can't tell me that. You can't fool me. He is going to be shot." Then I heard a shot was fired which came out of a heavy machine. I threw my bicycle on the ground and ran approximately 30-40 meters into the woods. There I saw only that the pilot was dead. He didn't move anymore. I left the woods again, took my bicycle, went on my bicycle and rode away. Then the first lieutenant called me, "Come here", or something like that. I couldn't understand him very clearly. I called back, "We don't have to say anything to each other." Whether he heard it or understood me, I can't tell you.

Q At any time did you notice whether or not the pilot was armed?

A I didn't bother with the whole matter anymore. I couldn't do anything about it. The man was dead, and I, as a member of the armed forces, if Albrecht would have reported me it could have caused my head.

Q The two policemen and the first lieutenant that you referred to, would you recognize that first lieutenant if you saw him again?

A The first lieutenant? Yes.

Q Take a look around the courtroom and see if he is here.

A Yes.

Q If so, point him out.

A Yes (indicating).

(Cross - Direct)

Q What number?

A Number 8.

PROSECUTION: Let the record show that the witness identified the accused Albrecht, No. 8.

QUESTIONS BY PROSECUTION:

Q Would you recognize either of the two policemen that you referred to if you saw them again?

A One of them had a steel helmet. I didn't recognize it. A steel helmet. One just looked like the other. I don't know them.

PROSECUTION: No further questions.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q How big a community is Bieber? As well as you know?

A Approximately 7,000.

Q How many people would you estimate were in the crowd in front of the police station?

A You can say approximately 100. Including children.

Q I call your attention to Prosecution Exhibit 108. Is that police station on a corner or is it in the middle of a block?

A That is a corner.

Q Is there a street in the back of it?

A There you can see the street (indicating). In this direction and in the direction where the car was standing.

DEFENSE COUNSEL: Let the record show that he is pointing in the first instance to a street which appears in the picture itself, and to a street which can be seen on the right-hand side of the picture with an automobile shown in it.

Q Which is the front of the police station--the entrance?

A The entrance was right on the corner.

Q Does that police station border yet on still a third street?

A From one--from two sides this street is running through.

DEFENSE COUNSEL: Let the record show he is still pointing to the street in front of the police station.

QUESTIONS BY DEFENSE COUNSEL:

Q My question is: Is there also a third street which borders on the police station or the grounds belonging to the police station?

A Up here another street is ending here (indicating). Goes up to the garden. But this is not here. This is on the adjoining grounds of another property.

Q Does that garden belong to the police station or does it belong to another piece of property?

A This garden belongs to the police station.

Q So that the police station is bordered on three sides by a street; is that correct? Counting the garden as a part of the police station?

A Another one is running in there.

Q This crowd that you say was gathered near the police station, was that crowd on one street or was the crowd on more than one street?

A I didn't count them. After two years I can't say it exactly anymore. I was in my apartment, in the tavern, respectively.

PROSECUTION: May I interrupt for a moment?

(Prosecution Exhibit 109 was marked for identification.)

[illegible]: I did not intend to put this chart up so soon but did so only for the convenience of the people working around here today. That chart is not for charge number seven, that chart is for charge number eight which will follow charge number seven.

QUESTIONS BY DEFENSE COUNSEL:

Q Was the crowd there when the pilot was brought to the police station?

A Many children were already following when the pilot was brought out of the forest by the civilian.

Q Were there any adults among the children?

A Yes. You saw also a few adults.

Q How soon after the pilot reached the station did more adults arrive?

A I cannot, after such a long time, recall by the hour anymore.

Q At the time the pilot left the police station, were there any adults in front of it?

A Yes. You saw adults but after two years it is impossible to give you the exact number.

Q Could you hear what the crowd was saying?

A While I was in the tavern I could not hear the words but once I left the tavern and came out into the street I heard, "He will be shot".

Q Who did you hear say that?

A No. That is, I don't know anymore about what happened at the police station.

Q I will ask you again, did you hear what the crowd was saying about the pilot?

A As I said just now, you could hear, "He will be shot".

Q What that said by the crowd and by the people who were gathered in front of the police station?

A By the children and some adults there.

Q Did you hear any of the adults threaten the pilot?

A No.

Q Do you know how to reach Offenbach or what roads go to Offenbach from the police station?

A The direct road is over Bieberer Street -- the direct route is Aschaffenburg to Offenbach direct.

Q Is there an indirect way of going from Bieber to Offenbach?

A You can go to Offenbach over Heisenstamm and then over the village Tempelsee.

Q Is there not a way of going from Bieber to Offenbach by following the road through the woods where you saw the pilot?

A Yes, that is through the community Tempelsee.

QDo you know what happened to the man that you say came out of the automobile that wore the brown overcoat?

A He went into the station.

Q And the man that was with him, where did he go?

A I cannot recall that anymore today. He was walking next to him and in all probability he went into the police station too.

Q You said a short while ago that a short while later a passenger car drove away, you heard a noise, what kind of noise?

A Noises? I heard only that the pilot was taken away.

Q Did you say that a short while after the car drove away you heard noises and they called out that the flyer would be shot, is that correct?

A I did not say anything about noises, I said "voices".

Q As a matter of fact you heard several people make the statement, did you not, that the flyer would be shot?

A Yes. You heard it from the children. I said so repeatedly and that is all I can say.

Q Did you not also say that you heard some adults on the street make the same statement?

A I did not talk about adults, there were only a few adults in the crowd. You just heard voices and whether they came from children, I don't know. After two years I cannot remember so exactly anymore.

Q Are you hostile to any of these accused?

PROSECUTION: I object to that question.

DEFENSE COUNSEL: I pray the Court's judgment.

PRESIDENT: The objection is overruled. The witness will answer.

THE WITNESS: No.

QUESTIONS BY DEFENSE COUNSEL:

Q Do you feel any hostility, for example, towards Albrecht because Albrecht violated what you call your conscience as a soldier?

A Well--

PROSECUTION: Object to that question as improper cross examination.

DEFENSE COUNSEL: I pray the Court's judgment.

LAW MEMBER: Will the reporter read the question?

(Whereupon the question was read by the reporter.)

PROSECUTION: Prosecution submits that the witness has said that he had no hostility to any of the accused.

DEFENSE COUNSEL: I am going from the general to the particular and pray the Court's judgment.

PRESIDENT: Objection overruled. The witness will answer.

THE WITNESS: No. I said already before Albrecht was very decent because he could have reported me.

QUESTIONS BY DEFENSE COUNSEL:

Q When you came to the woods on your bicycle you saw the pilot and two policemen and a first lieutenant with the pilot, is that correct?

A I was with Albrecht and Albrecht was behind the pilot and the two policemen.

Q Where did -- first, were there two policemen with the pilot?

A Yes, they were part of it, a little ahead of us.

Q How far behind the pilot were the two policemen?

A Right behind them but I cannot give you any figures on the steps but they were right behind them.

Q How far behind the two policemen was Albrecht?

A During the time I was speaking to Albrecht, it must have been ten to fifteen meters.

Q Did you see the shot fired?

A No, I was just talking with him and I heard only the shot - I heard only the shot.

Q Were you actually engaged in conversation with Albrecht at the time the shot was fired?

A Yes.

Q Can you give the Court an estimate of about how long Albrecht was in your sight before the shot was fired?

A It might have been two minutes.

Q During the entire two minutes that Albrecht was in your sight was he also within hearing distance of you?

A I was standing right next to him.

Q During that two minutes that you were standing next to Albrecht, before the shot was fired, did Albrecht say anything to the two policemen who were marching behind the pilot?

A No. Only we two. I respectfully objected there.

Q Were you and Albrecht walking behind the prisoner during those two minutes?

A No, we were standing.

Q Can you give the Court an estimate of how far in front of you and Albrecht the prisoner was at the time the shot was fired?

A The distance grew during the time while I was standing there with Albrecht and objected to the thing.

Q What was the first thing you did when you heard the shot fired?

A I put my bicycle on the ground and went into the woods to the spot.

Q What did Albrecht do?

A Albrecht? In all probability he must have turned around and started already to walk into the direction of Bieber because I caught up with him later on my bicycle.

Q Did you hear Albrecht yell anything at Mueller with words to this effect, "Where are you going with the flyer?"?

PROSECUTION: Object to that. There has been no testimony about anybody by the name of Mueller.

DEFENSE COUNSEL: I will rephrase the question.

QUESTIONS BY DEFENSE COUNSEL:

Q Did you hear Albrecht yell at either of the two policemen who were with the flyer, "Where are you going with the flyer" or words to that effect?

A No.

Q Where was Albrecht when he called after you to "Come here"?

A On his way to Bieber, on the path there.

Q Did Albrecht have a heavy weapon with him?

A Like any first lieutenant he had a belt with his pistol.

Q Did he have a heavy weapon such as the carbine you estimated was the weapon that fired the shot?

A No. Nothing like that.

Q At the time the pilot was brought to the police station were you standing by your window looking out the window?

GOVERNMENT COURT
MILITÄRGERICHT

[illegible] SHEET

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A I saw it from the window and then, as I said before, I went outside and heard voices, "The pilot will be shot".

DR. [illegible]: Dr. Ku[illegible] would like to cross examine this witness. He is the German attorney who represents Allrecht. I am through myself.

PRESIDENT: The Court will adjourn until 9 o'clock tomorrow morning.

(Thereupon at 1850 hours the court adjourned.)

Particulars — Einzelheiten

Second Charge: — Zweite Anklage

Particulars — Einzelheiten

The above charge[illegible] read to the [illegible] Military Court in this case.

Die Verhandlung wurde vor dem Einzelrichter des [illegible] Militärgerichts [illegible]

[illegible]

Copy of [illegible] received on [illegible]
Kopie [illegible] erhalten am [illegible] 194[illegible]

Die [illegible]
Unterschrift [illegible]

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on .....194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13

Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

Pages 412 - 484

9

Case No. Superior Orders

~~*Summary~~
~~*Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 23 JANUARY 1947

~~Members of Court~~

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Rudolph H. Schubert

Reporter Patricia Stewart, Irving Hayett, Sally Rose Hayett, Imogene Butler, John McDonald, Paula Silverman

WITNESSES:

PETER SCHROD
GEORGE HEBERER
PETER COMO
OSKAR LUECK

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence

Imprisonment
- Term .....
- Beginning ..... 194.....

Fine
- Amount .....
- To be paid before ..... 194.....
  or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES VERSUS JOSEF STROOP, ET AL

BY

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

28 JANUARY 1947 -- Pages 412 - 484, Inclusive

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COURT
SCHROD, Peter (resumed)		412	418	-	419
HEFNER, George	420	428	437		
COHO, Peter	440	448			
[illegible], Oskar	466	464			

EXHIBITS

No.	Description	Marked	Received in evidence
P-109	Map of Offenbach		421
P-110	Statement of Hermann Koller dated 5 October 1945	468	468
P-110A	Translation of P-110	468	469
P-111	Statement of Hermann Koller dated 9 May 1946	469	470
P-111A	Translation of P-111	469	470
P-112	Statement of Wilhelm Albrecht	470	470
P-112A	English translation of P-112	470	470
P-113	Statement of Oehrmdt	471	471
P-113A	English translation of P-113	471	471
P-114	Statement of Flatt	472	473
P-115	Statement of Hermann Koller	474	474
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P-116	Statement of Hermann Koller	474	475
P-117	Affidavit of Captain Kuschner with photo	475	476
P-118	Affidavit of Captain Kuschner with photo	476	477
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P-121	Pathologist's affidavit of Capt. Kuschner	479	482
P-121A	English translation	479	482
P-122	Statement of Wilhelm Albrecht	483	484

Camp Dachau, Germany
23 January 1947

MORNING SESSION

(Thereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense, the accused, reporter and interpreter are present.

Call Peter Schrod.

PRESIDENT: You are reminded you are still under oath.

PETER SCHROD, called as a witness by the prosecution, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

CROSS EXAMINATION (continued)

QUESTIONS BY DR. RAU:

Q Are you the same Schrod who testified before this court yesterday?

A Yes.

Q If I remember right, you said yesterday that in the tavern you didn't hear what the crowd on the street was talking, is that right?

A In the tavern I didn't hear anything but I went outside once.

Q Why did you go outside?

A Because I heard the crowd and there was a pilot, and for this reason I went outside.

Q How long did you stay on the street?

A A short while only.

Can you estimate the approximate time?

A Perhaps two minutes.

(Schrod-cross)

DR. RAU: That is just what I want to clarify because the witness said yesterday that he heard when the flier was being taken away from the police station. But did he mean?

THE WITNESS: When he was brought. I didn't know when he was brought away. The way he was taken I didn't know. I went on my bicycle and I had to ask children to find out where they went.

QUESTIONS BY DR. RAU:

Q That means when he was taken away you didn't notice that, is that right?

A No.

Q Why did you follow the pilot later on on your bicycle?

A I said already yesterday that my conscience bothered me when I heard a voice that a pilot would be shot.

Q At that time was there an air raid taking place on Dieber?

A No.

Q A few days before that?

A No.

Q You were on leave at that time?

A Yes.

Q How long before that did you come back on furlough?

A I came at the beginning of February.

Q I was told that ten days before this incident an air raid had taken place in the immediate vicinity of the police station.

PROSECUTION: I object to that question.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q Did you drink anything in the tavern on this day?

DEFENSE COUNSEL: I pray the court, that is a proper question.

PROSECUTION: Improper cross examination.

(Schrod-cross)

PRESIDENT: Objection overruled.

DR. RAU: Please answer my question.

THE WITNESS: There wasn't so much alcohol there at all. When you were on furlough and drank a beer or two that doesn't mean you were drunk at all.

QUESTIONS BY DR. RAU:

Q What had you drunk?

A I didn't mark it down.

DEFENSE COUNSEL: I pray the court's judgment. I think the witness is insolent and I ask the court to caution him about it. He is in an American court and I ask he be so informed.

PRESIDENT: The witness will answer the question.

THE WITNESS: On that day, it was in the afternoon, I hadn't drunk at all yet.

DR. RAU: Thank you.

QUESTIONS BY DEFENSE COUNSEL:

Q I believe you said yesterday you saw when the pilot was brought into the police station, is that correct?

A Yes, that's right.

Q I now show you Prosecution Exhibit No. 106 and ask you to indicate the place where the prisoner was brought into the police station.

A I saw him here on this street.

DEFENSE COUNSEL: He indicates the street in front of the police station, the street that is plainly shown.

A Whether he went through the back door or through the front entrance, I can't remember anymore.

(Schroe-cross)

Q What did you say yesterday as to which entrance he went into?

A Presumably, I said the same.

Q I ask you now to repeat what you said, whether it was presumably, but what you actually said yesterday as to the entrance through which this prisoner went into the police station.

MR. GRIMES: May I point out to the court these questions are repetitious and argumentative, too?

MR. DUKES: That may be. He made a specific statement yesterday and he is definitely hedging on it now and I have a right to pin him down.

THE COURT: Objection overruled.

THE WITNESS: As far as I can remember I said yesterday he came through the back door.

QUESTIONS BY DEFENSE COUNSEL:

Q Into which entrance did he go, through what door did he go into the police station? I didn't ask you through what door he came out.

A I can't recall exactly anymore.

Q As a matter of fact, isn't it true that the front entrance to that police station, the entrance which appears on the corner and which shows on the right hand side of that picture, was blocked off so he couldn't go inside?

A I can't say that because I didn't go into the police station.

Q Isn't it true that the entire side of the building that shows on the main street, beginning at the point where the garage begins and going all the way along the side of the building across the door as that shows, was blocked off by rope and cord?

A No, there was no air raid precautions.

Q All, did that air raid protection extend around the front door, the door that shows in that picture?

(Continued-cross)

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A No, as far as I know the door wasn't blocked.

Q As a matter of fact on that exhibit there is a line which shows just beneath the window and I call the witness' attention to a line which appears on the picture just beneath the front windows. Doesn't that line mark the height of that air raid protection?

A I can't say that exactly anymore. It has been taken away a long time. I remember exactly that this door over there where the car is standing was blocked up.

Q Now, your observation is very good isn't it and your memory excellent, also.

A What shall I say?

Q I'm asking you one question.

A I can't recall exactly all the small details at the police station but very exactly I can remember the facts about what happened in the forest.

Q You remember the number of people who were there in front of the police station at about the time the pilot was taken into the police station, don't you?

A I said so yesterday repeatedly, approximately 100, it might have been 150, mostly children.

MR. [illegible] COUNSEL: I am going to ask the court to warn the witness to answer the question.

MR. [illegible]: He answered that the way he did yesterday.

THE COURT: Will you repeat the question.

(Thereupon the reporter read the last question.)

MR. [illegible] COUNSEL: And the answer, too.

(Thereupon the reporter read the last answer.

MR. [illegible] COUNSEL: A question called for a yes or no answer, it didn't call for a number.

(Conrod-cross)

QUESTIONS BY DEFENSE COUNSEL:

Q But you do not remember whether the front door as shown on the Prosecution Exhibit was blocked or not, is that correct?

A I can't say that anymore.

Q And you don't remember whether he went in the front door or the back door?

A No, the whole incident occurred on this street. The question of the entrance — it's possible that he went through the back door. He came from the street, I can't say exactly through which entrance.

Q Can you tell the court exactly the time the pilot was in the police station?

A I can't say that.

Q Can you give the court an estimate about the time he went into the police station?

A The time by the clock? I don't know that. Afternoon.

Q Can you tell the court whether it was still the afternoon or whether it was twilight or whether it was evening when he was brought out of the police station?

A It was in the afternoon, after dinner time, it wasn't late.

DEFENSE COUNSEL: I have nothing more.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Yesterday you spoke about a First Lieutenant and two policemen in the forest and you said that the First Lieutenant had a pistol, is that correct?

A Yes.

Q Were the two policemen armed and if so with what?

A Yes, one with a steel helmet had a carbine.

PROSECUTION: Nothing further.

DEFENSE COUNSEL: Nothing further.

PROSECUTION: Questions by the court?

EXAMINATION BY THE COURT

QUESTIONS BY COLONEL ROBERTS:

Q While you were talking to the Lieutenant in the woods, where were the two policemen?

A There was a distance of approximately ten or fifteen meters.

Q Where were the two policemen at the time the shot was fired?

A When was I sent over there it was thirty-five to forty meters.

Q You didn't answer the question.

A The policemen and the pilot were approximately fifteen meters away from Albrecht and me when the shot was fired.

Q Were they in sight?

A I saw the men.

Q Then why didn't you see who fired the shot?

A I was talking with Albrecht at that time.

Q But you looked up when you heard the shot fired?

A Yes, I heard the sound.

Q Who was firing the gun?

A I didn't see the pointing, I only heard the sound.

Q You looked up, didn't you?

A Yes, at that moment I was excited and looked up.

Q Who had the gun pointed?

A I didn't see the pointing, I only heard the gun.

PROSECUTION: No further questions. Request the witness be excused.

PRESIDENT: Witness will be excused.

(Thereupon the witness was excused and withdrew.)

(Schrod-court)

DEFENSE COUNSEL: I understand from now on excusing them means only temporarily excusing them?

PROSECUTION: Yes. Call the witness George Heberer.

GEORGE HEBERER, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

BY QUESTIONS BY PROSECUTION:

Q State your full name.

A George Heberer.

Q Where do you live?

A Dietzenbach, near Offenbach.

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

QUESTIONS BY PROSECUTION:

Q What is your business?

A Retired Sergeant of the police and now a farmer.

Q How old are you?

A 55 years.

Q Were you employed in 1944? If so, in what capacity?

A From November '44 on I was working as First Sergeant of the police at the police station in Dieber.

Q When you say from November '44 on, until about what date do you mean?

A Until the 19th of March 1945.

Q Were you on duty in the police station in Dieber in February 1945?

A Yes.

Q Now, directing your attention to the latter part of February 1945, do you remember anything unusual happening in Dieber with respect to an American flier?

A Yes.

Q Tell the court what that was.

A On the 22nd of February 1945 at approximately 1300, during an air raid alarm I was riding on my bicycle from Dietzenbach to Offenbach-Bieber, the police station.

Q Then what happened?

A Suddenly I saw a four-motored bomber coming in my direction from a northerly direction. Before that I noticed that eight to nine parachutes were in the air, open parachutes were in the air. Since the airplane came closer and closer to me I took cover in an air raid shelter nearby in a little settlement.

Q I show you Prosecution Exhibit 108 and ask you to tell the court what that is a picture of?

A That is the police station at Bieber-Offenbach. In front is Wurzerfeld Street.

I show you a piece of paper marked for identification P-109, which is a map, and ask you to tell us what this is a map of?

A This is a city map of Offenbach, including Bieber.

PROSECUTION: I offer this map in evidence and ask that it be marked P-109 and made a part of the record.

PRESIDENT: Any objections?

DEFENSE COUNSEL: No.

PRESIDENT: Prosecution exhibit No. 109 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 109 for identification was received in evidence as Prosecution Exhibit 109, is attached hereto and made a part of the record.)

QUESTIONS BY PROSECUTION:

Q Now, looking at that map, I direct your attention to the lower right hand corner, the place marked "Bieber" and ask you to point out the place which is the location of the police station and tell the court whether or not that is indicated by a red circle?

Yes.

You said you saw some fliers parachute down from a plane, is that correct?

Yes.

How far was that from the Bieber police station?

A From Bieber it might have been five, six, seven kilometers.

Q In what direction from the Bieber police station is that, north, east, south or west?

That was northwest.

Q What happened after that?

A Then I saw the airplane for the last time. It turned to the left while I was still standing at the air raid shelter.

Q Then what happened?

A Then, after a short distance, the airplane crashed to the ground and I saw a big black smoke flame going up into the air. For a short while I stayed near the air raid shelter and then with my bicycle I continued my ride to the police station, Bieber. When I arrived at Bieber I saw already a larger crowd of people standing in front of the police station and when I came to the station the flier was already present there.

Q Then what happened?

A The flier was sitting on the small side of the desk. He had been searched and his things were laying on the table.

Q Do you remember the date in February 1945 that this happened?

A On the 22nd of February.

Q Now, referring to your going into the police station and seeing the flier, what time of day was that?

A It might have been around 2:30.

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Continue to tell the court what happened?

A I sat you for a while at the station and then I went into the cellar where the headquarters is located of the air raid protection and I relieved the police master sergeant, Keller of his duties there.

Q Do you know a man by the name of Hans Michel?

A Yes.

Q Who was he?

A No. 6.

PRESIDING: Let the record show that the witness identified the accused, Michel, No. 6.

QUESTIONS BY PROSECUTION:

Q Did you see Michel that day?

A I didn't see Michel on this day.

Q Who was Michel?

A Michel was the director of the police at Offenbach-Main.

Q Do you know a man by the name of Josef Hoitz?

A Yes.

Q Who was he?

A He was Captain with the Commander of the rear police.

Q Where?

A At Offenbach-Main.

You said that Michel was police director or police chief. There was no police under?

A At Offenbach-Main.

Q Would you recognize Hoitz if you saw him again?

A Yes.

Q If he is in the courtroom, point him out.

(Weber-direct)

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A No. 7.

PROSECUTION: Let the record indicate that the witness identifies the accused, Kiaitt, wearing No. 7.

QUESTIONS BY PROSECUTION:

Q Did you see Kiwitt or Michel on that day?

A No, I didn't see them.

Q What happened after that?

A Then I heard pretty loud voices upstairs in the police station and then later on I went on the stairs which lead into the cellar. From there I saw the flier standing on the Laurerfold Street with his face turned towards the passenger car.

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Q Was the flier armed?

A No, the flier was not armed.

Q Did you see anyone else there?

A Before I heard that it was said, "Two men get ready."

Q And then what happened?

A Then the flier was taken away from the car through Master Sergeant of the Police Moller; then I heard already from the crowd call "these are the ones who are murdering your wives and children".

Q Now, you referred to a car, was that car there when the flier was first brought into the police station?

A No, when I came to the police station I didn't see the car yet.

Q Did you see the car come to the place in front of the police station?

A No.

Q Now did you see anyone in that car at any time that day?

A No.

Q Now you spoke of a man by the name of Moller. Would you recognize him if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

A Number 9.

PROSECUTION: Let the record indicate that the witness indicated the accused Moller, wearing Number 9.

(Heberer-Direct)

QUESTIONS BY THE PROSECUTION:

Q Who was Moller in February, 1945?

A He was Master Sergeant of the Police and at the same time he was Sergeant of the Guard of one department.

Q Where?

A At the police station of Bieber-Offenbach.

Q Did you ever hear of a man by the name of Como?

A Yes.

Q Who was he?

A Como, too, he was a Corporal of the police force, and he did duty on the outside.

Q Where?

A In Offenbach-Bieber, too.

Q Do you know his first name?

A Peter Como.

Q Did you see Peter Como on that day, the 22nd of February, 1945?

A Yes, I saw him in the police station, and then I heard later on that Como had brought the flier to the police station.

Q Now what happened to the flier, if you know?

A The flier was then taken away--that's all I saw.

Q Who took him away?

A Moller took him away, along the Street Rebstock.

Q Was anyone else with Moller?

A Goehrendt followed quite some distance behind them and then also Como.

(Meberer-Direct)

Q Was Moller armed at that time?

A Yes, Moller had his carbine, and he was wearing a steel helmet.

Q Was Goehrendt armed?

A As far as I can recall, Goehrendt had his pistol, but I can't remember exactly any more.

Q Who was Goehrendt?

A Goehrendt was First Sergeant of the police force at Bieber-Offenbach, and he was second in charge.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

A Number 10.

PROSECUTION: Let the record show that the witness identified the accused Goehrendt, number 10.

QUESTIONS BY THE PROSECUTION:

Q When what happened?

A About half an hour or three-quarters of an hour later, Albrecht had already returned in the meantime and had gone to his office, Master Sergeant Goehrendt returned and reported to Albrecht, "shot while trying to escape."

Q Who was Albrecht?

A Albrecht was First Lieutenant of the police and in charge of the Police Station Bieber.

Q Would you recognize him if you saw him?

A Yes.

Q If he is in the court room, point him out.

A Number 8.

PROSECUTION: Let the record show that the witness

identified the accused Albrecht, number 8.

QUESTIONS BY THE PROSECUTION:

Q What happened after that?

A After a while, it might have been around five o'clock, Goehrendt came with a paper and asked if there was somebody who could bring it over to Moller in order to be signed by Moller; since nobody else was present I said, "All right, I ride down on my bicycle and get the paper signed." I then rode over to the apartment, Bieber Street 114, the second floor, and I found Moller in his apartment lying on his couch.

Q Did you look at the paper?

A I looked shortly at the paper and noticed a name like "William Duke" or something like that, and that he was shot while trying to escape.

Q Now did you give this paper to Moller?

A I put it on the table and Moller signed it in his own handwriting in my presence.

Q Now, going back to the time when the flier was brought to the police station, did you hear anyone say anything about that flier in your presence?

A Yes, he couldn't speak German, and so he indicated through gestures whether he could get some water or something to drink.

Q And then what happened?

A He got it.

PROSECUTION: No further questions.

CROSS EXAMINATION

QUESTIONS BY THE DEFENSE COUNSEL:

Q I show you Prosecution's Exhibit 108, the picture

of the police station at Bieber, and ask you to tell the Court whether or not a protective wall of some kind was around certain sides of the building.

A Yes.

Q Around how many sides of the building was that wall?

A This protective wall went around two sides of the building, here and here (indicating). The entrance, too, was closed--blocked off.

DEFENSE COUNSEL: The witness indicates the two streets, the streets showing in the picture, and a street on the right hand side of the picture where the automobile is standing.

QUESTIONS BY THE DEFENSE COUNSEL:

Q Was that front door which appears on the edge of the picture used at that time?

A No.

Q Was it blocked off so that it could not be used?

A Yes, there was a closet inside here for our rifles and for our clothes.

Q Now when you first came there, you said there was a crowd in front of the station. Can you give an estimate to the Court as to how many people were in that crowd?

A When I came there, there might have been 40 to 50 people, but this crowd grew as time went on.

Q Can you give the Court an estimate as to the size of the crowd at about the time the flier was taken from the station?

A There were many children, a few women, men, too,

I would say over a hundred.

Q Do you know how long the air raid alarm lasted on the day in question?

A I can't say that exactly any more.

Q Do you know whether any bombing occurred that day in the vicinity of Bieber?

A No, I didn't hear anything about that.

Q Now, this crowd in front of the police station--you say you heard them make certain statements, such as "these are the men who murdered our children"--did you hear that statement more than one time?

A No, I heard only once.

Q Do you know whether that statement was made by more than one person?

A It can be only one person.

Q Now, when you came into the station, you say the flier was sitting, and during the time he was there he was served water. Was he also allowed to smoke cigarettes?

A Yes, he was also allowed to smoke.

Q Do you know by whose permission he was allowed to have the water and to smoke?

A As far as I can recall it was the First Sergeant of the police force, Lueck.

Q During the time the flier was in the station, was anything said to Albrecht about the considerate way the flier was being treated?

A I didn't hear anything. I couldn't recall any more, anyway.

(Lieberer-Cross)

Q Did you see the flier leave the vicinity of the police station?

A I saw it shortly from the window of the police station when he came out this way in a southerly direction.

Q Would that be towards the left of the picture?

A Yes, to the left.

Q That would be the side towards the garden, is that correct? That would be the side away from the automobile?

A Yes, that's right. Yes, the car would be in a northerly direction, and he went in a southerly direction.

Q Now you say you saw Moller with the pilot as they left the vicinity of the police station. How close was the pilot to Moller as they went away?

A He was very close--perhaps one meter.

Q You say you heard someone say "you two men get ready"--do you know who those two men were?

A No, I didn't hear that--I couldn't hear.

Q Did you say who left with the flier in addition to Moller?

A Later on, First Sergeant of the Police, Goehrendt, came, and Como quite some distance behind them.

Q In other words, as I understand you, the flier was in front accompanied by Moller. Behind Moller and the flier came Como, and behind Como came Gehrendt--is that correct?

A No, first Goehrendt, and then Como.

Q How far behind Moller was Goehrendt?

A It might have been 40 to 50 meters.

Q And how far behind Goehrendt came Como?

A Como came far behind Goehrendt, 200 to 250 meters.

Q At the time these people left the police station, where was Aqbrecht?

A Aqbrecht was not in the police station--he must have left the police station, too.

Q Do you know where he went?

A I don't know that.

How long was the flier in the police station altogether, in your opinion?

A I don't know--it might have been an hour. It might have been a little bit more, too.

Q Prior to the departure of the flier from the station, did you hear any conversation dealing with him other than the words "you two get ready"?

A No, I didn't hear anything.

Q The voices which you say you heard upstairs. Could you hear what was said?

A No, I couldn't hear that--no, nothing at all.

Q At the time you heard the words "two men get ready", was the pilot still in the station, or was he already in the street?

A I heard this while the flier was standing near the car.

Q Outside the station?

A Outside the station. I thought he was going to be taken away by car.

(Heberer-Cross)

Q Now you said that when the pilot was being taken away you heard the crowd call "these are the ones who murdered your children." This call that came from the crowd, did it not take place after the pilot left the police station and stood outside in the street in front of the police station?

PROSECUTION: I object, I believe it is stated on a false premise. It refers to some words coming from the crowd, but the testimony was not that it came from the crowd, but that it was said to the crowd.

DEFENSE COUNSEL: I distinctly remember his testimony was that the crowd called "these are the ones who murdered our children"--besides, it's cross examination."

PRESIDENT: Will you read the statement?

("hereupon the reporter read the statement.)

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: Will you repeat the last question?

("hereupon the reporter read the last question.)

WITNESS: No, this remark was made while he was being taken away.

QUESTIONS BY THE DEFENSE COUNSEL:

Q Just exactly, as nearly as you can remember, where was the flier at the time the remark was made? Will you point out on Prosecution's Exhibit 108, if you can?

A The car was here in the back. You couldn't see it on this picture, anymore.

DEFENSE COUNSEL: He is pointing to the extreme left of the picture where the car was supposed to be standing.

WITNESS: And he was standing here on the sidewalk, his face towards the car.

QUESTIONS BY THE DEFENSE COUNSEL:

Q From what entrance of the building was the flier taken?

A From the back entrance, like here.

Q Does that entrance come out on that gate that shows on the wall that shows on the extreme left of the picture?

A Yes, it comes out here.

Q And about how far was the flier from the exact point at the time that remark was made?

A It might have been approximately five meters--five meters in a westerly direction.

Q In your opinion, was that remark loud enough to be heard by the pilot and by Moller and the other people who went along with the pilot?

A Yes, another witness, Fritz Kiefer, heard it, too.

Q Do you know if any orders were issued to Moller as to where he was to take the pilot?

A No, I did not hear anything.

Q Do you know what road was taken by Moller and the pilot after they left the police station?

A Along the Rebstock.

Q Was that an auxiliary road to Offenbach?

A Yes, that's an auxiliary road which leads into Aschaffenburg Street. Before it had a different name.

Q By taking that road, the auxiliary road, with the pilot, was it possible in that way to avoid the crowds which were standing in front of the police station?

A Yes, the crowd--it was possible to avoid the crowd if you had enough men to post guards, but we didn't have enough guards.

Q Well, was it possible to go around the crowd ... by taking the auxiliary path that was taken?

A That's a crossing point on the Maurerfeld Street and on the Rebstock, but it was possible, of course, to squeeze through the crowd.

Q Did you have enough policemen available for duty to protect the pilot against the crowd?

A We were five, six, seven men. Of course it was possible to protect him.

Q Did any air raids ever take place on Bieber itself?

A Yes, on the 11th of December, 1944.

Q Were any people killed?

A Fifty to sixty people were killed, I think.

Q Now this paper which you brought to Moller--by whom were you asked to bring it to Moller?

A First Sergeant of the Police Force, Goehrendt, and he, himself, had written it on the typewriter, as far as I know.

Q Were you asked by anyone to ask Moller if that paper was the correct statement of what had actually transpired?

A No.

Q Was there any talk in the police station the next day about the method by which captured allied air personnel were to be handled?

A No, I didn't hear anything.

Q Did you hear anybody talk to Goehrendt about this report that you say Goehrendt wrote out in his own handwriting?

A No, I didn't hear anything.

Q So you cannot tell the Court whether or not Goehrendt wrote that report on his own initiative or as a result of instructions received from anyone else?

A No, I don't know that--he only came to the orderly room and asked me to deliver it.

Q I show you Prosecution's Exhibit 108 and ask you can you tell the Court how the crowd was distributed around the building?

A Most of the crowd was standing here on the Maurerfeld Street and here on the side in an easterly direction a few more people were standing on Maurerfeld Street.

DEFENSE COUNSEL: Let the record indicate that the witness points to the exit from which the pilot came us to where the largest part of the crowd was standing.

QUESTIONS BY THE DEFENSE COUNSEL:

Q ere any standing on the street where the automobile was standing?

A I can't recall exactly anymore.

Q Were you not asked whether you were present and personally saw Moller sign the report?

Yes, he signed it himself, and I brought it back to the station.

QUESTIONS BY DR. DUENGER:

Q Where did Goehrendt report to Albrecht that the flier had been shot while trying to escape?

A At the orderly room in front of the door to the office of First Lieutenant Albrecht.

Q You were present?

A Yes.

Q Was this immediately after Goehrendt returned?

A Yes.

DEFENSE COUNSEL: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY THE PROSECUTION:

Q How long a time elapsed from the time they took the flier from the police station and the time Goehrendt returned?

A It might have been an hour--I can't say exactly.

Q Now you said that someone said, "These are the men who killed your women and children"--do you know who said that?

A No, I didn't hear that.

Q Now where was Kiwitt and Eichel on that afternoon, if you know?

DEFENSE COUNSEL: I pray the Court's judgment--he said he didn't see either of them that day.

PROSECUTION: He said he didn't see them come out of the car.

DEFENSE COUNSEL: He said he didn't see either of them that day.

PROSECUTION: Now I am asking if he knows were they were.

PRESIDENT: Objection overruled. Proceed with the question.

WITNESS: They must have been on the street.

DEFENSE COUNSEL: I pray the Court's judgment--that's not a responsive answer, and I request that it be stricken from the record.

PRESIDENT: Objection sustained.

QUESTIONS BY THE PROSECUTION:

Q Do you know whether or not they were on the street?

A I can't remember exactly.

Q Now you said you had enough of a police force to protect the flier. Why didn't the police protect the flier?

A Nothing happened to the flier. He was in the custody of Moller there.

Q And that's the Moller you have been referring to, one of the accused in this case?

A Yes.

Q Now, after they took the flier from the police station, did the crowd follow the flier, do you know?

A Yes.

PROSECUTION: No further questions.

DEFENSE COUNSEL: Nothing further.

(Reberer-Redirect)

PROSECUTION: Any questions by any member of the Court?

PRESIDENT: No.

PROSECUTION: May the witness be excused?

PRESIDENT: Witness excused.

(Whereupon the witness was excused and withdrew.)

PRESIDENT: The Court will recess for 15 minutes.

(Whereupon at 1020 hours the Court recessed.)

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(Whereupon the Court reconvened at 1035 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court, all members of the Prosecution, all members of the Defense, all the accused, the reporter and interpreter are present.

I call the witness Peter Como.

PETAR COMO, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY THE PROSECUTION:

Q State your full name.

A Peter Como.

Q Where do you live?

A Laemmerspiel.

Q Is that near Offenbach?

A Yes, the county of Offenbach.

Q What business are you in?

A I am foreman in a leather goods factory.

Q How old are you?

A Fifty.

Q Now, directing your attention to the month of February, 1945, were you employed by the German police?

A Yes, in 1943, I was drafted into the police force.

Q And were you in the police force in February, 1945?

A Yes.

Q What rank did you hold?

A I was corporal of the police.

Q Where is Bieber?

A Near Offenbach.

Q Were you in Bieber on the 22nd of February, 1945

A Yes.

Q Do you remember anything unusual happening on that day?

A Yes.

Q Tell the Court what happened.

A On this day I was on guard duty at the village--at the city--exit of Bieber.

Q Continue.

A From an easterly direction came an American plane--six pilots parachuted in the direction of Muehlheim, and three pilots landed in the township of Bieber.

Q Then what happened?

A After a while everybody was running into the woods. I saw Groh coming out of the woods with a pilot.

Q Who was Groh?

A He was a laborer in the forest.

Q Then what happened?

A On my bicycle then I rode from my guard post to the crossing at the railroad tracks.

Q And then what did you do?

A At the railroad crossing, the population of Bieber took a hostile attitude towards the flier. Then I took the flier into custody and went with him in the direction of

(Conn-Direct)

the police station Bieber. On the way to the police station the flier asked me where he was being taken. I told the flier he would be taken to the camp at Bad Homburg.

Q Then what happened?

A Then I delivered the flier at the police station. Then at the police station Albrecht came and Master Sergeant of the Police Lueck and searched the flier for weapons.

Q Then what happened?

A After he had been searched, the flier sat down on the table in the orderly room. Then the flier asked whether he could smoke, and Lueck gave him this permission. After he had smoked the first cigarette, he asked whether he could smoke another cigarette, and he got this permission from Lueck, too; and after he had smoked the second cigarette, the Police Director Eichel came and another officer unknown to me by name. Then the Police Director Eichel tore the scarf off his neck and hit the cigarette out of his mouth.

Q You say "off of his neck"--to whom are you referring?

A I am speaking about the flier. He had a scarf about his neck.

Q Then what happened?

A Then Police Director Eichel and Albrecht went into Albrecht's office.

Q Then what happened?

A We didn't hear what they were talking inside there. A few minutes later they left the office again through the orderly room; and, while leaving through the

(Como-Direct)

orderly room, in the door Police Director Eichel said, "We will be done away with."

Q Now, in addition to Albrecht, Lueck and Eichel, who else was in the police station at that time?

A Nearly the entire crew of the police--Heider, Eichel 1, Eichel 2, Dietrich, Ehmes and Lueck--these are the ones.

Q Do you know a man by the name of Goehrendt?

A Yes.

Q Was he there?

A Goehrendt was in the orderly room for a few minutes and then he left it again.

Q Who was Goehrendt?

A Goehrendt was First Sergeant of the police.

Q Do you know a man by the name of Kiwitt?

A No. I know him only by name--what his position was--but otherwise I don't know him.

Q Do you know whether or not he was in the police station?

A Only afterwards I heard that this was Captain of the police force, Kiwitt. I didn't know him before.

Q Would you recognize Albrecht if you saw him again?

A Yes.

Q If he is in the court room, point him out.

A Number 8.

PROSECUTION: Let the record show that the witness indicates the accused Albrecht, Number 8.

QUESTIONS BY THE PROSECUTION:

Q Would you recognize Goehrendt if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

A Number 10.

PROSECUTION: Let the record show that the witness identified the accused Goehrendt, Number 10.

QUESTIONS BY THE PROSECUTION:

Q Would you recognize Michel if you saw him again?

A Number six, yes.

PROSECUTION: Let the record indicate that the witness identified the accused Michel, wearing number 6.

QUESTIONS BY THE PROSECUTION:

Q Now you said Michel said "this man will be killed." What happened after that?

A Afterwards Albrecht, Michel went into the yard.

Q Then what happened?

A After some time Koller came into the orderly room and took his carbine, loaded it and took the flier into the back yard.

Q Would you know Koller if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

A Number 9.

PROSECUTION: Let the record indicate that the witness identified the accused Koller, number 9.

QUESTIONS BY THE PROSECUTION:

Q Now did Koller go out of the police station with

(Como-Direct)

the flier after he had loaded his carbine?

A Yes, he took him into the yard.

Q Then what happened?

A After a while then Moller went along the Rebstock with the flier.

Q Do you mean Rebstock Strasse?

A Yes, the street Rebstock.

Q Who else went with Moller and the flier?

A Later on Albrecht came into the room and said, "Como, you follow." Then Albrecht and Goehrendt left.

Q Did you go also?

A I waited for a while, and then I left, after Albrecht and Goehrendt.

Q And then what did you do?

A They walked in distances up to the forest.

Q Then what happened?

A Moller and the flier went up to the forest--the flier was walking right next to Moller, and then about 80 to a hundred meters behind them walked Albrecht and Goehrendt, and then another hundred to 150 meters behind Goehrendt and Albrecht I followed, and at the same time the distance between Moller and the flier and Albrecht and Goehrendt increased all the time.

Q Now were Albrecht and Goehrendt armed?

A They both had their pistols.

Q Now how far is the woods you are referring to from the police station?

A From the police station I would say a walk of

20 minutes--a 20-minute walk.

Q Now was the flier armed when they took him out of the police station?

A No, he had no weapon.

Q Did you go up to the woods?

A I hadn't reached the forest yet when two shots were fired.

Q Who did you see Moller at that time?

A At this moment when the shots were fired, I didn't see him.

Q Did you see Moller just before the shots were fired?

A Moller went into the forest with the flier, and he hadn't reached the end of the forest yet when two shots were fired.

Q Now, when you saw Moller walk into the woods, where was the flier--in front of him, back of him, or where?

A Up to the forest, as long as I could see them, they went side by side.

Q Were they walking or running?

A They walked fast.

Q How long after they entered the woods did you hear the shots fired?

A Let's say five minutes.

Q Now, after the flier and Moller entered the woods, did you see Albrecht and Cochrandt?

A Yes, I saw Albrecht and Cochrandt at the end of the woods.

Q And they were behind Moller and the flier, is that

correct?

A Yes.

Q When what is ened?

A I went into the forest, up to the path, and there Albrecht came to me and said, "Moller has done one thing for us."

Q Did he say anything else?

INTERPRETER: Just a minute please. "Moller has done one thing for us."

QUESTIONS BY THE PROSECUTION:

Q Did he say anything else?

A "And you stay here and don't let any civilians go to the body."

Q What happened after that.

A I was standing 20 meters away from the body. Twenty minutes later I was relieved by Michel L.

End Ta 78
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Q How farwas the flyer's body from the edge of the woods when you saw it?

A That is a very narrow forest. The entire forest is only 500 meters wide.

Q How was the flyer dressed all during this time?

A He had felt shoes and this full one-piece uniform.

PROSECUTION: No further questions.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Did you carry a weaponwhile you were on guard?

A Yes.

Q All during the time when you were following the pilot, Moller, Albrecht, and Goehrendt, were you also armed?

A Yes.

Q You said when this man Groh came towards the railroad crossing with the pilot the population was hostile to the pilot. What do you mean by the words "hostile to the pilot"?

A They yelled, "Beat him to death."

Q How many people were there at about that time?

A It might have been 200, 300 people. All people were on the street.

Q Was the expression "beat him to death" or words to that effect repeated once or more than one time?

A They were used several times.

Q Did you feel it necessary in your capacity as a policeman to hurry the pilot to the station to protect him from the population?

A Yes. At the police station I said, "If I would have

(Como - Cross)

known that this would happen to the flyer, I would have taken him to the Waldhof--to the anti-aircraft detachment."

Q At the time the pilot was in the station was there a crowd in front of the station?

A There were approximately 200 people standing in front of the police station.

Q Were there many adults in the crowd?

A Yes, mostly adults; children too.

Q Did you hear the crowd or anyone in the crowd repeat the same remarks you heard at the railroad crossing?

A No, because I was inside the police station and saw them only through the window.

Q When Michel came into the room and knocked the cigarette out of the flyer's mouth, was anything said there to the effect that Albrecht and Lueck were being too nice to the flyer?

A I didn't hear that.

Q All during the time, beginning with the time the flyer left the police station, do you tell this court that you were always behind Moller, the Pilot, Albrecht, and Goehrendt?

A Yes; behind them.

Q Was there ever a time when you were between the pilot and Albrecht?

A No. First came Moller and the pilot, then Goehrendt and Albrecht, and then I came about 100 meters or a little bit more behind them, because I came another way.

Q This road that was taken which led to the woods, was that one of the ways for going from Fieber to Offenbach?

(Como - Cross)

A The way they took, this too was a way to Offenbach. You can get to Offenbach this way, too, but that is the way to the forest.

Q As you walk along that road in the direction of the forest would you take a right-hand turn to go into the woods?

A From the police station you can walk pretty nearly straight ahead to get into the forest.

Q Was there a branch of that street which turned away from the forest?

A Before you enter the forest there is a Neusenstammer Road.

Q Were Moller and the pilot continuously in your view?

A Yes. I could observe them exactly which way they walked.

Q Did you see Moller and the pilot turn into that street--Neusenstammerstrasse?

A Up to the Neusenstammer Road I could observe Moller and the flyer. That is where the forest starts.

Q Did you see Moller at one time get off the road and hear Albrecht ask him where he was going?

A No.

Q I think you said that all during the time Albrecht and Goehrandt followed about 30 to 100 meters behind Moller and the pilot. Is that correct?

A Yes.

Q Were Albrecht and Goehrandt keeping together as they followed behind Moller and the pilot?

A Yes.

Q I believe you said that as Moller turned into the woods with the pilot the distance between Moller and the pilot and Albrecht and Goehrandt increased. Is that correct?

A Up to the forest. I didn't see what happened in the forest.

Q What was the distance between Moller and the pilot, on the one hand, and Albrecht and Goehrendt, on the other hand, at the time Moller and the pilot turned into the woods?

A I said so before. The flyer was walking next to Moller and the distance between Moller and the flyer on one side, and Goehrendt and Albrecht on the other side, was a distance I mentioned before.

Q At one time you mentioned a distance of 80 to 100 meters, and shortly after that you mentioned a distance of 100 to 150 meters. At what time did the distance between increase from 80 to 100 to 100 and 150 meters?

A Yes. I said the distance between me and them.

Q Was anyone with Moller, to your knowledge, at the time the shots were fired?

A What happened in the forest later on I didn't see.

Q Were Albrecht and Goehrendt in your sight at the time you heard the shots?

A I saw Albrecht and Goehrendt only up to the edge of the forest.

Q In your opinion were the shots you heard fired by the same weapon or the same type of weapon?

A It was two carbine shots.

Q Between Moller, Albrecht, and Goehrendt, who was armed with a carbine?

A Moller.

PROSECUTION: May I ask the reporter to read back

that last question and answer?

(Thereupon the reporter read the last question and answer.)

QUESTIONS BY DR. RAU:

Q When Moller disappeared in the woods with the flyer, how far behind were Albrecht and Goehrendt?

A I said up to the edge of the forest I could observe Moller, Albrecht, and Goehrendt. After they disappeared in the forest I couldn't.

Q I don't think you answered my question. Did Moller and the flyer disappear in the forest at the same time as Albrecht and Goehrendt?

A No.

Q That means first Moller and the flyer disappeared in the forest?

A Yes.

Q And how far away from the edge of the forest were Albrecht and Goehrendt at this time?

A As I said before, the distance between the flyer and Moller on one side, and Albrecht and Goehrendt on the other side, before they entered the woods, was 80 to 100 meters.

Q When you heard the shots fired did you look towards the spot?

A I couldn't see the spot from where I was standing.

Q Could you not see the edge of the forest from the place where you were standing?

A No.

Q You said before that Albrecht told you "Moller has done one thing for us." How is this supposed to be understood? It is difficult to understand the language.

(Como - Cross)

DEFENSE COUNSEL: I pray the court's judgment. As senior defense counsel I withdraw the question. I will not let you ask that question.

PRESIDENT: Question withdrawn.

DR. RAU: I have to object to this decision, as much as I appreciate the great experience of the chief defense counsel. It is very important for the court to know what is meant with this sentence.

DEFENSE COUNSEL: I am not going to argue with associate counsel, but I am not going to let him ask the witness what the witness thinks somebody else meant by what somebody else said.

PRESIDENT: The interpretation is a matter for the court to decide.

PROSECUTION: Any further questions by the defense?

QUESTIONS BY DEFENSE COUNSEL:

Q What were you supposed to be doing walking 100 to 150 meters behind Albrecht and Goehrendt? Did you have any orders as to what you were supposed to be doing?

PROSECUTION: I do not know what the answer to this question might be, but in cases of this kind I would like to ask the court, if there is a possibility of incrimination, that the witness be warned.

PRESIDENT: The witness will be warned that any statement he makes can be used against him, if it tends to incriminate him.

PROSECUTION: Also, I want the court to warn him that in that case he does not have to answer the question.

(Como - Cross)

THE INTERPRETER: I told him already.

DEFENSE COUNSEL: Will you please read the question?

(Whereupon the reporter read the question, as follows:

"Q What were you supposed to be doing walking 100 to 150 meters behind Albrecht and Goehrendt? Did you have any orders as to what you were supposed to be doing?")

PROSECUTION: I object to that because there are two questions in one--did he have orders and what was he supposed to be doing. I ask the defense to please rephrase his question.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q What was your mission that you were executing when you walked 100 to 150 meters behind Albrecht and Goehrendt?

A I was supposed to be a guard. I guess from what I saw afterwards that I was supposed to be a guard near the corpse.

DEFENSE COUNSEL: Would you mind reading my question?

(Whereupon the reporter read the last question.)

QUESTIONS BY DEFENSE COUNSEL:

Q Did you receive any orders from anyone prior to the time you started out on this walking behind Albrecht and Goehrendt?

A No. I had received only the order from Albrecht "Come on. You follow us."

DEFENSE COUNSEL: Nothing further.

PROSECUTION: No further questions by the prosecution. Any questions by any members of the court?

PRESIDENT: No.

(Como - Cross)

PROSECUTION: May the witness be excused?

PRESIDENT: The witness is excused.

PROSECUTION: Call Oskar Lueck.

PROSECUTION: May the witness be excused?

PRESIDENT: The witness is excused.

PROSECUTION: Call Oskar Lueck.

OSKAR LUECK, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q State your full name and give the court the correct spelling.

A Oskar Lueck, L-u-e-c-k.

Q Where do you live?

A In Offenbach-Main.

Q What is your business?

A Police first sergeant.

Q How old are you?

A 50.

Q In February 1945 were you employed by the German police?

A Yes.

Q In what capacity?

A First sergeant of the police.

Q Where were you on duty in 1945?

A In Offenbach-Bieber.

Q Directing your attention to the 22nd of February 1945, did anything unusual happen on that day in Bieber?

A Yes.

Q Tell the court what happened.

A On the 22nd of February 1945, around noontime, the crew of an American plane parachuted over Bieber. I can't give the exact number. Part of them was driven in the direction of Lulheim and three crew members came over Bieber in the direction of Obertshausen. Approximately half an hour later there was the first signal that the air raid would be over soon. Since during the air raid I was in the bunker at Bieber, at that time I intended to go to the police station.

(Lueck-Direct)

When I came to Aschaffenburg Street I saw a great crowd coming. In front of the crowd walked a policeman, an American flyer and a civilian named Groh. When I came to the corner of Aschaffenburg Street and Rebstock, I stopped and let the three pass me. After these three had passed me I kept the crowd back. These three, this group then went into the police station. I too went into the police station. There, First Lieutenant of the police Albrecht and I searched the flyer for weapons immediately.

Q Before you continue with your story I want to show you Prosecution Exhibit P-108 and ask you to tell the court what that is a photograph of.

A That is the police station Bieber.

Q Is that the police station that you have just been talking about?

A Yes.

Q Continue with your story.

A We didn't find any weapons on the flyer. He had only a neckerchief, a flyer's ration, two packages of cigarettes, a lighter, his identification papers, -- only these five things.

Q Then what happened?

A After we had searched the flyer we put these things on the table.

Q You said there was an identification card among the things on the flyer. Did you look at that card?

A Yes.

Q Was there any name on it?

A Yes.

Q What was the name?

A William Duke.

(Lueck-Direct)

Q Then what happened?

A The flyer sat down on a chair near the table. He asked for something but he spoke English. We didn't understand English but through gestures he indicated that he wanted some water. He got the water and was sitting on the table.

Q How was the flyer dressed at that time?

A He had a flyer's uniform on and had high field boots.

Q Did he have anything else on besides the uniform?

A No, nothing else.

Q How was he clothed around the neck?

A Around the neck he had a scarf.

Q Then what happened?

A After he was sitting there for awhile; in the meantime First Lieutenant Albrecht had gone into his office. He pointed at the cigarettes and made me understand that he wanted to smoke. I said, "Yes" and so he took his cigarettes and lighted one or his lighter.

Q Are you referring to the flyer?

A Yes, about the flyer.

Q Then what happened?

A At this time the First Lieutenant Albrecht came out of his room again, went over to the table, picked up the lighter, looked at it and said, "This one isn't any better than ours" and he put it back on the table and Albrecht went back again to his room.

Q Then what happened?

A Then the food was brought in and everybody went into the room to get the food. This moment I was alone in the room with the flyer and I called somebody else should come, so the Police Corporal Dietrich came and sat down there too. He put on his helmet and took the belt with his pistol.

(Lueck-Direct)

Q Before Deitrich came, did you say anything else to anyone in the ro m?

A No.

Q Then what happened?

A Then the police corporal Como came into the room and sat down near the telephone.

Q Do you know a man by the name of Eichel?

A Yes.

Q Did you know him at that time?

A Yes.

Q Who was he?

A He was the police director.

Q Where?

A Offenbach.

Q At the time that Dietrich came into the room or prior to that time, did you have any conversations about Eichel?

A No.

Q About what time of the day did all this happen?

A Around noontime.

Q Would you recognize Albrecht if you saw him again?

A Yes.

Q If he is in the courtroom will you please point him out?

A Yes, number 8 (indicating).

PROSECUTION: Let the record show that the witness identified the accused Albrecht wearing number 8.

QUESTIONS BY PROSECUTION:

Q Would you recognize Eichel if you saw him again?

A Yes.

Q If he is in the courtroom will you point him out?

Tk [illegible]

A Number 6 (indicating).

PROSECUTION: Let the record show that the witness identified the accused Eichel wearing number 6.

QUESTIONS BY PROSECUTION:

Q What happened after that?

A We were sitting there for a short while. Then we heard a call outside, "attention."

Q Then what happened?

A We all jumped up at attention, the flyer too, and the flyer was standing with his back to the wall, I was standing in the middle of the room, Dietrich at the window and Sand near the telephone.

Q Then what happened?

A In the meantime the flyer had taken another, a second cigarette and up to this moment he had smoked this about halfway. Obviously the police director had seen that he had been sitting and that he was smoking and he yelled at me immediately, "Who has given this man permission to sit down? Where did he get the cigarettes from? Who gave him the fire?" And at the same time he took the scarf off the flyer's neck and knocked the cigarette out of his hands. He had it in his left hand.

Q Did you know a man by the name of Kivitt?

A Yes.

Q Was he there in the room at that time?

A Yes, he came together with the police director.

Q Who was Kivitt?

A He was a captain of the police.

Q Did Kivitt say anything to you or anybody at that time?

A Yes, to me.

Q What did he say?

A After the police director Eichel had yelled at me in this way, Captain Kivitt looked me up from head to toe and said, "You are a fine man."

(Lueck-Ircot)

Q Did he say anything else?

A Then the police director and first lieutenant Albrecht went into Albrecht's office and then he said again to me a few times more, "You are a fine man." And then he said, "It seems you too haven't lost anything yet."

Q Look around the courtroom and see if Kiwitt is in the courtroom.

A Yes.

Q Will you point him out to the court?

A Number 7 (indicating).

Q Is that the same Kiwitt you have been talking about?

A Yes.

PROSECUTION: Let the record show that the witness identified the accused Kiwitt wearing number 7.

QUESTIONS BY PROSECUTION:

Q What happened after that?

A Then the first lieutenant Albrecht and the police director came out of Albrecht's office and went out into the yard. Kiwitt followed.

Q Before he went out in the yard did he say anything to you?

A No, nothing to me.

Q Then what happened?

A They were gone for a short while when Albrecht returned and I was standing next to the door and he said to me, "Get ready. He will be done away with."

Q Did you say anything in answer to that?

A I said, "I am not going to do that."

Q What did Albrecht say?

A Albrecht then repeated again and said, 'This is on orders of the police director."

(Lueck-Direct)

Q What did you say?

A I said, "No, I am not going to do it. I am not going with you."

Q Then what happened?

A Then all the men who were in the orderly room disappeared and then Albrecht said, "Two men have to get ready," but nobody made any start to get ready. Then Albrecht said to Voller to get ready. Voller walked over to his closet right away, put on his steel helmet, took a carbine, loaded it and gave the sign to the flyer like he should follow him out of the room.

Q Did you know a man at that time by the name of Goehrendt?

A Yes.

Q Who was he?

A He was assistant to Albrecht.

Q At the time Voller loaded his carbine, did you see Goehrendt?

A No.

Q Did you see him at any time after that?

A Yes, afterwards, because later on I was in the orderly room in the front. He had been on the road to look for parachuted fliers and I hadn't seen him when he had returned and when Voller and the flyer left the room Albrecht said to Goehrendt -- and only at that time I noticed that Goehrendt was back again -- "Come with me." And then these two went into the yard.

Q Would you recognize Goehrendt if you saw him again?

A Yes.

Q Will you look around the courtroom and see if he is in the courtroom?

A Yes.

Q Will you point him out for the court?

A Number 10 (indicating).

(Lueck-Direct)

PROSECUTION: Let the record show that the witness identified the accused Goehrendt wearing number 10.

QUESTIONS BY PROSECUTION:

Q Would you recognize Moller if you saw him again?

A Yes.

Q If he is in the courtroom will you please point him out?

A Yes, number 9.

PROSECUTION: Let the record show that the witness identified the accused Moller, number 9.

QUESTIONS BY PROSECUTION:

Q Did you see Goehrendt after that?

A Yes.

Q What happened?

A Approximately a half hour later Goehrendt returned very excited and pale and said to me, "Moller has done one thing for us."

Q Did you have any conversation with Goehrendt about where that was supposed to have taken place?

A Yes, I said then, "Why? What happened?" He said, "Moller shot while half of Rieber was present."

Q Did he say where it took place?

A Yes, I asked him and he said back there at the settlement Tempelsee.

Q I show you Prosecution Exhibit P-109 which is a map of Offenbach. Will you tell the court whether or not that Tempelsee is the place that you refer to is on this map?

A Yes, over here (indicating).

Q I direct your attention to a red cross at the place that you have just pointed out. Does that red cross indicate a forest next to the Tempelsee community?

A Yes.

PROSECUTION: No further questions.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q When were you first examined by any American authority with respect to your present testimony?

A In 1945, summer or fall; I can't say exactly.

Q Do you remember by whom?

A I don't know the gentleman.

Q Do you remember where?

A Yes, in Offenbach.

Q Did you at that time sign any statement about this case?

A Yes.

DEFENSE COUNSEL: Have you a copy of that statement?

PROSECUTION: No.

QUESTIONS BY DEFENSE COUNSEL:

Q When next, after the summer or fall of 1945 did you discuss this case with any American personnel?

A In January 1945.

Q Do you know by whom that was?

A Yes.

Q Will you tell me who?

A That was Military Government, Offenbach, an investigator named Zukunft.

Q Did you give a written statement at that time?

A Yes.

Q On either of these two occasions were you given a copy of your statement?

A No.

(Lucok-Cross)

hen was the third time?

A That was Easter, 1944.

o you know by whom?

That was an American too. It was an officer and one man without indication of his rank.

Do you know where they came from?

A No.

hen was the fourth time?

A No, afterwards nobody else was there. That was the last time -- and now here, when I came here.

Did you talk this over with Peter Como at any time?

A Only here now. Before, I didn't see Como at all any more.

hen was the last time that you saw Como before you saw him in court?

A The 21st of January 1947.

Was present when you were interrogated by the American officers?

A Yes, I was alone.

Who was present in the office when you had this talk with Albrecht about your going alone?

Como was running around, Dietrich, Pickel, -- two Pichels -- and a few others that were all running around and everybody tried to beat it.

In your opinion should the statement made by Albrecht to you have been heard by Como or some other witness?

[illegible] The same statement was going on and whether they heard it or not it would [illegible] you.

Well, when you said that they all disappeared, did you not mean to tell it to mean that they knew you were given the order or they disappeared in order to avoid being given the order themselves?

A It is possible, it is possible.

DEFENSE COUNSEL: I would like to suspend with this witness if the court does not mind. It is almost twelve o'clock.

PRESIDENT: Court will recess until one-thirty.

(Whereupon at 1157 hours the court recessed until 1330 hours.)

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AFTERNOON SESSION

(Thereupon the Court reconvened at 1330 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and the interpreter are present.

SKAR Ivar, called as a witness by the Prosecution, resumed the stand and being reminded he was still under oath testified through an interpreter as follows:

CROSS EXAMINATION (Continued)

QUESTIONS BY PROSECUTION:

Q Mr. Lwok, you testified this morning that Lehrendt came back to the police station and said something to you, will you repeat the statement that Lehrendt made to you?

A Lehrendt did not say anything to me in the evening at noon, after the flyer had been thrown down and then he said so things.

Q What did he say to you on the occasion you have in mind?

INTERPRETER SCHWARZ: I am sorry I cannot translate the answer of the witness. It is an idiomatic expression and I would have to give the sense of it.

PROSECUTION: I think that perhaps in all fairness it requires a note and from that what was expressed to him by the Kriminalgericht and in one sense to which we took serious objection. I discussed this thing with Dr. Seibert as to when his translation would be and he has given the same or in open court.

INTERPRETER SCHWARZ: I can give only the answer that I believe to be right.

PROSECUTION: I ask the court to direct the interpreter to give the translation which he believes to be right, which is what the interpreter always does anyway.

PRESIDENT: Will you give us what you believe to be correct.

INTERPRETER SCHWARZ: "Keller put us in a mess".

(Cross-examination)

DEFENSE COUNSEL: That is diametrically opposite to what was translated by the other interpreter this morning. I have no further questions.

PROSECUTION: Any questions by the Court?

DEFENSE COUNSEL: Pardon me, Dr. Trost has one question.

PRESIDENT: The Court would like to have that statement submitted in writing to them.

DEFENSE COUNSEL: Perhaps we could have the interpreter dictate the German spelling into the record.

PRESIDENT: All right.

INTERPRETER SCHMIDT: Weller hat was eine Ausbildung.

PROSECUTION: Any questions by any member of the Court?

DEFENSE COUNSEL: Dr. Trost has a question of this witness.

QUESTIONS BY DR. TROST:

Q You have stated that you saw Albrecht and Bichel when they came out of the room from Albrecht's, is that correct?

A Yes.

DEFENSE COUNSEL: May I interrupt, may I ask the Court in its research as to the true meaning of that expression, just read into the record, to have in mind that it is an idiomatic expression commonly used around Wiesbaden, the district from which these people come?

QUESTIONS BY DR. TROST:

Q At that moment, how close was Conz to you?

A About one meter or one meter and fifty centimeters.

PROSECUTION: Any questions by the Court?

PRESIDENT: No.

PROSECUTION: May the witness be excused?

PRESIDENT: The witness will be excused.

(Thereupon the witness was excused and withdrew.)

PROSECUTION: Will you mark these documents Prosecution Exhibits 110 and 110-A?

(The documents referred to were marked Prosecution Exhibits 110 and 110-A for identification.)

PROSECUTION: Now comes the Prosecution and offers in evidence a handwritten, sworn statement of the accused Hermann Moller, taken before Harry Saenger, 1st Lieutenant, Air Corps, and sworn to at Dachau, Germany, 3 October 1945, which document has previously been marked Prosecution Exhibit 110 for identification and a true and correct translation which has been marked Prosecution Exhibit 110-A. We ask they be received in evidence, and made a part of the record as Prosecution Exhibits 110 and 110-A.

DEFENSE COUNSEL: The same objection to the introduction of sworn exhibits by any of the accused.

PRESIDENT: Objection overruled. Prosecution Exhibits 110 and 110-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 110 and 110-A for identification were received in evidence as Prosecution Exhibits 110 and 110-A are attached hereto and made a part of the record.)

PROSECUTION: Permission is requested to read Prosecution Exhibit 110-A the English translation.

PRESIDENT: Permission is granted.

(Whereupon the Prosecution read Prosecution Exhibit 110-A, the English translation of Prosecution Exhibit 110, followed by a reading in the German language by the interpreter.)

PROSECUTION: Will you mark these documents Prosecution Exhibit 111 and 111-A.

(The documents referred to were marked Prosecution Exhibits 111 and 111-A for identification.)

PROSECUTION: Prosecution now offers in evidence a handwritten sworn statement of the accused Hermann Moller, sworn to the 9th day of May 1946 before Walter M. Creek, Investigating Examiner. The original statement has been marked for identification Prosecution Exhibit 111 and the true and correct translation has been marked for identification Prosecution Exhibit 111-A. Prosecution requests they be received in evidence and marked Prosecution Exhibit 111 and 111-A and made a part of the record.

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DEFENSE COUNSEL: Same objection as to the previous exhibits.

PRESIDENT: Objection overruled. Prosecution Exhibits 111 and 111-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 111 and 111-A for identification were received in evidence as Prosecution Exhibit 111 and 111-A, are attached hereto and made a part of the record.)

PROSECUTION: Permission is requested to read these exhibits.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution Exhibit 111-A, the English translation of Prosecution 111, followed by a reading in German by the interpreter.)

PROSECUTION: Will you please mark these documents for identification as Prosecution Exhibits 112 and 112-A?

(The documents referred to were marked Prosecution Exhibits 112 and 112-A for identification.)

PROSECUTION: Prosecution now offers in evidence a handwritten, sworn statement of the accused Wilhelm Albrecht, sworn to on 17 October 1945 at Dachau, Germany before Werner Conn, 2nd Lt., Investigating Examiner; this document has been marked for identification Prosecution Exhibit 112. The Prosecution also offers a true and correct translation which has been marked Prosecution Exhibit 112-A for identification.

DEFENSE COUNSEL: Same objection, may it please the Court.

PRESIDENT: Objection overruled. Prosecution Exhibits 112 and 112-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 112 and 112-A for identification were received in evidence as Prosecution Exhibits 112 and 112-A, are attached hereto and made a part of the record.)

PROSECUTION: Permission is requested to read the exhibits.

PRESIDENT: Permission granted.

(Whereupon Prosecution read Prosecution Exhibit 112-A, the English translation of Prosecution Exhibit 112, followed by a reading in the German language by the interpreter.)

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PROSECUTION: I hand you a document and ask that it be marked Prosecution Exhibit 113 for identification and another document, the English translation, and ask that it be marked Prosecution Exhibit 113A for identification.

(The documents referred to were marked Prosecution Exhibits No. 113 and 113 A for identification.

PROSECUTION: The prosecution now offers in evidence a typewritten and also partially written in handwriting, sworn statement of the accused, Goehrendt, sworn to at Dachau, Germany, 28 December 1945. This document has previously been marked Prosecution Exhibit 113 for identification and a true and correct translation thereof marked Prosecution Exhibit 113A. I ask the court to admit these documents in evidence and that they be made part of the record.

PRESIDENT: Any objection by the defense?

DEFENSE COUNSEL: Same objection, may it please the court, as to the previous exhibit.

PRESIDENT: Objection overruled. Prosecution Exhibits No. 113 and 113 A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 113 and 113 A for identification were received in evidence as Prosecution Exhibits 113 and 113 A, are attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission from the court to read exhibit 113 A.

PRESIDENT: Permission granted.

(Thereupon the prosecution read Prosecution Exhibit 113 A, the english translation of Prosecution Exhibit 113, followed by a reading in the German language by the interpreter.)

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PROSECUTION: I hand the reporter a document and ask that it be marked Prosecution Exhibit 114 for identification.

(Marked on the document referred to was marked Prosecution Exhibit 114 for identification.)

end Tu 82
Putler jms

PROSECUTION: Prosecution now offers in evidence the sworn testimony of the accused Kiwitt taken at Zuffenhausen, German on 3 June 1946 by M. M. Crook, civilian investigator-examiner, War Crimes Branch, APO 633, sworn to the 4th of June 1946. This document has been marked Exhibit 114 for identification. Prosecution asks that it be received in evidence and made a part of the record.

DEFENSE COUNSEL: Some objection, may it please the court.

PRESIDENT: The objection is overruled. Prosecution Exhibit Number 11 will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibit 114 for identification was received in evidence as Prosecution Exhibit 114, is attached hereto, and made a part of the record.)

PROSECUTION: Before the reading of this document at this time I would like to call the court's attention to the fact that there will be some evidence from this point on submitted in connection with both Charges VII and VIII. There are some confessions, some pathologist's reports and photographs that necessarily combine the two charges.

Prosecution requests permission to read Exhibit 114.

PRESIDENT: Permission is granted.

PROSECUTION: Has the defense any objection to my omitting the qualifications of the reporter and interpreter?

DEFENSE COUNSEL: None.

(Thereupon prosecution read Prosecution Exhibit P-114, followed by a translation thereof in the German language by the interpreter.)

PRESIDENT: Court will recess for thirty minutes.

(Thereupon at 1500 hours the court recessed for thirty minutes.)

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all members of the court, all members of the prosecution, all members of the defense, all the accused, the reporter and interpreter are present.

I hand the reporter two documents and request that they be marked Prosecution Exhibits 115 and 115-A for identification.

(The documents referred to were marked Prosecution Exhibits 115 and 115-A for identification.)

PROSECUTION: Now comes the prosecution and offers in evidence a typewritten statement dated May 29, 1945, taken at Offenbach, of the accused Hermann Moller, which has been marked for identification Prosecution Exhibit 115, and a true and correct translation thereof which has been marked for identification Exhibit 115-A, and ask that they be received in evidence and made a part of the record.

DEFENSE COUNSEL: Same objection, may it please the court.

PRESIDENT: Objection overruled. Prosecution Exhibits 115 and 115-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 115 and 115-A for identification were received in evidence as Prosecution Exhibits 115 and 115-A, are attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Prosecution Exhibit 115-A.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 115-A, followed by a reading of Prosecution Exhibit 115 by the court interpreter.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution Exhibit 116 for identification.

(The document referred to was marked Prosecution Exhibit 116 for identification.)

PROSECUTION: Now comes the prosecution and offers in evidence

the sworn testimony of Hermann Moller, taken at Dachau, Germany, the 8th of May, 1946, by M. M. Crook, Civilian Investigator-Examiner, War Crimes Branch, APO 633; which has been previously marked Prosecution Exhibit 116 for identification, and askr that it be received in evidence and made a part of the record.

PRESIDENT: Any objection?

DEFENSE COUNSEL: Same objection, may it please the court.

PRESIDENT: Objection overruled. Prosecution Exhibit 116 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 116 for identification was received in evidence as Prosecution Exhibit 116, is attached hereto, and made a part of the record.)

PROSECUTION: Permission is requested of the court to read Prosecution Exhibit 116.

PRESIDENT: Permission granted.

PROSECUTION: Does the defense have any objection to skipping the qualifications of the interpreter?

DEFENSE COUNSEL: None.

PROSECUTION: Does the defense counsel have any objection to skipping the name and residence and all that?

DEFENSE COUNSEL: None.

(Whereupon the prosecution read Prosecution Exhibit 116, followed by a translation of the same into the German language by the court interpreter.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution Exhibit 117 for identification.

(The document referred to was marked Prosecution Exhibit 117 for identification.)

PROSECUTION: It is stipulated by and between the defense and the accused and the prosecution that if the witness Captain Smith, who previously testified before this court, was present, he would testify that

Captain Marvin Kuschner, Medical Corps, U. S. Army, is now in the United States of America. Does the defense agree to that stipulation?

DEFENSE COUNSEL: We subscribe to it.

PROSECUTION: Now comes the prosecution and offers in evidence an affidavit of Captain Marvin Kuschner, Medical Corps, and accompanying true and correct translation thereof, and attached photograph to which reference is made in that affidavit. This document has been previously marked Prosecution Exhibit 117 for identification. Prosecution asks that it be received in evidence and made a part of the record.

DEFENSE COUNSEL: May it please the court, thedefense objects — no objection.

PRESIDENT: Prosecution Exhibit 117 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 117 for identification was received in evidence as Prosecution Exhibit 117, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Exhibit 117.

PRESIDENT: Permission granted.

(Thereupon the prosecution read Prosecution Exhibit 117, followed by a reading of the same in the German language by the court interpreter.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution Exhibit 118 for identification.

(The document referred to was marked Prosecution Exhibit 118 for identification.)

PROSECUTION: Now comes the prosecution and offers in evidence an affidavit of Captain Marvin Kurchner and a true and correct translation attached thereto and a photograph attached thereto, to which reference is made in the affidavit. This document has been previously marked Prosecution Exhibit 118 for identification. Prosecution asks that it be received in evidence and made a part of the record.

DEFENSE COUNSEL: No objection.

PRESIDENT: Prosecution Exhibit 118 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 118 for identification was received in evidence as Prosecution Exhibit 118, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Prosecution Exhibit 118.

PRESIDENT: Permission granted.

PROSECUTION: Does the defense have any objection if I omit the qualifications of the medical officer, the same one in the preceding affidavit?

DEFENSE COUNSEL: None.

(Whereupon the prosecution read Prosecution Exhibit 118, followed by a reading of the same in the German language by the court interpreter.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution Exhibit 119 for identification.

(The document referred to was marked Prosecution Exhibit 119 for identification.)

PROSECUTION: Now comes the prosecution and offers in evidence an affidavit of Marvin Kuschner, Captain, Medical Corps, with accompanying true and correct translation and photograph attached thereto, to which reference has been made in the affidavit. This has been previously marked Prosecution Exhibit 119 for identification. Prosecution asks that it be received in evidence and made a part of the record.

DEFENSE COUNSEL: May it please the court, the defense objects to the introduction of that photograph, which is a picture showing the point of entry into the abdomen of a bullet hole. Our objection is based on the fact that the picture itself is highly prejudicial to the rights of the accused in that it shows behind the body of the deceased named in this picture four other graves which have nothing whatever to do with this case.

There is no way to block them out of the picture.

PROSECUTION: We ask the court to recall the theory of the prosecution throughout this entire case as a criminal conspiracy to commit homicide and murder on a large scale, and any evidence along those lines which tends to prove a conspiracy has probative value and should be accepted by the court. The particular purpose, however, for introducing this document is the medical officer's report on the bullet wound in the stomach of the flier Dacke. If the court feels that the presence of the crosses in the back is not relevant, the court has the discretionary power to disregard it. This document has probative value and should be received.

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DEFENSE COUNSEL: I have no objection to the report itself, may it please the court. The objection is to the picture, and I don't think the prosecution can prove a conspiracy to commit war crimes merely by the introduction of photographs which bear names above crosses. It is going to be hard for a court composed of human individuals to look at a picture and then block out of it the most significant part of the picture.

PROSECUTION: Will it be acceptable to the court if the crosses that appear in the back, bearing names we are not familiar with, if we put a paster across them and block them out?

DEFENSE COUNSEL: That would meet my objection completely, as long as the graves were blocked out of the picture.

PRESIDENT: The court will disregard it either way.

DEFENSE COUNSEL: If that is done, I withdraw my objection.

PRESIDENT: The defense having no objection to the photograph as it now exists, Prosecution Exhibit 119 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 119 for identification was received in evidence as Prosecution Exhibit 119, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Prosecution Exhibit 119.

PRESIDENT: Permission granted.

PROSECUTION: If you have no objection, I will skip the preliminary qualifications.

DEFENSE COUNSEL: None at all.

(Whereupon the prosecution read Prosecution Exhibit 119, followed by a reading of the same in the German language by the court interpreter.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution Exhibit 120 for identification.

(The document referred to was marked Prosecution Exhibit 120 for identification.)

PROSECUTION: Now comes the prosecution and offers in evidence an affidavit of Captain Marvin Kaschner and accompanying true and correct translation thereof and photograph attached thereto, to which reference has been made in said affidavit. This has been previously marked Prosecution Exhibit 120 for identification. We ask that it be received in evidence and made a part of the record.

DEFENSE COUNSEL: There is no objection.

PRESIDENT: Prosecution Exhibit 120 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 120 for identification was received in evidence as Prosecution Exhibit 120, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Prosecution Exhibit 120.

PRESIDENT: Permission granted.

(Whereupon prosecution read Prosecution Exhibit 120, followed by a reading of the same in the German language by the court interpreter.)

PROSECUTION: I hand the reporter two documents and request that they be marked Prosecution Exhibits 121 and 121-A for identification.

Ta 84-ps-SO-1/23-7

(The documents referred to were marked Prosecution Exhibits 121 and 121-A for identification.)

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PROSECUTION: Now comes the prosecution and offers in evidence a document which has been previously marked Prosecution Exhibit 121 for identification, and which is a pathologist's affidavit of Marvin Kuschner, Captain, Medical Corps, which was sworn to by him on the 29th of April, 1946, with accompanying exhibits. I ask that this exhibit be received in evidence and made part of the record.

I would like to call the court's attention to the fact that this is an instance where the piece of evidence is also in support of Charge VIII.

DEFENSE COUNSEL: The only objection we have, may it please the court -- we have no objection to the exhibits -- is that the affidavit itself refers to three individuals, one named in Charge VII, to which there can be no objection, and one named in Charge VIII, to which we offer no objection. But it also refers to another individual who is not named in the case whatsoever, and I think it ought to be offered without that part of it which deals with the certain named person, or only such part of it as deals with named persons.

PRESIDENT: Objection overruled.

PROSECUTION: The prosecution also offers in evidence a document which has been marked Prosecution Exhibit 121-A for identification, which is a true and correct translation of Prosecution Exhibit 121. We ask that that be received in evidence and made a part of the record.

DEFENSE COUNSEL: No objection, except to such part of the translation of the record dealing with one Fraser, who is not a part of this case.

PRESIDENT: Objection overruled. Prosecution Exhibits 121 and 121-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 121 and 121-A for identification were received in evidence as Prosecution Exhibits 121 and 121-A, are attached hereto, and made a part of the record.)

PROSECUTION: Permission is requested of the court to read Prosecution Exhibit 121.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 121-A, affidavit of Captain Marvin Kuschner, followed by the reading of Prosecution Exhibit 121, affidavit of Marvin Kusconner, in the German language by the interpreter.)

MAJOR SAXON: If it please the court, I would like to ask the court to reconsider its former ruling on Colonel Berman's motion to strike from this report any part that refers to the man Frazer. It has no purpose in this case whatsoever. The prosecution has not charged any of these people with the death of Frazer, and there is no evidence here as to how he died. It does not make any difference to this case, and I think it is possibly a reversible error. It has no purpose in the case, and I think that Colonel Berman's motion should be sustained.

PROSECUTION: During the course of this trial we expect to prove other murders. Charge I charges the accused with the commission of various murders at sundry places within the then German Reich, individually and collectively, as principals, accessories, leaders, organizers, instigators, and accomplices; did engage in, formulate and participate in a common plan or design to commit or cause to be committed violations of the laws of war, and pursuant thereto did

wilfully, deliberately, and wrongfully encourage, aid, abet, order and participate in, or took a connecting part in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and under the prisoners of war, to cruelties and mistreatments, including killings.

MAJOR SAXON: Could I add one more word, if the court please? That would be like saying that every person who lost his life over here in the European Theater lost it by some act of these accused. Many fliers were shot down and were buried by the German populace. To charge these accused with the death of this one particular prisoner is certainly out of the realm of possibility in this case and should be stricken.

PROSECUTION: Yes, we intend to prove many murders, because this is a criminal conspiracy, and any murders committed in Wehrkreise 12 can be accepted by the court in support of a common design and criminal conspiracy.

PRESIDENT: The court will recess in place.

(Thereupon the court recessed in place.)

PRESIDENT: Court will come to order.

The motion to strike that portion of Prosecution Exhibit 121 as pertaining to Charles Frazer is sustained.

(Prosecution Exhibit 122 was marked for identification.)

PROSECUTION: Now comes the Prosecution and offers in evidence the sworn testimony of Wilhelm Albrecht, taken at Dachau on the 14th day, 1946. This document has been previously marked Prosecution Exhibit 122 for identification.

We ask that it be received in evidence and be made a part of the record.

DEFENSE COUNSEL: The same objection made as to the receiving of a sworn confession.

PRESIDENT: Objection overruled. Prosecution Exhibit 122 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 122 for identification was received in evidence as Prosecution Exhibit 122, is attached hereto, and made a part of the record.)

PROSECUTION: This is five pages of testimony. Does the court desire that I read it now?

PRESIDENT: Court will adjourn until tomorrow morning at 9 o'clock.

(Whereupon the court adjourned at 1700 hours until 0900 hours, 24 January 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on .....194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13

Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

(10)

Pages 485 - 568

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 24 JANUARY 1947

*~~Members of Court~~

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Rudolph H. Schubert

Reporter Patricia Stewart, Irving Hayett, Sally Rose Hayett, Imogene Butler Paula Silverman, John McDonald

WITNESSES:

JOHN STEGNER FRITZ FABIAN
ADAM JAEGER
GERHARD ZAHN
KARL GUENTHER

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

In trial of

THE UNITED STATES VERSUS JURGEN STROOP, ET AL

BY

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JAN 1947

24 January 1947--Pages 485 - 568

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COURT
STEGNER, John (Recalled)			486	487	
JAEGER, Adam	496	509			
ZAHN, Gerhard	520	530	551		
GUENTHER, KARL	560	567			
FABIAN, Fritz	551	556			

EXHIBITS

No.	Description	Marked	Received in evidence
P-123	Affidavit of Eric Steinmetz	486	493
P-123A	English translation	486	493
P-124	Affidavit of Eric Steinmetz	494	495
P-124A	Translation of P-124	494	495
P-125	Report of Burial of Wm. A. Duke	495	496
P-126	Plat marked "Jaeger Exhibit A"	498	500
P-127	Wall Chart, Same as 126	500	501
P-128	Photograph	530	531
P-129	"	531	532
P-130	"	532	533
P-131	"	533	533
P-132	"	533	534
P-133	"	535	535

MORNING SESSION

(Thereupon court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: If the court please, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Rau, who is absent on business of the defense, all the accused, the reporter and interpreter are present.

Prosecution requests permission of the court to read prosecution exhibit number 122.

PRESIDENT: Permission granted.

(Thereupon the prosecution read Prosecution Exhibit Number 122, followed by a translation thereof into the German language by the interpreter.)

PROSECUTION: Will you mark these documents Prosecution Exhibit Numbers 123 and 123-A for identification, please?

(The documents referred to were marked Prosecution Exhibits Numbers 123 and 123-A for identification.)

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PROSECUTION: Call John Stegner.

JOHN STEGNER, US Civilian, recalled as a witness by the Prosecution, having been previously sworn testified further as follows:

(Whereupon the proceedings were translated into the German language.)

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Are you the same John Stegner who has previously testified in this cause?

A I am.

Q Were you employed in connection with the pre-trial investigation of the case now on trial before this Court?

A I was.

Q What efforts have been made to secure the attendance before this Court of the French witnesses: Josef Hunter, William Jordy and Eugene Schneider?

A On December 6, 1946 the Apprehension Section of the War Crimes Group, Augsburg, made a request to the French liaison detachment, Augsburg, War Crimes Group, that these witnesses who are living in France, Strassbourg be extradited for the purpose of testifying in this cause.

Q Have these witnesses been obtained and are they here now available to testify?

A They have not been obtained and are not here to testify.

Q Were diligent efforts made by the Apprehension Section to obtain their presence here?

A Efforts ---

DEFENSE COUNSEL: I pray the Court's judgment to that question.

PRESIDENT: Objection overruled.

THE WITNESS: Yes.

QUESTIONS BY PROSECUTION:

Q Do you know whether or not the three persons I have named are French citizens residing in France at this time?

A Yes. They are citizens of France and reside in France.

Q Has the French Government granted extradition of these people?

A To my knowledge the French Government has not as yet granted the extradition of these witnesses. I do know of my own knowledge that the request for apprehension has been forwarded by the French liaison but we have heard no more.

PROSECUTION: No further questions. Does the Defense wish to question?

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q May I see the paper you were looking at?

A Yes. (Witness handed paper to Defense Counsel).

Q Is the evidence that you gave to the Court about the date the extradition was asked for based on your own knowledge or was that information conveyed to you?

A Based upon my own knowledge, upon a conversation I had with Captain Smith in charge of apprehension of all witnesses in this case.

Q You say that on 6 December a request was made for these three witnesses and that to your personal knowledge that request was forwarded by the French liaison officer?

A It was forwarded to the French liaison officer.

Q By someone in Augsburg?

A That is correct.

Q What follow up had been made, to your knowledge, of the original request for these men dated December 6?

A I personally called Captain Smith from Dachau on Monday or Tuesday of this week and asked him what developments had taken place in our requests for these witnesses.

Q Did Captain Smith ---

A He replied that he had contacted the French liaison, Augsburg and

they had informed him that his request for extradition had been forwarded to the French authorities.

Q Did Captain Smith tell you when he made that request by phone?

A I do not remember if he told me the exact date but I know the follow up call has been in the last week or ten days.

Q So that the diligent efforts you say were made to procure these witnesses consisted of a request for them to get the witnesses forwarded to them December 6 - to the French liaison officer and a phone call to Captain Smith to that same officer; as a result of which you learned that the request had been forwarded to someone higher up, is that correct -- plus your phone call to Captain Smith last Monday?

A That is correct.

DEFENSE COUNSEL: No further examination.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Did you make a phone call to Captain Smith yesterday?

A Yes.

Q Did he tell you that the witnesses had been secured?

A He said they had not been secured.

PROSECUTION: Any further examination by the Defense?

DEFENSE COUNSEL: Nothing further.

QUESTION: Any questions by the Court?

PRESIDENT: No.

PROSECUTION: Request the witness be excused.

PRESIDENT: The witness will be excused.

(Thereupon the witness was excused and withdrew.)

PROSECUTION: Now comes the Prosecution and offers in evidence a statement in French, signed by the Police Superintendent Steinmetz, Ministry of Interior, General Department of National Security, Strasbourg, France, referring to testimony taken by him of one Josef Kontor. This has been

marked for identification as Exhibit 123. We also offer in evidence a true and correct translation thereof marked Prosecution Exhibit 123-A and ask these documents be received in evidence and made a part of the record.

DEFENSE COUNSEL: May it please the Court, the Defense objects to the introduction of these exhibits on several grounds. First, on the ground that diligent efforts to procure these witnesses was not made. We submit that an effort was initiated on December 6th and followed through to the extent indicated here which in our opinion is not a diligent effort. Secondly, this is supposed to be a true and correct copy of a statement but the signature on the true copy is illegible so that there is no evidence before this Court to indicate that this is a true copy in as much as the Prosecution does not have the original signed copy. Furthermore I invite the Court's attention to the Manual for the Trial of War Crimes at Dachau, Section 280. That Section is the Bible for the introduction of statements in the absence of witnesses themselves. It discusses the introduction of statements when the witnesses cannot be procured and opens up with a statement to that effect. It goes on to say that "...such testimony may be introduced if it was procured by an officer officially appointed to investigate war crimes". That situation can be understood because the person so operating or acting under orders is subject to control by the military authorities and subject to disciplinary control. It provides for some sort of safeguard in the taking of these statements. Here we are offered a true copy by someone unknown, of a statement obtained by some Frenchman, given by some other Frenchman with no safeguards whatsoever. Furthermore, -- and I am anticipating the contents of this statement -- this particular one is so obviously false, if it were to have any probative value at all then the Court would have to disregard all the Prosecution witnesses with respect to charge number seven. It talks of events not connected with the charges and in a most roundabout fashion. I could go on further but I think I have indicated enough to the Court as to the basis of our objection to this particular exhibit.

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PROSECUTION: As this question may come up again, I beg the Court's permission to be heard at this time. At the beginning I offered this document and the Court has not seen it. I will tell the Court that it bears the official stamp of the Police Commissioner Steinmetz from Strasbourg and his signature. He says it is a certified and true copy above his signature and therefore we establish the presumption of the regularity of acts of an official. Coming now to the War Crimes Trial Manual -- and I recall this to the Court -- "The Court will admit such evidence as in its opinion will be in assistance in proving or disproving the charge or such as in its opinion would have probative value in the mind of a reasonable man". That is on page 107 of the Manual. On page 108 of the Trial Guide we find the following: "This rule permits the admission of any evidence which in the opinion of the Court is of probative value". I will remind the Court again, as I have done throughout this entire case, that all though at present moment we are offering particular proof to support charge number seven, we are continually, throughout the trial, offering evidence, from time to time, in support of charges one and two and we are proving criminal conspiracy. At the moment we are trying to prove the particular murder in charge seven and conspiracy. I would like to quote from Underhill on Evidence:

> "In proving a conspiracy any fact, or circumstance either direct or circumstantial tending to prove a concurring agreement to carry into effect a common purpose to commit a crime, is admissible and the Court will permit the evidence to take a wide range. The acts and statements of conspirators, even though remotely relating to the crime which is the object of the conspiracy, may be relevant as a part of the res gestae although otherwise irrelevant."

I have just quoted from paragraph 774, page 1406 from a Treatise on Law of Criminal Evidence, H. B. Underhill of New York Bar. I further quote from page 1407 of the same book "Evidence is admissible to show the carrying into effect of a conspiracy to commit a crime and many facts of no consequence in isolation may be proved because of the persuasiveness of their united effect".

DEFENSE C OUNSEL: There is no doubting the statement that this Court is authorized to receive hearsay testimony within a very wide range, it is so stated but the rule limiting the admission of written evidence is also stated and that is a limitation to the general rule. The reason for that is obvious. When you have a man on the witness stand facing the Court, the Court is composed of men of experience and has as its aid its experience in dealing with men and it sees the witness. The second rule limits the first one, as a matter of elementary justice to the accused in any particular case because there you do not even see the man. May it please the Court, I have tried and defended a good many conspiracy cases and I know that anything that is material or that contributes in the slightest degree to the consumation of the conspiracy is admissible. We do not deny that. However, you cannot introduce in evidence against named conspirators the acts of people not named as conspirators. That is fundamental. This charge names twenty two specific people and says they conspired together and that excludes everyone else but these twenty two people. If it was intended to bind these accused by the acts of others then these others should have been named, at least in general terms. The ordinary procedure is to say that John Doe or Richard Roe and others, whose names are unknown, did conspire. That was not done in this case. Some of the men named in these statements are not named as defendants and there is no general inclusive catch-all phrase. Is it going to be possible to blame these accused for everything everyone did in the whole Rhine-Westmark area without some language to that effect in these charges? I submit not, may it please the Court.

PRESIDENT: The Court will recess for thirty minutes.

(Thereupon at 0955 hours the Court recessed.)

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(Thereupon the court recessed at 1035 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense; all the accused; the reporter and interpreter, are present.

May it please the court, there is a new interpreter to be sworn, Mr. Herbert Rosenstock.

(Whereupon Herbert Rosenstock, U. S. Civilian, was sworn as interpreter.)

PROSECUTION: May it please the court, to aid the court in its decision in the matter now before the court, the prosecution makes two suggestions. One, that the document about which there has been an argument before the court be examined by the Law Member who may advise the Court. Secondly, the prosecution consents that that part of the document referring to any other conspirator than the accused in the dock be not received in evidence.

DEFENSE COUNSEL: Without waiving our objection, I have no objection to the suggestion but I should like to add this — that we have an additional objection to one or the other of the other two. For instance, we object to one of them on the ground it contains definite defamatory matter, matter of character, talk about beasts for instance. I mean that because while only one has been offered in evidence, there are three and as long as the Law Member is going to examine one document, he might just as well examine the three of them. I object to the three on the common ground I have stated, plus the additional objection that some of them are definitely character testimony.

PROSECUTION: I would like for the court to understand the prosecution objects strenuously to the defense putting his interpretation

on what the document contains. He has told the Court what, in his opinion, the document contains and I object to that.

PRESIDENT: Let the documents be submitted to the Law Member.

DEFENSE COUNSEL: One is officially in the Record and the other two the Law Member might just as well look at now.

PROSECUTION: If the Court rules that this document can not be received in evidence, then I do not intend to offer the other two. I suggest that they be taken up one at a time.

PRESIDENT: One only will be submitted. Court will recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the Court, the prosecution withdraws its offer of Exhibits 123 and 123-A and offers these documents again in evidence, eliminating the names of persons therein who are not accused.

DEFENSE COUNSEL: The defense stands on the objection as it originally stated, of course, with the exception of the objection it referred to people who were not accused.

PRESIDENT: Objection overruled. Prosecution Exhibits No. 123 and 123-A will be received in evidence as offered and made a part of the record.

(Whereupon the documents heretofore marked Prosecution Exhibits No. 123 and 123-A for identification, were received in evidence as Prosecution Exhibits No. 123 and 123-A, are attached hereto, and made a part of the record.)

PROSECUTION: Permission is requested to read Prosecution Exhibit No. 123-A.

(Whereupon the prosecution read Prosecution Exhibit No. 123-A the English translation of the statement of Erie Steinmetz.)

PROSECUTION: May it please the Court, this document is in French. I have an interpreter to be sworn who will translate the exhibit from the French into German.

PRESIDENT: The Court has appointed Yolanda E. Keller as court interpreter. She will be sworn.

(Whereupon Yolanda E. Keller, Swiss National, was sworn as court interpreter, who translated Prosecution's Exhibit 123 from French into German.)

PROSECUTION: I hand the reporter two documents and request that they be marked Prosecution's Exhibits 124 and 124A for identification.

(The documents referred to were marked Prosecution Exhibits 124 and 124A for identification.)

PROSECUTION: Now comes the Prosecution and offers in evidence an affidavit from the Police Superintendent Steinmetz, Strassbourg, concerning testimony given him by one Guillaume Jordy. This document has been marked Prosecution's Exhibit 124 for identification, and the Prosecution offers a true and correct translation thereof, which has been marked Prosecution's Exhibit 124A for identification; and Prosecution asks that these documents be received in evidence and made a part of the record.

DEFENSE COUNSEL: Now the same objection, may it please the Court, as was made to Prosecution's Exhibits 123 and 123A. I would like to particularly ask if the record doesn't show the two names in Prosecution's Exhibits 123 and 123A excluded, because if you take the statement as it was read into the record, the man talks about four and says these Americans were "supposed to have been killed", giving

the impression that these two killed the four of them, because that's not the sense of the statement; and I wanted to know how that could be guarded against--giving that impression. Of course, the mere fact that I say so may take care of that.

PRESIDENT: The objection is overruled. Prosecution's Exhibits 124 and 124A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 124 and 124A for identification were received in evidence as Prosecution Exhibits 124 and 124A, are attached hereto and made a part of the record.)

PROSECUTION: Permission is requested of the Court to read Exhibit 124A.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution's Exhibit 124A, an affidavit of Eric Steinmetz, followed by a translation of Prosecution's Exhibit 124 from French into German by the interpreter.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution's Exhibit 125 for identification.

(The document referred to was marked Prosecution Exhibit 125 for identification.)

PROSECUTION: Now comes the Prosecution and offers in evidence a report of burial of William A. Duke, an official document signed by Clyde C. Collin, Major, Quartermaster Corps, Headquarters, First Quartermaster Group, and ask that it be made a part of the record. It has been marked for identification as Prosecution's Exhibit 125.

DEFENSE COUNSEL: No objections.

PROSECUTION: The Prosecution asks the Court's permission to dispense with the reading of this document.

DEFENSE COUNSEL: No objections.

PRESIDENT: Prosecution's Exhibit 125 will be received in evidence and made a part of the record, and the reading will be dispensed with.

(The document heretofore marked Prosecution Exhibit 125 for identification was received in evidence as Prosecution Exhibit 125, is attached hereto and made a part of the record.)

PROSECUTION: May it please the Court, that concludes the Prosecution's main evidence directed in support of Charge Number 7. Prosecution now desires to begin submission of evidence in connection with Charge Number 8.

I call the witness Adam Jaeger.

ADAM JAEGER, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY THE PROSECUTION:

Q State your full name.

A Jaeger, Adam.

Q Where do you live?

A Offenbach-Bieber.

Q How old are you?

A 50.

Q Did you ever hear of a man by the name of Bernhard Fay?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

A 13.

PROSECUTION: Let the record indicate that the witness identified the accused Fay, wearing number 13.

QUESTIONS BY THE PROSECUTION:

Q Did you ever hear of a man by the name of Paul Nahrgang?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

A 10.

Q Do you know a man by the name of Philipp Hammann?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

A I can't pick him out now, even though we spent years together.

Q Do you know Hans Eichel?

A Yes, six.

PROSECUTION: Let the record show that the witness identified the accused Eichel, wearing number 6.

QUESTIONS BY THE PROSECUTION:

Q Would you like to stand over near that table

and see whether you can see whether Hammann is in the court room?

MR. MACHAEL: If the Court please, the Defense objects to the question and the form of identification of the accused. The Prosecution is limited. He has asked the witness to go to the Defense table and examine the accused. I respectfully submit that that is beyond the method to be used for the purpose of identification.

PROSECUTION: When the witness tried to make--

WITNESS: Number 12--I never saw him with glasses before.

PROSECUTION: When the witness tried to make his identification he looked in the direction of the dock, and I only asked him to go closer to aid his vision.

PRESIDENT: Objection overruled.

PROSECUTION: Let the record show that the witness identified the accused Hammann, wearing number 12.

QUESTIONS BY THE PROSECUTION:

Q Do you know a man by the name of Josef Kiwitt?

A I do know his name, and I did see him in uniform. He had been with us ever since February.

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution's Exhibit 126 for identification.

(The document referred to was marked Prosecution Exhibit 126 for identification.)

QUESTIONS BY THE PROSECUTION:

Q I hand you a piece of paper which has been marked Prosecution's Exhibit 126 for identification. Would you tell me whether or not you have ever seen this before?

A 126? What do you mean by that? What that's possible to mean?

Q That's the identification number for the benefit of the Court. Have you ever seen that piece of paper before?

A This here?

Q Yes.

A Yes.

Q Did you supply the information concerning which that was prepared?

A Yes.

Q To whom?

A To an American.

Q Where?

A On the Bierbrauer Weg.

Q When?

A In 1945.

Q What is that piece of paper you have there?

A That's a sketch.

Q Sketch of what?

A Of the place where the flier was shot.

PROSECUTION: Now the Prosecution offers in evidence a map which is entitled "Jaeger Exhibit A", signed by Burkhardt, dated 7 June 1946, showing the location and

buildings on Bierbrauer Weg. This has been marked for identification Prosecution's Exhibit 126, and we ask that it be received in evidence and made a part of the record. This is offered to aid the court in determining the facts in this case.

MR. RACHEEL: The Defense objects to that on the ground that there is no evidence before the Court that that is a true and accurate sketch, and that the foundation for the admission of the sketch has not been laid, in view of the fact that the witness through whom the sketch is being introduced did not prepare it.

PRESIDENT: Objection overruled. Prosecution's Exhibit 126 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 126 for identification, was received in evidence as Prosecution Exhibit 126, is attached hereto, and made a part of the record.)

PROSECUTION: I ask the reporter to mark the chart on the wall Prosecution's Exhibit 127 for identification.)

(The document referred to was marked Prosecution Exhibit 127 for identification.)

PROSECUTION: Prosecution offers in evidence a large wall charg which has been marked Prosecution's Exhibit 127 for identification, which is an exact duplicate of Prosecution's Exhibit 126, and is offering this to aid the Court in determining the facts in this case.

MR. RACHAEL: The Defense objects to it on the ground that it does not know whether or not it is a true and correct copy of that paper and for the further ground for the reasons stated for Prosecution's Exhibit 126.

PRESIDENT: Objection is overruled. Prosecution's Exhibit 127 will be received in evidence.

(The document heretofore marked Prosecution Exhibit 127 for identification, was received in evidence as Prosecution Exhibit 127.)

PROSECUTION: Because of the size of the exhibit, Prosecution's Exhibit 127, permission is requested to withdraw the same at the conclusion of the trial.

PRESIDENT: Permission granted.

QUESTIONS BY THE PROSECUTION:

Q Jaeger, were you a member of the fire police in Offenbach in February, 1945?

A Yes.

Q What rank did you hold?

A Sergeant.

Q Do you remember anything unusual happening in February, 1945, while you were on duty in Offenbach?

A Yes.

Q Tell the Court what happened.

A The pilots of a four-motored plane came down in a parachute at about two P. M.

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Q What were you doing at that time?

A The main air raid alarm had been called, and I was on guard, and a police captain drove by on his bicycle, and he said, "All these fliers are going to be beaten to death."

Q Continue.

A And all the comrades said that this was Captain Kiwitt.

Q And?

A He was driving a bicycle with a big frame.

Q Continue.

A I didn't know him, but he was driving a bicycle and he was a captain.

Q About what time of the day did this happen?

A Two P. M.

Q Do you remember what date in February that was?

A 22nd.

Q Continue to tell us what happened.

A In the evening between 8:30 and 9 o'clock, there was another preliminary air raid alarm, and I and Zahn was standing guard, and two policemen came by with a flier.

Q What happened? Come over here to the chart.

(Whereupon the witness did as directed.)

A And as they were at the corner, we were in Place A and at B.

Q Are you referring to the place marked A and B on the wall chart? If so, point these places out.

A He was standing here, and as the police was in this place, they called us.

PROSECUTION: Let the record show that the witness indicated a point near A, and then a point marked B.

QUESTIONS BY PROSECUTION:

Q Continue.

A And they were calling the guards, so we went over there, and he said, "Where is the sergeant of the guard here?"

MR. RACHAEL: If the court please, I don't believe the accused can hear what the witness is saying.

PROSECUTION: Tell him to talk a little louder so they can hear him.

(Whereupon the court interpreter did as directed.)

THE WITNESS: Yes, I will talk louder.

QUESTIONS BY PROSECUTION:

Q And then what happened?

A And then Zahn said, "He is still in the Caserne."

Q Who was Zahn?

A We were both standing guard.

Q Was he a policeman also?

A He was wearing the uniform of the air raid police.

Q Then what happened?

A He said, "He is supposed to be bumped off." The police said that.

Q Who said that?

A One of these policemen.

Q Then what happened?

A He said they had been running around for an hour and a half already.

Q Continue.

A And one of them was a bad man, and we were supposed to do that with civilians.

Q Then what happened?

A Suddenly Nahrgang was here, and he called Hammann, and I didn't hear what they said, because I was standing in the house next to the flier.

Q Point out on the chart where Nahrgang and Hammann were at that time.

A Here where the shelter is, here. (indicating.)

Q PROSECUTION: Let the record show that the witness is pointing out a place which is marked "bunker," and also with the letter "F."

QUESTIONS BY PROSECUTION:

Q Then what happened?

A And Hasmann said "No." Upon that, he called "Guard."

Q Then what happened?

A I didn't hear what they said, but Fay replied, "That is only a small matter. We will get it fixed up right away."

Q Then what happened?

A And one of the policemen said, "Have you got a pistol?"

Q And?

A And one of them, who didn't say anything, took his pistol off.

Q Where was the American flier when this was taking place?

A He was standing here at that time. Here is the bunker -- that is a shelter against shrapnel, really -- and I would say he was standing about here (indicating.)

PROSECUTION: Let the record show that the witness pointed to the place on the map marked "bunker."

QUESTIONS BY PROSECUTION:

Q Then what happened?

A Now, that is the flier here, and he pushed him, like this.

PROSECUTION: Let the record show that the witness demonstrated pushing of the flier by using the interpreter as an example.

QUESTIONS BY PROSECUTION:

Q Then what happened?

A Then they went out down this way.

Q When you say "they went out," who are you referring to?

A Fay and the flier and the regular policeman.

Q Then what happened?

A And then went around here. There was a wooden shed here with a kitchen there, and there was a shot. That must have been about here.

Q Then what happened?

MR. RACHAEL: If the court please, I would like to have the prosecution indicate for the record where the witness pointed to.

PROSECUTION: I am coming to that.

QUESTIONS BY PROSECUTION:

THE WITNESS: I didn't see it, but it must have been somewhere back here. I was standing up here, and that is about where the shot came from, or where I seemed to hear it from.

PROSECUTION: Let the record show that the witness pointed to a square underneath another square on the map, which is marked "Guard Shack, Hammann, Fay, Mahrgang."

QUESTIONS BY PROSECUTION:

Q Did the flier start his march with Fay from the place marked "bunker?"

A Here, yes, that is where they left.

Q You told the court you supplied the information for the making of this chart. What do these lines, dotted lines, indicate that and with an arrow near the point D?

MR. RACHAEL: If the court please, I respectfully submit that the witness, upon being asked the question "where did they start from?" pointed to the guard room, and the record should indicate that such point was made.

PROSECUTION: Will you please read the last question back?

(Whereupon the last question was read by the court reporter.)

QUESTIONS BY PROSECUTION:

A Well, this should be turned around. That is not clear to me at all. It should be twisted all around.

Q What does the point E indicate?

A This E, that is the staircase.

Q The staircase leading to what?

A That goes down this way. That was the big shelter for the air raid alarm.

Q Did anything happen at point E?

A Point A, here. Well, the flier must have gone down that way.

Q All right. When you say the flier must have gone down ------

PRESIDENT: I think we should switch that chart around so it is clear in his mind, the way he wants it.

PROSECUTION: May we have a recess in place?

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show that Prosecution Exhibit 127, at the request of the witness, has been turned upside down.

QUESTION BY PROSECUTION:

Q Are you better able to describe what happened with the exhibit in the position it is in now?

A Yes, I understand it now.

Q You said the flier was standing in front of the place marked "bunker," is that correct?

A Well, he was standing over here, that is where he was.

Q When Fay and the flier went away -----

A (Interposing) I was standing here with the flier.

Q When Fay and the flier went away, trace on that chart their path, the route that they took.

A Here, up this way, over this way here, and that is down the stairs this way.

PROSECUTION: Let the record show that the witness pointed to the dotted lines leading from the bunker and ending with an arrow at the place marked A, and also the vicinity of the place marked Stairway 25 steps.

Q Then what happened?

A When they had the shot?

Q What happened?

A Suddenly somebody called out, "A parachutist is escaping."

Ta 90-pa-10-1/24-6

Q Then what happened?

A I was standing here, that is where I was standing.

PROSECUTION: Let the record show the witness is pointing to the vicinity of the point marked F, the gate.

A I was standing facing half left this way, like this (indicating.) I had a carbine on my left shoulder, and Hammann came running out and he pulled the carbine away from me. Hammann was about -----

Q You say Hammann came running out? From where did he come?

A From here.

PROSECUTION: Let the record show that the witness is pointing ----

A (Interposing) Here, he was standing here.

Q Did he come from the place marked Guard Room?

A I don't know where he came out.

Q But, at any rate, he came out to the point marked B?

A Yes, out the gate.

Q Then what happened?

A He was standing here, and he took the carbine, and I was looking that way, and the flier was about here by then.

PROSECUTION: Let the record show that the witness is pointing to a place about half way distant from the point marked G and the point marked Hammann shot here.

Q Then what happened?

A He pulled my carbine down and he ran after him and shot this man and killed him at close range. Three shots were fired.

Q How far from the flier was Hammann when he fired the shots?

A Very close distance. I can't tell you how close it was.

Q Was it a dark night?

A The moon was shining. It wasn't quite dark.

Q What happened after that?

A Some people were carrying him. I don't know how many, it might

have been four.

Q Carrying whom?

A The flier.

Q Then what happened?

A They carried him in here, around here, there where the trees stand here, and that is where they put him down.

PROSECUTION: Let the record show that the witnesspointed out the place on the map marked "Garden Body Brought Here."

Q Continue. Then what happened?

A The first lieutenant came later.

Q And?

A And I was very depressed and I didn't hear the conversation that was going on there any more.

Q Going back to the time when the flier and Fay walked away from the bunker along the dotted line up to the point D, at that time was the flier running or walking, or how was he moving?

A Up this way? He was just walking in the usual pace. He wasn't escaping any.

Q Was the flier armed?

A No.

PROSECUTION: No further questions.

(Whereupon the witness resumed the witness stand.)

PROSECUTION: May it please the court, the prosecution would like to ask the witness once more to look around the courtroom to see whether he can recognize Mahrgang.

PRESIDENT: Go ahead.

PROSECUTION: Any objection?

MR. RACHAEL: Yes, if the court please. Defense objects to that on the ground that the witness has already testified.

PRESIDENT: The objection is overruled.

QUESTIONS BY PROSECUTION:

Q Come out in the middle of the floor and look all around the courtroom, in any direction you wish.

A What am I supposed to be doing?

Q Can you recognize Nahrgang if you see him again?

A No. 11.

PROSECUTION: Let the record show that the witness identified the accused Nahrgang, No. 11.

CROSS EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Is anything wrong with your eyes?

A Yes.

Q What is the matter with your eyes?

A They have been bad ever since I was a child.

Q Do you have eyeglasses?

A No.

Q When was the last time you wore eyeglasses?

A I never did.

Q Are you farsighted or nearsighted?

A Nearsighted, I guess.

Q I show you this chart. Would you tell me whether you can read that word?

A No.

MR. RACHAEL: Let the record indicate that the defense has pointed to the German word "Darmstadtstrasse" indicated on Prosecution Exhibit P-70, which is approximately 20 feet from the accused, the letters of which are an inch and a half in length.

Q Did you speak to anybody concerning this case within the past two days?

A No.

Q Did you ever see that chart before today?

A No.

PROSECUTION: Let the record indicate that the question is directed to ——

THE WITNESS: I didn't see the big one.

PROSECUTION: —— Prosecution Exhibit 127, the large wall chart.

QUESTIONS BY MR. RACHAEL:

Q What chart did you see before today?

A What? What chart I saw?

Q How long have you been here at Dachau?

A Since the 22nd. We left on the 23rd or 24th and we came back again on January 3rd.

Q Since January 3rd, did you speak to anybody about this case?

A No.

Q Did you speak to any member of the prosecution staff about this case?

A Member of the prosecution staff? No.

Q Were you shown a small sketch before today?

PROSECUTION: If it will shorten this examination, prosecution will concede the fact that the chief prosecutor talked to this witness in the preparation of this case three or four times.

QUESTION BY MR. RACHAEL:

Q How do you know there was a moon shining on the 22nd of February, 1945?

A Because I know it.

Q You are positive about that now, aren't you?

A Yes.

Q Was it dark at 6:30 on the 22nd of February, 1945?

A It wasn't entirely dark.

Q Were there any artificial lights shining near your post at that time?

A Lamps? Artificial lights?

Q Yes.

A No.

Q As a matter of fact, there was a complete blackout, wasn't there?

A Yes.

Q I want you to tell me again what post you walked, showing the distances. Go to that chart and show me.

(Whereupon the witness did as directed.)

A The whole terrain?

Q What were your duties that night?

A I was standing here, and I was checking the whole territory.

Q Were there any other guards on duty?

A Yes, there were two men, and we were relieved every two hours.

Q Does your post constitute the entire area indicated by Prosecution Exhibit 127?

A Yes.

Q You say you noticed a captain coming up on a bicycle, did y u not?

A Yes.

Q About what time was that?

A That was 2 P. M..

Q I want you to look at the accused and tell me if any of those accused there was the man you saw on the bicycle.

A Well, he doesn't wear a uniform any more. How am I supposed to know him?

Q If each one of the accused would be wearing uniforms, would you select each one of them as the man riding on the bicycle?

PROSECUTION: I object to that as improper cross examination.

PRESIDENT: Objection sustained.

QUESTION BY MR. HACHAEL:

Q Did you know Kiwitt personally?

A Only from seeing him I knew him.

Q Did you look at the man who was riding on the bicycle?

A Well, I had to salute him.

Q Who did you salute?

A This police captain.

Q Was it Kiwitt?

A All the comrades said it was Kiwitt.

Q Do you know whether or not it was Kiwitt?

A Well, after January or February, whenever there was an alarm, he was the man of the police who would come around and go down to the shelter.

Q How long after you saw the two policemen go by and the flier walk away did you hear someone yell, "The parachutist is escaping?"

A Oh, that was only two or three minutes.

Q Did you know Fay well?

A Yes.

Q Did you speak to him often?

A We had been together ever since '40.

Q Do you know his voice?

A Yes.

Q Was Fay the one who shouted, "The parachutist is escaping?"

A There must have been several doing that.

Q About how many people would you say called out that the parachutist is escaping?

A I wouldn't say that, because I was standing next to the gate all the time.

(Whereupon the witness resumed the witness stand.)

Q You say you heard several people shout, "The parachutist is escaping." About how many voices would you say that several constituted?

A Well, I can't say that, because, after all, it was a distance of about 40 meters.

Q But you are certain it was several voices that yelled?

A Yes.

Q And it was after those shouts that Hammann ran out from the guard room, is that right?

A Yes, that had been before; that is, the thing that happened first was the yells, "parachutist is escaping," and then the man came running out.

Q Where were you standing when Hammann first approached you after he had come from the guard room and after the voices had been heard yelling the parachutist had escaped?

A Same place, next to the gate.

Q Which is indicated on Prosecution Exhibit 1-127 with the letter B?

A B.

Q Was it there at that point that Hammann took your carbine?

A Yes, B.

Q And where did Hammann go after that?

A He went down that way.

(Whereupon the witness left the witness stand.)

A Down that way (indicating.)

MR. MACHAEL: Indicating along Bierbrauer Weg towards the spot joined by the dirt road with Bierbrauer Weg.

PRESIDENT: Court will recess until 1:30.

(Whereupon the court recessed at 1210 hours.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Rau, who is absent on business of the defense, all the accused, the reporter and interpreter are present.

Let the record show that Adam Jaeger has resumed the stand.

ADAM JAEGER, called as a witness by the prosecution, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

CROSS EXAMINATION (Continued)

QUESTIONS BY MR. MACHAEL:

Q You said that shortly after the cries, "The parachutist is escaping," were heard, that Hammann came running out to you and took your carbine, is that right?

A He didn't escape.

Q At any rate, Hammann took your carbine?

A Yes.

Q And at that time, you were standing out on Hierbrauer Weg at approximately the position indicated by the letter B on Prosecution Exhibit 127?

A Yes.

Q Did Hammann ask you anything?

A No.

Q When Hammann took your carbine, what did he do?

A He ran over there.

Q Ran over where?

A To the flier.

Q You testified that the flier went through the courtyard, isn't that correct?

A Can I show you?

Q Yes.

(Whereupon the witness left the witness stand.)

A The flier came up from there, and when he was approximately here, then Fawcett caught up with him when he was approximately there.

(Whereupon the witness resumed the witness stand.)

Q Did you not testify ——

PROSECUTION: Let me object. I would like the record to show that the witness pointed to the map Exhibit 127 and pointed to the dotted line that is marked "Flier Chased Along This Route. Dirt Road."

MR. RACHALL: And he started pointing from the stairway, 25 steps.

QUESTIONS BY MR. RACHALL:

Q You did not answer my question. I asked you whether or not the flier had gone through the courtyard.

A Through the courtyard?

Q That is correct.

A Hey?

Q Yes, you.

(Whereupon the witness left the witness stand.)

A He went down the stairs. This question comes from behind.

Q Will you resume your seat in the witness chair, please?

(Whereupon the witness did as directed.)

Q You testified that the policeman and Fay and the flier left from where you were and went somewhere?

A Yes.

Q Did they go through the courtyard?

(Whereupon the witness left the witness stand.)

A Yes, they went this way. Yes, that is the way they went.

MR. RACHALL: Indicating the courtyard.

(Whereupon the witness resumed the witness stand.

Q You testified that they walked at an ordinary pace, is that right?

A He pushed him.

Q How long would it take to walk from Gate B to the stairway with the 25 steps?

A It is approximately 50 or 60 meters, it is not far, perhaps even less. It might be less.

Q After Hammann took your carbine, what did you do?

A I didn't know what to say. I was standing there.

Q You were standing there and Hammann ran away, is that right?

A Yes.

Q How far is it from point B at the gate to where you say Hammann shot?

A That must be at least 150 meters, certainly 150 meters.

Q And so Hammann was 150 meters away from you when he shot the carbine, is that right?

A Yes, approximately. I saw only the fire coming out of the carbine.

Q What was the condition of the moon that night?

A The moon hadn't come out completely yet, but I can't say it exactly any more.

Q You say the moon had not come out yet?

A The moon was out, but not completely yet. There was a little bit overcast, perhaps a few clouds.

Q All right. Now, I will ask you what was the condition of the moon generally that night. Was it a full moon?

A Later on it was very light.

Q How much later on would you say it got light?

A Four hours later, when I was on guard again.

Q How wide would you say Bierbrauer Weg is?

A Six or seven meters wide.

MR. RACHAEL: If the court please, Dr. Aheimer would like to interrogate the witness with a few questions.

QUESTIONS BY DR. AHEIMER:

Q I show you once more the exhibit P-126, of which P-127 is an enlargement, and I ask you who made the sketch.

A This sketch is made according to my information, by some American. It is the place where the crime was committed.

Q When was it done?

A I don't know exactly.

Q You see in this map some figures given, for instance, on the point B, six meters and three meters. I ask you who gave these figures?

A I didn't. The Americans.

Q Did the American talk to you about these figures?

A No.

Q How long is the Haus Felsenkeller?

A I guess 10 meters.

Q What is this square which appears on this map on the left side?

A Oh, this is the garage.

Q How long is this garage?

A Forty meters.

Q Do you mean this building here?

A Yes.

Q And you say this is approximately forty meters long?

A Yes.

Q How wide would you say the Haus Felsenkeller is, in your estimation?

A Six meters wide and ten meters long.

Q Then you mean this is from this point to this point ten meters?

A Yes.

DR. AUSTIN: The record may indicate that the two points between the beginning and the end of Haus Felsenkeller are meant.

Q I bring to your attention once more the sketch P-126 and I ask you

then if the garage is 40 meters long and the Haus Felsenkeller is only 10 meters wide, is this sketch then correct?

A That doesn't make any difference, however, whether it is that long or that long. I don't know how long it is. I made an estimate. It might be longer.

Q Take this sketch once more into your hands. I bring now to your attention the center of this Exhibit 126 and 127, where appear, one after another, approximately ten little squares which run the middle of the sketch from top to bottom. I ask you now what these little squares are indicating?

A Iron railing.

Q I show you now a photograph and ask you what does this indicate?

PROSECUTION: I object to that. The photograph is not in evidence. It is part of my case.

MR. AMEIMER: I have the possibility of introducing this evidence and I am just going to do it.

PROSECUTION: Any document should be introduced by the defense when their case is on.

MR. MACHAEL: If the court please, at the moment the prosecution has on the stand a witness who has testified as to terrain of an area. He is now under cross examination. Counsel for defense is confronting the witness with photographs of that terrain and is about to ask the witness whether or not those photographs represent that area.

PROSECUTION: That photograph was given to the defense in anticipation that the prosecution would offer it in evidence. Had I known it would be used for this purpose, I would not have done so. That photograph will go in evidence in an orderly way at the proper time by the proper witness.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: Then, may it please the court, we will have to ask that the witness be recalled a little later for cross examination.

PROSECUTION: Of course, the defense is always at liberty to call this witness and make him its own witness.

DEFENSE COUNSEL: For cross examination, may it please the court. This is legitimate cross examination. We have the right.

PRESIDENT: The court approves of bringing him back for cross examination.

PROSECUTION: Prosecution would like to go on record as asking the court to reconsider that. I have not offered that evidence by this witness. It is my intention to offer the photograph by another witness who will follow this witness on the stand. The regular procedure is that the defense may cross examine concerning matter that was brought out while this witness was under direct examination, and the rules have also been laid down that if the defense wishes to go into this matter further, they may call the witness as its own witness, and is thereby bound by whatever he says.

DEFENSE COUNSEL: May I remind the court that the exhibit which went into evidence before the chart was introduced through this particular witness, and then the chart was introduced as an identical enlargement of the exhibit which went in through this witness. By impeaching the enlargement, we impeach its miniature, and we have a right to impeach the miniature and the enlargement through the witness through whom it was introduced. Furthermore, the prosecution has no God-given right to its evidence. If it legitimately comes into our hands and can be properly offered, it is for the court to use. It is the court who is going to decide the justice of this thing. If we weren't intended to be allowed to use it, then why were we given it?

PRESIDENT: The court's ruling stands as it is.

MR. RACHELS: No further questions of this witness.

PROSECUTION: Any questions by any member of the court?

PRESIDENT: No.

(JAEGER-Cross)

PROSECUTION: May the witness be excused?

PRESIDENT: Witness is excused.

(Whereupon the witness was excused and withdrew.)

DR. AHRIMAR: I ask that the witness is kept ready for further cross examination at some later time.

MR. RACHAE.: That has been taken care of.

GERHARD ZAHN, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q State your full name.

A Gerhard Zahn.

Q Where do you live?

A Offenbach-Main.

Q How old are you?

A 55 years.

Q What business are you in?

A Carpenter.

Q Directing your attention to the month of February, 1945, were you a member of the police, German police?

A No, fire department.

Q A member of what?

A Fire department.

Q What rank did you hold?

A I was a sergeant.

Q Were you a member of what is known as the air raid protection police?

A Yes.

Q Directing your attention again to the month of February, 1945, do you remember anything unusual happening in Offenbach?

A Yes.

A Yes.

Q Do you remember the 22nd of February, 1945?

A Yes.

Q Do you remember anything unusual happening on that day?

A Yes.

Q Did you ever hear of a man by the name of Paul Nahrgang?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q Will you look around the courtroom and if he is present, will you point him out?

A No. 11.

PROSECUTION: Let the record indicate that the witness identified the accused Nahrgang, No. 11.

Q Did you ever hear of a man by the name of Philipp Hammann?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q Will you look around the courtroom and see if he is among those present?

A Yes.

Q If he is in the courtroom, will you point him out?

A Over there.

Q What number is he wearing?

A No. 12.

PROSECUTION: Let the record indicate that the witness identified the accused Hammann, No. 12.

Q Did you ever hear of a man by the name of Bernhard Fay?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom, will you please point him out?

A (indicating.)

Q What number is he wearing?

A 13.

PROSECUTION: Let the record indicate that the witnessidentified the accused Fay, wearing No. 13.

Q Do you know a man by the name of Hans Eichel?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom, will you point him out?

A (indicating.)

Q What number is he wearing?

A No. 6.

PROSECUTION: Let the record indicate that the witness identified the accused Eichel, No. 6.

Q Now, tell the court what happened on the 22nd of February, 1945, in Offenbach.

A On this evening in question, I was on guard duty with my comrade, Jaeger.

Q Continue.

A About nine o'clock I heard a call, "Guard." We went to this spot. A policeman came up to us a few steps and said, "We have here one man who is to be killed."

Q Was that in the morning or the evening?

A Evening.

Q Then what happened?

A I told them, "What are you bringing him to the fire department for? Better take him over to the caserne."

Q Before you continue with your story, please come over to the map, and with this pointer tell the court where on that map these things happened that you talk about.

(Whereupon the witness left the witness stand and assumed a position near the map.)

A Here (indicating).

PROSECUTION: Let the record indicate that the witness is pointing to a place on the map marked "Bierbrauer Weg".

QUESTIONS BY PROSECUTION:

Q What happened at that point that you are talking about?

A At this point the policeman came and said, "We have a man who is to be killed."

Q Then what happened?

A Then I told him, "Why are you bringing him to the fire department? Better take him over to the caserne."

Q Then what happened?

A Then he said, "That's where we are coming from; we are running around already for an hour and a half."

Q Then what happened?

Q Continue.

A About nine o'clock I heard a call, "Guard." We went to this spot. A policeman came up to us a few steps and said, "We have here one man who is to be killed."

Q Was that in the morning or the evening?

A Evening.

Q Then what happened?

A I told them, "What are you bringing him to the fire department for? Better take him over to the caserne."

Q Before you continue with your story, please come over to the map, and with this pointer tell the court where on that map these things happened that you talk about.

(Whereupon the witness left the witness stand and assumed a position near the map.)

A Here (indicating).

PROSECUTION: Let the record indicate that the witness is pointing to a place on the map marked "Bierbrauer Weg".

QUESTIONS BY PROSECUTION:

Q What happened at that point that you are talking about?

A At this point the policemen came and said, "We have a man who is to be killed."

Q Then what happened?

A Then I told him, "Why are you bringing him to the fire department? Better take him over to the caserne."

Q Then what happened?

A Then he said, "That's where we are coming from; we are running around already for an hour and a half."

Q Then what happened?

A I went up to this house where the pilot was standing with one policeman.

Q Are you referring to the Haus Felsenkeller?

A Yes, that's where the pilot was standing and one of the policemen.

PROSECUTION: Let the record indicate that the witness points to the south end of the Felsenkeller and is now pointing to a place on the Bierbrauer Weg alongside of the Haus Felsenkeller.

QUESTIONS BY PROSECUTION:

Q Then what happened?

A Then I went back to the gate and the policeman said, "Who is in there here?" I said "over there is our guard room."

PROSECUTION: Let the record show that the witness is pointing to the place marked "guard room."

QUESTION BY PROSECUTION:

Q Continue.

A When we went up this stairs the policemen asked me, "You have a pistol?" I denied this.

Q Then what happened?

A Then he wanted to take off his pistol and give it to me, and I asked him, "What shall I do with it?" He said, "If I kill him he will see it."

Q Then what happened?

A I told him, "You think if I kill him he won't notice it?"

Q Then what happened?

A Then I went up the stairs up here (indicating) and Wahrgang came out of the guard room.

PROSECUTION: Let the record show that the witness pointed to a place just opposite the guard room and between the guard room and the garden.

QUESTIONS BY PROSECUTION:

Q Then what happened?

A I recognized him right away and said that the policeman had a man who was to be killed.

Q Then what happened?

A Wahrgang went up to the policeman and went up the stairs here (indicating).

Q Then what happened?

A They talked something to each other; I didn't understand it. Wahrgang then went back to the door and Hammann came out of the room with him. They stood near the policeman.

Q When you say Hammann came out of the room do you mean the guard room?

A Yes, the guard room. At the same time that was the living quarters for the group leader and platoon leader.

Q Then what happened?

A They talked something to each other but I couldn't hear it because they said it in a very low voice.

Q Was the flier armed?

A No.

Q Then what happened?

A Hammann made a no sign with his head. Then Wahrgang called for Bernhard Fay. Bernhard Fay came out of the room, stood there for a moment and then he passed me and said, "He'll have it right away."

Q Then what happened?

A Then Fay went out this way down the stairs (indicating).

PROSECUTION: Let the record indicate that the witness is now pointing to a place just outside the bunker which is marked "F" on the map.

QUESTIONS BY PROSECUTION:

Q Then what happened?

A How far he went I don't know because I stayed up here (indicating).

PROSECUTION: Let the record show that the witness is now pointing to the curved line just outside of the guard room.

QUESTIONS BY PROSECUTION:

Q Then what happened?

A A short while later the pilot came up the stairs and one of the policemen and Fay followed him.

MR. SACHAR: If the court please, I would like to have the record indicate that the witness is pointing to a spot between the guard room and the wall around the garden and he is referring to that area having stairs.

PROSECUTION: That is not a correct statement. I will ask the question.

QUESTIONS BY PROSECUTION:

Q When you say they came up the stairs, point out the building that has the stairs that you are talking about.

A This (indicating) had been a garden restaurant and from the street to the garden restaurant there are approximately 8 to 10 steps because the garden is on a higher level then the street. The steps start at the height of the bunker and the last one is approximately at the height of the garden room.

PROSECUTION: Let the record show that the witness is now pointing to a point half way between the guard room and the wall around the garden.

QUESTIONS BY PROSECUTION:

Q Then what happened?

A So Fay drove the pilot in front of him. In his right hand he had a pistol and made signs like/when you drive cattle.

Q Then what happened?

A I changed the place where I was standing and went over here (indicating) where a tree is standing.

[illegible]: Let the record show [illegible] pointing to a place just below the writing, 'order - body brought here."

[illegible]:

Then what happened?

[illegible] by [illegible] with the pistol was directly up to the staircase [illegible]. I saw it because it was a preliminary [illegible] that they wouldn't go up the stairs but would go to the right to a place where they kept dirt.

Then what happened?

A short while later, [illegible] one or two shots and 'bolt', persecuted [illegible] escape."

From what direction did the shots come? I am referring to the [illegible].

They might have been fired here (indicating) or behind the stairs.

[illegible]: Let the record show that the witness first pointed to the place [illegible] letter "A" on the second time he pointed to the [illegible] on the west side of the area of the first arrow.

[illegible]:

Then what happened?

The party [illegible] the way west out there [illegible] along in a northerly direction.

[illegible]: Let the record show that the witness pointed to the state line from "A" to the [illegible] and that along Fairbrauer [illegible] in a northerly direction.

Then what happened?

[illegible] followed them, came up to [illegible] approximately here (indicating) and there [illegible] two or three more pistol shots and three shots from a carbine.

[illegible]: Let the record show that the witness [illegible] to a place just next to the [illegible] on the south end of that place.

(Whereupon,

Q Then what happened?

A Of the carbine shot I saw also the fire reflect.

Q Then what happened?

A I ran in a northerly direction to the spot where the shots had been fired; approximately here the pilot was lying on his knees. (Indicating)

PROSECUTION: Let the record indicate that the witness pointed to the place on the map marked with a star and with the words "Hamann shot here."

A I was standing approximately here. (Indicating)

PROSECUTION: Let the record also that the witness is pointing to a place which is the intersection of the dirt road and Pierbrauer Weg.

Q Then what happened?

A A few people were standing around there. I went over there up to this point here. (Indicating)

PROSECUTION: Let the record show that the witness is pointing to the place just east of the star marked "Hamann shot here" and near the edge of the road.

Q Then what happened?

A Whether the police director Michel arrived ahead of Fabian I don't know. Fabian came out of this direction (indicating).

PROSECUTION: Let the record indicate that the witness is indicating the direction from the north.

A The police director came up here (indicating). I couldn't hear what they were talking about because I was standing on the side.

Q Then what happened?

A I walked up a little bit closer then and the police director Michel turned around and said, "You son-of-a-bitch."

Q To whom did he make that remark?

A In my opinion, to the pilot. He might have referred to the others too, I don't know. I can't look in his head.

Q Then what happened?

A Then four men picked up the pilot and carried them to the gate. I followed them behind.

Q Was the pilot dead at that time?

A When he was being carried away I heard a moaning but I don't know whether this meant he was still alive or this sound was only caused since he was being carried away.

Q Then what happened?

A I followed them behind and when I came up to this point (indicating) -- this is a wire fence (indicating)--I saw here when a police officer picked up his bicycle.

[illegible]: Let the record indicate that the witness is pointing to a place on the Bierbrauer Weg right under the English word "Run".

A According to the description it must have been police lieutenant Alt.

Q Then what happened?

A He took his bicycle and he too went in this direction. Whether he entered the garden I can't say any more today.

Q Are you indicating a southerly direction on Bierbrauer Weg?

A Southerly direction.

Q Then what happened?

A The pilot was carried in and put down next to a tree (indicating).

[illegible]: Let the record indicate that the witness has indicated a place marked "Garden body brought here."

Q What happened there?

A I continued my guard duty here (indicating) but I saw still that police director Eichel was standing there too and with a big line like that used by the fire department they handled around with.

Q Now, going back to the place where the flier was shot, which is marked with a star on this map on Bierbrauer Way, did you see the flier (Zahn-/direct)

after he was shot?

A Approximately from this spot here (indicating) I saw when he was on his knees.

Q About how far was that away from where the flier was kneeling on his knees?

A It might have been 20, 25 meters.

Q Who was standing around the flier at that time?

A Wahrgang and Hammann -- whether Fay and the others were there too, I don't know any more -- there were three or four people.

Q After the body was brought back to the garden, did anything else happen that you know of?

A After some time the master of the fire guard Tardt called "Guard". I reported and he asked me who was with me. I said, "Jaeger."

Q You said that you saw the flier over here at the place marked with a star on the map and that he was on his knees, is that correct?

A Yes.

Q Had he been shot at that time?

A Yes.

PROSECUTION: Will you mark this Prosecution Exhibit 128 for identification, please?

(The document referred to was marked Prosecution Exhibit 128 for identification.)

Q I show you a photograph which has been marked for identification Prosecution Exhibit 128 and ask you to tell the court what that is a picture of.

A That is point "B".

PROSECUTION: Let the record indicate that the witness pointed to the place on the large wall map indicated by the letter "B" and the word "garden."

Q I see a picture of a man standing in front of a building. Do you know who that man is?

A That is Jaeger.

Q Do you know his first name?

A Adam. Here you can see the steirs which I described before (indicating).

PROSECUTION: I offer in evidence a photograph which has been marked Prosecution Exhibit 128 for identification and ask that it be received in evidence and be made a part of the record.

MR. RACHAM: The defense objects to those pictures on the ground that the prosecution has failed to show as yet that the condition of the area at the time those pictures were taken was exactly the same as it was on 22 February 1945 at eight-thirty P.M.

Q Look at this photograph again and tell the court whether it shows the condition around the gate and the yard as it was on 22 February 1945.

A Yes.

PRESIDENT: The objection is overruled. Prosecution Exhibit 128 will be received in evidence and made a part of the record.

(Thereupon the document previously marked Prosecution Exhibit 128 for identification was received in evidence as Prosecution Exhibit 128, is attached hereto and made a part of the record.)

PROSECUTION: Will you mark this Prosecution Exhibit 129 for identification, please?

(The document referred to was marked Prosecution Exhibit 129 for identification.)

Q I show you a photograph which has been marked for identification Prosecution Exhibit 129 and ask you to look at it and tell the court what that is a picture of.

A This is Bierbrauer Way and where the soldier is standing, that is approximately the spot where the murders had been committed.

Q Does this picture fairly represent the condition of Bierbrauer Way as far as the terrain and buildings as it was on 22 February 1945?

(Zahn-Direct)

A Yes.

PROSECUTION: Prosecution offers in evidence a photograph which has been marked Prosecution Exhibit 129 for identification and asks that it be received in evidence and made a part of the record.

MR. RACHEL: No objection.

PRESIDENT: Prosecution Exhibit 129 will be received in evidence and made a part of the record.

(Thereupon the photograph previously marked Prosecution Exhibit 129 for identification was received in evidence as Prosecution Exhibit 129, is attached hereto and made a part of the record.)

PROSECUTION: Will you mark this Prosecution Exhibit 130 for identification, please?

(The photograph referred to was marked Prosecution Exhibit 130 for identification.)

Q I hand you a photograph which has been marked for identification Prosecution Exhibit 130 and ask you to look at it and tell the court what that is a picture of.

A That is a path through which the pilot ran to the Bierbrauer Way.

Q Will you point that out on the large wall map?

A That is a part from up here to down here (indicating).

PROSECUTION: Let the record show that the witness pointed to the dotted line with arrows, where the flier was chased along this dirt road.

Q Take a look at this picture again and tell the court whether or not it fairly represents the condition of the terrain along that road as it was on 22 February 1945.

A This terrain is in the same condition for at least 30 years.

PROSECUTION: I offer in evidence a photograph which has been marked Exhibit 130 for identification and ask that it be received in evidence and made a part of the record.

PRESIDENT: Prosecution exhibit 130 will be received in evidence and made a part of the record.

PROSECUTION: Will you mark this photograph prosecution exhibit 131 for identification?

(The photograph referred to was marked Prosecution Exhibit 131 for identification.)

I show you a photograph which has been marked for identification Exhibit 131 and ask you to look at that and tell the court what that is a picture of.

A These are the stairs on point "F".

Are you referring to point "F" on the large wall map?

A Yes, on there (indicating).

PROSECUTION: Let the record indicate that the witness pointed to the large wall map at the place marked "Stairway - 25 steps" and lettered "F".

Will you look at this picture again and tell the court whether it fairly represents the condition of the stairs as it was on 22 February 1945?

A Yes.

PROSECUTION: Prosecution offers in evidence a photograph which has been marked for identification Prosecution Exhibit 131 and asks that it be received in evidence and made a part of the record.

H. MACNEIL: No objection.

PRESIDENT: Prosecution Exhibit Number 131 will be received in evidence and made a part of the record.

(Thereupon the photograph previously marked Prosecution Exhibit 131 for identification was received in evidence as Prosecution Exhibit 131, is attached hereto and made a part of the record.)

PROSECUTION: Will you mark this photograph Prosecution Exhibit 132 for identification, please.

(The photograph referred to was marked Prosecution Exhibit 132 for identification.)

Q I show you a picture or photograph which has been marked for identification Exhibit 132 and ask you to look at that and tell the Court what that represents?

A Behind this wall are the stairs in question (indicating).

Q Referring to the stairs which are marked with the letter "E" on the large wall map?

A Yes.

Q Can you tell from that picture about in what direction the photographer would have been standing when he took that photograph?

A This picture is taken approximately from here (indicating).

Q Let the record show that the witness pointed to a place north of the stairway. So that the photographer, when he took this picture, was facing south, is that correct?

A Yes.

Q Look at that picture again and tell the Court whether it is a fair representation of the general conditions of what is shown in the picture?

A Yes.

Q As it was on the 22nd of February 1945?

A Yes.

PROSECUTION: Prosecution offers in evidence a photograph which has been identified as Exhibit 132 and ask that it be received in evidence and made a part of the record.

MR. RACHAEL: No objections.

PRESIDENT: Prosecution Exhibit 132 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 132 for identification was received in evidence as Prosecution Exhibit 132, is attached hereto and made a part of the record.)

PROSECUTION: Will you mark this picture as Prosecution Exhibit 133 for identification, please?

(Zahn-direct)

(The document referred to was marked Prosecution Exhibit 133 for identification.)

QUESTIONS BY PROSECUTION:

Q I show you a photograph which has been marked Prosecution Exhibit 133 for identification and ask you to look at that and tell the Court what it is, if you know?

A This is the garden restaurant and the pilot must have taken this way in order to come to the staircase "3".

Q I notice in the picture that there is a wooden building, can you identify that wooden building on the large wall map?

A Yes. Here (indicating).

Q Let the record show that the witness the building on the large wall map marked "Wooden Shack". I notice on the large wall map a row of small squares going from east to west and west to east, is that shown on the photograph?

A Yes. This entire railing here (indicating).

Q On the left side of the picture?

A Yes.

Q Does this picture show the general terrains and condition of the buildings as it was on 22 February 1948?

A Yes. Exactly.

Q That's all.

PROSECUTION: Prosecution offers in evidence a photograph which has been marked Exhibit 133 and ask that it be received in evidence and marked Prosecution Exhibit 133, and made a part of the record.

DR. RACHAL: No objections.

PRESIDENT: Prosecution Exhibit 133 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 133 for identification was received in evidence as Prosecution Exhibit 133, is attached hereto and made a part of the record.)

QUESTIONS BY PROSECUTION:

Q I show you exhibit 133 and I notice three men in the picture walking away from the camera, do you know any of those three men?

A The one on the right is Adam Jaeger.

Q I show you a picture which is in evidence as Prosecution Exhibit 129 and I notice three men in that picture, do you know who those men are?

A It might be that the man on the right is Adam Jaeger.

Q You have told the Court what happened that night of February 22, 1945, did you see Adam Jaeger at all that night?

A Yes.

Q What was he doing?

A We both together were on guard duty.

Q Was Jaeger with you at any time when you went to the spot where you said the flyer was shot?

A No.

PROSECUTION: No further questions.

CROSS EXAMINATION

QUESTIONS BY Mr. L. CHAIN:

Q You testified you were on guard duty that night, is that correct?

A Yes.

Q What were you guarding?

A We guarded the barracks and the garage.

Q Against what?

A That was the order.

Q Were there any air raid shelters in that particular area which you were guarding?

A We didn't have to guard the air raid shelters but we had to guard the garage where the cars were.

Q Were there any air raid shelters in the area in which you were guarding?

A Yes.

Q How many air raid shelters were there?

A One public --

Q Where was that? Will you indicate on the map?

A The public one was approximately here (indicating).

Q Indicating a spot on the extreme east side of the chart at about the margin, in the center of the chart.

A The one for the police was approximately here (indicating).

Q Indicating the spot a short distance to the south of the spot originally pointed to.

A And here were two wine cellars (indicating).

Q Indicating a spot on the chart designated by the words, "Shelter Michel Command Post".

A Here are the stairs -- down the stairs -- the Command Post of Michel was approximately here and the wine cellars approximately here (indicating).

Q The wine cellar is indicated on the chart by the pointer pointing to the letter "E" of the name "Eichel" -- the first "E". So that there were at least three air raid shelters in the area shown by that chart?

A There was one public air raid shelter, one for the police and three wine cellars which, in case of emergency, could have been used by the population as air raid shelters.

Q The air raid shelters which you just mentioned, did these include the shelter of the "Eichel Com and Post"?

A It is included.

Q There was an air raid alarm, was there not?

A Yes.

Q Were there people in the air raid shelters at the time?

A There were people inside but I didn't go inside because I was on guard duty.

Q How do you know that there were people inside?

A Because while we were on guard duty the people passed us in order to go to the air raid shelters.

Q You were on guard duty with Jaeger, were you not?

A Yes.

Q About what time was it that these two policemen came up to you with the flyer?

A Nine o'clock.

Q Do you know those two policemen?

A No. I saw them for the first time and it was dark.

Q You say it was dark?

A It was evening, nine o'clock.

Q Wasn't there a full moon?

A I couldn't say it anymore today.

Q Would you say that there was no moon at that time?

A I don't know anymore today.

Q There was a black out at that time, was there not?

A Yes. There always was a black out when there was an alarm.

Q So that the only light you could see by was the light coming from the sky, is that correct?

A Yes.

Q How did you know that those two policemen accompanying the flyer were policemen?

A You could see it by the uniform they were wearing -- by the uniforms and they were talking to us.

Q When you say "talking to us" do you mean to you and Jaeger?

A Yes.

Q If you were to see those two policemen now, would you recognize them?

(Zahn-c-ors)

A It is possible but I cannot say it definitely.

Q Were those two policemen tall or short?

A Short.

Q They were both about your size, were they?

A I think a little bit shorter.

Q This flyer, how do you know that he was a flyer?

A You could see it on his uniform that he was wearing. He was wearing a combination- one piece uniform.

Q Had you ever seen any flyers before?

A Yes, when they were shot down.

Q This was at night, was it not?

A In the evening at nine o'clock, yes.

Q According to the knowledge that you have of air raids that took place, what nationality airmen would you expect at night in Germany?

PROSECUTION: Object to the question as being improper cross-examination.

RESTRICTED: Objection sustained.

QUESTIONS BY DR. RACHAEL:

Q Did you speak to the flyer?

A No? No.

Q Did the policeman speak to the flyer?

A Not in my presence.

Q Did anybody speak to the flyer?

A You.

Q Who?

A I think it was Jager and the policeman said, "Keep quiet because they all understand German".

Q Did the flyer understand German?

A I don't know.

(Zahn-cross)

Q What did Jaeger say to the flyer?

A I don't know it anymore today.

Q What did the policeman say to you?

A He said, "Be quiet they all understand German".

Q Did they say anything else?

A No.

Q Did you not testify on direct examination that the policeman said, "We have here one man who has to be killed"?

A Yes. I said so before.

Q Did they say anything else?

A Whether I had a pistol.

Q Did they tell you that they had brought this flyer from Offenbach?

A No.

Q Did they tell you that they had been to the police station in Offenbach?

A No. They said only that they have been running around with him for one and one half hours.

Q Did they tell you from where they were running around?

A No.

Q Do you know who the policeman was who said, "We have here one man who has to be killed"?

A No.

Q I ask you to look at these defendants and ask you to tell the Court if that policeman was anyone of them? Take your time, look around and decide.

A I do not think so.

Q After you had that conversation with those policemen where did you go?

PROSECUTION: Object to this further questioning on repetitious matter. All of this has been covered over and over again on direct and cross examination.

DEFENSE COUNSEL: I have just started my cross examination and have not gotten beyond the point I am interrogating about now. If the Prosecution means that he went through it, that is one thing but if he means I have gone through it already, I respectfully submit that I have not.

PRESIDENT: The objection is overruled.

THE WITNESS: I went to the guard room.

QUESTIONS BY MR. RACHAEL:

Q Did Jaeger go with you?

A No.

Q Did the policeman go with you?

A One of the policemen, yes.

Q Did the flyer go with you?

A No.

Q Do you know where the flyer, the policemen and Jaeger were when you went with one of the policemen to the guard room?

A Yes. He was standing outside on the wall.

Q Is that at the foot of the steps or up to the top of the stairway leading to the guard room?

A Here was Jaeger with the policeman while I was going up the stairs with the other policeman (indicating).

PROSECUTION: Will you have the record indicate what the witness has pointed out?

MR. RACHAEL: I move to strike the answer of the witness from the record on the ground that it was not responsive to the question.

PROSECUTION: Unfortunately the Defense is not satisfied with the answer, however, he asked the question and it was answered and the record should indicate what the witness did at the wall chart.

PRESIDENT: The motion of Defense counsel is overruled.

MR. RACHAEL: Will you go to the chart again and point out where the flyer, the policeman and Jaeger were standing? Indicating a spot on Bierbrauer Weg just below the letter "A" in the word "Haus""Felsenkeller".

(Zahn-cross)

QUESTIONS BY MR. RAPHAEL:

Q Then you went over to the guard door what did you do?

A Mahrgang just came out of the door.

Q Did you have a conversation with Mahrgang?

A I called him right away because I recognized him and told him that the policeman had a man with him who had to be killed.

Q Did Mahrgang come out alone?

A Yes.

Q Where was Herrmann at that time?

A Inside the guard room.

Q Then did Herrmann come out?

A After Mahrgang had called him.

Q Then did Fay come out?

A After Mahrgang had called Bernhard.

Q So that Mahrgang, Herrmann and Fay, the policeman and you were all in the courtyard, is that correct?

A Yes.

Q Then what happened?

A Then Fay went out and got the pilots.

Q Where did Herrmann and Mahrgang go?

A They must have followed him.

Q Then did you and the policeman go?

A The policeman went with them too.

Q Where did you go?

A I walked over to the right side to the trees.

Q So that Mahrgang, Herrmann, Fay and the policeman all went out through the gate to Eierbrauer Weg to where the pilots were standing?

A No, only Fay went there.

(Zahn-cross)

Q Where did Mahrgang and Hermann go?

A They were still standing there at the time when Fay brought in the pilot.

Q Where were you?

A On the tree I was standing.

Q That tree is in the garden?

A Yes.

Q Will you point out on that wall chart approximately where the tree is?

A Approximately over here (indicating).

Q Indicating a spot south of a dark line, east of the second letter "e" in the word "here".

A Yes.

Q This line that I am now indicating in the chart, what does that indicate?

A That is a wall.

Q I pointed to a black line which borders the words "Garden, body brought here". How high is that wall?

A Approximately like this (indicating) -- one meter and twenty.

Q How long did you remain at that spot?

A Until Hermann and Mahrgang had run out here this way (indicating).

PRESIDENT: The Court will recess for thirty minutes.

(Whereupon at 1500 hours the court recessed.)

(Zahn-cross)

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense; all the accused, the reporter and interpreter, are present.

Let the record show that the witness, Gerhard Kahn, has resumed the stand.

GERHARD KAHN, called as a witness by the prosecution, returned the stand and being reminded he was still under oath, testified further through an interpreter, as follows:

CROSS EXAMINATION (continued)

BY MR. MICHAEL:

Q Now, you went through the courtyard with the officers who were going in the direction of the officer's command post there?

A Towards the stairs "".

Q When the two civilians by you didn't the civilian the flier was escaping?

Pursuant to Nuremberg.

Q They ran from point "" to point ""?

A Either they came from the point "," or from somewhere on the way there, I don't know.

Q You were standing in the garden by the tree, were you not?

A Yes.

Q And you say that Fay and the policemen and the flier went towards point "", is that right?

A Yes.

Q And you saw there was a cry "the flier is escaping" and two men ran by you?

A Yes.

(Zahn-cross)

Q You say those two men were Hermann and Fahrgang?

A Yes.

Did Fahrgang and Hermann accidently run to point "A"?

They must have followed him because they weren't standing anymore on the spot where they stood before.

Q Did you see them follow Fay?

A No, I didn't see that because it was too dark.

Q Do you know where Dicker was at this time?

A No.

When you heard the words, "the flier is escaping" where did you go?

A I stood where I was.

How long did you stay there?

A Until Hermann and Fahrgang had passed me running.

Did you follow Hermann and Fahrgang?

A Yes.

Q Did you see Hermann take the carbine from Jaeger?

A No.

Q How far behind Hermann and Fahrgang were you?

A It might have been 15 or 2 or 3 steps. I can't say exactly.

Did you hear any pistol shots from the direction of point "A"?

I said before, the pistol shots might have been fired on point "A" but also might have been fired beyond the stairs.

Q You say you also heard pistol shots when you were on Fischbauer Weg?

A Yes.

Q Do you know who fired those shots?

A No.

Do you know who fired carbine shots?

A No.

MR. McCRAE: No further questions.

(Witness)

Ta 94 1-24-47
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QUESTIONS BY DR. [illegible]:

Since when do you know Jaeger?

A Since the 1st of September 1939.

Q From September '39 until this day in question in February 1945, did you meet Jaeger quite often?

A We were together at the Fire Department. Once Jaeger was transferred to another detail outside of the city and whenever something had to be done, labor service or something like that, Jaeger and I were always together. We were always put on the same details.

Q In addition to the evening of the 22nd of February 1945, did you go guard duty with Jaeger before?

A Yes.

Q Is it not right that Jaeger had complained before that he was night blind and couldn't go on guard duty at night?

A He must have done this with his superior officers. He didn't do it with me.

Q Did he ever tell you that his eyes were bad?

A He spoke about this, yes.

Q Had you ever noticed yourself that his eyes were bad?

A No.

Q On this 22nd of February 1945 didn't you enter the guard room together with one of the policemen and ask for Mahrgang?

A No.

Q Since when are you in Dachau?

A We have been here since before Christmas then we were on leave for eight days and since the 3rd of January we are here again.

(/Ahn-cross)

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Co -ls/4

Q Were you alone in the same room with the witness, Adam Jaeger?

A Yes.

Q Did you talk with the witness, Adam Jaeger, about this incident of 22 February 1945, during the past two days?

A No.

Q I bring to your attention once more prosecution exhibit P-127 and I ask you is it right that the staircase " " is located right outside of the wood shack?

A It is possible that the house is a little bit more to the right or the staircase is a little bit more to the left.

Q I show you once more prosecution exhibit P-127 and I ask you can you see on this photograph the staircase which is designated " " on the exhibit 127?

A Yes, the staircase is running behind this wall over there. (Indicating.)

Q I ask you furthermore, can you see on this photograph the wood shack partly or in its entirety?

A Up there (indicating) this corner is part of the wood shack.

DR. AHRENDT: The protocol should show that the witness is pointing to the part of the roof which is showing in the upper righthand corner of prosecution exhibit P-127.

CROSS EXAMINATION BY DR. AHRENDT:

Q Consequently, the staircase is behind the woodshack?

A Yes, I said so before.

Q Is it not then a fact that exhibit P-127, as far as the staircase is concerned, does not reproduce the right situation, the right location?

A In principle it is the same only according to the way people have to go a little bit more to the right instead of to the left.

(Cross-cross)

Q Is it not a fact that the staircase "E" is behind the woodshack?

A This woodshack is used as a kitchen and a mess hall and adjoining to this woodshack there is another shack which goes over up to the staircase.

Q Is this second shack of which you talk shown on this Exhibit P-127 or not?

A No.

Q I show you now the photograph P-133 which you identified before andask you is this shack which is adjoining the woodshack about which we just talked, shown on this picture or not?

A Yes, that is the one over here.

DR. AHLMARK: The protocol may show that the witness pointed to the center of the photograph where the second woodshack is shown.

QUESTIONS BY DR. AHLMARK:

Q To make it clear, this second woodshack is not shown on Prosecution Exhibit 127?

A No.

Q I show you once more the Prosecution Exhibit P-133 and I ask you whether the railing shown on the left side of this photograph can be seen on Prosecution Exhibit 127?

A Yes, it is shown through the twelve squares.

Q I bring to your attention that on this map, P-127, the little squares lead straight to the corner of the wood shack. Based on Prosecution Exhibit P-133, I ask you whether the sketch on P-127 is correct or not?

PROSECUTION: I object to that question and any further questions along those lines. This Exhibit, P-127, and the small map of which it is an enlargement, were not offered as an accurate scale map.

DR. AHLMARK: I wish to answer the following: I want to prove that not only as far as the measurements are concerned but also as far as

the reproduction is corrected, -125 and 127 are 1 correct. Through another photograph I will attempt to prove that certain of these are shown on that map. If it can be proven that this map is incorrect, the conclusions drawn by the witnesses based on this map might also be incorrect. For this reason I ask the court to admit my question.

THE COURT: Objection is overruled.

MR. ALLEN: Will you repeat the question, please.

(Thereupon the reporter read the last question as follows:

"Q I bring to your attention that on this map, C-127, the little squares lead straight to the corner of the woodshack. Based Prosecution Exhibit P-133, I ask you whether the sketch on P-127 is correct or not?")

The WITNESS: According to the photograph it is correct but whether it is correct in accordance with the reconnaissance I couldn't say.

CROSS EXAMINATION BY Mr. ALLEN:

Q You misunderstood my question. I didn't ask you if the reproduction of the photograph is correct but I asked you whether this map is correct?

A I can't recall that.

Isn't it right in accordance with this photograph that the woodshack actually is beyond the building to the left?

A I don't know that.

Q I bring to your attention now on Prosecution Exhibit P-127, the dotted line which leads beyond the shack on this map and I ask you, does this dotted line represent a path.

A Yes.

Q Please show us once more on Exhibit P-127.

Q This part from here down to here. (indicating)

I show you once more Prosecution Exhibit P-127.

MR. CARTER: May it please the Court, have the record show the witness pointed to the map, the place marked along this route marked "dirt road".

(Cross-examination)

T: 9a 1-2 -47
BY: nls/7

[illegible] BY Mr. [illegible]:

I ask you, based on Prosecution Exhibit 1-22, where is the building which is shown in the center of this picture on or at the map.

It isn't shown but it is located over here. It must be located over here (indicating).

Aren't these lines indicating trees?

There is a garage which can be seen here.

I understand you might find this may be incorrect also insofar as it shows the existence of a garage building [illegible]

[illegible]: Let same be described for the record.

[illegible]: I'd like to point out to the court again we did not offer this map with the correct relations, as all the buildings merely showed it as a fair representation of the relationships to each other of the more important buildings in this case.

[illegible]/[illegible]: Court will recess in place.

PRESIDENT: The Court will come to order.

MR. RACHAEL: The Defense has no further questions of this witness.

DR. AHEIMER: The protocol may indicate that the witness pointed to a space on Prosecution's Exhibit 127 which is marked as "woods".

REDIRECT EXAMINATION

QUESTIONS BY THE PROSECUTION:

Q I show you Prosecution's Exhibit 132, both copies thereof, and ask you to look at that picture and take this fountain pen; and, for the convenience of the Court, mark with the letter "S" where the stairs are that are shown on that map with the letter "E".

(Whereupon the witness did as directed.)

PROSECUTION: The witness put a mark here and here (indicating) on both of them. That's supposed to be a German "S".

No further questions. Any further questions by the Defense? Are there any questions by any member of the Court?

PRESIDENT: No.

PROSECUTION: May the witness be excused?

PRESIDENT: Witness excused.

(Whereupon the witness was excused and withdrew.)

PROSECUTION: I call the witness Fritz Fabian.

FRITZ FABIAN, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY THE PROSECUTION:

Q What is your full name?

Fritz Fabian.

Q Where do you live?

A Offenbach-Main.

Q How old are you?

A 50 years.

Q Now, directing your attention to the month of February, 1945, were you then a member of the air protection police?

A Yes.

Q What rank did you hold?

A I was platoon leader.

Q Where were you stationed in February, 1945?

A Felsenkeller on the Bierbrauer Weg, Offenbach.

Q Do you remember anything unusual happening on the evening of 22 February 1945?

A Yes.

Q Tell the Court what happened.

A On this evening there was an air raid alarm. Since it was quiet, I walked with two girls along the Bierbrauer Weg. It was between eight and nine o'clock.

Q In the evening?

A Evening, yes.

Q And then what happened?

A I walked with the girls in the direction of the railroad crossing. I stayed with the girls for a while, and then one of the girls said "shots have been fired" or "shot has been fired". A short while later another shot was fired.

Q Before you continue, I show you Prosecution's Exhibit 126 and ask you to look at it and ask you what it

represents.

A That's a sketch of the Bierbrauer Weg.

Q What is shown on that sketch?

A There is the bunker, Haus Felsenkeller, furthermore, the Bierbrauer Weg--up here the stairs go down to the cellar, here the street goes to the railroad crossing.

Q Now when this woman told you she heard a shot--come over to this enlargement of the diagram I have just shown you and tell us where you were. Now I would direct your attention to the fact that the map is upside down.

PRESIDENT: If it's more convenient for the witness to have the map turned around, I suggest we turn it around.

PROSECUTION: Would it be convenient for the witness to identify the things on the map upside down as it is, or would you prefer to have it turned up?

WITNESS: It's all right this way. It's better this way.

QUESTIONS BY THE PROSECUTION:

Q Continue.

A The spot where I was standing isn't on this map anymore.

PROSECUTION: The witness indicates a point to the left of the map, which would be in a northerly direction and off the map.

QUESTIONS BY THE PROSECUTION:

Q Continue.

A A short while later a second shot was fired. I ran up the street, and from over there I saw men running towards me.

Q Now before you tell that part of the story, you say that this woman told you she heard a shot. Was she along side of you at that time?

A Yes.

Q Now I am referring to the first shot. Did you hear that shot?

A No.

Q Why not?

A I can't hear so well.

Q Did you hear the second shot?

A Yes.

Q Now continue and tell us what happened?

A After I heard the second shot, I run up the street in the direction of the Felsenkeller.

Q Is that in a southerly direction?

A Yes, in a southerly direction.

Q Then what happened?

A I saw men coming towards me and behind them a few men.

Q Now point out on the map where you were at that time.

A I run the street up here (indicating). The first man, the flier, might have been up here.

PROSECUTION: Let the record show that the witness pointed to a spot which would be about where the word "shot" is near the star where it says "Hamman shot here".

QUESTIONS BY THE PROSECUTION:

Q Continue.

A On the way, two, three, it might have been four shots were fired.

Q And then what happened?

A When I came to this spot, the flier was lying on the ground, dead.

PROSECUTION: Let the record show that the witness pointed to the star along the words "Hamman shot here."

QUESTIONS BY THE PROSECUTION:

Q Then what happened?

A Now the people came running.

Q Then what happened?

I pushed the people back a little bit--then I went over to the flier. There was standing Hammann, Nahrgang and Guenther.

Q What was Guenther's first name, if you recall?

A Karl.

Q Then what happened?

A We picked up the flier and carried him along here to the garden, Neber's Felsenkeller.

Q When you say along here, do you mean along Bierbrauer Weg?

A Yes, over the Bierbrauer Weg.

Q Then what happened?

A We put the flier down in the garden, and here Michel came with the second officer.

Q Before you continue, go back to the place where you say the flier was shot.

A Yes.

Q Now when you heard the three or four shots, did you see the flier, and what he was doing?

A I saw how the flier turned and dropped to the ground.

Q How far away were you from him at that time?

A It might have been 15 or even 20 steps.

Q Now come back to the place where you say the flier was brought and continue and tell the court what happened.

A We put the flier down in the garden next to the stairs, and there Eichel came with the second officer and asked "what has happened"? Hammann reported to him, "flier shot while trying to escape." Eichel said "good". A short while later Eichel asked what kind of a ring the flier was wearing. He asked, "The same ring as the flier on the afternoon?" Well, the flier was wearing a Jew ring like the other flier in the afternoon.

RING

Q Do you know a man by the name of Hammann?

A Yes.

Q Did you see him there at any time?

A Hammann was present there.

Q Would you recognize Hammann if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

PROSECUTION: Before the witness identifies the accused, tell him to wait just a minute. I notice and

bring to the Court's attention that some of the accused today are wearing glasses that haven't worn them before. I would like to have the accused remove their glasses.

DEFENSE COUNSEL: I pray the Court's judgment. That's a natural thing--they have been wearing their glasses for the normal course of living. I object, and I also object to the intimation, too.

PROSECUTION: Whether the glasses were put on for the first time today makes no difference. I would still like the Court to ask them to remove their glasses.

PRESIDENT: Objection overruled.

WITNESS: Number 12 is Hammann.

PRESIDENT: Do you still desire that?

PROSECUTION: Yes, sir.

PRESIDENT: All the accused will take their glasses off.

(Thereupon the accused did as directed.)

CROSS-EXAMINATION BY THE PROSECUTION:

Q Did you know a man by the name of Nahrgang?

A Yes.

Q Did you see him at any time that evening?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the Court, will you point him out?

A Number 11.

PROSECUTION: Let the record indicate that the

witness identified the accused Hammann wearing Number 12, and the accused Nahrgang wearing Number 11.

QUESTIONS BY THE PROSECUTION:

Q Did you know a man by the name of Hans Eichel?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the Court room, will you point him out?

A Number 6.

PROSECUTION: Let the record indicate that the witness identified the accused Eichel, number 6.

QUESTIONS BY THE PROSECUTION:

Q Who was Eichel?

A Police Director.

PRESIDENT: Direct the accused that they can put their glasses on.

(Whereupon the Interpreter did as directed.)

QUESTIONS BY THE PROSECUTION:

Q At the time the flier fell down on Bierbrauer Weg, at that time did you have any conversation with Hammann?

A I said to Hamman, "How could you shoot?" He answered, "I saw you coming."

PROSECUTION: No further questions.

CROSS EXAMINATION

QUESTIONS BY MR. PACHAEL:

Q When was the first time you saw Eichel that evening?

(Fabian-Cross)

A In the garden after I had brought the flier into the garden.

Q Are you sure he was not where the flier was lying in the road and referred to the flier or someone as "son-of-a-bitch"?

A I don't know that.

Q You were standing where the flier was lying in the road, were you not?

A Near? Yes.

Q Did you see Michel there?

A I don't know that.

Q How far were you from the flier when the shots were fired?

A I was on my way, I can't say anymore.

Q How far away were you from the person who fired the shots?

A I don't know that, either.

Q If the flier had gotten past that point at which he was shot, would he have been in open country?

A No, only along the road.

Q What was on the sides of that road?

A On the left, in the direction in which the flier was running, there were gardens, and on the right there were previously beer cellars.

Q Do you mean by that depressions in the ground?

A Yes, it was pretty deep depressions.

PROSECUTION: Any further questions? Any questions by the Court?

PRESIDENT: No. The witness is excused.

(Thereupon the witness was excused and withdrew.)

PROSECUTION: I call the witness Karl Guenther. During the first part of the examination of this witness, the Prosecution makes the same request--to have the accused remove their eye glasses.

PRESIDENT: The accused will remove their eye glasses.

(Whereupon the accused did as directed.)

KARL GUENTHER, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY THE PROSECUTION:

Q State your full name.

A Karl Guenther.

Q Where do you live?

A Offenbach.

Q How old are you?

A 47.

Q What is your business?

A At the time I am fire protection police.

Q What time are you referring to?

A Now.

Q Now, directing your attention to February, 1945, were you a member of the fire protection police then?

A Yes.

Q Do you remember the 22nd of February, 1945?

A Yes.

Q Do you remember anything unusual happening on that day?

A Yes.

Q On that date date what rank did you hold?

A I was a sergeant of the protective fire police.

Q Did you know a man by the name of Paul Nahrgang?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom, will you point him out?

A Number 11.

PROSECUTION: Let the record show that the witness identified the accused wearing Number 11.

Q Did you know a man by the name of Philipp Hammann?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom, will you point him out?

A Number 12.

PROSECUTION: Let the record indicate that the witness identified the accused Hammann, Number 12.

Q Did you ever know a man by the name of Bernhard Fay?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom, will you point him out?

A Number 13 (indicating).

PROSECUTION: Let the record indicate that the witness identified the accused Fay, wearing Number 13.

Q Did you know a man by the name of Hans Eichel?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom, will you point him out?

A Number 6.

PROSECUTION: Let the record indicate that the witness identified the accused Number 6.

Q Did you know a man by the name of Josef Kiwitt?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q If he is in the courtroom, please point him out.

A Number 7.

PROSECUTION: Let the record show that the witness identified the accused Kiwitt, Number 7.

Q Directing your attention again to the 22nd of February, 1945, do you remember anything unusual happening on that day?

A On this day a flyer was shot.

Q I show you Prosecution Exhibit 126 and ask if you are familiar with this sketch? (Hands document to witness.)

A Yes.

Q What does that represent, in general?

A This sketch shows in general how this incident happened.

Q Where did the incident happen?

A On the Bierbrauer Way, near the Felsenkeller.

Q Tell the court what happened, and in doing so come over to this large scale enlargement of the small map I just showed you. I call the witness' attention to the fact

that the wall map is upside down. Would you prefer to have it stay that way or do you want it right side up?

A It can stay the way it is.

Q Tell the court what happened?

A On the 22nd of February I was standing here on the gate. On this evening I was standing here on the gate. Then from a northerly direction two policemen came with a flyer.

Q Did they come along the Bierbrauer Way?

A They came this way (indicating).

PROSECUTION: Let the record show that the witness pointed to a place on Bierbrauer Way right next to the Haus Felsenkeller.

Q Continue.

A From this side the guard came(indicating).

PROSECUTION: Let the record show that the witness pointed to a place on Bierbrauer Way south of the gate, and he pointed showing the direction of the people going north.

Q Continue.

A And then one of the policemen asked, "Who has something to say here?" Then we said, Jaeger, Zahn and myself, he should go into the guardroom and ask. Then Zahn went with him into the guardroom in order to tell the guard--the sergeant of the guard. A short while later the policeman came out again and said, "Over here." Then they walked up this way (indicating).

Q When you say "they", to whom are you referring?

A The two policemen and the flyer.

Q Then what happened?

(Guenther - Direct)

A And Fay accompanied them. A short while later I entered the guardroom too through the gate and came approximately to this point (indicating).

Q Point to that again, please.

A (Witness indicates).

PROSECUTION: Let the record show that the witness pointed to the dotted line just opposite the guardroom.

Q Continue.

A Hammann came out of the guardroom, and when we were close together a call was heard from up front, "He has escaped."

Q You say a call came from up front. Will you point to the general area of that call on this map?

A From up there (indicating).

PROSECUTION: Let the record show that the witness pointed up in the general area of the wood shack and the 25 steps.

Q Then what happened?

A Then Hammann and I went out through the gate, and here Jaeger was standing. There Hammann took Jaeger's rifle. Then Hammann ran down this way (indicating), and me, too.

PROSECUTION: Let the record show that the witness pointed to Bierbrauer Way in a northerly direction.

A (continuing) And the flyer was there where they came out there on the road.

Q Before that happened, and while you were back here near the guardroom, and when you heard the holler from the area up near the steps, did you hear anything else?

A You heard only from up front that he is escaping.

Q What did you hear?

A That the flyer had escaped.

Q Do you know who said that?

A There were several voices.

Q Did you hear anything else besides voices?

A No.

Q Now continue with your story.

A Hammann ran up there. Me too. Then several voices called "Halt".

Q Where did this happen? Will you point that out on the map?

A It was approximately here (indicating). And then Hammann shot.

PROSECUTION: Let the record show that the witness pointed to the arrow at the end of the dotted line right near the star which says "Hammann shot here."

Q Continue.

A After several shots the flyer fell to the ground. Then I passed Hammann and wanted to go over to the flyer, and when I had nearly reached him Hammann shot once more.

Q Did you see that?

A Yes.

Q Was the flyer armed?

A I didn't see that. I don't think so.

Q What did Hammann shoot the flyer with?

A With a carbine.

Q Then what happened?

A Hammann shot, and then I wanted to go over to the flyer. Hammann shot once more. Then I told him, "Phillip, stop it." And then Hammann said, "I can't see any man suffer." Then, since so many people were coming over, I went back to hold back the crowd. When I was holding back the crowd Eichel arrived, too. And then Eichel asked what had happened, and Hammann said, "Flyer shot while trying to escape."

Q Did Eichel say anything after that?

A He said, "Good." Then we went over, picked up the flyer, and carried him over to approximately this point here (indicating).

PROSECUTION: Let the record show that the witness pointed to the place just under the words "Garden, body brought here."

Q Then what happened?

A Then one of the policemen said, "The flyer is carrying a watch." Then I took off his watch and gave it to Eichel. This moment Eichel saw that the flyer was still wearing a ring, and then he said, "Let me see this ring, whether it is the same Jew ring as the flyer had in the afternoon." Then Fay took off the ring and gave it to Eichel too, and Eichel gave these things to a lieutenant or first lieutenant. I don't know who that was.

Q Did anything else happen that you know of?

A No.

PROSECUTION: Go back to your seat.

(Whereupon the witness resumed the witness stand.)

PROSECUTION: No further questions.

CROSS EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Does that chart show correct distances to indicate where Hammann shot and where the flyer lay, as compared to the rest of the chart?

A Pretty closely.

Q Will you go up to the map and show exactly where Hammann was standing when he fired the first shot?

(Whereupon the witness assumed a position near the chart.)

A The first shot he fired while he was still running.

Q Where was he at the time he fired the first shot?

A Approximately in this height over here.

Q Do not move your stick. Point to the spot.

A Approximately this height (indicating).

MR. RACHAEL: Indicating a spot just about the head of the arrowhead and slightly below it, of the dotted line.

Q And how many shots did you say Hammann fired?

A A total of four shots.

Q Was he running when he fired the second shot?

A Yes. A few shots he fired while he was still running.

Q How many shots did he fire while he was running?

A I don't know that so exactly anymore.

Q Was that a single action carbine?

Tr 86 - 90
1-24-47:JGL cD;3

A That was an Italian carbine with six shots.

MR. RACHMEL: May we suspend until Monday morning, if the court please?

PRESIDENT: Court will adjourn until Monday morning at 9 o'clock.

(Thereupon the court adjourned at 1700 hours until 0900 hours, Monday, January 27, 1947.)

(Guenther - Cross)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

Court/GI 13

Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

(11)

Pages 569 - 652

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 27 JANUARY 1947

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Herbert B. Rosenstock

Reporter Patricia Stewart, Irving Hayett, Sally Rose Hayett, Imogene Butler, John McDonald, Paula Silverman

~~Members of Court~~
WITNESSES:
KARL GUENTHER
KARL SCHNEIDER
ERIC MAHLOUT
KARIN SCHORNWEBER
PHILIPP BUHLMANN

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *furtner term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES VERSUS JURGEN STROOP, ET AL

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

27 JANUARY 1947 - Pages 569 to

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COURT
GUNTHER, Karl		569			
SCHNEIDER, Karl	571	575			
WALDUT, Fritz	578	581	619	622	
SCHORNBERGER, Karin	591	596	602	602	
BUHLMANN, Philipp	604	610	615	615	

EXHIBITS

No.	Description	Marked	Received in Evidence
P-134	Sworn statement of Paul Nahrgang	577	583
P-134-A	English translation of P-134	577	583
P-135	Statement of Josef Diwitt	584	585
P-136	Statement of Philipp Hartmann, 24 Aug 46	586	586
P-136-A	English translation of P-136	586	586
P-137	Statement of Philipp Hartmann, 15 May 46	587	587
P-138	Statement of Bernhard Fay	588	588
P-139	Affidavit of Capt. Marvin Kuschner	589	589
P-140	Affidavit of Capt. Marvin Kuschner	590	590
P-141	Statement of Erwin Goss	616	616
P-141-A	English translation of P-141	616	616
P-142	Statement of Georg Best	617	617
P-143	Sworn testimony of Heinrich Hohely	618	618
P-144-A to 144-J	Photographs	618	629
P-145	Document No. 728-PS	629	631

27 January 1947

MORNING SESSION

(Thereupon court reconvened at 0900 hours.)

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Kau and Dr. Trost, who are absent on business of the defense, all the accused, the court reporter and the interpreter are present.

KARL GUENTHER, called as a witness by the prosecution, having been previously duly sworn, resumed the stand and testified further through an interpreter as follows:

PROSECUTION: May it please the court, let the record show that the witness Karl Guenther has resumed the stand.

PRESIDENT: The witness is reminded he is still under oath.

DR. RACHEL: Dr. Aheimer would like to interrogate the witness.

CROSS EXAMINATION (Continued)

QUESTIONS BY Dr. AHEIMER:

Q Mr. Guenther, you said on direct examination that the incident about which you told us happened in the evening of the 22nd of February 1945. At what hour?

A It was eight-thirty or nine o'clock.

Q Was it light or dark that evening?

A I can't remember exactly any more. It wasn't light.

Q Can you remember whether the moon was in the sky or not?

A I can't say whether the moon was shining.

Q On this evening when did you see the accused Ushrgang for the first time?

A Before the incident happened or afterwards?

Q Before.

A Ushrgang was at the guard room.

(Guenther-Cross)

Q While you were standing at the gate after the two policemen had come to you, when did you see Wahrgang then for the first time?

A Then I saw Wahrgang at the place of the crime after the crime had happened.

Q You mean the spot where the flier had been shot?

A Yes.

Q You said that one of the policemen went to the guard room to ask for the sergeant of the guard. Did you yourself see that the policeman went into the guard room?

A I couldn't see that from the spot.

Q Do you know a man by the name of Adam Jaeger?

A Yes.

Q Where was this man on that evening?

A At that time he was standing at the gate.

Q During the time this one policeman went to the guard room, were you standing in the immediate vicinity of Adam Jaeger?

A Yes, in the vicinity.

Q You said you could not see whether one of the policemen went into the guard room. Was Jaeger able to see it?

PROSECUTION: I object to that question.

THE WITNESS: I can't say that.

PRESIDENT: Objection sustained.

DR. AUBERER: That is all.

MR. BACHAR: The defense has no further questions.

PROSECUTION: Any questions by any member of the court?

PRESIDENT: No.

PROSECUTION: May the witness be excused?

PRESIDENT: The witness is excused.

(Thereupon the witness was excused and withdrew.)

(Guenther-Cross)

PROSECUTION: Call the witness Karl Schneider.

KARL SCHNEIDER, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q State your full name.

A Karl Schneider.

Q How old are you?

A 45.

Q Are you at present a prisoner of war at Dachau?

A Yes.

Q Did you ever hear of a man by the name of Goehrendt?

A Yes.

Q Would you recognize him if you saw him again?

A Yes.

Q Will you look around the courtroom and if he is present will you point him out?

A Yes, 10.

PROSECUTION: Let the record indicate that the witness identified the accused Goehrendt wearing number 10.

QUESTIONS BY PROSECUTION:

Q I [redacted] your attention to the 22nd of February 1945. Did you have any conversation with Goehrendt on that day?

A Yes.

Q What was that all about?

A A captured flier was brought in. We got the order from Goehrendt to bring a captured flier from Bieber to Offenbach.

Q What happened?

A We got all his things in a briefcase and a letter in which all his personal things were mentioned.

Q On that day were you a member of the German police force?

A Yes.

Q What rank did you hold?

A Corporal of the police.

Q About what time of the day did this all happen?

A It was in the evening.

Q Then what happened?

A We went with the flier to the headquarters of the order police and put down the briefcase with his personal belongings.

Q Where was this located?

A Corner Dom Street and Kaiser in Offenbach.

Q Then what happened?

A Then Captain Kiwitt was called.

Q Who was Captain Kiwitt?

A He was at the headquarters.

Q Did Captain Kiwitt say anything at that time?

A Yes, he took us to the next room.

Q What did he say?

A He told us, "How can you have the nerve to bring this man down here? Why didn't you do away with him?"

Q Would you recognize Captain Kiwitt if you saw him again?

A Yes.

Q Take a look around the courtroom. If he is among those present will you point him out?

A Number 7.

PROSECUTION: Let the record indicate that the witness identified the accused Kiwitt number 7.

QUESTIONS BY PROSECUTION:

Q Then what happened?

A He asked us then, "Are you married? Do you have children?"

Q What else?

A We answered, "Yes."

Q Then what did he say?

A Then he asked, "Are you of the reserve or are you a member of the regular police?"

Q What did you say?

A We said, "We are of the reserve."

Q Was anyone else with you at that time?

A In the room?

Q Yes.

A Michel.

Q Who was he?

A Michel was a sergeant of the police.

Q What else did Kiwitt tell you?

A Kiwitt then said furthermore, "These are the men who killed your women and children."

Q Then what happened?

A "The flier has to be chained by you."

Q Who said that?

A Kiwitt.

Q What else did he say?

A We said, "We wouldn't do that, he is a prisoner of war."

Q Then what happened?

A Then he said, "Get out. The flier has to be shot."

Q Then what happened?

A Then we answered, "We wouldn't do that."

Q Then what happened?

A And then he said, "If you don't do it you know what's going to happen."

Q Then what did you do?

A Then we were turned out of the room. We left with the flier and said we would return to Bieber.

Q Then what did you do?

A Then we left and while we were on our way somebody called, "Michel, over here." I couldn't recognize who was calling. Then the same voice said, "Schneider, you stay with the flier." When Michel returned I asked him who that was. He said it was Lieutenant Alt.

Q What was Alt's first name?

A Might be Adolf; I dont' know for sure.

Q Who was Alt?

A Lieutenant of the police.

Q Then what happened?

A Then I said to Michel, "What did he want from you?" Michel said, "I told Lieutenant Alt we would bring the flier back to Bieber." Then an alarm was given and flak artillery was fired, so on our way to Bieber we went in the direction of the bunker.

Q Where was the bunker?

A Bierbrauer Way.

Q Then what happened?

A While we were still a little bit away from the bunker Michel said, "It is getting dangerous, run away and I will wait near the gate for you."

Q What gate are you referring to?

A The entrance to the bunker through the garden.

Q Did you take the flier to the bunker on Bierbrauer Way?

A Yes.

Q After you got there what happened?

A A guard was standing there and asked, "Whom do you have with you?" So we said, "We have a captured flier. We tried to hand him over at

headquarters but we coul'n't get rid of him. We are supposed to shoot him but we are not going to do it, and therefore, we are returning him to Bieber. We would like to take cover until the danger is over."

PROSECUTION: No further questions.

CROSS EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Then what did you do?

PROSECUTION: I object to that question. I took this witness up to the point where he brought the flier to the bunker. That is as far as I went. He is going into direct examination.

MR. RACHAEL: I will make the witness my own witness.

PROSECUTION: You cannot do that. I object to that strenuously.

PRESIDENT: The objection is sustained.

MR. RACHAEL: This witness is a witness to all the facts that took place in this area during this entire proceeding.

PROSECUTION: The defense is commenting on something that is not in the evidence and I object again.

MR. RACHAEL: I believe the court should know what has happened.

PRESIDENT: The objection is sustained.

QUESTIONS BY MR. RACHAEL:

Q You spoke to Captain Kiwitt in his office, is that right?

A Yes.

Q Did he tell you to kill the flier?

A Yes.

Q Did you speak to me in my office one day last week?

A I think two weeks ago.

Q Did I ask you at that time whether Kiwitt had given you an order to kill the flier?

A Yes.

Q Did you answer me at that time that he did not?

(Schneider-Cross)

A The sentence which he used, "The flier has to be done away with", I took as an order.

Q Did you not answer me when I asked you whether Kiwitt gave you an order to kill the flier, that he did not give you such an order?

A No.

MR. RACHAEL: Dr. Buerger would like to ask some questions.

QUESTIONS BY DR. BUERGER:

Q On direct examination you said you were sent to Offenbach by Goehrendt, is that right?

A Yes.

Q What was Goehrendt's order?

A To deliver the flier at Headquarters.

Q When you arrived at Headquarters, who was present there when you arrived with the flier?

A First Lieutenant Trautmann.

Q At that time were you given already an order in regard to the flier?

A Not by 1st Lieutenant Trautmann.

QUESTIONS BY DR. AHEDER:

Q Mr. Schneider, what was the purpose of your going with the flier in the vicinity of the Bierbrauer Way?

A Because there was an air raid alarm and we were looking for cover.

Q That means the only reason for you to go in the neighborhood of the Bierbrauer Way was to find cover?

A Yes.

Q At what time of the day did you arrive at the Bierbrauer Way?

A It might have been quarter to nine or nine o'clock. I don't know exactly any more.

Q Was there a blackout at that time?

A Yes, there was a blackout.

Q Was it possible to see a lot through moonlight or was it dark?

A You couldn't see very much.

Q Can you tell us how many meters you could see at that time?

A I don't know exactly any more.

Q Approximately -- could you see five meters or ten meters?

A No, you couldn't see.

Q That means you could see only for a shorter distance than five meters, three or four meters, is that right?

A Yes.

Q You said before that at the gate of the Pierbrauer Hay you met a guard post. Did you know this guard before?

A No.

Q Did you meet one or two men there?

A We were close to the guard, which might have been one meter.

Q You misunderstood me. I want to know whether there were one or two men.

A I don't know so exactly any more.

DR. [illegible]: That is all.

PROSECUTION: Are there any questions by any member of the court?

PRESIDENT: No.

PROSECUTION: May the witness be excused?

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

PROSECUTION: Will you mark these documents Prosecution Exhibit Numbers 134 and 134-A for identification, please?

(The documents referred to were marked Prosecution Exhibit Number 134 and 134-A for identification.)

PROSECUTION: Call the witness Eric Wahlgut.

ERIC WAHLGUT called as a witness by the prosecution, being first duly sworn, testified as follows:

(Thereupon the proceedings were translated into the German language.)

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q State your full name.

A Eric Wahlgut.

Q Are you a United States Army War Department civilian on duty here with War Crimes at Dachau?

A I am.

Q Are you on duty as an investigator in this case now on trial before this court?

A I am.

Q Were you so employed on the 14th of December 1946?

A I was.

Q At that time were you a captain in the Army of the United States?

A Yes, I was.

Q I show you Prosecution Exhibit which has been marked 134 for identification and ask you to look at that paper and tell us whose signature appears at the bottom thereof?

A That is the signature of Paul Nahrgang.

Q Is he one of the accused in this case?

A Yes, he is.

Q Whose signature appears below that of Paul Nahrgang?

A That is my signature.

Q What is that paper?

A That is a sworn statement in German of the incident that took place.

Q Was that sworn to before you?

A Yes, it was.

Q Was any force, duress or promises of reward made to Nehrgang at the time he signed that?

A No, he wasn't.

Q Do you speak and read and translate the German language fluently?

A Yes, I do.

Q Where did you learn the German language?

A In Germany.

Q When?

A As a child.

Q How many years did you spend in Germany?

A The first eight and a half years of my life, two months in 1936 and two and a half years in the army.

Q At the time Nehrgang signed this statement did he have any discussion with you about any corrections to be made on it?

A Yes, he did.

Q Did you speak with him in the German language?

A Yes.

Q Did he make any corrections on that instrument?

A Yes, he made three corrections.

Q Did he make those corrections voluntarily?

A Yes, he did.

Q Did he initial them?

A He did.

Q Now, that instrument was taken on what date, or was signed and sworn to on what date?

A That was taken on the morning of the 11th of December about ten o'clock.

(Wehlgut-Direct)

Q About what time?

A Ten o'clock.

Q Were you present in my office most of the morning of the 14th of December 1946?

A I was.

Q Do you remember what day of the week it was?

A It was on Saturday.

Q Were you present when I served Paul Mahrgang with the process, charge sheets in this case?

A I was.

Q About what time of the day was that?

A They were served about a quarter to twelve.

Q On the same day, 14th of December 1946?

A Same day.

Q So that he was served with process by me after he signed and swore to that statement, is that correct?

A That is correct.

PROSECUTION: No further questions.

DEFENSE COUNSEL: I would like to cross examine him on the statement.

PROSECUTION: It has not been offered in evidence as yet.

DEFENSE COUNSEL: Then I ask that it all be stricken from the record as being purposeless.

PRESIDENT: The objection is overruled.

PROSECUTION: Prosecution offers in evidence a document that has been marked Prosecution Exhibit 134 for identification, which is a sworn statement in German of the accused Paul Mahrgang, sworn to on the 14th of December 1946 before Erle P. Mahlgut, Captain, U.S. Army, together with a true and correct English translation thereof, which has been marked 134-A for identification, and ask that these documents be received in evidence and be made a part of the record.

(Mahlgut-Direct)

PRESIDENT: Any objection?

DEFENSE COUNSEL: Yes, I have an objection but I would like to cross examine the witness before stating my objection.

PRESIDENT: Proceed.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q On the day you administered this alleged oath, what was your official capacity?

A Interrogator, pre-trial interpreter.

Q By what virtue did you assume at that time to administer a binding oath?

A At that time I was still a captain in the Army.

Q Was the administration of the oath by you based solely on the fact that as a captain in the Army you had a right to administer an oath?

PROSECUTION: I object to that question. The Court Martial Manual says that an officer detailed for duty with the Judge Advocate General's Department, particularly with War Crimes, has the power and authority to administer an oath.

QUESTIONS BY DEFENSE COUNSEL:

Q Were you in the Judge Advocate Genral's Department at that time?

A I was with War Crimes.

Q Were you a member of the Judge Advocate General's Department on that day?

PROSECUTION: If the court please, we can save the court's time. This man was an officer on that day, he worked for me. He was detailed to this office, which is a Judge Advocate Department function. I can get the Court Martial Manual if the court desires.

PRESIDENT: The objection is sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q At the time you took this oath, you knew, did you not, that Mahrgang

was to be served papers that very day?

PROSECUTION: I object to that question as entirely irrelevant.

PRESIDENT: The objection is sustained.

THE WITNESS: I did.

DEFENSE COUNSEL: May it please the court, the defense objects to the receipt of this exhibit, first, on the ground that the person who undertook to administer the oath was under no circumstances authorized to administer an oath on the ground that at the time the statement was made it was known definitely then that Wahrgang was a defendant, an accused in this case, and consequently, to obtain a statement from him at that time was a serious infraction of his rights, and on the ground given throughout this case, that to obtain a sworn statement from the accused, particularly under these circumstances, where he couldn't take the stand right now and deny under oath those statements, is a serious deprivation of the substantial rights of the accused.

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: The Court will come to order. The objection is overruled.

DEFENSE COUNSEL: I would like a ruling, may it please the Court, at this time specifically on the question as to whether the witness was authorized to administer oaths at that time, in view of the position he testified he held.

PRESIDENT: The Court is of that opinion.

PROSECUTION: Will the Exhibits 134 and 134-A be received in evidence?

PRESIDENT: Prosecution Exhibits 134 and 134-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 134 and 134-A for identification were received in evidence as Prosecution Exhibits 134 and 134-A, are attached hereto and made a part of the record.)

PROSECUTION: May the witness be excused?

DR. AMEIMER: I have a question.

QUESTIONS BY DR. AMEIMER:

Q How was the text of this statement made up?

A It was given to me by Colonel Dalnell.

Q Do you know whether the accused Nahrgang was interrogated before?

A No I don't. He probably was.

DEFENSE COUNSEL: I ask that "He probably was" be stricken from the record.

PRESIDENT: The motion is sustained.

QUESTIONS BY DR. AMEIMER:

Q Did you bring to the attention of the accused Nahrgang that he couldn't be forced to make statements under oath which could be used against him?

A No, I did not.

(Mahlgut-cross)

PROSECUTION: I object to the question and move that the last last question and answer be stricken from the record on the the ground that the accused was not an accused at that time and therefore the question is irrelevant.

PRESIDENT: Motion is sustained.

DEFENSE COUNSEL: I would like the Court to have in mind and the record to indicate the fact that at the time this thing was done orders had been received from higher authority that this man was to be put to trial and that the charge sheets, as presented to this Court, had at that time been approved by higher authority.

PRESIDENT: The Court will consider that at the proper time.

PROSECUTION: The record should also show and I would like to ask the court to take knowledge of the fact that the Prosecution, despite those orders, could refuse or rather abstain from making that man an accused if the evidence so warranted.

DEFENSE COUNSEL: I would like to state positively that that is not a subject for taking judicial notice.

PRESIDENT: Proceed.

MR. RACTAN: The Defense has no further questions.

PROSECUTION: Are there any questions by the Court?

PRESIDENT: No. The witness is excused.

(Thereupon the witness was excused and withdrew.)

PROSECUTION: Prosecution requests permission to read Exhibit 134-A.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution Exhibit 134-A, followed by a translation thereof into the German language by the interpreter.)

PROSECUTION: Will you mark this document Prosecution Exhibit 135 for identification?

(The document referred to was marked Prosecution Exhibit 135 for identification.)

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PROSECUTION: Now comes the Prosecution and offers in evidence the sworn statement of Kimitt which has been previously marked for identification as Prosecution Exhibit 135. This was taken on 8 June 1948 and sworn to before Milton M. Crooks, Civilian Investigator-Examiner, AFO 633. We ask that this document be received in evidence, and made a part of the record.

MR. RACHAEL: The Defense objects to this statement on the grounds previously stated about statements having been made by an accused.

PRESIDENT: Objection overruled. Prosecution Exhibit 135 will be received in evidence and made a partof the record.

(The document heretofore marked Prosecution Exhibit 135 for identification was received in evidence as Prosecution Exhibit 135, is attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Exhibit 135.

PRESIDENT: Permission granted.

(Thereupon the Prosecution read Prosecution Exhibit 135, followed by a translation thereof into the German language by the interpreter.)

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(Whereupon the court reconvened at 1020 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense except Dr. Trost whois absent on business of the defense; all the accused; the reporter and interpreter are present.

I hand you a document and ask that it be marked Prosecution Exhibit 136 for identification, and the English translation thereof Prosecution Exhibit 136A.

(Whereupon the documents in question were marked Prosecution Exhibits 136 and 136A for identification.)

PROSECUTION: Now comes the prosecution and offers in evidence a sworn statement of the accused, Philipp Hammann, sworn to the 24th day of August 1945 before George A. Gray, Major, Air Corps, Investigator-Examiner. This document has previously been marked Exhibit 136 for identification and is in the handwriting of the accused. The prosecution also offers in evidence a true and correct translation thereof which has been marked 136A for identification. The prosecution asks that these documents be received in evidence and made a part of the record.

MR. RACHAEL: Defense objects for the same reason previously stated, the same reason on the matter of swearing an accused.

PRESIDENT: Objection overruled. Prosecution Exhibits 136 and 136A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 136 and 136A for identification were received in evidence as Prosecution Exhibits 136 and 136A, are attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Exhibit 136A.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 136A, the English translation of the statement of Philipp Hammann, followed by a reading of Prosecution Exhibit 136 by the interpreter in the German language.)

PROSECUTION: I hand the reporter a document and ask that it be marked Prosecution Exhibit 137 for identification.

(Whereupon the document referred to was marked Prosecution Exhibit for identification.)

PROSECUTION: Now comes the prosecution and offers in evidence the sworn testimony of Philipp Hammann taken at Dachau the 15th of May 1946 before Milton Crook, Investigator-Examiner, APO 653. This document has previously been marked for identification Exhibit 137. The prosecution asks that it be received in evidence and made a part of the record.

MR. RACHAEL: Same objection as to the previous statements.

PRESIDENT: Objection overruled. Prosecution Exhibit 137 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 137 for identification was received in evidence as Prosecution Exhibit 137, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution asks the court's permission to read Exhibit 137.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 137, the statement of Philipp Hammann, followed by a translation into the German language by the interpreter.)

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

LAW MEMBER: The court wishes to ask the translator this question -- In the sentence which has been translated in Exhibit 136A, "I followed him

from 80 to 100 meters and shouted 'halt' at him two or three times", will the interpreter give the actual translation of the word "from" as used in that sentence.

THE INTERPRETER: It should say "approximately 80 to 100 meters" instead of "from 80 to 100 meters". "Ungefahr 80 bis 100 meters" should be translated "approximately 80 to 100 meters."

PROSECUTION: I hand the reporter a document and ask that it be marked Prosecution Exhibit 138 for identification.

(Whereupon the document referred to was marked Prosecution Exhibit 138 for identification.)

PROSECUTION: Now comes the prosecution and offers in evidence the sworn testimony of Bernhard Fay taken on the 9th day of May 1946 at Dachau, Germany before Milton Crook, Investigator-Examiner. This document has previously been marked for identification as Prosecution Exhibit 138. The prosecution asks it be received in evidence and made a part of the record.

MR. RACHAEL: Same objection as to the other statements, if it please the court.

PRESIDENT: Objection overruled. Prosecution Exhibit 138 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 138 for identification was received in evidence as Prosecution Exhibit 138, is attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission of the court to read Exhibit 138.

PRESIDENT: Permission granted.

(Whereupon the prosecution read Prosecution Exhibit 138, the statement of Bernhard Fay, followed by a translation into the German language by the interpreter.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution's Exhibit 139 for identification.

(The document referred to was marked Prosecution Exhibit 139 for identification.)

PROSECUTION: May it please the Court, at this time we call the Court's attention to the fact that we previously pointed out to the Court that there would be evidence presented during presentation of Charge 7 that would also be applicable to Charge 8. I am now specifically referring to the pathological report that went into the presentation of that part of the case wherein it referred to the body of Archibald Monroe. That part of the evidence is applicable to Charge 8, which is now being presented to this Court.

Now comes the Prosecution and offers in evidence the affidavit of Captain Marvin Kuschner, Medical Corps, with a true and correct translation thereof attached thereto, and with a photograph attached thereto to which reference is made in said affidavit, which was subscribed and sworn to on 29 April 1946. The Prosecution asks that this be received in evidence and made a part of the record. This has been marked for identification as Prosecution's Exhibit 139.

MR. RACHAEL: No objections.

PRESIDENT: Prosecution's Exhibit 139 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 139 for identification was received in evidence as Prosecution Exhibit 139, is attached hereto, and made a part of the record.)

PROSECUTION: The Prosecution requests permission to read Prosecution's Exhibit 139.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution Exhibit 139, followed by a translation into German by the interpreter.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution's Exhibit 140 for identification.

(The document referred to was marked Prosecution Exhibit 140 for identification.)

PROSECUTION: Now comes the Prosecution and offers in evidence an affidavit which has been previously identified as Prosecution's Exhibit 140, with a true and correct translation thereof attached thereto, and also a photograph attached thereto, to which reference has been made in said affidavit. This is the affidavit of Captain Marvin Kuschner dated 29 April 1946. Prosecution asks that this be received in evidence and made a part of the record.

PRESIDENT: Any objections by the Defense?

MR. MACHALL: No objections.

PRESIDENT: Prosecution's Exhibit 140 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 140 for identification was received in evidence as Prosecution Exhibit 140, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission of the Court to read Prosecution's Exhibit 140.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read Prosecution Exhibit 140, followed by a translation into German by the interpreter.)

PROSECUTION: May it please the Court, that concludes the presentation of the proof offered by the Prosecution in support of the main, the allegations contained in Charge 8. The Prosecution will now proceed with the evidence in support of Charge Number 9. I call the witness Karin Schornweber.

KARIN SCHORNWEBER, called as a witness by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY THE PROSECUTION:

Q Will you please state your full name?

A Karin Schornweber.

Q Where do you live?

A Wiesbaden.

Q How old are you?

A 28.

Q Now, directing your attention to 17 March 1945, where were you on that day?

A Wallrabenstein.

Q Do you remember anything unusual happening on that day?

A Yes, an American flier parachuted.

Q And what happened?

A The flier parachuted and was taken prisoner by the SS.

(Schornweber-Direct)

Q And then what happened?

A The flier was taken away to the school house and from there to the Mayor.

Q And then?

A Then I didn't see him any more.

Q Did you ever know a man by the name of Heinrich Michely?

A Yes.

Q Did you see him on or about that time?

A Yes.

Q When and where?

A Sunday evening.

Q Was that in March, 1945?

A Yes.

Q Tell the Court what happened when you saw Michely.

A Michely was very drunk and he was wearing a wrist watch and a little bracelet of an American.

Q Where was that?

A In a tavern.

Q Where was the tavern?

A In Jacoby, near Wallrabenstein.

Q Now, referring to what happened in the tavern, tell the Court exactly what happened in respect to Michely.

A I asked Michely where from he had the wrist watch, and the bracelet; and he told me an American prisoner had given him those as a present. Then I told him, "You don't believe this yourself,"; and then he said, "If you

want to know it exactly, I did away with him and he is lying up there."

Q Now how long had Michely been in the tavern before he said that?

A He was there ahead of me.

Q What was he doing in the tavern?

A He was drinking.

Q Do you know to what extent he had been drinking? Say that if you know.

A He said he was drinking schnapps.

Q Would you recognize Michely if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

A Number 16.

PROSECUTION: Let the record indicate that the witness identified the accused Michely, wearing number 16.

QUESTIONS BY THE PROSECUTION:

Q Now, from your observation of Michely, were you able to tell to what extent he had been drinking?

A He was very drunk.

Q Did you ever know a man by the name of Goss?

A Yes.

Q Did you see him in March, 1945?

A Yes.

Q Was that about the time that Michely told you about the flier?

A Yes.

Q What happened?

want to know it exactly, I did away with him and he is lying up there."

Q Now how long had Michely been in the tavern before he said that?

A He was there ahead of me.

Q What was he doing in the tavern?

A He was drinking.

Q Do you know to what extent he had been drinking? Say that if you know.

A He said he was drinking schnapps.

Q Would you recognize Michely if you saw him again?

A Yes.

Q If he is in the court room, will you point him out?

A Number 16.

PROSECUTION: Let the record indicate that the witness identified the accused Michely, wearing number 16.

QUESTIONS BY THE PROSECUTION:

Q Now, from your observation of Michely, were you able to tell to what extent he had been drinking?

A He was very drunk.

Q Did you ever know a man by the name of Goss?

A Yes.

Q Did you see him in March, 1945?

A Yes.

Q Was that about the time that Michely told you about the flier?

A Yes.

Q What happened?

A When the flier was being taken away, Goss said he should keep on walking, otherwise he would kick him--that's all.

Q Was Goss armed at the time?

A I don't know that.

Q Do you know whether or not the American flier was armed?

A I don't know that, either.

Q Where did all this happen? I am referring now to Goss.

A In the open.

Q Whereabouts with reference to the tavern?

A That was when the flier had parachuted.

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Q Was it anywhere near the schoolhouse in the village?

A Yes, a few steps away.

Q Just exactly what did you see and what did you hear? I am referring to the incident near the schoolhouse.

A The flier was brought to the schoolhouse and was taken into the schoolhouse building, and I heard only a lot of noise, and that is all I saw.

Q What kind of noise did you hear?

A It sounded to me like beatings.

Q You refer to the fact that in the ——

DEFENSE COUNSEL: I pray the court's judgment. "I think it sounded like beatings." I think that is definitely leading. The witness ought to describe what she heard, not what it sounded to her like. I ask it be stricken from the record.

PRESIDENT: Objection sustained.

PROSECUTION: I think it is a rule of evidence that a person from his experience can make a statement as to whether or not a particular sound sounds like a particular thing. This witness is 28 years of age, was outside of the schoolhouse, and heard sounds in there. I think she was old enough to be able, of her own common knowledge, from normal experience, to state what those sounds sounded like.

PRESIDENT: Let the witness state what she heard.

QUESTIONS BY PROSECUTION:

Q Describe to the court, as best you can, the nature of the sounds that you say you heard from the schoolhouse.

A I heard only slaps, beatings, and loud voices.

Q Referring back to the time you say you saw Michely leave the tavern, you said something about a bracelet. Did you look at that bracelet?

A Yes.

Q Describe it to the court.

A It was a silver bracelet with a silver plate.

Q Did you notice anything else about it?

A The name.

Q What name?

A The first name, Jimmy.

Q Have you ever seen that kind of bracelet from that day to this?

A Yes.

Q When and where?

A With Americans.

Q Was there more than one name on the bracelet? You mentioned the fore name. Was there more than one name on the bracelet?

A Yes, there was another letter and a family name.

PROSECUTION: You may cross examine.

CROSS EXAMINATION

QUESTIONS BY MAJOR FAXON:

Q You have stated here on direct examination that you remember this as March 17th, is that correct?

A The middle of March. I don't know whether it was the 17th of March.

Q You also mentioned that when you saw Michely the next time, it was on a Sunday night, it was March 17th, or whatever this night or day was that this parachutist came down. Was that the same Sunday?

A That was on a Saturday.

Q Were you there at the schoolhouse when Michely brought in the flier?

A I didn't see Michely.

Q Who did you see bring the flier in?

A Goss and a few others.

Q Had they just captured the flier at that time?

A Yes.

Q What time of day was that?

A It was approximately 2 o'clock in the afternoon.

Q Had you known about this flier being in the vicinity before they brought him into the schoolhouse?

A I saw when he parachuted.

Q About what time was that?

A It was approximately 2 o'clock.

Q Was he then immediately captured by Goss?

A First by another SS man.

Q Who was that?

A I don't know.

Q You knew Goss personally before you saw him that day, did you?

A I didn't know him personally.

Q You knew him by sight?

A Yes.

Q Was this your home, this town?

A No.

Q How did you happen to be there that day?

A I was evacuated to Wallrabenstein.

Q Did you stay there at the schoolhouse or in the vicinity of the schoolhouse after they took the flier inside?

A Yes.

Q Did you see Michely at that time?

A No.

Q How long was the flier inside the schoolhouse?

A Perhaps ten minutes.

Q You stated to the court that at that time you heard beatings and slaps, is that right?

A Yes.

Q Will you describe to the court what you mean by beatings and slappings that you could hear from outside the building?

A There was a slapping noise.

Q Just what do you mean by that? Somebody slapped in the face with a hand or with a stick?

A I don't know that.

Q Do you think that you could have heard someone slapping his hand on a table, like that?

A No, it didn't sound like that.

Q Then how did it sound?

A It sounded like the way you slap somebody.

Q Did you ever slap anyone?

A Yes.

Q Did it sound like that, is that the idea?

A Yes.

Q Did you ever get slapped yourself?

A Me? No.

Q Did you hear any outcry from anyone as though they were being hurt?

A No.

Q Now, you say they were inside for about ten minutes, is that correct?

A Yes.

Q And you waited outside during that time, is that right?

A Yes.

Q And did you go inside?

A No.

Q Were you outside when they brought the flier out to go to the burgomeister's office?

A No, then I wasn't there any more.

Q When was it that you saw the flier the next time?

A Not at all.

Q Didn't you testify on direct examination that you saw him being taken to the burgomeister's office?

A I didn't see it; I heard it.

Q You have placed the time that the flier was inside the schoolhouse at about ten minutes. What did you do after they took the flier inside the schoolhouse?

A Several women were standing in front of the schoolhouse, and talked about it.

Q Did you stand there and talk with them?

A Yes.

Q On this particular day, did you ever see the flier again after the first time he was brought into the schoolhouse?

A No.

Q Did you ever hear of anyone who saw them bring the flier out of there to take him to the burgomeister's house?

A Yes.

Q You talked to those people, did you?

A Yes.

Q Did anyone ever tell you that this flier showed any signs of being slapped or beaten after he was brought out of that schoolhouse?

A No.

Q The sole evidence you have got about slappings and beatings is what you think you heard inside the schoolhouse as you stood outside?

A Yes.

Q Did you see Michely at all that day?

A No.

Q As I understand it, it was the following day, which would be Sunday night, that you next saw Michely, is that right?

A That is right.

Q Before that time, however, had you heard about this particular flier in question being shot?

A No.

Q What time did you see Michely in the tavern Sunday night?

A 7 or 7:30.

Q How long had you been there in the tavern before you saw Michely?

A I just came there.

Q Michely was already there?

A Yes.

Q How long had you known Michely before this time?

A Perhaps two weeks.

Q Is that the length of time that you had been around that town?

A Yes.

Q You had been out drinking with Michely on other occasions, is that right?

A No, I hadn't gone out with him.

Q Were you drinking there with Michely during this conversation on this particular night?

A No.

Q How long did you and Michely talk there about this flier?

A Only these few moments.

Q Michely was very drunk when you got there, is that right?

A Yes.

Q And he was so drunk that he didn't know what he was talking about, is that right?

A Yes, I thought he was just bragging.

Q You hadn't heard about him shooting any flier yourself, is that right?

A No.

(SCHORNWEBER-Cross)

Q I believe you stated you saw this parachutist come out of the plane, is that right?

A I saw him hanging in the air.

Q What kind of a plane was it he came out of? Was it a bomber or a fighter plane?

A I couldn't distinguish it. I think it was a bomber, because many of them came out.

Q Were there both types of planes there that day, fighter or strafer planes, and also bombers?

A I don't know.

Q Were there big planes and little planes, both kinds there?

A Big, heavy bombers.

Q Any little planes?

A I didn't see any.

Q Had you been in the custom of going out on other occasions with Michely and drinking?

PROSECUTION: I object to that question. The witness said that she hadn't.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q Had you ever seen Michely drunk before in the two weeks you had known him?

PROSECUTION: I object to that question on the ground that it is immaterial.

MAJOR SAXON: It is material.

PROSECUTION: The witness testified to admissions against interest made by the accused at a particular place and particular time.

PRESIDENT: Objection overruled.

QUESTIONS BY MAJOR SAXON:

THE WITNESS: No.

Q Had you had occasion to see him as much as once a day for the two weeks prior to this?

A I saw him on several occasions in the evening.

MAJOR SAXON: That is all.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Would you recognize Goss if you saw him again?

A Yes.

Q Will you look around the courtroom and see if he is present, and if so, point him out?

A No. 15.

PROSECUTION: Let the record indicate that the witness identified the accused Goss, wearing No. 15.

QUESTIONS BY PROSECUTION:

Q Was Goss in the tavern at the same time that night with Michely?

A Yes.

Q What was he doing?

A He was sitting in the kitchen.

Q Do you know what he was doing?

A Drinking.

PROSECUTION: No further questions.

RECROSS EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q Did Michely tell you where he had secured the bracelet you have testified about?

A He said only his first American prisoner had given him this as a present.

Q You spoke of a plate or some kind of disc. Did Michely also have something besides the bracelet?

A No, there was one bracelet. It was altogether.

Q You mentioned a wristwatch?

A Yes.

Q How did he say he came by that?

A Yes, together with the bracelet.

Q From the same prisoner?

A Yes.

Q Did I understand you to say Michely told you this was the first and only American prisoner he had ever captured?

A No. He said, "This was my first one."

Q Just what did he mean by that?

A I don't know what he meant. I think that was his first American prisoner.

Q You mean it was the first American prisoner he had ever captured, is that right?

A Yes.

MAJOR SAXON: That is all.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Didn't you tell him that you didn't believe that?

A Yes.

Q What did he say?

A Then he said, "If you want to know exactly, I did away with him, and he is lying out there."

PROSECUTION: No further questions.

Any questions by any member of the court?

PRESIDENT: No questions by the court.

PROSECUTION: May the witness be excused?

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

MAJOR SAXON: As I understand it, this witness and all of them

are being held in case ———.

PROSECUTION: Let's not go into that again. They are all outside and will be here as long as you want them.

MAJOR SAXON: I just wanted to be sure.

PHILIPP BUHLMANN, called as a witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q State your full name.

A Philipp Buhlmann.

Q How old are you?

A 53.

Q Are you at present a prisoner of war in Dachau?

A Yes.

Q Were you a member of the German armed forces in World War II?

A No.

Q Were you a member of any police organization?

A Auxiliary police organization.

Q Where?

A Frankfurt-Main.

Q What do you mean by auxiliary police organization?

A That was an emergency squad.

Q How long were you a member of that auxiliary police organization?

A Since 1933.

Q Until when?

A Until the end of the war.

Q What rank did you hold?

A Master of the technical emergency squad.

Q What were your duties, as such?

A Our duties were to get into action in case of emergency, to build

bridges over rivers in case of emergency, and to save people in danger of drowning.

Q Did you ever hear of the town of Wallrabenstein?

A Yes.

Q Where is that with respect to Frankfurt?

A Approximately 60 kilometers in the northwesterly direction of Frankfurt.

Q Directing your attention to the month of March, 1945, do you remember anything unusual happening in Wallrabenstein with respect to American fliers?

A Yes.

Q What happened?

A After I was in Bauerbach for two days from the hospital, I got orders from Dr. Goss to pick up a flier who had parachuted from a shot-down plane in a field near Bauerbach, and to deliver him to the headquarters of the police at Wallrabenstein.

Q Who was Dr. Goss?

A Dr. Goss was the director of the school.

Q Would you recognize him if you saw him again?

A Yes.

Q Take a look around the courtroom and see if he is among those present? Stand up.

A No. 15.

PROSECUTION: Let the record indicate that the witness identified the accused Goss, No. 15.

QUESTIONS BY PROSECUTION:

Q You spoke about a school. What school were you talking about?

A There was a training school which had been organized, which was organized by the higher SS and police leaders in Wiesbaden.

Q What was the name of the school?

A It was a training school, W-12.

Q What do you mean by W?

A Wehrkreise 12, Service Command 12.

Q Did you ever hear of a man by the name of Best?

A Yes.

Q Who was he?

A Best was in charge of the school.

Q Would you recognise him if you saw him again?

A Yes.

Q If he is in the courtroom, will you point him out?

A No. 14.

PROSECUTION: Let the record indicate that the witness identified the accused Best, No. 14.

QUESTIONS BY PROSECUTION:

Q What was his rank at that time in Wallrabenstein?

A He was major of the SS.

Q Did you ever hear of a school or undertaking known as the Wehrwolf?

A It was talked about, but I can't say anything exact about it.

Q Continue to tell the court what happened with respect to this flier about whom Dr. Goss gave you orders.

A I went out of Wallrabenstein approximately 1000 meters into the meadows, and I saw members of the army which had a flier in between them. I walked over to them and asked them to hand the flier over to me. The flier was handed over to me, and I returned with them to Wallrabenstein, to the headquarters office.

Q Then what happened?

A There the flier was searched, and since his weapons had been taken away already before, he was searched whether he had in his possession some other things, any other things.

Q Prior to that, just exactly what orders had you received from Dr. Goss with respect to this flier? Tell the court exactly.

A I had received the order to go into the meadows to pick up the flier and bring him to the headquarters building in Wallrabenstein.

Q Continue.

A After he was searched in the evening, about evening, I got the order to take the flier to a camp at Bauerbach, and on the way there, to do away with him.

Q Who told you to do away with him on the way?

A Dr. Goss. After darkness set in, I took my flier, took him over to Bauerbach, and found out that there was a labor camp of prisoners of war from the East.

Q Where was Bauerbach with respect to Wallrabenstein?

A Approximately seven kilometers in the northwesterly direction.

Q Then what happened?

A There I refused to leave the flier there, and I took him back to Wallrabenstein.

Q Then what happened?

A Following that, he was taken to Idstein in the Taunus by two men who were attached to the school.

Q Where was Idstein with relation to Wallrabenstein?

A Approximately five kilometers in a southerly direction.

Q Then what happened?

A Then the flier was brought there and delivered there at the police.

Q Did anything happen the following day?

A The next day another flier was taken prisoner.

Q Tell the court about that.

Q In the afternoon, I was told that Michely had captured a flier who had still his weapons and his knife in his possession. This flier was

captured by Michely.

Q Then what happened?

A The flier was searched, and later on Dr. Goss talked to me who should bring the flier away.

Q What was said?

A I suggested that the two men who had taken away the flier the night before should take away also this flier, but then Dr. Goss answered me Michely would bring the flier away.

Q Was Michely on duty at that place at that time?

A Yes.

Q Who was his superior officer?

A Dr. Goss.

Q What did Michely do after that, if you know, with respect to the flier?

A When darkness set in, Michely left with the flier. Approximately one hour later, he returned and said he had shot the flier while he tried to escape.

Q Then what happened?

A I got orders from Dr. Goss to get four other men and to pick up the flier at the spot which was given to me, and to bring the flier to the cemetery.

Q Then what happened?

A I ordered four men to go with me, went to the spot with a stretcher, picked up the flier, and delivered him at the cemetery.

Q At any time since the flier was shot, did Dr. Goss say anything to you about it?

A He didn't say anything about the case Michely. He told me only that he had been bawled out because I hadn't shot the first flier.

Q Did he say bawled out by whom?

A Yes, by Major Best.

Q At any time after the flier was shot, did Major Best say anything to you?

A Approximately around the 24th or 25th of March, during a conference which Major Best had with Dr. Goss, and where I was present too, there Major Best complained about me and told me I should keep out of the view of the lieutenant general.

Q What lieutenant general was he talking about? To whom was he referring?

A He was referring to a lieutenant general Stroop.

PROSECUTION: No further questions.

PRESIDENT: Court will recess until 1:30.

(Whereupon the court recessed at 1200 hours.)

End ta 101
srh fols

AFTERNOON SESSION

(Whereupon court reconvened at 1340 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Trost, who is absent on business of the defense, all the accused, the court reporter and interpreter are present.

PHILIPP BUHLMANN, called as a witness by the prosecution, having been previously duly sworn, resumed the stand and testified further through an interpreter as follows:

PROSECUTION: Let the record show that the witness Philipp Buhlmann has resumed the stand.

You may cross examine.

DEFENSE COUNSEL: I have just one or two questions and then Major Saxon will take over.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q. Just before the noon recess you stated that someone said to you words to the effect, "Look out for the Lieutenant General." Just exactly what was it that you said at that time?

A Not to permit myself to be seen by him.

Q Who said that?

A Major Best said so.

Q Please, as near as you can remember, give the court Major Best's exact words to you as he said them.

A Major Best told me that I should not permit myself to be seen by General Best or I would get reprimanded.

(Buhlmann-Cross)

Q General who?

A By Gruppenfuehrer Stroop.

Q Did Major Best mention the name Stroop or did he just mention a title?

A Only the rank.

Q In other words, Major Best said something to the effect, "Don't let the lieutenant general see you," is that correct?

A Yes.

QUESTIONS BY MAJOR SAXON:

Q How long had you been stationed at Wallrabenstein before this incident in March that you have been testifying to?

A Only a few days.

Q Where had you been stationed before that?

A In the hospital in Eichberg.

Q How long had you been with the police force?

A I wasn't in the police force at all. That was an auxiliary police organization.

Q As a member of the auxiliary police organization, what was to be your duty at Wallrabenstein?

A None at all.

Q That was a school, was it not, known as Wehrkreis 12 School?

A No, that was a school which was organized by the group and for which an expert for emergency aid was needed.

Q Were you to be an instructor in that school?

A Yes.

Q What rank did you hold in the auxiliary police?

A Master sergeant.

Q As I understand, you had come to Wallrabenstein to be an instructor and you were a master sergeant. Who was your immediate commander?

A Dr. Goss was.

Q Were you there on this particular day that Michely brought in a flier?

A Yes.

Q Were you in the schoolhouse?

A Yes.

Q Who else was there?

A Dr. Goss was there and several people were there too.

Q What time of day was it that Michely brought in the flier?

A In the afternoon.

Q About what time?

A Approximately between two and four o'clock.

Q Was the flier searched after he was brought in?

A Yes.

Q What was found on the flier's person?

A Two maps were found on the flier, a compass, a wallet, a pocket knife, bandages, the flier's package, cigarettes and a lighter.

Q Was there anything else found on him?

A I don't remember.

Q Was there a gun found on his person?

A That had been taken away from him before I saw the flier.

Q What kind of a gun was it?

A It was a pistol and a knife.

Q Was this additional equipment brought in at the same time the flier was brought in?

A Yes, Michely turned that in.

Q Was there anything else turned in by Michely besides the knife and the gun?

A I don't know.

Q Were you there while the flier was being questioned and searched?

A Yes.

Q Was this flier mistreated by anyone there?

A No.

Q Was he slapped or hit by any person there in the room?

A No.

Q Now, how long was the flier kept there in Dr. Goss' office?

A That wasn't in the office, that was a mess hall, dining room.

Q In the same school building?

A In the building next door.

Q How long a time was he questioned there by Dr. Goss?

A By Dr. Goss not at all, I don't think.

Q By whom was he questioned?

A Questioned by nobody.

Q How long was he kept there?

A That might have been until seven, seven-thirty, or eight o'clock in the evening.

Q Were you there all of the time that he was there?

A Yes, but not in the same room all the time.

Q What is the next thing that you recall after the afternoon had passed away and seven o'clock in the evening, so far as this flier is concerned?

A All I knew was that Michely then left with the flier.

Q About what time was that?

A I can't tell you exactly. It must have been approximately eight o'clock.

Q You have testified here that you were the person who got together other men to go get the body of the flier. Who gave you the order to do that?

A I got that order from Dr. Goss.

Q What was it that Michely said to Dr. Goss in your presence when

he came back after having taken the flier out?

A When Michely first came back he was not with me in the beginning. I received the order to pick up the body of the flier from Dr. Goss and on that occasion I either saw Michely only for a short period or not at all.

Q On the afternoon that this flier was brought in for the first time, do you happen to know how Michely came to capture him?

A No, I don't know.

Q Getting back to the time when he was brought in and searched, did you see any wrist watches of any kind?

A No, he did not have a wrist watch while being searched.

Q I understand then that Michely didn't bring in any wrist watch, is that correct?

A No, I didn't see any such thing.

Q Did you see any bracelet?

A I only saw that afterwards.

Q Where did you see it?

A He had it on his wrist.

Q Who had it?

A Michely.

Q When you saw that bracelet on his wrist, did he have any American wrist watch on there?

A I don't know. He was wearing a wrist watch. I assumed it was his own.

Q Did you happen to see this particular flier parachute to earth?

A No.

Q Did you see planes over the little town of Wallrabenstein that day?

A No, I don't remember any.

MAJOR SAXON: That is all.

(Buhlmann-Cross)

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q You said the flier was not slapped when he was in the schoolhouse. Were you with him all the time he was in the schoolhouse?

A I wasn't in there during all the time but I was there during most of the time. The man who was guarding him was an elderly man 60 years of age and I am sure he didn't slap him.

Q Did you at any time leave the flier in anyone else's presence? I am referring to the schoolhouse.

A I didn't see anybody except these people from our place.

Q Do you know everything that happened to the flier while he was in the schoolhouse?

A Most of it.

Q Did you go out to get the flier's body?

A Yes.

Q How was he dressed?

A He was wearing coveralls, shoes. I don't know of anything else significant.

Q Was he armed?

A Well, until he was captured; not afterwards.

PROSECUTION: No further questions.

DEFENSE COUNSEL: May I ask one more question?

RECROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Do you know the name Lieutenant General Prustzmann?

A No.

Q Did you ever hear of some general who was in command of the school where you were located on the day in question?

A No, I never heard of anybody like that.

DEFENSE COUNSEL: That is all.

PROSECUTOR: Any questions by any member of the court?

PRESIDENT: No.

PROSECUTION: May the witness be excused?

PRESIDENT: The witness is excused.

(Thereupon the witness was excused and withdrew.)

PROSECUTION: Will you mark these documents Prosecution Exhibit Numbers 111 and 111-A for identification?

(The documents referred to were marked Prosecution Exhibits Numbers 111 and 111-A for identification.)

PROSECUTION: Now comes the prosecution and offers in evidence the typewritten sworn statement dated 1 June 1946 of the accused Erwin Goss, sworn to before Lieutenant James F. Gutchen and William Smoke, Lieutenant Colonel, CAC, investigator-examiner. This document has previously been marked Exhibit 111 for identification. Prosecution also offers in evidence that which has previously been marked Prosecution Exhibit 111-A, which is a true and correct translation of Exhibit 111. Prosecution asks that these documents be received in evidence and made a part of the record.

DEFENSE: The defense objects to the acceptance of Exhibit 111 and 111-A, purporting to be the sworn statement of Erwin Goss and a translation thereof for the reason that it is a sworn statement and under the rules the accused cannot take the stand and refute the same under oath, and is therefore deprived of his substantial rights.

PRESIDENT: The objection is overruled. Prosecution Exhibits 111 and 111-A will be received in evidence and made a part of the record.

(The documents previously marked Prosecution Exhibits P-111 and P-111A for identification were received in evidence as Prosecution Exhibits P-111 and P-111A, are attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission of the Court to read Exhibits 141 and 141-A.

PRESIDENT: Permission granted.

(Thereupon the Prosecution read Prosecution Exhibit 141-A, followed by a reading of Prosecution Exhibit 141 by the interpreter in the German language.)

PROSECUTION: Will you mark for identification Prosecution Exhibits 142 and 142-A?

(The documents referred to were marked Prosecution Exhibits 142 and 142-A for identification.)

PROSECUTION: Now comes the Prosecution and offers in evidence a typewritten sworn statement of the accused Baer, Ernst, dated 19 June 1946 and sworn to before James T. Latcher, 1st Lt., WCIT 3839, Investigator-Examiner. This statement has been previously marked Prosecution Exhibit 142-A. We also offer in evidence a true and correct translation of Exhibit 142-A. Prosecution asks that these exhibits be received in evidence and made a part of the record.

DEFENSE COUNSEL (MAJOR SAXON): Defense makes the same objection to the acceptance of these documents in evidence as made to Exhibits 141 and 141-A.

PRESIDENT: Objection overruled. Prosecution Exhibits 142 and 142-A will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 142 and 142-A for identification were received in evidence as Prosecution Exhibits 142 and 142-A, are attached hereto and made a part of the record.)

PROSECUTION: Prosecution requests permission to read Exhibit 142-A.

PRESIDENT: Permission granted.

(Thereupon the Prosecution read Prosecution Exhibit 142-A followed by a reading of Prosecution Exhibit 142 by the interpreter in the German language.)

PROSECUTION: Will you mark this document Prosecution Exhibit 143 for identification?

(The document referred to was marked Prosecution Exhibit 143 for identification.)

PROSECUTION: Now comes the Prosecution and offers in evidence the sworn testimony of Heinrich Nieholy, taken on 24 May 1946 and sworn to before David S. Herrison, Civilian Investigator-Examiner, APO 633, this document was previously marked for identification as Prosecution Exhibit 143. Prosecution asks that the Exhibit be received in evidence and made a part of the record.

MAJOR SAXON: Defense makes the same objection to the acceptance of these documents in evidence as made to Exhibits 141 and 141-A.

PRESIDENT: Objection overruled. Prosecution Exhibit 143 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 143 for identification, was received in evidence as Prosecution Exhibit 143, is attached hereto and made a part of the record.)

PRESIDENT: Prosecution Exhibit 143 may be read.

(Thereupon the Prosecution read Prosecution Exhibit 143 followed by a translation into the German language by the interpreter.)

PROSECUTION: Will you mark these photographs Prosecution Exhibits 144-A to 144-J both inclusive?

(The documents referred to were marked Prosecution Exhibits 144-A to 144-J, both inclusive, for identification.)

PROSECUTION: Prosecution recalls the witness, Eric Mahlgut.

ERIC MAHLGUT, recalled as a witness by the prosecution, having been previously duly sworn, resumed the stand and testified further as follows:

(Whereupon the proceedings were translated into the German language.)

PROSECUTION: Will the court remind the witness, please, that he is still under oath.

PRESIDENT: You are reminded you are still under oath.

REDIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Are you the same Eric Mahlgut who testified in this case this morning?

A I am.

Q I show you a series of photographs which have been marked for identification Exhibits 144 A, B, C, D, E, F, G, H, I, J, and I ask you to look at each one of these pictures and tell me whose signature or signatures appear thereon? I am referring to the backs of the photographs.

A On every one of them appears the signature of Heinrich Micholy.

Q Is he the same Heinrich Micholy who is an accused in this case?

A Yes, he is.

Q Does your signature appear on those pictures?

A Yes, it does.

Q Does any other signature appear on there?

A That of the translator, Barbara Schilling.

Q Now, look at the back of each picture, particularly drawing your attention to the upper right hand corner thereof, and tell the court if you see any writing or printing there?

A Yes.

Q In what language is that?

A That is written in English.

Q What else appears on the back of each picture?

A The statement by the accused that the above paragraph that is written in English has been translated to him and that it is correct.

Q. Are those statements sworn to?

A Yes, they are.

Q Who took the oath?

A I did.

Q Now, what day was that done?

A That was on the morning of the 14th of December.

Q And were you present on the 14th of December when I served Heinrich Michely with the charges in this case?

A Yes, I was.

Q- Was that before or after he signed the statements on the backs of those photographs?

A That was before.

Q About what time of the morning of the 14th of December 1946 did he sign the statements on the back of those pictures?

A About 10:30 or shortly before 11:00.

Q And about what time on that morning did I serve charges upon the accused, Heinrich Michely in this case?

A A quarter to twelve.

Q At the time Michely signed and swore to those statements was there any force or duress used to obtain those signatures that he placed on the backs of those pictures?

A No.

Q Did you or anybody make any promises or hope of reward to Michely to enable you to obtain those statements?

A No.

Q Did he sign them voluntarily?

(Wahlgut-redirect)

A Yes.

DEFENSE COUNSEL: I pray the court's judgment. I am sorry I did not object fast enough. I thought that was a conclusion for the court to come to.

LAW MEMBER: It is.

QUESTIONS BY PROSECUTION:

Q I believe you told the court this morning that you speak German fluently?

A Yes, I do.

Q That you read and write German?

A Yes, I can.

Q Tell the court what happened at the time you translated the English statements that are in the upper right hand corner of the backs of those pictures?

A I gave the pictures to Michely for his signature whereupon he read the statements up there himself, stating he could read English fairly well and I only assisted him in translating certain portions which he did not understand.

Q Did he read the statements to you in English?

A Yes, he did. I was standing right next to him.

Q What you have said refers to each one of the pictures that you hold in your hand, is that correct?

A Each one.

PROSECUTION: Prosecution offers in evidence photographs which have been marked for identification Exhibits 144 A through J inclusive, and ask that they be received in evidence together with the sworn statements and all the matter that is contained on the back of each picture, and made a part of the record.

MAJOR SAYON: If it please the court, before any ruling is made by the court, Colonel Berman desires to cross examine this witness and we want to interpose an objection to the introduction.

Ta 1cc 1-27-47
80 pls

RECROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Where did Michely read these statements and sign them?

A In Colonel Dwinell's office.

Q Who brought him into Colonel Dwinell's office, if you remember?

A I believe some guard brought him in from the waiting room.

Q Which waiting room?

A Down there where all the prisoners are kept in the waiting dock.

Q How many other of the accused were brought into the prosecution's office that morning?

A Eventually, all of them came in there.

Q I mean for the purpose of signing statements and so forth?

A That was the only one.

Q There was one you testified about this morning, that he had some argument about what happened on the morning of the 14th.

A That one I went out and got myself.

Q Where did you go to get him?

A I got him in the waiting room and took him right next door into the interrogation room, sir.

Q Now, at the time you went into the waiting room and took the man out, you testified about this morning -- at the time Michely was brought into the prosecution's office to sign these papers, were not every single one of the accused assembled in the waiting room at that time?

A Yes, they were all waiting there.

Q And weren't every single one of these accused assembled in that waiting room for the express purpose of bringing them over to the prosecution's office some time that morning to serve them with the charges for which they are now standing trial?

A Probably so.

(Wahlgt-recross)

Q Well, you know it's true, don't you?

A I know we were waiting for Major Saxon to come back so we could serve the charges.

Q So that at the time Nicholy was brought to your office to sign these papers you knew and the prosecution knew that he was a defendant and the question of serving the charges on him was only a question of time until Major Saxon came back, is that not true?

A Yes.

Q And was anything said to Nicholy or Fahrenz by way of warning them of their rights or --

PROSECUTION: I object to that.

PRESIDENT: Read the question again, please.

(Whereupon the reporter read the last question.)

PROSECUTION: I respectfully object to that question on the ground it is irrelevant and immaterial. The matter has been gone into over and over and over again before this court. The testimony is very complete that the accused was served these charges about a quarter of twelve on the morning of the 14th of December 1946. Anything that happened prior to that happened at a time when they were not accused and this court knows that at five minutes before that time I could have decided, as prosecutor, to strike any name from that charge sheet, and not until I actually served them with process are they entitled to be called accused and entitled to any so-called benefits they may have.

Now we are taking the court's time over and over again. I did not warn them of any rights; they did not have any; they were not accused that I will state for the record and I will state for the record as prosecutor, and I am quite embarrassed to have to make these statements. I said to my assistant, "Bring in Nicholy and show him the pictures and ask him if they are true and correct." Nicholy went over to the corner and said very freely "Yes, they are." Mr. Kahigian and I asked him if he

wanted to sign those statements and he said, "yes" and that was all there was to that. I did that because I am thoroughly grounded in the rule of law that anybody who makes an admission against interest, whether it be pictorially, orally or against the wall, that can be used against him.

DEFENSE COUNSEL: May it please the court, the defense does not desire to enter into any controversy with the prosecution or challenge in any way the statement as to what took place. It is just that we think the line here is so close. When I asked this witness about what happened this morning I neglected to ask him -- there is just one thing -- if Colonel Dwinell insists on his right or authority to nolle prosequi the case as far as these accused are concerned, five minutes or five weeks before court, it is a matter of importance to the court and I want to put him on the stand and have him testify he has the authority to nolle prosequi any case.

PRESIDENT: Objection sustained. Proceed with the examination.

MAJOR SAXON: As I understand it, the prosecution's objection is sustained?

PRESIDENT: The objection to the question is sustained.

PROSECUTION: Does the court desire to question the witness?

PRESIDENT: No.

PROSECUTION: May the witness be excused?

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

MAJOR SAXON: If it please the court, on the 23rd of January the defense made a written motion objecting to the introduction of these pictures. A copy was served on the law member and on that date a copy was given to Colonel Dwinell. I desire to have that written motion made part of the record and unless the court wants it, I won't read it into the record. It

is in English now and I would like to give a copy to the reporter to have it incorporated in the record. However, it should be sent to the Court now should there be any interest or otherwise.

MR. O'TOOLE: In view of the fact, may it please the court, that I will answer this motion, I believe it would be helpful if the motion was read to the entire court.

JUDGE KAUFMAN: Can I read this to the Court on this?

MR. O'TOOLE: Proceed with the reading.

MAJOR STACK: The defense objects to the introduction into evidence against the accused in Charge 2 to the aforementioned purporting to be a re-creation of the car ferry which took place at the alleged homicide in which the accused Lobely is charged with being an active participant and the accused Cora and Heeb are likewise charged as participants.

According to the purported authentication on the back of these pictures, they were taken either in March or May of 1946, at a time about eighteen months after the date of the alleged crime. Further, this authentication dated the 11th of December 1946 which was the date the accused were served with the charges and whether the pictures were authenticated and sworn to before, or after the service of those charges, certainly were made at a time when the prosecution knew that these three accused were to be defendants.

The pictures in themselves disclose that at least two different cars are in the pictures than were actually on the scene of the alleged crime and that one car, perhaps in certain of the pictures, there are three cars before this Court shows could have been possible.

There is no evidence that the clothing is the same, nor that the weather is the same, nor that the time of the day is the same, nor that the physical scene and terrain is the same as it was then last.

Based on the evidence given by the three pictures are merely cumulative [illegible] to the [illegible] evidence and [illegible] Court

or prove any weak link in the prosecution's case.

Evidence of this type allegedly procured by the use of one of the accused is so fragrantly unfair to an accused who has neither the benefit of counsel and knowing that he is without even the support of his own government that it should not be accepted by any court.

Evidence of this type is only intended to color wrongfully and prejudice the alleged acts of the accused and deprive him of a substantial defensive right guaranteed to him, even as an alleged war criminal.

The court's attention is invited to the fact that the authentication made on the back of these pictures is a statement made under oath on the date he was made an accused and that as an accused, he is unable to refute this statement under oath, and that he is therefore deprived of a substantial defensive right. Further than that, he has been deprived of one of the so-called "ground rules" accorded to defendants in a case of this kind both by this detachment headquarters and by the Group headquarters in Augsburg, to wit: after becoming an accused, he will be freed from further interrogation by the prosecution.

The court's attention is called to paragraph 117, page 159 of Underhill's Criminal Evidence, copyrighted 1935, and to the following quotation therefrom:

> "It is not allowable, however, for the Prosecution to arrange a scene assumed to represent the Res Gestae of the crime and then to photograph the scene represented. Thus the chief witness for the Prosecution very carefully reproduced his version of the crime by means of persons employed for the purpose, the situation, of the parties to the homicide, and a reproduction of the occurences which took place at the time of the killing."

I want to add just one other thing to that. There was one of these accused used in effecting this imaginary scene. There are two other accused in this same charge who had no voice in it, made no effort to

participate in any way, and this one who was used certainly has no choice or voice in the part he played in the representation of this so-called reproduction and I think these pictures should not be admitted.

PROSECUTION: Does the court permit the prosecution to be heard?

PRESIDENT: You have another statement to make before the recess?

PROSECUTION: One more short statement.

PRESIDENT: Proceed.

PROSECUTION: The confessions introduced in evidence in this case and in many other cases, have annexed to them diagrams made by the accused, or if they are not made by the accused in the body of the confession he says that is an accurate diagram, and that type of evidence has been received time and time again. Here the accused goes a step further. He said, in effect, "I will do something better than draw a diagram, I will go out to the scene. You can photograph me. I will point to the place and I will sign my confession on the back thereof."

Now, it is true that it says in the work of evidence that has been cited, on page 159 of Underhill, that it is not allowable for the prosecution to arrange a scene. The prosecution did not arrange a scene, the man himself was charged with the crime voluntarily arranged it for us and this very work of evidence cites cases on that same page. Photographs and arrangements of a scene of a crime are admissible as proof of accuracy of the arrangement. Who gave us the proof of the accuracy of the arrangement? The man himself whose picture was on the other side of the confession.

In the opinion of the prosecution, and we are urging this opinion upon the court, this has very definite probative value, more so than the typewritten

confessions you have been receiving in this case with pen and ink diagrams attached thereto.

MAJOR SAGE: Could I add just one word, if it please the court. The first thing I want to answer is the voluntary nature of this defendant who at that time was a prisoner in jail, a prisoner of the American government. There wasn't much question about his going out and reproducing this scene. There is no proof before the court at all as to the accuracy of the pictures or the scene they attempted to depict. I would agree if the prosecution brought in good and substantial evidence for the court to accept them and the court wished to, but there is no proof before the court now.

PRESIDENT: Anything further?

DEFENSE COUNSEL: No, sir.

PRESIDENT: Court will recess for thirty minutes.

(Whereupon at 1300 hours the court recessed until 1330 hours.)

(Whereupon the Court reconvened at 1530 hours.)

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all the members of the Prosecution, all the members of the Defense except Dr. Trost, who is absent on business of the Defense, all the Accused, the reporter and interpreter are present.

PRESIDENT: The objection is overruled. Prosecution's exhibits numbers 144 from A to J, inclusive, will be received in evidence and made a part of the record.

(The documents heretofore marked Prosecution Exhibits 144 from A to J, inclusive, for identification, were received in evidence as Prosecution Exhibits 144 from A to J, inclusive, are attached hereto, and made a part of the record.)

PROSECUTION: The Prosecution requests permission to read the written matter on the back of each one of these exhibits.

PRESIDENT: Permission granted.

(Whereupon the Prosecution read the written matter on the back of Prosecution Exhibits 144 from A to J, inclusive, followed by a translation into German by the interpreter.)

PROSECUTION: I hand the reporter a document and request that it be marked Prosecution's Exhibit 145 for identification.

(The document referred to was marked Prosecution Exhibit 145 for identification.)

PROSECUTION: May it please the Court, at this time the Prosecution has concluded the proof offered in the

main to support Charge Number 3. (Whereupon the remainder was stricken physically from the record, by direction of the Court.)

PRESIDENT: The Court will recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: The Court will come to order.

DEFENSE COUNSEL: May it please the Court, I move that the request just made by the Prosecution that the Court take judicial notice that certain places mentioned in this case are within certain territorial limitations, and the comment by the Court be physically stricken from the record.

PROSECUTION: No objections.

PRESIDENT: Motion sustained; the request and the comment will be physically stricken from the record.

End ta 105, ps fols

PROSECUTION: Prosecution has one more offer of evidence in connection with the case as a whole, and offers in evidence certified, true copies of Document No. 728-PS, which was introduced in evidence as Exhibit No. GB-152 in the trial by the International Military Tribunal of Hermann Goering, et al, which commenced in that court on the 20th of November, 1945. This has been marked for identification Prosecution Exhibit 145. We ask it be received in evidence and made a part of the record.

PRESIDENT: Any objection?

DEFENSE COUNSEL: The defense, may it please the court, is aware of the fact that the court has received in evidence, over objection, analogous evidence when it received the Goebbels newspaper article. Despite that, I would like to press the defense objection to the receipt of this particular document, on the ground that it is a communication between the highest ranking officials in Germany, not named as conspirators in this case, people over whom the accused in this case had no control, on the theory that only evidence involving named conspirators can be introduced in a trial involving analogous conspiracy.

PRESIDENT: The objection is overruled. Prosecution Exhibit 145 will be received in evidence and made a part of the record.

(The document heretofore marked Prosecution Exhibit 145 for identification was received in evidence as Prosecution Exhibit 145, is attached hereto, and made a part of the record.)

PROSECUTION: Prosecution requests permission of the court to read Prosecution Exhibit 145.

PRESIDENT: Permission granted.

(Whereupon prosecution read Prosecution Exhibit 145, followed by a translation of the same into the German language by the court interpreter.)

PROSECUTION: Prosecution rests.

DEFENSE COUNSEL: My associates, may it please the court, have the notion that the exhibit just received in evidence is identical with one already in evidence, No. 25.

PROSECUTION: Partially so.

DEFENSE COUNSEL: The numbers are different, so I will not make any point of it. They are partly the same.

May it please the court, now that the prosecution has rested, there is nothing further to come up before the court, I take the liberty of saying, except the final determination of the date we are going to reconvene. As I remember it, the court announced that at the end of the prosecution's case, the defense would have eight days, not including Sunday, in which to prepare its defense. Eight days, not including Sunday, would bring us to Thursday, February 6, as the next date to reconvene, with the exception that one of these days is Saturday, a half day. I call the court's attention to that fact, at the risk of appearing somewhat picayunish about it, but when the court has in mind that we asked for fourteen days and were given eight -- I call that fact to the court's attention with a great deal of diffidence. Strictly eight days, counting Saturday as a half day, would bring us to noon of Thursday, February 6. Furthermore, because of this difference with respect to the production of witnesses, I think in all honesty I can say to the court that we are going to be later in getting them than we hoped to at the time we first asked for them.

PRESIDENT: Court will recess and reconvene Thursday, February 6, at 9 o'clock.

(Whereupon the court recessed at 1620 hours.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at .....
in (Address of Court) (Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

on .....194.....
am

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused .....194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

12

Pages 633 - 690

Case No. Superior Orders

*Summary
*~~Intermediate Military Court~~
*General

Place DACHAU, GERMANY

Date 6 February 194 7

Members of Court:

Prosecutor Lt. Col. Driscll

Defence Counsel Lt. Col. Berman

Interpreter Rudolf L. Nathanson
Herbert B. Rosenstock

Reporter Patricia Stewart, Sally Rose Hayett, Imogene Butler, John McDonald, Paula Silverman

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES VERSUS JURGEN STROOP, ET AL

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

5 FEBRUARY 1947 - Pages 633 - 690, Inc.

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Motion to Quash	635
Motion for Finding of Not Guilty as to Charge I	647
Motion for Finding of Not Guilty as to Charge II	655
Motion to Strike Certain Exhibits	665

Before presenting the first [illegible] Dachau, Germany like to make a short general statement [illegible] 6 February 1947.11 the matters which will be presented to the court.

MORNING SESSION

It happens almost invariably in original proceedings [illegible] (Whereupon the court reconvened at 0900 hours.) which is the war PRESIDENT: Court will come to order. It is the duty of the [illegible] PROSECUTION: May it please the court, let the record show that all the members of the court, all the trial members of the prosecution, all the members of the defense the except Dr. Treat, who is sick, all of the accused, the official reporter and the interpreter are present.

PRESIDENT: The defense may proceed with its case. [illegible] by the [illegible] DEFENSE COUNSEL: May it please the court, the defense at this time has a number of matters it desires to present for the attention of the court, which it will do in the form of motions. It would like, subject to the approval of the court, to present these motions one at a time, and to [illegible] after argument by both sides, submit that particular motion for the decision of the court, and then to proceed with the next matter. May I ask for a ruling on that question now.

[illegible] for PRESIDENT: That will be agreeable to the court. [illegible] charge and DEFENSE COUNSEL: During the last several days the defense drew up four separate motions, copies of which were given to the prosecution and copies to the law member. This morning I drew up a fifth, which I have presented to the prosecution but not yet to the law member. This fifth one is a first cousin to one already presented, and I should like to argue it with the first matter to be presented to the court. [illegible]

Th 107 - 80
8-6-47;JCMcD;2

Before presenting the first question I should like to make a short general statement with respect to all the matters which will be presented to the court. It happens almost inevitably in criminal prosecutions on a large scale that a great many matters are charged which in the very nature of events cannot be proved. It is the duty of the state in civil matters, as well as the duty of the prosecution in military matters, to make its charges as broad as language will permit. However, there comes a time when the decks must be cleared, when surplusage must be disposed of, and the actual issues joined. Later on in the course of the argument, as disclosed by the brief for the prosecution, there is an admission of surplusage in some of these charges. And now, as I have said, is the time to dispose of all those matters and come down to the questions really involved.

The first two motions, may it please the court, deal with the same charge and specification, namely, Charge I and Specification thereunder. The first motion with respect to Charge I is captioned "Motion to Quash", and the second is a motion for a finding of not guilty with respect to the same charge and specification. With the permission of the court, and subject to objection by the prosecution, I should like to argue them both at the same time, since the arguments and statements of fact with respect to one will in some degree apply to the other.

PROSECUTION: The prosecution does not desire to interfere with the plans of the defense, but I am a bit confused at the moment for this reason:

There is a motion to quash with respect to Charge I. Then there is a general motion addressed to all of the charges for a finding of not guilty. Now we have this morning an additional motion for a finding of not guilty with respect to Charge I. I think that all three of those should be [illegible] combined.

[illegible] DEFENSE COUNSEL: I think, if the court and the prosecution will examine the copies furnished, they will find that one of the motions for a finding of not guilty applies to Charge I, one to Charge II, and the long one to Charges III to X, depending upon which individual was involved, but that there is no duplication.

"DACHAU, GERMANY

"Case No. 12-2000 3 February 1947

UNITED STATES

vs.

JUERGEN STROOP et al

MOTION TO QUASH

"Now come the accused and individually and collectively move that the Particulars under Charge 1 and Charge 1, be quashed and for reason assign the following:

"Under the provisions of paragraph 5-22b, each charge upon which an individual is put to trial shall disclose one offense only, and shall be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense, and shall specify the provision under which the offense is charged. In determining the degree of compliance with the rule the charge must be read together with the Particulars set forth under the charge. The Particulars to Charge 1 allege among other things, conspiracy, assault, assault and battery, and murder, both as principals and as accessories before and after the fact.

"WILLIAM ERMAN
Lt.Col. AC
Chief Defense Counsel"

If it please the court, with respect to the Motion to Quash, paragraph 5-32b of Title 5 for the regulation established for the government of this tribunal states that each charge upon which an individual is put to trial shall disclose one offense only and shall be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense, and shall specify the provision under which the offense is charged.

It is our contention, may it please the court, that in determining the degree of compliance with that rule the particular must be read with the charge.

Now, procedure in courts of this description--courts martial, courts in civil life--on matters of this kind is practically all the same. The charge sheet upon which these accused face this court is analogous to an indictment in civil courts, and the charge, with the specification, is a count under the indictment in our state and federal courts. Each of them must state one offense only.

I think parenthetically, that rather than interrupt our train of thought, when the argument is through--at least I would so prefer--the reporter can read it back and the interpreter can interpret, unless the court objects.

PRESIDENT: That is satisfactory to the court.

DEFENSE COUNSEL: It also happens in military commissions and in civilian courts that sometimes the circumstances make it difficult for the government, the district attorney, or, in this case, the prosecution, to determine under which offense, under which Article of War, under which statute, a certain set of facts will lie; and, consequently, in courts-martial it is common practice for the same set of facts to be alleged under two separate Articles of War, and it is then left for the court to determine which Article of War was in fact violated. And, likewise, in civilian courts the same thing happens. They are charged alternatively under different statutes. There comes a time when the accused or the defendant seeks to raise that issue. In courts-martial or in a court of this description it could be done in a motion to quash. I tried it myself in a court-martial two weeks ago, arguing the quashing of one on the ground of multiplicity, and the court at that time ruled against the motion, and it said, "How can we tell now, before evidence is introduced, whether it is multiplicitous or not and under which Article of War it should belong?" And so I raised that question at the end of the prosecution's case, just as we are doing now, and I emphasize that to the court on the timeliness of this motion, because the prosecution in its brief raises the

contention that all this business has been waived by a failure to raise it prior to the plea to the general issue.

In civilian courts every lawyer has tried the same thing that I have done--at the beginning of the prosecution's case have sought to make the district attorney elect as to which indictment or which count of the indictment he was going ahead with, and in the courts with which I am familiar such motions are now denied on the ground that the time to make that is when the prosecution's case is in, unless the defense wants to rest before the prosecution's case is in.

I have in my hand a document called "Punishment of Persons Guilty of War Crimes," the sub-heading is "Crimes Against Peace and Humanity." It is dated Berlin, the 20th of December, 1945, and it is signed by McNarney, Montgomery, Koeltz, and Zhukov, the commanding generals of the four Allied powers, representing their governments.

Article 2 of that document begins with a paragraph that says "each of the following acts is recognized as a crime."

Incidentally, I want to urge upon the court that a great deal of this law now upon which these accused are being tried is ex post facto law, and is definitely contrary to the American Constitution, which no tribunal can vitiate. The commanding generals of armies or the President of the United States cannot authorize this court to violate the Constitution of the United States, which says that Congress in no authority shall pass any ex post facto law. It is our contention at this time that all this business is ex post facto law, and we desire most earnestly that the court have that in mind throughout its deliberations in this case.

At any rate, paragraph 1(b) goes on to describe war crimes, which is referred to in these charges, and it lists atrocities or offenses against persons or property, etc., then paragraph 2, which we particularly desire to call to the attention of the court:

> "Any person without regard to nationality or the capacity in which he acted" -- note that it makes a differentiation in capacity -- "is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization, etc., "or (f) if he held a high political" . . . office.

The point, may it please the court, of that document is this: A number of war crimes were defined in there and a number of capacities were defined in there, but the law also says that only one offense can be charged in one charge, and, necessarily, it has to be in one capacity. If a man is charged with murder as a principal he cannot in the same charge and specification be charged with aiding or in some capacity which is less than murder, and he cannot be charged with conspiracy, because conspiracy to commit an offense is not the offense of murder.

Now let us take the charge sheet. How are we going to read this? You have 22 people named here. If it said that these 22 people conspired to commit an act we are out. There would be no argument about that. But it says that these 22 people "as principals, accessories, leaders, organizers, instigators and accomplices." In other words,

this thing runs the gamut of every single capacity named, in that it names them in all six.

It is fundamental, may it please the court, that John Doe and Richard Roe cannot conspire to commit murder and be so charged where one actually intended to conspire to commit murder and the other one never had murder in his mind, and, in fact, did nothing to accomplish the murder but his act was something entirely different.

Here you have these 22 men, it says, individually and collectively, as principals, accessories, and so on, did engage in, formulate, and participate in a common plan or design. That is one of the things mentioned in here. "To cause to be committed, violations of the laws of war and pursuant thereto did, wilfully . . . aid, abet, order and participate in, or took a consenting part" therein, to a long list of offenses which it defined as war crimes.

Now is the court going to determine in reading this charge whether it is alleged that Stroop conspired to commit murder with Fuehr, who conspired to commit something else? Or how can it be alleged in this thing that Somann committed murder and Hoehler or Goehrendt or somebody else did something else merely as an accomplice to the thing?

Now, an accomplice is not a principal. A principal is a man whose action in the case was a direct participating effective cause in the commission of the offense, and an accomplice could be almost anything, so far distinct from being a principal that the distinction between them is as broad as the Atlantic Ocean.

It is our contention that with this language as it stands it puts a burden on the court and on the accused to

that language is surplusage. All right, strike it out. That is a part of our motion. The motion is to quash the whole business. If the court decides that the whole business should not be quashed, the motion is broad enough to cover a request that portions of it be quashed, and we so urge. The [illegible] I will conclude by inviting the attention of the court to the memorandum of law filed by the prosecution. The [illegible] PROSECUTION: I have not filed that word "accomplice" in [illegible] DEFENSE COUNSEL: Then I will have to call the court's attention to some things that are said in here. [illegible] PROSECUTION: I would like to call the court's attention to the fact that I have not said anything yet that is found in [illegible] DEFENSE COUNSEL: Then I will use it as my own remarks, with the court's permission, I will wait until later. [illegible] PROSECUTION: If the court will read charge L, at a first blush it appears that it is a standard type of allegation

take these pieces together and decide what is charged. With 22 people named in six different capacities with any number of different crimes, what is the offense? We submit, may it please the court, that there are just as many offenses charged [illegible] there as the laws of combinations would bring out. The result is 22 people named, and some six or seven or eight different factors, and three separate categories, and we submit that that is not a proper burden for the court. It is not the function of the court. We even go so far as to say that this court cannot determine which offense was intended to be charged. Neither can the accused. And for that reason we urge that the count be quashed. [illegible] crime, which conspiracy was entered into by whom, the prosecution in its brief says that a lot of

of conspiracy. We are charging one offense. If the court will read it sentence by sentence it can be analyzed that way. The particulars state, after naming the accused:

> "at sundry places within the then German Reich, individually and collectively, as principals, accessories, leaders, organizers, instigators and accomplices, did engage in, formulate and participate in a common plan or design" . . .

Now let us stop there for a minute. It says they engaged in a common plan or design. Now, the principal role played by each criminal in the conspiracy is one of several descriptive terms, namely, principal, accessory, leader, organizer, instigator, or accomplice. It is obvious that in a conspiracy to commit a crime, which conspiracy was entered into by two or more people, one or more of the conspirators may play one or more of the participating roles. They may play one or more of the participating roles that have been described--principal, accessory, leader, organizer, instigator.

There is much law that is fundamental and must be repeated, however, in order to clarify this situation. The law has been established, fundamentally, that an accomplice is a person who unites in or in some way is concerned in the crime for which the accused is on trial. The word "accomplice" in common law includes principals and accessories. That is fundamental law. The law member probably would like to refer to Underhill's Criminal Evidence, page 221-222. In a prosecution for conspiracy, all conspirators are accomplices. That is found in the same work at page 252. Certainly the words "leaders, organizers, and instigators" are synonymous in the law with the words "accessories and accomplices" and are descriptive of the position or positions held by the persons involved in this

conspiracy.

Looking again at the charge sheet: After outlining the parts played by the defendants, they go on to say:

"did engage in, formulate and participate in a common plan or design" . . .

At that point we know that we are charging a conspiracy.

There then follows an allegation of the nature of the conspiracy, to indicate to the court that we are alleging conspiracy to commit acts that are unlawful in themselves. In that connection the particulars say: "to commit, or cause to be committed, violations of the laws of war."

There we have our case--a plan to violate the Laws of War--one crime. We are charging a plan--a formulation of a plan. If we had stopped at that point we would have had a legally sufficient pleading. That has always been the law.

The defense mentioned my statement about surplusage. I put that in because in studying the precedents that have been in the case books for years I found much to the effect that when we go on to characterize the conspiracy and allege overt acts such as killings, beatings, etc., that we could have left that out and still the pleading would be sufficient. There it is said "willfully, deliberately and wrongfully encourage, aid, abet, order and participate in, or took a consenting part," etc., in the killings and mistreatments--that was merely descriptive of the character of the relation between the act and the conspiracy. It has been held many times in all our courts that it is not necessary that that character or relationship be alleged. If it is alleged it is still a good pleading. It is informative to the court.

Now we come to the most important point, and I think we should decide this issue above all. First we should read the particulars as a whole and consider them in their entirety. It indicates one distinct crime, that is, a criminal conspiracy.

Referring particularly to the sufficiency of pleadings in war crimes cases, we have as the guide and the authority and the law for this court the Yamashita case again. There that question was raised. I am quoting from the opinion of the majority of the court:

> "Obviously, charges or violations of the laws of war tried before a military tribunal need not be stated with the precision of a common law indictment."

And then they cite the cases.

We conclude that the allegations of the charge, tested by any reasonable standard, adequately allege a violation of the law of war, and that the military commission had authority to try and decide the issue which it raised.

One more point that was mentioned by the defense: I do say that this motion is untimely. If the accused desire to resist the indictment by claiming that the pleadings were defective, they should have made what might be called a demurrer or motion to dismiss the indictment at the beginning of the case. If the accused desire to resist the indictment by advancing the theory that the charges and particulars do not state facts sufficient to constitute a legal charge, that should have been done at the outset of the case. To the contrary, they pleaded to the general issue, and thereby they agreed to stand trial as charged. They sat through our entire case and remained silent on the subject and in effect said,

"..e will take your pleadings and try to combat them."

One final point: I thoroughly disagree with the defense when they say that it is the practice to require the government to elect. If there is any defect in any indictment in any court, federal or otherwise, that matter is taken care of at the very outset, either by a motion made before the case starts or at the very outset of the case. Furthermore, we were never asked anything by the defense on that point during our entire case. We were never called upon to make any election or defend the indictment or pleading itself, and we therefore say that the motion is also untimely.

DEFENSE COUNSEL: Shall I go ahead and finish my argument now?

PRESIDENT: We had better let the interpreter proceed now.

DEFENSE COUNSEL: May I reply just very briefly? The defense, may it please the court, has no quarrel with the Yamashita case. That case merely decided that the charge and particulars set forth a war crime for which Yamashita could be tried. It also set forth the principle that a statement of a war crime need not be set forth with that degree of particularity, that the charge of the crime had to be set forth in a similar case. I admit that by the proper use of punctuation marks, commas, brackets and parenthesis you can get a war crime stated sufficiently particularly to justify holding these people for trial. The question is this, -- there are so many of them.

No , the prosecution read to the court at the beginning of the particulars that the accused, "between certain dates, at sundry places within the then German Reich, individually and collectively, as principals, accessories, leaders, organizers, instigators and accomplices, did engage in, formulate and participate in a common plan or design to commit, or cause to be committed, violation of the Laws of War..." And there they stopped and said if they had stopped in the first instance they would have stated all that had to be stated. I would agree to that, but we object to the language that is stated in there, "as principals, accessories, leaders, organizers, instigators and accomplices." These people are entitled to know, -- are they charged as principals, leaders, accomplices or organizers? -- and that you cannot tell. And then it goes on to say, "a conspiracy to commit assault and batteries, beatings, abuses and indignities." Indignities cannot even be merely an assault without that. In other words, these individuals do not know whether they are being charged with. The prosecution should always say they are being charged as principals, accessories, leaders, organizers, instigators or accomplices. The prosecution, with its power to nolle prosequi, ought to rewrite the particulars here and now so that it would read, "so-and-so did conspire to commit a war crime" -- and if they do that, we will withdraw our motion.

PRESIDENT: Let the record show that by agreement of the defense, the prosecution and the court, each motion will be taken up one at a time.

Court will be closed.

(Thereupon, at 0950 hours the court was closed.)

(Whereupon the court opened at 1030 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense, with the exception of Dr. Trost, who is absent sick; all the accused; the reporter and interpreter are present.

PRESIDENT: The motion of the defense to quash is denied.

DEFENSE COUNSEL: The second matter the defense desires to present to the court is a motion filed on behalf of all of the accused for a finding of not guilty as to each with respect to Charge I and the particulars thereunder.

DACHAU, GERMANY

Case No. 12-2000 6 February 1947

UNITED STATES

vs.

JURGEN STROOP, et al

MOTION

Now come the accused, Jurgen STROOP, Hans TEMMLER, Otto SCHAAL, Arthur FUHR, Wilhelm HOELLER, Hans KICHEL, Josef Johann KIRITT, Wilhelm ALBRECHT, Hermann HOELLER, Wilhelm Friedrich SCHREDER, Paul HEINRICH, Philipp HAHMANN, Bernard FAY, Georg BEST, Erwin GOSS, Heinrich Matthias KICHELY, Leonard KRAMER, Julius LABSAL, Fritz GIRKE, Heinz HELLENBROICH, Karl Franz STATTMANN and Michael MAAF and move for a finding of not guilty as to each and all of them with respect to Charge 1 and the specifications thereunder and for reason assign the following: -

1. That the Prosecution has failed to sustain its burden of proving the guilt of the accused beyond a reasonable doubt.

WILLIAM PERLMAN
Lt. Col. AGD
Chief Defense Counsel.

Now, may it please the court, my argument on that question will be very brief. It is necessary as a matter of law that to find

a person guilty of being a member of a conspiracy, the burden is on the prosecution to prove beyond a reasonable doubt two things: one, an act, a contribution by that person to the effectuation of the conspiracy itself; and secondly, and this is vital, the burden is likewise on the prosecution to prove that this contribution was made knowingly and with intent to effectuate and promote the purposes of the conspiracy. If a stranger should come along during the course of the existence of the conspiracy and unwittingly do something which helps the conspiracy a great deal — let us say, for the purpose of making my argument, that his contribution guarantees the success of the object of the conspiracy, and yet he did this particular act not knowing of the existence of a conspiracy and without any intent to be a conspirator. We submit it is then as a fundamental principle that such a person could not be found guilty of the criminal act of conspiracy.

Now, in this particular case, we assume for the purpose of making our point that each of these accused did some act which could be tied with the acts of all the other accused and have the color of a conspiracy. The prosecution must prove that what each of these accused did was done with the intent to promote the conspiracy, that he had a common design in mind, and that he knowingly and wilfully and with intent did his act to promote the conspiracy.

Now, in that connection, may it please the court, I can only refer, or could best refer, to the brief filed by the prosecution with reference to the motion already disposed of. There is a quotation which I should like to read. "We must also hold, to advance a step further, that there cannot be a negligent conspiracy." It also follows that there cannot be a coincidental conspiracy. Joint evil intent is necessary to constitute the offense. Mere passive cognisance of a conspiracy is not sufficient to make a co-conspirator. Now, the evidence before the court with respect to all these people is that each did something. It could

well be that what all the lowest strata in this case did, or what all the accused did, might have carried out the design of someone higher up, but all the evidence is this: what these people did, they did by order, by some form of compulsion. That might not be a defense to a murder charge, but to a charge of conspiracy, we submit it is a most effective defense. A man might do something in obedience to some form of compulsion, the orders of his superior, which, because it was an illegal order, would not constitute an effective defense to a charge of murder or a lesser charge, but there would not be that intent there to consummate and effect a conspiracy which is a fundamental, vital element necessary to make a conspiracy. Now, we submit, may it please the court, or, rather, we agree that a person's intent may be inferred from his actions as well as from his utterances. That is fundamental law, too. But the utterances of these accused are merely statements of what they did, and they say that what they did, they did in obedience to orders. "So and so said 'Do it.' We did it."

Now, if the court should find that the prosecution has failed to sustain its burden of proving they did the thing willingly, then this motion on Charge I must be allowed. If there is any evidence from which a reasonable man might say that the Fuehrer did what he did not willingly, but because his superior said "Do it," and he did it because he was ordered to do it and for no other reason, there is not that intent which is necessary to make a co-conspirator, and we submit, may it please the court, that that sort of situation is true of all of them. Each of them, from the lowest to the highest and each of these categories of prisoners, acted in conformance, let us say, with an illegal compulsion, but nonetheless a compulsion sufficient to vitiate or at least to cast doubt on the fact that they joined in with this evil intent to carry out a common design.

PROSECUTION: Very seldom has the court received such a mass of evidence to prove a combination of guilt to do an unlawful act. Certainly,

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a passive conspiracy is not criminal, by no stretch of the imagination was this passive. This was the most active conspiracy the world has ever known. Previously during this case I stated some principles of law about conspiracy very briefly. I would like to refresh the court again to fit the balance of my statements into their proper orders, would be continually effort. When two or more persons unite to execute a purpose, to injure or destroy the life or property of another, the conspiracy exists in that very uniting. The mere combination to do a criminal act, even though the object of the contemplated act is not completed, even though the object of the combination is not consummated, still the conspiracy exists, and if there is a criminal conspiracy that is one to violate the laws of war, that is sufficient. By direct testimony of co-conspirators and officers and exhibits many times in this court and other courts the term "common design" has been used. That is a descriptive term merely. The gist of the crime is the criminal conspiracy to violate the laws of war. The term "common design" is used to typify the over-all picture of the conduct of the accused. It can be understood to mean a community of intention between the peoples involved. When any one of the accused became a member of the conspiracy or joined the organization, he will be held accountable for all the criminal acts that were done by the group in accordance with the intentions of the parties when the conspiracy was originated. Ohlendorf, for example, so far as the evidence up to this point in the case, did not personally by his own hand kill anyone in violation of the Hague Convention. It is definitely a fact, however, that at the time he was the commanding officer of the SD, the over-all conspiracy had many months before been conceived and formed and, in fact, was in operation to accomplish the ends for which it was created. Ohlendorf, as a colonel with years of experience with soldiers and police matters in the German Army, with his over-all knowledge of the ends and aims and purposes of the High Command in Berlin, cannot now come in here and say that he was a

more negative quantity and free from all responsibility for the criminal actions of the organization to which he not only belonged, but in which he held the rank as commanding officer.

During the prosecution's case, we reminded the court over and over again that the murders, the extermination murders, would be continually offered to the court in support of the conspiracy, in addition to proving the actual murders themselves. The actual murder of nine Allied, named and unnamed, and which resulted from a scheme and a plan, were proven beyond question. It will be noted that the charges and specifications and the proof have included the conspiracy together with the intent and the actual overt acts of the murders themselves. Charge I, a criminal conspiracy, was proven by direct testimony of subordinates and officers and employees working under command of General Stroop, Colonel Trumler and Colonel Sammern. They came into court and testified. This was supported by an overwhelming mass of documentary evidence to show the general plan, general scheme, general design.

Now, the charges that concern themselves with the actual killings were offered to support, strengthen and corroborate the conspiracy, as well as to show that the actual men themselves are guilty of having the blood of these people on their hands. We did not submit this case on circumstantial evidence to prove the conspiracy or the murders. There are many, many cases decided in these courts where all the court has to guide it is a mere innuendo, an inference from a series of events. But in this particular case, if the court will recall, both with regard to the conspiracy and the nine murders, we submitted four different types of evidence and combined them together in addition to that.

1. The overwhelming amount of circumstantial evidence.

2. Direct evidence from eyewitnesses to the commission of the crimes themselves and to the formation of the conspiracy, people

who were in Stroop's office and who heard what he said, people who were in his anteroom, people who were in various places where people talked about what the purpose of the conspiracy was, people who saw the actual commission of the deeds that resulted from the conspiracy, who got on the witness stand as eyewitnesses. Now combine that with the circumstantial evidence.

3. Then we had the voluntary confessions and the admissions against interest of the perpetrators themselves.

4. Then we proved the corpus delicti. We went the fourth step, the dead bodies, the identification of the victims either by medical testimony, photographic evidence, or the people that saw the bodies lying there, the most complete evidence that has ever been presented in a case of this kind.

It is a rule that the prosecution in resisting a motion that is made to dismiss at the end of the prosecution's case is only required to show that we made out a prima facie case. We went way beyond that. We proved our case beyond a reasonable doubt, and we showed the part each one of these people played in the whole scheme.

For example, getting back to the conspiracy once more, we submitted documentary proof, if the court recalls, from the Foreign Office of the German Reich, from the German High Command to the branches of the armed forces, showing that they wrestled continuously with the problem how to accomplish these deeds in an apparently legal manner. If the court recalls, we read evidence showing that the leaders of the German nation and the German nation itself knew well that the scheme was criminal. They heard it on the radio. They read it in the newspapers. The propaganda was extensive. Then the propaganda was born and the populace was exhorted to take action. You heard that right from the witness stand. Witnesses said, "Yes, I have seen that. I heard it on the radio. It came from the Propaganda Ministry." Then

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the commanders after that were directed specifically to spread that propaganda. Then the murders were committed.

I have one final thing to say which I consider an adequate statement of the law on criminal conspiracy, and I think if the court will listen to this last statement of the law it will fit right into this whole picture. I take this from an old British case that I found in Wharton's Criminal Law, an authority on the subject. For the benefit of the court, it is found in Wharton's Criminal Law, Volume II, page 1939.

> "In prosecutions for criminal conspiracies," says Judge King, **the proof of the combination charged must almost always be extracted from the circumstances connected with the transaction which forms the subject of the accusation. In the history of criminal administration the case is rarely found in which direct and positive evidence of criminal combination exists. To hold that nothing short of such proof is sufficient to establish a conspiracy would be to give immunity to one of the most dangerous crimes which infest society. Hence, in order to discover conspirators, we are forced to follow them through all the devious windings in which the natural anxiety of avoiding detection teaches men to circumstanced to envelop themselves, and to trace their movements from the slight, but often unerring, marks of progress which the most adroit cunning cannot so effectively obliterate as to render them unappreciable to the eye of the sagacious investigator. It is from the circumstances attending a criminal, or a series of criminal acts, that we are able to become satisfied that they have been the results not merely of individual, but the products of concerted and associated action, which, if considered separately, might seem to proceed exclusively from the immediate agents to them; but which may be so linked together by circumstances, in themselves slight, as to leave the mind fully satisfied that these apparently isolated acts are truly parts of a common whole; that they have sprung from a common object, and have in view a common end."**

The adequacy of evidence in prosecution for a criminal conspiracy, to prove the existence of the conspiracy, like other questions of the weight of evidence, is a question for the court. I do not intend to take the court's time to go through the record and point out all that mass of evidence, how it bound these people together in this great nefarious scheme. Suffice it to say that we contend that we have established a prima facie case.

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PROSECUTION: May it please the Court, one more statement. Before the Court decides, I would like to call the Court's attention to the fact that this type of motion made by the Defense is quite similar to the familiar motion that is made at the end of a court-martial case as appears in paragraph 71d, page 56 of the Manual For Courts Martial where it says that, "at the close of the case for the Prosecution and before the opening of the case for the Defense, the Court may, on motion of the Defense for findings of not guilty, consider whether the evidence before the court is legally sufficient to support a finding of guilty as to each specification designated in the motion"--"If there be any substantial evidence, which, together with all reasonable inferences therefrom, and all applicable presumptions, generally tends to establish every essential element of an offense charged or included in any specification to which the motion is directed, the motion as to such objection will not be granted."

DEFENSE COUNSEL: I have nothing further to add.

PRESIDENT: The Court will be closed.

(Whereupon at 1106 hours the Court was closed.)

(Whereupon at 1120 hours the Court opened.)

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all members of the Prosecution, all members of the Defense, except Dr. Frost, who is absent sick, all the accused, the reporter and interpreter are present.

PRESIDENT: Motion of the defendants for a finding of not guilty with respect to Charge I and the particulars thereunder is denied.

DEFENSE COUNSEL: Before proceeding with the next matter, may it please the Court, I would like to ask for a ruling, I think perhaps it should be called by the Court, in the motion to quash. The argument was advanced by the Prosecution that the motion was not timely made. I would like a ruling from the Court whether or not the basis for the denial of the motion to quash Charge I and the specifications thereto was based in whole or in part on the question of timeliness or entirely on the merits.

PRESIDENT: The decision on the motion to quash was based on the merits and not the timeliness of the motion.

DEFENSE COUNSEL: May it please the Court, I have here another motion, which I should like to read into the record before argument:

DACHAU, GERMANY
Case No. 12-3000 — 3 February 1947
UNITED STATES
vs.
JURGEN STROOP et al

MOTION FOR FINDINGS OF NOT GUILTY

Now come Hans Eichel, Josef Johann Kivitt, Wilhelm Albrecht, Hermann Moller, Wilhelm Friedrich Goehrendt, Jr. Paul Nahrgang, Philipp Hammann, Bernard Fay, Leonard Branner, and Wilhelm Hohler, and move for a finding of not guilty as to each and all of them with respect to Charge 2, and the specification thereunder, and for reason assign the following:

That the prosecution has failed to prove beyond a reasonable doubt that they or any one of them was a member

of any of the organizations for the period in question as stated in Particulars to Charge 2.

/Signed/ William Berman
Lt. Col. AC
Chief Defense Counsel"

The Court may recall that at one time in the presentation of this case, the Prosecution introduced statements by a number of the accused which listed the various organizations to which they belonged. I named in here some eight or nine, I have forgotten how many, seven or eight, individuals, concerning whom, with one single exception, no such statement was introduced. There was a statement by Mohler, and I will come to his case later on; but there was no statement introduced by any of the others named in that motion as to membership in an organization or any one of these four organizations; and there was no evidence introduced at all--I say that with a great deal of diffidence because my memory may be faulty--there was no evidence introduced by the Prosecution at all tying up any one of these men named with any one of the four groups found guilty as criminal organizations. The one exception is Mohler. In his statement he mentions the Gestapo, but in parenthesis he says "on detail", which means that he was "on detail" with the Gestapo--not a member of the Gestapo. Now, may it please the Court, this is a separate offense--membership in the organization--entirely separate and apart from the conspiracy, and entirely separate and apart from any one of the Charges from three to ten, and the same burden is upon the Prosecution to prove that these men did belong to one of these four groups named as criminal groups; and we submit that the Prosecution has presented no evidence to sustain that Charge, and that con-

sequently this particular motion should be now allowed.

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PROSECUTION:

Concerning the accused Eichel and Albrecht, reference is made to Prosecution Exhibit P-122 which is the written statement of Albrecht, in that statement Albrecht admits that he was Commander of the Police Precinct in Bieber (page 2), that his immediate superior was Kuhlenbeck (page 2), that Kuhlenbeck was the Commander of the Protective Police in Offenbach (page 2), that Kuhlenbeck's immediate superior was Eichel (page 2), that Eichel was Police Director of Offenbach (page 2), and that Eichel's immediate superior was the Commander of the BDO in Wiesbaden (page 3).

With reference to the accused Moller and Goehrendt, reference is made to Prosecution Exhibit P-116, wherein Moller says: "I had received the order originally from Eichel and I believed that Eichel sent the other two along who were my superiors" (page 4). This was in answer to a question as follows: "Would you say that in the shooting of the flier you acted under the general orders of Eichel and the particular and immediate orders of Albrecht and Goehrendt?" (page 4). In that same exhibit reference is made to Captain of the Police Kiwitt who was part of that same organization and who took his orders from Eichel. In Kiwitt's statement, which is Prosecution Exhibit P-114, he says that he was a Captain in the Police of the Offenbach Police Department (page 2). Kiwitt exercised control and was in command of Moller and Albrecht.

In Moller's statement, Prosecution Exhibit P-110, he said, referring to Eichel: "The former showed up in a car with Captain of the Police Kiwitt. As the two entered the room in which my comrades and I, as well as the captured flier were, the Police Director yelled 'You

cowards, you should be hit in the mouth', etc." (page 1), and, further that "we were intimidated." (page 1)

Kiwitt says in his statement, Prosecution Exhibit F-135, that he lived in the Commando building and that Major Kuhlenbeck was in charge that day and that he conferred with Kuhlenbeck about the killing of the flier and that Kuhlenbeck said the flier had to be killed as Police Director Eichel ordered it. (pages 2 and 3). All of these men he ing previously been identified as taking orders from the BDC in Wiesbaden.

Hammann refers to Eichel as his superior officer (page 4), in Prosecution Exhibit F-137, where at the end of the statement he said that he was directed by Eichel to make a report to his unit (page 5).

Fay, in Prosecution Exhibit F-138, identifies Mahrgang as a Police Sergeant (page 2), working with him and says that they were under Eichel (page 3). He identifies Hammann as a policeman working with him and says that they were subject to the orders of Eichel (page 6).

It is clear that although we have no evidence of the formalities of membership with respect to Eichel, Kiwitt, Albrecht, Koller, Goehrendt, Mahrgang, Hammann and Fay, there is no question but that they were in fact so much a part of the organization that they functioned as members, conducting themselves in accordance with the rules and regulations and codes under which these groups operated.

In referring to the Extracts from the Nuernberg Judgment, Prosecution Exhibit F-39, we point out to the court that the Tribunal said on page 14 of that exhibit: "In dealing with the SD the Tribunal includes Amts III, IV, V and VI of the RSHA and all other members of the SD, including all local representatives and agents, honorary or otherwise,

[illegible] whether they were technically members of the SS or not."

There is no doubt whatever that all of the accused we have mentioned were local representatives and agents, honorary and otherwise, of the SD. The court had previously said on page 18 of the Extracts from the Judgment: "Members of the Security Police and the SD were charged with the enforcement of the decree for the shooting of parachutists and commandos."

We don't have the membership cards of some of these men that are declared criminal by the International Tribunal, but the last line referred to here showing that their dues had been paid and that they were accredited up to a certain date as members of the SD, but they were local representatives and cooperating with the SD with the complete carrying out of this plan all the way up from this Command to the Commander of the SD to whom they deferred and from whom they received orders and instructions which they obeyed and carried out. I don't know what other proof of membership could possibly be required.

Now, with respect to Leonard Brenner, although in Prosecution Exhibit P-58 he definitely states that he was a member of the Security Police in Munich from 1936 to 1939 and in September 1939 was transferred to the Gestapo in Darmstadt, that, of course, definitely makes him a member of the criminal organization. It is the opinion of the prosecution and we submit this for the consideration of the court that in view of the fact that Leonard Brenner is being tried in absentia, no finding of guilty of not guilty can be made with respect to that accused. Only a recording of evidence can be made, and I refer to the rule entitled Rule 8, Military Regulations 357.87.

With respect to Wilhelm Koehler, in his statement, Prosecution Exhibit P-66, he says: "I am the Criminal Secretary". In reading the entire

statement it shows that he was associated with Luckhardt, Fraund, Fuhr, and he said: "As next highest ranking man, it was my duty to make the report" (referring to the killing of a flier) and that Trummler expressed appreciation by saying, "Well done." By his own admission and by the organization with which he was working and cooperating, he was definitely a member of one or more criminal organizations.

Now, it is interesting to note that this point has escaped the defense. -- Charge II alleges these men were members of organizations declared criminal by the International Tribunal, but the last line in the particulars of Charge II begins with the word "or" and reads: "or were personally implicated in the commission of such criminal acts", so that if, by any stretch of the imagination, it can be said that we did not prove membership in these criminal organizations, there is no doubt that, as to each defendant, we have proved personal implication in the commission of criminal deeds which were violations of the laws of war.

DEPUTY COUNSEL: May it please the court, I should like to answer the prosecution in rebuttal. The prosecution, in answering the motion by the accused for findings of not guilty to Charge II, divided the charge into three parts -- one to evidence deduced in the case, to which we take no exception if that was introduced to show conspiracy or if that was introduced subordinate to the BDO. But the BDO is the abbreviation for Befehlshaupt Ordnance Polizei which is here (indicating) and a branch of the regular Polizei, the Schupo. The SD is over here (indicating) and comes under Kaltenbrunner. There is no relationship whatsoever.

We admit that all these people, with the exception of Hoehler, took their orders through here (indicating) and were members through

here (indicating), members of the Schupo, the regular civil police.

It is part of the establishment of the BDO in Wiesbaden but not the SD.

Now, may it please the court, the SD was declared criminal. It was one of four organizations declared criminal -- the SS, the Leadership Corps, the Security Police, the Sipo, and the SD. These were the four. The regular police were not. The SD was a part of the regular police and were not declared criminal so these two arguments fall.

Now, the prosecution thought we overlooked the last line because no reference was made to "or were personally implicated in the commission of such criminal acts." It was not an oversight, may it please the court, because that language was taken directly from the Nuernberg decision and was used for this reason: it came out during the trial that a lot of people claimed that they were forced to join the organizations, these four criminal organizations. They weren't members of their own free will, so the Tribunal had to deal with people who put up that defense and yet were just as mean in what they did as the man who joined willingly, so this is what they said: "The Tribunal declares to be criminal --" and I am now reading from the extract introduced in evidence, "the group composed of those members of the Leadership Corps holding positions enumerated in the preceding paragraph or who became or remained members of the organization with knowledge that it was being used for commission of acts declared criminal in Article 6 of the Act, or who were personally implicated as members of the organization in the commission of such crime." In other words, they took a whack at such people who tried to say, "We were driven into it, yes." If you were driven into it and did nothing, you are out. If a man was driven into an organization and compelled to join it and did nothing to carry out its aims, he wasn't

criminal, he was let out. But the man who was forced to join and partipated was just as bad as the man who willingly joined it and that is what the last line means which the prosecution thought we had overlooked.

PROSECUTION: May it please the court, I must reply to that, I correctly quoted from the exhibit when I said that the chain of command ran up to the KDO, which is the Ordnance Police. I also pointed to the SD and did it on purpose. Now, that chart has been before this court for several weeks and if the court will look at it again, they will notice there is a direct chain of command there from Stroop down to the KDO. You will notice there is a command channel down to the Commander of the SD. You will notice there is a chain of command from Himmler over to the Security Police Main Commander, Kaltenbrunner. There is a chain of command over to General Wunnenberg. We have a great inter network, all persuading each other and when any man said he operated down in this corner, (indicating), even if he got a great many of his orders from here (indicating); that he didn't have any orders or influence on him from this headquarters, (indicating), he is insulting the intelligence of this court. Look at the influences that come down from all corners of this chart. Certainly I showed the uniform that these men were was that of the Order Police, and these men are trying to tell this court they can hide behind a technical name -- KDO, or whatever you want to call it. They were part of the greatest conspiracy and setup in the channels, inter-relations of departments the world has ever heard of. There is no officer on this court who ever saw a chain of command setup so complicated as that one before you now. And any man down in the lower right hand corner who cooperated to kill Fliers worked hand in hand with SD men, belongs to that organization definitely.

80 Ta 111
pls

DEFENSE COUNSEL: May I be permitted just one sentence.

The court at Nuernberg certainly went into all this business about the chain in much more detail than this court will ever be able to do it and they found the regular police is an organization not guilty and there is no question here of all this interchange and conspiracy with these members of a criminal organization.

PROSECUTION: But they didn't say that a member of the Order Police who associated himself with the SD in his work was absolved of the guilt, they never said that.

PRESIDENT: Court will be closed.

end Ta 111 (Whereupon the court was closed at 1000 hours.)

Mac fols

4 February 1947

AFTERNOON SESSION

(Whereupon the court was opened at 1615 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Dr. Trost, who is absent because of illness, all of the accused, the reporter and interpreter, are present.

PRESIDENT: The motion for a finding of not guilty with respect to Charge II and the Particulars, thereunder, is sustained as to the accused Hans Michely, Josef Johann Kiwitt, Wilhelm Albrecht, Hermann Moller, Wilhelm Friedrich Gonsorandt, Paul Mahrgang, Philipp Hermann, and Bernhard Ney, and the motion is denied as to the accused Leonard Brenner and Wilhelm Hoehler.

DEFENSE COUNSEL: May it please the court, the defense now has another motion made up of four paragraphs, which I should like to read:

DACHAU, GERMANY
Case No. 12-2000a
3 February 1947

UNITED STATES

Vs.

JUERGEN STROOP et al

MOTION TO STRIKE FROM THE RECORD

1. Now come the accused and move to strike from the record the following specified exhibits offered by the prosecution and received into evidence on the ground that they refer to individuals not named in the Charges and Specifications with which they stand accused; and on the further ground that the prosecution has failed to sustain its burden of proof that the accused or any one of them has conspired in any way wilfully and deliberately with any of the persons named in any of the exhibits hereinafter referred to: -

Prosecution's Exhibits: P15, P16, P17, P18, P19, P20, P21, P22, P23, P24, P25, P26, P32, P32A, P38, P39, and P40.

2. And the accused further move to strike from the record all references to the Kahrwolf, on the ground that the prosecution has not sustained its burden of proof that this organization was ever actually formed, or that it ever participated in any war crime.

3. And the accused further move to strike from the record all references and testimony with respect to one STOLL (beginning on page 169 of the record) on the ground that the prosecution has failed to sustain its burden of proof to connect any of the accused with the said STOLL.

4. And the accused further move to strike from the record Prosecution's Exhibits P27, P27A, P28, P28A, P29, P29A, P30, P30A, P31, P31A, P41, P41A, P42, P42A, P43, P43A, P44, P44A, P45, P45A, P46, P46A, P47, P47A, P48, P48A, P49, P49A, P50, P50A, P51, P51A, P52, P52A, P53, P53A, P56, P56A, P57, P58, P58A, P64, P64A, P65, P65A, P66, P66A, P103, P103A, P104, P104A, P105, P105A, P106, P106A, P107, P107A, P110, P110A, P111, P111A, P112, P112A, P113, P113A, P114, P115, P115A, P116, P134, P134A, P136, P136A, P137, P138, P141, P141A, P142, P142A, P143, P144A, P144B, P144C, P144D, P144E, P144F, P144G, P144H, P144I, P144J, and for reasons assign the following:

The prosecution has not sustained the burden of proving the confessions were obtained without duress and that they were voluntarily made. (In this connection, see Footnote 19, Page 555, Underhill's Criminal Evidence, Fourth Edition.) It is submitted that the rule permitting the receipt of any evidence having probative value is a modification merely of the hearsay rule and not an abolition of all the rules of evidence and a complete nullification of all the safeguards surrounding the introduction and receipt of evidence. It is urged that the rules governing the receipt of confessions are more matters of substantive law than adjective law.

/s/ William Herman
WILLIAM HERMAN
Lt. Col. AC
Chief Defense Counsel

DEFENSE COUNSEL: May it please the court, in arguing the first paragraph of this motion, the defense has in mind that this question has already been passed upon by the court when these exhibits were first offered into the record. And yet, it feels constrained to offer them again in accordance with the practice known to those acting as counsel in this case.

It is quite the common thing in civilian courts for evidence to be received de bene. That is the language used in my own home state. What it means is frequently in a conspiracy case evidence is offered, which at the time is not tied in definitely with the charge, but the court receives it subject to an obligation on the part of the state to show its relevancy later on and to show how it is tied up to one or more of the accused. The defense, in presenting this motion, assumes that to some extent, at least, that might have been the underlying motive on the part of the court. At any rate, whether it be right or wrong, we now present this motion for the decision of the court.

It is a fundamental axiom in all Anglo-Saxon courts, which has not been superseded by this rule which talks about probative value, that the accused is entitled to know those with whom he is accused of participating in a crime. This principle states unequivocably that when two or more people are put to trial on a conspiracy, that the charge must name, either directly or by class, or if neither one is known, with persons unknown, but the entire category of people concerned in the conspiracy must be stated. That is not true in this case. That point has been made before and I have to re-state it.

Now, the argument we have to make applies to some of these exhibits made not in the same degree as these others. It might well be that with more time to prepare this I might not have omitted one or two of these exhibits named, and we apologize to the court now for our failure to be more exact.

If what Keitel, Jodl and Goebbels did can bind Fuehr, so could what Hess did bind Fuehr, because this conspiracy as we know it, to wage this war, began in 1919, or perhaps even sooner. You cannot, by any stretch of the imagination, introduce evidence to bind these people to what was done by people to whom they were dirt and who did not even know they existed. To talk of Puhr and Koehler as conspiring with Himmler, I personally do not know how to characterize such talk. The only evidence in the case is that later on these people did something which these other people talked about and maybe advocated, but to say that they conspired with all those other people, we submit is going too far. Likewise, to seek to bind them with what the German ambassador said in a memorandum to some psychiatrist of what the heads of the Wehrmacht or of the secret police did in their sanctum sanctorum, we submit is going much too far.

All these people can be charged with is what they themselves did and what others did for them at their solicitation. They could be tools, but not members of a general conspiracy. For that reason, there we stop.

We submit that those exhibits which refer to acts and declarations of others way up in the higher-ups cannot be introduced as evidence against these small fry sitting in the dock even though one of them was a lieutenant general.

Now, with respect to the Wehrwolf, may it please the court, that was an organization which was testified to by Hans Gunther, for he worked on it two or three weeks. He said that Major Rost and I think, Goss, completed it. How he knew they completed the project nobody knows, but there is much evidence in this case as to what the Wehrwolf was. There is no evidence that it was actually more than a paper organization, no evidence that it ever actually functioned, no evidence that as an organization it committed a war crime, such as the Nuremberg International Military Tribunal found

that the Gestapo committed war crimes. This man told us he never knew how he was tied up with these people, nobody said what his responsibilies were, and there is no way of finding out. But the court on several occasions in this trial has stricken out evidence dealing with people and the acts of people who were not accused. I think there was some evidence about some man by the name of Fraser that was stricken from the record and we submit the evidence for Stoll should be stricken from the record for the same reason.

Now, may it please the court, we come to what is by far the most serious question, and that is the exhibits referred to in paragraph four (4), which are all statements signed by the accused. Objection was made to the receipt of these statements at the time they were offered on a ground familiar to the court. We are now asking that they be stricken on a totally different ground. And we submit the ground is so fundamental and vital, the question of timing cannot be raised. As a background to the arguments on this question I need only refer the court to this manual, "Manual for Trial of War Crimes" and ask the court to consider page 106 -- if that is not the correct page, that portion of the manual which discusses the procedure in court when a man pleads guilty. The court cannot accept the plea. There is an obligation to prove that the man knew what he was talking about and rather than argue it now, I ask the court to refer to it. It is very important, may it please the court, because as a matter of law the court can suspend the receipt of further evidence once it is satisfied that a plea of guilty is knowingly made and received. It can then proceed to sentence, even to death, without the receipt of further evidence, and the law with respect to confessions in Federal Courts is the same. A confession is a plea of guilty so far as its effect is concerned and the court can sentence on a confession just as fully as a judicial confession, just as fully as if it were a plea of guilty in open court.

Then to come and say say that there is a plea in open court, certain safeguards must be gone through of a very serious nature, and then to say the court can receive a full-fledged confession without any evidence as to how it is made because it is evidence and has probative value and can be received is to give to that rule as much sanctity as the Creator gave to the Ten Commandments. It just does not make sense. It just cannot be believed that that rule was intended to supersede all safeguards.

I would like to call the court's attention to the fact that paragraph 399, entitled number 5, merely states that a Military Government Court "shall in general receive oral evidence which has probative value." It does not say it must. It has been interpreted to mean that the court must receive in evidence anything that has probative value.

Now, in passing on these motions, may it please the court, the court will have to consider first whether the statements were offered as evidence, -- some evidence -- whether they were offered as statements for admissions against interest, or whether they were offered as confessions. Throughout the trial reference has been made to them by the prosecution as "confession." Now, the law talks about confessions as being in two classes, judicial and extra-judicial. A judicial confession is made in a preliminary examination or before a coroners court or at the trial of the accused. An extra-judicial confession is one made by anyone outside of the court. These confessions, we submit, were all made as parts of preliminary examination, and some of them were taken by members of the staff of the prosecution on the very day they were served with charges, or a day or two before. We submit they were received during preliminary examinations and consequently, are to be treated as judicial confessions, subject to all rules and regulations governing the receipt of these confessions.

Now, in my brief, -- which I am not going to repeat here and take up the time of the court -- the law is plainly to be shown that a confession

cannot be received without proof and the burden is on the prosecution or the state to prove that the confession was voluntarily obtained, and they make a distinction between proving the confession itself and the method by which the confession was obtained. The courts have ruled, and I have stated my authorities for it, that whether or not a confession is to be received is a mixed question of law and of fact to the extent that it might be a question of fact. It might be argued that it comes within the rule of probative value, but if it is a question of law, then it could not come under any rule which deals with the receipt of evidence.

Now, there is a distinction between confessions which are judicial and those which are extra-judicial. The difference does not relate to proof of their voluntary character or how they were obtained or that the person making it knew what he was doing. The safeguards around both are the same. The difference lies only in the weight to which the court can give. The judicial confession itself will support a confession. The extra-judicial confession requires some corroboration. The amount of that corroboration I will not go into at this time, but that is also set forth in the citations which are given.

I could, may it please the court, go on and argue this a great deal at length. I am going to submit it without very much more on the brief we have filed. It is an important question and I am going to have to refer to it again in my motion for finding of not guilty, which is why I am cutting my argument short at this time. I just want to say once more that this rule that anything that has probative value can come in, that is going to apply to every bit of evidence that comes before the court, you have a situation which reduces itself to absurdity. Somebody -- God knows who -- out in the field, under no circumstances, nobody but those who were there know -- goes a man to confess his innermost soul and put his name to a piece of paper. It is called a confession and is received. If that man comes into court he is put on the stand and analyzed by the court. The two things just cannot be reconciled and since the interrogation

of a rule must be such as to give some sense to the rule, to give some validity to the rule, then this court must interpret this rule about probative value so as to give it meaning so that it will not be ridiculous. That meaning cannot mean that it has abolished all safeguards. That can apply only to the receipt of ordinary evidence.

PRESIDENT: Court will recess for fifteen minutes.

(Thereupon at 1950 hours the court recessed until 1515 hours.)

(Whereupon the court reconvened at 1515 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Frank, who is absent sick, all the accused, the reporter and interpreter are present.

In respect to the motion to strike from the record certain documentary evidence, the following is respectfully submitted:

For the information of the court, the documents referred to in paragraph 1 of this motion are as follows: [illegible] in toto.

D-15. Subject "Instructions to the civilian population regarding appropriate behavior in case of landings of enemy planes or parachutists in German territory." Substance of the directive outlines directions as to procedure which were to be disseminated only orally via district leaders, local municipal leaders, cell leaders, block leaders, leaders of the incorporated and affiliated organizations of the party. Signed, "R. Hess."

D-16. Instructions as to how single parachutists are to be handled (turned over to the Security Police). Signed, "Keitel."

D-17. Hitler's order regarding annihilation of terror and sabotage units to be used against British sabotage units and her Allies, orders, with or without arms, annihilation to the last man in battle or in flight.

D-18. Reiterates the Fuehrer's order of 18 October 1942, that is, "That the shooting of uniformed prisoners acting on military orders must be carried out even after they have surrendered voluntarily and asked for pardon."

The annihilation of sabotage units in battle are not at all to be kept secret but on the contrary to be currently published in the

officers." 23. Fuehrer Headquarters, 6 June 1944, subject "Treatment of enemy fliers." "It is not the task of the Police to interfere in clashes between Germans and the English and American terror fliers who have bailed out." Signed, "H. Himmler." The order stated above was sent to the chief of the regular police and the security police for information with instructions that the order of Himmler contained therein be made known to subordinate officers verbally. In addition, the Reichsführer SS requested that the Gauleiters concerned also be informed verbally of this order.

P-30. A secret letter to the Inspector of the Sicherheitspolizei and of SD., SS Standartenführer, Sommer, Wiesbaden. Subject "Shot down enemy fliers." Reference letter (Sommer) 21 April 1944. This letter acknowledged complete understanding of the instructions contained in the order from Sommer dated 21 April 1944. The quoted terminology made it clear that there was not to be interference between

CINC (Supreme Command of the Armed Forces) reports. The distinction was defined as between large scale landings, etc., where large scale battles take place and any two or more landed by sea or air or dropped by parachute. "The purpose of these measures do not as a deterrent, will not be achieved, if those taking in enemy 'commando operations' would not know, that certain death and not only imprisonment awaits them." This secret document states that such persons are to be annihilated immediately, unless their statements are first needed for military reasons, it is necessary that not only all members of the Armed Forces must receive instructions that these types of saboteurs, even if they are in uniform, are to be annihilated, but also all departments of the home staff, dealing with this kind of question, must be informed of the course of action which has been ordered [illegible] in [illegible] incidents involving [illegible] Distribution To all senior executive SS and police

the population and shot down fliers, she further, "It has, besides, been learned confidentially that the chiefs have instructed their units accordingly, making it clear, at the same time that no value is attached any more to enemy fliers taken prisoners." Signature acknowledging receipt of instructions from Command was presumably that of Wilbrandt, Der Führer Des SD Abschnitts Koblenz.

[illegible] A newspaper article printed in the "Volkischer-Beobachter" newspaper, written by Reichs Minister Dr. Goebbels inciting the German population against enemy fliers.

[illegible] A circular letter dated 30 May 1944 signed "H. Hoffmann." "Concerning Action executed by the people against Anglo-American murderers." This letter states no police measures (or criminal proceedings) are taken against German civilians participating in lynching incidents involving American and British flyers.

[illegible] Führer Headquarters 6 June 1944, subject "Treatment of enemy terror aviators."

Minutes of meetings attended by Hitler, Himmler and others at which meeting it became evident that all were in agreement on the extermination of enemy flyers. In no case of killings, by the populace or soldiers, there was to be no question of court martial sentence or handing over to the police of perpetrators. Remarks by the head of OKW of the Armed, "I am against legal procedure. It doesn't work out." Signed, "F" (Keitel).

Remarks by chief of WVHA concerned himself chiefly with who would proceed by taking the guidelines (a) "by the people" and (b) "by the authorities". Signed "-" (Jüttl).

[illegible] On the basis of preliminary discussions and after consultations whatever would justify the transfer of enemy aviators from the air forced (FW) reception camp, Oberursel, to the SD for special [illegible] and reports was of [illegible] defined.

treatment, would be undertaken upon the publication of an instance of lynching and which would justify such transfer for special treatment. Signed, "F" (Knittel).

P-25. Concerning treatment of enemy terror airmen, reply to 15 June 1944 letter, "In spite of the evident objections from the point of view of foreign policy and of International Law, the (German) foreign office agrees on the whole with the intended action." Differentiation was to be observed between lynching justice and special treatment by the Security Police (SD). It is plainly stated that individual cases would not accord to legal prisoner of war status. "This will be prevented by the intended execution." Initialed "F" (Knittel). A guy out was meant to mean that the flyers would not become prisoners of war but, they were to be treated as criminals.

P-26. Commanders and inspectors of the SIPO and SD received an order in July or August 1944 by RF SS Himmler through the chief of SIPO and SD, Dr. Kaltenbrunner, that members of the English-American commando groups should be turned over to SIPO by the armed forces. The SIPO was to interrogate these men and then shoot them after questioning.

P-32 and P-33. References to letters sent to Gestapo, the State Police Detachments, Security Service, and Criminal Police, complaining that interference by the Wehrmacht hindered action by the population against enemy terror fliers. Signed, "SS Lieutenant Colonel". This letter originated from Wiesbaden, Germany, offices of the Commander of Security Police and SD, Rhein/Westmark dated 6 October 1944.

P-38. Nuremberg Judgment. Agreement among the governments of the United Kingdom of Great Britain and Ireland, United States of America, the Provisional Government of the French Republic, and the Union of Soviet Socialist Republics, together with the governments of the United Nations. By a charter annexed to the agreement, a constitution, jurisdiction and functions of the Tribunal were defined.

It vested power in the Tribunal to try and punish persons who had committed crimes against peace, war crimes, and crimes against humanity as defined in the charter. The Tribunal could declare an organization criminal, or any individual member, or any group, either

P-39. The Tribunal Judgment declaring and making criminal the following organizations: 1) Leadership Corps of the former German Reich, 2) Die Gebeime Staatspolizei, commonly known as the Gestapo, 3) Die Sicherheitsdienst Der Reichsfuehrer SS, commonly known as the SD, 4) Die Schutzstaffeln der National Socialistchen Deutschen Arbeitspartie, commonly known as the SS.

P-40. Book entitled "Das Urteil Von Nurnberg" in the German language. This work is a German translation of the Nurnberg Judgment.

These documents were received in evidence pursuant to the general rules of evidence made for the guidance of this court, permitting the court to receive such evidence as would, in its opinion, have probative value. The documents are evidence of the scheme or plan inaugurated and carried forward by many persons of the German Reich. They serve to show the intent of all the parties who combined to bring about an unlawful end or result. They show the malice aforethought and the proof of criminal intent thinking on the part of all of those who determined to bring about the conspiracy and to put it into active operation. "The existence of the assent of minds which is involved in the conspiracy may be, and, from the secrecy of the crime, usually must be, inferred by the jury from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole". That is a statement appearing on pages 1401 and 1402 of Underhill's Criminal Evidence.

"Evidence of actual participation, rather than mere cognisance, acquiescence or approval of an unlawful act, is required to sustain conviction for conspiracy. But proof of acquiescence in, or consent to, the actions of others is relevant to show the criminal intention of the

passive party, and generally the smallest degree of consent or collusion among parties lets in the act or words of one against the others." See Underhill's Criminal Evidence, pages 1403 to 1405.

"In proving a conspiracy, any fact or circumstance, either direct or circumstantial, tending to prove a concurring agreement to carry into effect a common purpose to commit a crime, is admissible; and the court will permit the evidence to take a wide range. The acts and statements of conspirators, even though remotely relating to the crime which is the object of the conspiracy, may be relevant as a part of the res gestae, although otherwise irrelevant. So, evidence of bad reputation of the defendant is admissible; and so is evidence as to collateral transactions. However, the acts and declarations sought to be introduced to show the conspiracy must be relevant to the issue. Evidence is admissible to show the carrying into effect of a conspiracy to commit a crime, and many facts of no consequence in isolation may be proved because of the persuasiveness of their united effect. In a prosecution for criminal conspiracy, evidence is admissible to show the purpose of the conspiracy, and evidence of overt acts charged in the indictment are admissible, so is evidence of an overt act not charged in the indictment, to corroborate such act charged in the indictment or to establish continuance of the agreement of conspiracy. The remarks made by a bystander in the course of a fight held admissible under the rule pertaining to coprincipals. Evidence is admissible to show a conspiracy to commit a crime, although the indictment does not allege the conspiracy, and where one is charged with conspiracy to bribe, evidence is admissible to show his participation in the bribe-money. And where one is charged with conspiracy to possess and transport intoxicating liquor, a receipt for a large number of cans found in defendant's possession is admissible; and a receipt of a tip is admissible in a prosecution for violation of the liquor law. Evidence of escape and flight of conspirators to rob a bank, and the contents of a

traveling bag found in defendant's automobile, held admissible to show continuance of the common purpose of the conspiracy. In a prosecution for conspiracy to commit homicide, evidence of threats or ill will, by any of the alleged conspirators, toward the deceased, is admissible. So, evidence is admissible to show the mental attitude of the conspirators as to the object of the conspiracy. In a prosecution of members of the Communist Party for conspiracy to overthrow the government, the party platform is admissible." Underhill's Criminal Evidence, Fourth Edition, pages 1406, 1407, 1408 and 1409.

I refer now to another well-known work on evidence. "The existence of a design or plan to do an act is some evidence to show that the act in question was done. While it is true that a design or plan is not always carried out, yet it is more or less likely to be, hence its probative value. The existence of a design or plan is evidence chiefly by conduct and the kinds of conduct are innumerable. It may be said that any act, which, under the circumstances and according to experience, as naturally interpreted and applied, would indicate a probable design, is relevant and admissible. For instance, the possession of tools or means for doing an act is admissible as a significant circumstance; i.e. a probable design to use them. Thus, the sharpening of a knife just before the affray in which the knife was used was admitted as an act of preparation." He cites some cases. "Getting a revolver out of pawn, a few days before the murder, was admitted to show deliberate intent," in the cases cited by Richardson on Evidence, Section 111, page 92.

It would be utterly absurd if in the case of taking a revolver out of pawn a few days before a murder to show a deliberate attempt, the name of the pawnbroker and the place where it took place could be excluded as irrelevant. The courts in America have gone further and have actually admitted as an exception to the general rule, evidence of other crimes to show a common plan or scheme.

"Evidence of other crimes is admissible to show a common plan or scheme. But to bring a case within the exception to the general rule which excludes other crimes, there must be some evidence of a general plan or system between the offense on trial and the one sought to be introduced." To illustrate: a very simple illustration to support the statement that was just made. The defendant was convicted of the crime of arson in the third degree. The specific charge was that defendant had burned a barn belonging to the man by whom he had been employed as coachman and gardener. The defendant had been discharged from this position. A poisonous preparation had been kept in the barn for use in destroying insects in the garden. The defendant knew of this. Evidence was received to show that on the night of the fire and before it occurred, a span of horses, a pony and a cow had been poisoned and had died. This evidence was held competent, as tending to prove that the injury to the animals was done by the incendiary and as a part of the same criminal scheme which resulted in the destruction of the barn. Another example: A police sergeant was convicted of bribery in collecting "hush money" from the proprietor of a gambling resort. Evidence was received to show that the defendant received from his predecessor a list of gambling house proprietors in his precinct from whom "hush money" had been collected; that the complainant's name was on this list; that the persons listed had previously paid sums of money for police protection to the defendant's predecessor; and that they continued to pay them to the defendant. This evidence was held admissible as proof of a plan or scheme to commit a series of crimes, including the one on trial. In order to render evidence of other crimes competent under this exception, however, a very close relation of time, place, or circumstance must be shown between the other crimes sought to be proved and the crime charged, so that they can truly be said to be embraced in a single criminal scheme. That is our situation in this case. Another case cited. The defendant was on trial for arson. Prosecution attempted to show that the defendant and one Irwin had entered into a

conspiracy to induce persons to insure their property for the purpose of having it destroyed by fires which were to be set by Stein, and that the defendant was to attend to adjusting the losses and collecting the insurance. Evidence of nine other incendiary fires set by Stein in which the defendant was implicated was introduced. The Court of Appeals, however, held this evidence inadmissible on the ground that there was no such relation of time, place, or circumstance between them that the mere evidence of the origin of any of them tended to prove the origin of the fire in question." I cited that case to show that in comparison to this situation, we have direct relation of time, place and origin, making a complete plan and scheme, one readily recognizable.

"These rules apply to whether the action is civil or criminal." In one case, the Court said, "In an action upon a promissory note against an indorser where the indorsement is alleged to be forgery, it is permissible to show that other indorsements upon the same or other notes linked to and part of the original transaction coming from the same person were also forgeries." We think that both reason and authority justify that such evidence is competent. The fact that this is a civil case instead of a criminal prosecution plays no part. Where the signature is denied and claimed to be a forgery, it is competent to show the whole plan and scheme of the man procuring and giving the notes and to give evidence establishing the forgery of all signatures and all indorsements." That was cited by Richardson on Evidence, Section 154, pages 108-3-4.

The prosecution did not intend to indict or convict unapprehended and unavailable co-conspirators of the accused, such persons as Adolf Hitler, Heinrich Himmler, Kaltenbrunner and numerous other persons who were either dead, or unavailable, but it is straining logic to the ridiculous point to say that in proving a combination to commit violations of international law, which is a conspiracy on an extremely large scale, that we can not offer evidence, whether by witnesses or documents, that mention the name

of any of these nefarious characters. If they were present with the conspirators and gave us by their presence or by their acts or deeds some probative information which would tend to show the overall scheme, this court could not lend a deaf ear to that merely because the persons mentioned are not sitting in the dock.

It is utterly absurd to say that Stroop, for example, in collaborating with the other accused can not be said to have an intent to commit the crime of conspiracy because we can not prove that the sources of his ideas and diabolical schemes came from members of the gang who are not before the court on trial.

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All that has been previously said refers to paragraph 1 of the motion made by the Defense. Concerning paragraph 2 of the motion, much that was said in answering the objections of the Defense Counsel during the course of the trial as to the introduction of certain evidence and the answer to the multiplicity of dilatory motions with which the Court is now burdened are applicable in answer to this particular motion. With respect to paragraph 2 of the motion to strike, all that has been said heretofore is applicable to the introduction of evidence concerning the Wehrwolf School. The formation and adoption of that plan in violation of international law was another part of the criminal machinery and it is evidence to this Court of the intentions of the Accused and of the methods that were used to carry out their plans. As to the Wehrwolf School, the record very definitely indicates that the plan was organized, completed, and carried into effect, and, we direct the Court's attention to the testimony of Hans Gunther in this connection, beginning on page 119 of the record and concluding on page 123. At the bottom of page 121 and the top of page 122 we have the following:

"QUESTIONS BY THE PROSECUTION:

Q How long were you engaged in preparing the plans for the Enterprise W?

A From the beginning of the organizing work, approximately three weeks.

Q Had the plans been fully completed when you were relieved from that assignment?

A No.

Q Who completed the plan?

A Captain Keller and Major Best."

We also refer to the written statement of the accused Georg Best (Prosecution's Exhibit P-142) in which he says "About the same time as this incident, or shortly after, it was reported to me through Goss from Goss' unit that a foreigner had been executed by personnel of the Wehrwolf School." Goss says in his written statement (Prosecution's Exhibit P-141), "I was ordered as liaison officer to the Wehrwolf School located at Wallrabenstein."

That testimony, together with Gunther's testimony indicates that not only was the school created and formed as part of the conspiracy but that it was actually being put into operation, and the statements of Best and Goss when received in their entirety show that flyers were being made the victims of the students of that school of crime.

With respect to the reference to connecting any of the accused with a man named Stoll, the defense is now offering an absurd theory when it says that we can not mention any living human being in the course of our testimony as being present or near or associated in any way with the accused. All that we have heretofore said in answer to the numerous motions made herein concerning the proper admission to evidence of any and all facts that tend to prove the conspiracy and which are relevant, is also applicable to what has been said concerning Stoll.

Stoll told us about other crimes committed in pursuance of this common design. He gave us proof of crimes which are admissible in evidence to show conspiracy and that is a proper form of evidence as we have heretofore pointed out.

On page 170 of the record he spoke of a conversation with the witness Traeger and told him that it was "about the shootings there" and how he had to get vengeance for 7 family members and that he had taken care of 4 of them already, that is "That he had finished off four enemies". Will this Court turn a deaf ear to that, when it is the testimony of one of the Gestapo involved with all the rest?

The testimony on page 173 is as follows:

"Q In other words, would you say he was a civilian?

A He wore a brown uniform.

Q A member of the labor front, though?

A Yes, but that was in connection with the use of political units for the security service. He had the identity card of a Gestapo agent that he used to show."

This evidence should be considered together with all its logical inferences and all of its innuendos. It certainly is circumstantial evidence to be considered in connection with the conspiracy. Circumstantial evidence, as we know, is a linking together of a lot of chains, but they are all part of a complete whole, and that should be considered with all the rest for whatever value it may have.

Concerning the motion in paragraph 4 to strike from the record Prosecution's Exhibits which are written statements, this is also an untimely and belated motion. The Defense Counsels during the entire case presented by the Prosecution remained silent with respect to this objection. Conceding, for the purpose of this argument, that it is a correct state of law that we have the burden of proof of the voluntary nature of the statements, we can recall no challenge during our case on that point. The Defense is free to offer

in its case whatever evidence they think they might have of duress to which we will counter with appropriate evidence.

At the beginning of the case we presented Prosecution's Exhibit P-27, the written statement of Stroop and we presented that by the U. S. civilian investigator witness, Kurt Tiel, who identified the signature and said that it was made in his presence. When it was offered, as appears in the record on page 98, no objection was made. We quote:

> "DEFENSE COUNSEL: I assume it has to do with this case. If it has we have no objection."

The same thing happened in connection with exhibit P-28, also a statement to Stroop. See page 100 of the record where the exhibit was offered in evidence and the Defense again said "No objection." This same happened with respect to Exhibit P-29, which was a statement of the accused Girke which appears on page 102 of the record. When the question was asked: "Any objection by the Defense?" the answer was "None." All of this took place while the witness, who was present when the signatures of the various accused were given was on the stand. Not only did the Defense not object, but they said nothing on the subject of duress. If the Court will continue to read the balance of the record with respect to all the other numerous exhibits, it will be noted that there was no objection to any of the exhibits except that made on the basis that sworn confessions should not be received unless they could be refuted by sworn testimony of the accused. No objection was made on the basis of duress or the involuntary nature of the statements. We began our case by putting a witness on the stand to identify signatures. When it became apparent that no questions of

duress were going to be received, we stipulated then and let the witnesses go home. We could have brought five to ten witnesses to testify.

The time has come when, after a long series of War Crimes trials at Dachau, the frequent challenges made to these rules in spite of precedents both by reviewing authorities and trial courts should be once and for all silenced. This Court has listened with patience to motions of this character despite the fact that in the Trial Guide there is unequivocal rules for the guidance of the Defense and the opinion of the Deputy Theater Judge Advocate which is a clear and definite directive to this Court.

If the Defense Counsel wishes to quibble over the fact that some of the leading cases have not been finally reviewed, certainly the Hademar and Dachau cases not only have been reviewed, but the sentences of death have been executed therein, and, in those cases these very rules of procedure were followed.

Yes, the presumption of regularity of these documents exists because it remains unchallenged and we sustain the burden of proof when we are met with no challenge whatever, and certainly, without question, each and every one of the documents offered in evidence in this case are relevant and have definite probative value. Must we again say this is not a case tried before the Federal Courts of the United States, but is a case tried under the rules applicable to War Crimes procedure, based upon the fact that the gathering of evidence against war criminals is necessarily hampered by the nature of the case and the types of evidence and

people involved and the circumstances under which the crimes were committed.

At the end of the notice of motion prepared and served by the Defense, reference is made to a statement in Underhill's Criminal Evidence on page 553 that the Prosecution has not sustained the burden of proving the confessions were obtained without duress and that they were voluntarily made. However, the Defense did not seek to call the Court's attention to the further statement beginning on that page as follows:

"But, on the other hand, there are cases holding that a confession is presumed to be voluntary, the burden of proof is on defendant to show that the confession is involuntary, and that the Prosecution is not required, as a preliminary to the reception of the confession, to introduce evidence as to the voluntary character, unless the Prosecution's proof of making the confession raises an inference or suggests that the confession was not voluntarily made. Where the trial judge has reason to suspect or there is evidence tending to show the use of violence, threats, torture or promises, all of the persons having any authority or control over the person making the confession and charged by the evidence with the use of such means, must be called, if possible, and examined as witnesses before the confession may be admitted." There is no suggestion or inference of that kind; therefore, the Court did not call anybody and neither did we; therefore the Defense remained silent, conceding that fact. The burden of proof may be on us, but that is not the law; and, if it was, it was never challenged; so the burden of proof has been sustained.

With respect to the motion to strike from the record Prosecution's Exhibits P-38, P-39 and P-40, we respectfully call the Court's attention to the fact that documents P-38 and P-39 are extracts from the Nuernberg Judgment and were put in evidence in this case for the convenience of the Court and the reviewing authority. The Court had previously taken judicial notice of the entire Nuernberg Judgment, and it has before it therefore all of the pages of that document. If the Court grants this motion with respect to P-38 and P-39, the Judgment is still before the Court, but it will be nevertheless inconvenient for the Court and reviewing authorities to have the pertinent extracts removed from the record. Of course, if the Court grants a motion with respect to P-38 and P-39, I can get the five volumes and bring them into Court. The Court has a judgment before it. The purpose of the Prosecution in bringing those exhibits was to make it more convenient both for the Court and the reviewing authority. All that has been said with respect thereto is applicable to Prosecution's Exhibit P-40, which is a German translation of that Nuernberg Judgment. That document, in addition, was put in the record for the benefit of the accused so that they could have the official, accurate German translation. The accused personally had the benefit of reading that exhibit and it seems inappropriate at least to now object to the fact that it is in evidence before the Court.

Nothing further from the Prosecution.

THE MARSHAL: Anything further from the Defense?

DEFENSE COUNSEL: No, sir.

Ta 115, 2/6/47, idb-8

PRESIDENT: Court will recess until tomorrow morning at nine o'clock.

(Whereupon at 1645 hours the Court recessed.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... **Erste Anklage** .....

.....

.....

.....

Particulars: ..... **Einzelheiten:** .....

.....

.....

.....

Second Charge: ..... **Zweite Anklage:** .....

.....

.....

.....

Particulars: ..... **Einzelheiten** .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary / *Intermediate Military Court to be held / *General

Die Verhandlung wird vor dem *Einfachen / *Mittleren Militärgerichte / *Oberen

at ..... on ..... 194 .....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194 .....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

13

Pages 691 - 764

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 7 FEBRUARY 1947

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Herbert B. Rosenstock

Reporter Patricia Stewart, Sally Rose Hayett, Imogene Butler, John McDonald, Paula Silverman

~~Members of Court~~

WITNESSES:

JURGEN STROOP

OTTO SOMANN

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *furtner term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES vs. JOACHIM PEIPER, ET AL

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

7 FEBRUARY 1947 PAGES 691 - 761

Motion For Finding of Not Guilty Page 691

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COURT
JOACHIM PEIPER	718 745	746	752		
OTTO SOMANN	753	763			

EXHIBITS

No.	Description	Marked	Received In Evidence
D-1	Chart, Chain of Command	718	720
D-1A	Part of D-1	745	745
D-1B	Part of D-1	745	745
D-2	Wall Chart, Same as D-1	721	721

Ta 116 SO
pls 2-7-47

Camp Dachau, Germany
7 February 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show, may it please the court, that all the members of the court; all the members of the prosecution; all the members of the defense except Dr. Trost, who is absent sick; all the accused, the reporter and interpreter, are present.

PRESIDENT: The motion of the defendants to strike from the record and each of the four branches thereof is overruled.

DEFENSE COUNSEL: If I remember correctly, may it please the court, the position taken by the prosecution in opposition was to the effect that the motions were not timely made. May I request an opinion from the court whether the timeliness played a part in the decision of the motion by the court?

PRESIDENT: The decision of the court was based on the merits and not on the element of time.

DEFENSE COUNSEL: The next matter to be presented to the court by the defense is a motion for findings of not guilty. That, as it was prepared and given to the prosecution, consisted of three paragraphs. The third paragraph, however, has already been presented and we request that it be disregarded. With the court's permission I will read into the record the motion as we now desire to present it.

It is captioned "Dachau, Germany, Case No. 12-2000." The date

is today's date, of course.

" UNITED STATES

vs.

JUERGEN STROOP et al

1. Now come the accused in the above entitled cause as they are named herein below and move for findings of not guilty as to each of them with respect to the charges and specifications under the charges set forth in each instance, and for the reasons assigned the following:"

In preparing this, may it please the court, I have used the word "specifications" instead of the term "particulars". I meant to use the term "particulars".

"That the prosecution has failed to prove beyond a reasonable doubt that each of them was guilty of the crimes with which they stand charged and more particularly as set forth hereinafter:

A. Jurgen Stroop, with respect to Charges 3 to 10 both inclusive, and with respect to the specifications thereunder.

B. Otto Semann, with respect to Charges 3 to 10 both inclusive, and with respect to the particulars thereunder.

C. Hans Trummler, with respect to Charges 3, 7, 8, and 9, all inclusive, and with respect to the particulars thereunder.

D. Julius Lassak and Leonard Brenner, with respect to Charge 3, and with respect to the particular thereunder.

E. Wilhelm Hohler, with respect to Charge 4, and with respect to the particular thereunder.

F. Fritz Girke and Heinz Hellenbreich, with respect to Charge 6, and with respect to the particular thereunder.

G. Hans Tichel, Josef Johann Kiwitt, Wilhelm Albrecht and Wilhelm Friedrich Goehrendt, with respect to Charge 7 and with

respect to the particular thereunder.

H. Hans Eichel, Johann Kwitt, Paul Mahrgang, Philipp Hammann and Bernard Fay, with respect to Charge 9 and with respect to the particular thereunder.

I. Georg Best, with respect to Charge 9 and with respect to the particular thereunder.

J. Fritz Sirke, with respect to Charge 10 and with respect to the particular thereunder.

2. Now come Jurgen Streop, Otto Sonnen, Hans Trumpler, Julius Lassak, Leonard Brenner, Wilhelm Mohler, Fritz Sirke, Heins Hellenbreich, Hans Eichel, Josef Johann Kiwitt, Wilhelm Albrecht, Wilhelm Friedrich Geehrendt, Paul Mahrgang, Philipp Hammann, Bernard Fay and Georg Best and move that a finding of not guilty of the crime of murder be found as to each and everyone wherever and in what form said crime may be charged in Charges 1 to 10 inclusive, and the particulars thereunder."

That is signed by myself as chief defense counsel.

PROSECUTION: Does the prosecution understand that the defense does not intend to proceed under paragraph 2 of their motion?

DEFENSE COUNSEL: I thought I made that plain on the very ground it has been presented and passed upon by the court. I think that was the second item that was presented that was already denied. May it please the court, the items which make up paragraph 1 of this motion for findings of not guilty, as well as paragraph 2, are all addressed to the evidence which has been presented to the court during the long days which have passed, and it is our desire to avoid, as much as possible, arguing too lengthily on evidence which the court is presumed to know and unquestionably does know even better than I do.

However, to some extent it is going to be necessary to do that, and furthermore, because it involves some people, I am going to ask permission for my two associates to supplement my argument on the evidence to a reasonable extent on matters which I may fail to mention and which they think important so to do.

The court will note, first of all, that in these various subdivisions of this motion we have not named all of the accused either in paragraph 1 or in paragraph 2. We have named only those against whom, in our opinion, the prosecution has failed to state a prima facie case. We will admit at the outset that there is some evidence with respect to most of them. The opposition is just this -- That a prima facie case such as a case upon which the court may convict reasonably, without any other evidence, is not present in these particular cases.

Now, with respect to Stroop -- oh, yes, in considering this motion we would like the court to have in mind that, whereas evidence of an accomplice is admissible and whereas, under the federal law evidence of a co-defendant indicted at the same time as any other defendant and tried at the same time, is admissible in evidence. We admit that. However, the cases do state that the testimony of an accomplice or co-defendant, particularly one whose intimate, vital self interest persuasively directs him in the path of colored testimony -- to be blunt, where it is to his interest to lie -- that the testimony of such people is to be received with the utmost caution and scrutiny. Parenthetically, these charges of 8 to 10, in our opinion, are all charges involving the crime of murder. There is no evidence or language of conspiracy in them. It says: "deliberately and wrongfully

encourage, aid, abet and participate in the killing" of someone and that is important for the defense, particularly when the court comes to consider the second paragraph of this motion.

Now, with respect to Stroop, the only evidence which ties him in with these killings is testimony that certain orders were issued from his headquarters and from him which, when it came down to the final element, were used by someone as the basis for a killing. In this connection I should like to invite the court's attention to the manual whichhas been prepared for the trial of these cases in which the defense of Superior Orders is discussed and in there the language, which is our contention, states that superiors who issue the orders are just as guilty as the man who executes. The language there, in our opinion, plainly means the original person who issued the orders and not intermediaries who were merely conduits, not issuing orders but acting as means of communications by which orders are issued. For instance, an order issued by Himmler finds its way down to the ultimate person who is intended to be the executor of that order. Any other reasoning could make even the stenographer in Stroop's office or in Birke's office or in any of these offices who transmits or typewrites and passes down an order, equally guilty of the crime. So you have a hierarchy beginning with Himmler and going all the way down to I don't know how many.

The court, being composed of members of the armed forces, knows the difference between the issuance of an order as a function of command responsibility and passing the order down issued by higher headquarters. There is a vast and vital distinction which we earnestly request the court to keep in mind and on that basis, on that principle,

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and on the fact that whatever Streep did was done through so many other hands and on the fact that theevidence, wherever it exists, is the evidence of biased, prejudiced, interested people. There is not that extension of the burden which falls on the part of the prosecution to justify the finding of not guilty.

With reference to Somann, there is uncontradicted evidence that he left Wiesbaden in July, the 28th of July, and went up to Berlin to an organization found not guilty by the Nuernberg Tribunal and had nothing to do with anything that happened in this case. He left July the 28th; the first murder was October 3rd. The evidence is that he transmitted two orders. One was a non-interference order that the police would not interfere with civilian populations, and one was an order -- I have forgotten exactly what it was, but I think it had something to do with the treatment of saboteurs. That was an order which never found execution in this case. None of the people are alleged to have been executed as saboteurs. They were all killed on the basis of an order that came out long after Somann had left and that was the order to the police to do the killing, and evidence shows that that order came out in September.

Now, this particular case I am using as an illustration of the problem facing this court. The evidence against Somann consisted, first of all, of a statement about this man, Christmann, the fellow who escaped and hasn't been caught, and he mentioned some man's name in here in connection I think with the delivery of the Superior Orders case and in a very indefinite way stated that he thinks that Somann had that order alone.

I am not going to take the time to find the exact part but it is referred to in Exhibit P-83A and in P-84A. This is from Christmann, too,

he is asked a question: "What statement can you make about Order No. 67?" "I don't remember what that order was. I can fully confirm the substance of the statement made by Wellenbreich but I believe that, as far as the meaning was concerned, he did not only issue one order but two orders which both represented directives given by the Fuehrer and signed by Himmler. According to the one order the police was forbidden to interfere." Well, that's the old story. "According to the other order, the Constabul ry was instructed not to turn bailed out fliers over to the armed forces any longer but deliver them to the competent office of the State Police."

The evidence will show he was mistaken in that. That order came out in September.

Then there is a statement by Wellenbreich. He says he heard something, he doesn't know whether he heard it from Semann or Trummler.

THE INTERPRETER: Will you let me translate that?

DEFENSE COUNSEL: I understood you would translate the whole business at the end.

THE INTERPRETER: I think it will be simpler if you stop after every man.

DEFENSE COUNSEL: Let us finish Semann.

Then there are two statements by Lassak in which he says he heard something, he doesn't know whether he heard it from Trummler of from Semann. That, may it please the court, is all the evidence which ties Semann to these 8 to 10 charges. A man who is two months gone before the first event happens. The question for this court to decide is whether the blight of that order which merely said the police should not interfere, lasted over the period of months and was a motivating factor in these murders committed by men long after he was gone or ever when he had no

control, who killed, as they testified, on orders which were directed to the police to do the killing. How can it be said that an order which merely said the police should not interfere with civilians could be used in interpretations for the police themselves to do the killing?

Now, with respect to Trummler -- we do not intend to argue the evidence under "C" may it please the court, with respect to Trummler but merely call the attention of the court to the fact that the motions addressed to Charges 5, 7, 8 and 9, where Trummler is mentioned, and the basis for the motion is the fact that the actual participants, the so-called "trigger men" in 5, 7, 8 and 9 were all members of the organizations over which Trummler had no control. For instance, No.7 which I remember offhand, is made up of Meller and so on, were allmembers of the Ordnance Police and in other of these charges they were members of the Ordnance Police or Fire Police, which was a part of the Ordnance Police and we think it would be a fundamental miscarriage of justice to hold a man responsible for murders as he is holding Trummler responsible for murders, if I may use the word, committed by people of an organization who got the same orders from their own responsible head higher up and he had nothing to do with them. They are over on the lefthand side of the chart and he is over here on the righthand side, and these four charges mentioned with Trummler were all executed by people not members of the organization over whom he personall had any command jurisdiction or in fact, any other jurisdiction.

Now, with respect to "D" may it please the court, the only evidence against Lasak is his own statement. He was a member of the Ordnance Police and by his statement had admits that he turned over to the Gestapo one prisoner. Taking and interpreting his statement from the worst

possible point of view, at least from his point of view, let's say, that Lasaak admitted that he turned this man over to the Gestapo, knowing what was going to happen to him, that was carried out under orders. Does that make Lasaak guilty of murder? Merely turning a man over to another organization under orders of his superior, that's all he did, taking his statement at its worst possible interpretation.

With respect to Charge 4 -- that charge, of course, names Stroop, Sommer and Truemler and also names Hoehler and Fuehr. The evidence against Hoehler comes from himself and from Fuehr so far as the actual commission of the crime is concerned. There was a lot of testimony about two men coming to the home of this gendarme and telling him to go bury the man and a lot of people who saw the body of the flier and the undertaker who buried him, and so forth and so on. Nobody has identified Hoehler in this case. None of the witnesses identified him. Fuehr says that he stayed in the car and that Freund went out of the car and he thinks both shot. Hoehler says that Freund went out of the car and he thinks both shot. The only evidence against Hoehler in that case is the statement of Fuehr who is an interested party to a most vital extent, and then too, the evidence I have already mentioned.

With respect to Charge 6, Stattman and Haaf had admitted doing the shooting. They say that Hellenbreich gave them the order to do it. Hellenbreich says Himmler gave him the order to do it. We submit the argument on that particular charge on the strength of the principles we have already enumerated and directed to the attention of the court.

With respect to 7, I'd like to expatiate a little bit more. The accused in that case, in addition to the three major accused, are Eichel, Kiwitt and Goehrendt, and one other not named in the motion, Heller. The evidence is complete that the actual firing was done by

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Moller himself, his statement admits it. To tie in all these other individuals then becomes a question of their participation in the killing. Eichel, Kiwitt, Albrecht and Geehrendt were not there at the scene of the killing, although Albrecht and Geehrendt were not too far away, but Eichel and Kiwitt were not anywhere near the killing. That is the testimony of Moller. Moller says in one statement that Albrecht orderdd it done; in another statement which is also in the record, he says Eichel gave him the order. Now, the only other thing that ties Eichel in with that killing is first, the testimony that he was there at the police station and outside of the police station, prior to the departure of the flier; testimony that he knocked a cigarette out of the victim's left hand, and Moller's testimony that he gave him the order, and some testimony that Eichel made some statement to the crowd -- "this man is one of your murderers." That is all there is with respect to Eichel.

With respect to Kiwitt there is a great deal less. Nobody claims that Kiwitt gave any orders in this matter whatsoever. He was present prior to the departure of the flier from the station, nothing more. Albrecht is tied in with this murder, this killing, first by his presence, going behind them; by Moller's testimony that Albrecht gave an order and by some testimony from some man by the name of Gluck.

There is nothing that ties Geehrendt in with this killing whatsoever except the fact that he was one of the four people who went along. The evidence is he came into the police station just about the time the flier left the police station; that the order to him was to "come along". That order came from Albrecht to come along and he went along. There was a dispute as to what the translation was. We will rest on the assumption that the real translation is, "He's done us a dirty trick."

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The case of No. 8, may it please the court, is somewhat entirely different from the others. The testimony of all of the witnesses for the prosecution is that the victim made an attempt to escape, that he made an actual break, and at the time he was shot he was actually in flight, ahead of all his pursuers.

PROSECUTION: I do not quite understand. Did you say the testimony of all of the witnesses in this case was to that effect?

DEFENSE COUNSEL: That is what I said.

PROSECUTION: I take exception to that.

DEFENSE COUNSEL: I think the time to do it is when your time comes. That is my memory.

PROSECUTION: I take an exception to the misquoting of the evidence before this court.

DEFENSE COUNSEL: May it please the court, it is inevitable that I am going to make some misquotations of the evidence. I said when I began that I could not possibly remember it all, and I am relying on the court to disregard any statement I make which the court knows is in error.

He was shot by Hammann from the rear while Hammann was in pursuit of the man who was shot.

So far as Fay is concerned, the evidence is only that he fired a pistol. I am not sure whether the evidence was that he fired it in the air or not, but after the victim made a break and was in actual execution of his attempt to escape.

I do not remember what the evidence is of Hausmann, but he never fired on anybody. At least in this case he did not fire on the victim.

Eichel was present there, but that was his command post. There is some evidence that somebody told him about this flyer having been shot while attempting to escape, and that Eichel said "Gute", and that has been twisted to mean to this court that he said it in the sense of satisfaction, that it was a grand thing, Gute. The German word "Gute" means the same thing that the word "Good" means. Every member of this court has used it time and again when he has received a report from a subordinate. He says "Good". That simply means "Thank you for your report". It does not mean that you approve the report or that you are expressing an opinion or a sense of satisfaction about the contents of the report. It is merely acknowledgement. So they have not got Eichel tied into this case at all.

Kiwitt is not tied into the case at all; Hausmann did nothing in the case at all; Fay shot at a man trying to escape; Hahrgang admits killing him,--Or maybe I have got the names twisted--while attempting to avoid the escape, and the map shows that at the time of the fatal wound the victim was practically out of the compound and already on the open road.

I would like to make one more comment with respect to Charge 8, and that has to do with the autopsy. According to the autopsy this man was shot from the front, and I think this would be the right chest. The right side of the chest, anyway, with the exit point on the left of the body, which is

the only evidence before the court to negative all the weight
of the other evidence that the victim was actually in headlong
flight at the time he was shot. There are two explanations
for that, both of them consistent with the rest of the
evidence.

There was testimony that at the time of the fatal
contact with the bullet the victim was on the road with open
fields to both sides. He could have, at the time of the hit,
actually turned, heading towards the open fields, which would
have turned his body in the direction of the fire, or else
the body of the victim identified in this case was not the
body that was shot.

I would like to call the court's attention to the
fact that the only identification in this case, as I remember,
is the same.
between the body upon which the autopsy was performed and the
victim of this shooting was that somebody remembered the name
Archibald--the first name Archibald. That is all there is.
So that there could very well be a case of mistaken identity,
as well as the fact that at that time he had turned and headed
to the open fields at the time of the shooting.

With respect to Charge 9, may it please the court,
the only evidence against Best is as follows: First there is
his statement, and, second, there is a statement by Goss
mentioned in the case. Best says that he was a messenger
delivering an order from Stroop to Goss with respect to a
flyer that had been captured, and that the order was to kill,
but that that particular flyer had been delivered to the
Wehrmacht. So there are two things: First of all, he did

not give an order. He was a messenger--a staff officer--or conveying a message from one command to another. That is all he did, and that thing which he did do referred to an individual who was not hurt--who got away. And then there was the second statement that the second flyer was killed on the strength of Stroop's order, but that was the order which East brought down referring to some other individual. That is all there is to it, may it please the court.

The argument with respect to No. 10, may it please the court, we have made in No. 6, and I will not take the time of the court to repeat it.

Paragraph 2 was added to this motion with a view, particular thought in mind. The language of all three charges is the same. It says that they did wilfully, deliberately and wrongfully encourage, aid, abet and participate, four or five different words each meaning something different.

The law of the land with respect to principals first, the first and second degree, with accessories before the fact, with aiders, accomplices, abettors and participators is somewhat at variance, so that we of the defense could not with any degree of certainty calculate just what offenses were charged therein. Whether or not a man could be found guilty of Charge 3, for instance, of murder in the first degree or of the second degree, or as an accessory before or after the fact, or what. So we made our motion for findings of not guilty, which I have already argued, and because of that misunderstanding or lack of understanding on our part we have made the second motion, which asks for findings of not guilty on the charge of murder.

For instance, take this case of East, who brought

this order down with respect to another man, and that order was used as the basis for killing a second individual. We ask the court to find that Best in that case was not guilty of the crime of murder. That is what we are asking in the second charge, and by analogy we are asking the same sort of thing with respect to the other named individuals in the various charges in which they are named. For instance, we are asking you to find Semmes not guilty of murder in all charges from 5 to 10, and that is in the event the court denies our motions for findings of not guilty, criminality than the or [illegible] so-called orderer. In our own mind we could understand how a court might refuse motions for a finding of not guilty on those charges, because they feel there was some slight responsibility, but the court could deny that motion and at the same time allow the motion for a finding of not guilty of murder, and those cases by analogy apply to all the individuals named therein. [illegible] at this [illegible] That completes our argument, may it please the court, subject perhaps to a request that we might add something by way of rebuttal. [illegible] with [illegible] defendants [illegible] fact [illegible]

PRESIDENT: Court will recess for 20 minutes.

(Whereupon at 1000 hours the court recessed until 1020 hours.)

[illegible] number "primal [illegible] [illegible] the [illegible], procurator [illegible] of [illegible] [illegible] right to [illegible], many things [illegible] [illegible] the case.

[illegible]

(Thereupon court reconvened at 1030 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Frost, who is absent sick, all the accused, the reporter and interpreter are present.

The prosecution, in answering the motion by the defense, would like to point out to the court at the very outset that the defense in this court, and perhaps in many of these courts in Dachau, forget that a war crime killer has a greater degree of criminality than the ordinary so-called murderer, so that when the defense refers to murder and the elements of murder, we drift away from war crimes.

Our English Common Law surrounds the defendant with great many protections. For example, in murder, very definite elements must be proven conclusively beyond a reasonable doubt. Under our English Common Law we have available to us for the defendant certain safeguards, but this type of crime is an unusual one. It comes from war and the rules to be applied are different.

Recognizing the enormity of the offense with which these defendants are charged and the difficulties in obtaining evidence because of the fact that the evidence necessarily comes from a war or wartime area, the Nuernberg Tribunal and those authorities who laid down the rules, prescribed rules of evidence that give the court the right to take many, many things into consideration in determining the facts in the case.

The government of the United States and in particular, these people of the United States who are the relatives of the families of Duke, Lumley and Garrison -- and you must not forget them -- have charged me with the duty of presenting everything that we can possibly get, and that is what

we are doing. The court should bear with us and consider every fact that has been made available to us through the processes of investigation.

Now, conceding for the sake of argument that this might be a charge of murder, I recall that from the principles of law that I know on the subject, that back in the States and in the British system, if I go into a house to kill a man in his bed and my associate stands downstairs as lookout, he will hang with me.

Now, as I mentioned yesterday, with respect to Ohlendorf, it is definitely a fact that at the time he was commanding officer of the SD, the conspiracy had been formed. Ohlendorf never denied that he was a colonel and experienced in police matters, and with his knowledge of the desires and aims of the High Command in Berlin, cannot be said to be a mere inactive

quantity and free from the responsibilities of the criminal acts of the organization to which he not only belonged but in which he belonged as a commanding official.

Now, if the court will recall the statement of Hollenbreich, Exhibit P-30. Hollenbreich said, talking about a particular order:

> "It is not the duty of the police to protect bailed out terror fliers from the excesses of an enraged population. Intervention on the part of the police was unequivocally forbidden. In the discussion which followed the reading of this decree, Semann, who at that time was inspector of the Security Police and of Corps Area XII, made an unequivocal addition, which could be interpreted only as an order to shoot."

Hollenbroich says that Semann said:

> "It is understood that I do not want to hear that we, the Security Police, have turned fliers over to the air forces or that at public gatherings, one of us would be soft enough to turn his gun over to someone else. We can find all kinds of possibilities during the transport."

That is Semann himself speaking.

Christmann, in Exhibit P-34, says this:

> "I can fully confirm the substance of the statements made by Hollenbreich, but I believe that Semann, as far as the meaning is concerned, did not only issue one order but two orders, which both represented directives given by the Fuehrer and were signed by Himmler."

"As far as the meaning is concerned I can recall that Somann did not wish the Security Police to turn any fliers over to the armed forces. In substance he said approximately the same as did Hellenbroich in his statement."

Let us look back at the Yamashita case. Yamashita had a large army under his command, many millions of troops. It would have been impossible for Yamashita, while he was in Luzon, to be in Bagaio at the same time. Yet, the court said that by reason of his position and rank, the fact that it was war and he was a commander, a man of authority, and had some power to control these things, he is responsible. Even if he does not physically stop it himself, he is responsible for not putting in measures while he is in office to prevent these things. What did Somann ever do? Did he ever do anything to prevent this? No, he issued orders of his own.

Now, the actual murders of the nine fliers, some named and some unnamed, which resulted from the scheme and plan, we contend we have proven beyond a reasonable doubt, though at this point in the case we have only been required to submit substantial evidence, which, together with reasonable inferences therefrom and all applicable presumptions, fairly tends to establish the elements of the offense.

We ask the court to remember -- and we have said this many times in the trial -- that Charges III to X must be taken together with Charge I and considered as a whole. By taking the evidence in support of Charge I and combining it with the evidence of Charges III to X, a pattern is discovered -- the pattern of criminality. The fabric is discovered, -- the fabric by which it was constructed. The machinery that was set in motion is described and the results obtained are here established. Charges III to X concern themselves with actual killings, here supported and strengthened by more evidence than is usually offered in a case of this kind.

I pointed out yesterday, and I will repeat briefly now the four

types of evidence in each charge: The circumstantial evidence, the evidence of eye witnesses, the voluntary sworn confessions or statements, or admissions against interests of the perpetrators, and the proof of corpus delicti, -- the dead body, named or unnamed.

The court has been furnished with a Memorandum of Law by the defense. I would like to make one or two comments about that. There is a statement in paragraph 3 of that Memorandum of Law that says that the accused's written statements are the only evidence in this case. Of course, I am sure that was a mistake and was not meant to be stated in that way. The evidence was overwhelming; there were 40 witnesses in this case and 140 documents, pictures, charts and pathological reports.

There was a statement of law which I am sure was unintentionally put in the Memorandum of Law as a mistake, and that was the statement appearing in the Memorandum of Law in which a quotation from Underhill on page 567-569 was given. It was quoted in the Memorandum of Law this way:

> "....but it is in reversible error for the confession to be received before the proof of corpus delicti...."

The quotation should read:

> "....but it is not reversible error...."

The word "not" was left out. I am sure that was a mistake.

The prosecution would appreciate it greatly if the court would read the other statements in that book on page 568. I will briefly mention a few of them:

> "If facts are shown from which the jury may infer that the crime has been committed, any other evidence tending to implicate the accused is thereby rendered inadmissible."

> "Evidence tending to show that the defendant intentionally ran an automobile against the deceased held sufficient evidence of corpus delicti to admit inculpatory statements."

> "The finding of a person dead from wounds not self-inflicted establishes corpus delicti, which admits the statement of the defendant."

> "The testimony of an accomplice may sufficiently prove corpus delicti to warrant introduction of admissions or confessions."

"As a predicate for receiving confession, corpus delicti is sufficiently shown by prima facie evidence. Proof beyond a reasonable doubt is not required."

"In homicide prosecution the corpus delicti is sufficiently established to render admissible defendant's extra-judicial confession where prima facie evidence establishes that deceased met death through another's unlawful act, though such act is not traced to the accused."

There is much evidence in this case, -- the record is voluminous. I do not want to take the court's time by analyzing it page by page. However, I would like to point out one or two things. A point was made about one or two cases where there seems to be an inference that the flier was the guilty one in attempting to escape. Well, let us look at the particular one I have in mind, which is shown on the chart in the courtroom. I have never seen a better case of staging an attempted flight. They shoved him and said, "Heraus, get going, get up there." Prior to that, the court must remember the flier had been down to the police station where he had been stripped of his possessions and two policemen took him out on the road and he was met by two armed men. He knew that certain death met him. Then they went a step further and they pushed him into that command post in the very right corner of the diagram and fired shots at him. The poor devil took one or two steps away. Would you not do that? I certainly would. He was not a prisoner of war then, and he knew it. They cornered him and shot him down like a rat.

Just to touch briefly on one or two other points with reference to Lassak. The defense gets up and says the only evidence against Lassak is his statement. That is an example of the type of argument the defense has been making, -- he has only been convicted on his own statement. If the court will turn to page 244 of the record, you will see the testimony of Kuenk:

"Question: What was Mr. Lassak's position there in Giessen?

"Answer: He was police director, SS colonel.

"Question: What occurred after you got to the police station?

"Answer: I went with the flyer to the basement. In the hallway it was half dark, and we moved only slowly. Lassak followed us, and since we moved slowly he pushed the flyer to the side and opened the door so that we could enter the orderly room.

"Question: What do you mean by 'he pushed the flyer to the side'? Be more definite.

"Answer: The hall is very narrow, and he wanted to pass between us, so he rushed him to the side so that he could pass us.

"Question: Then what happened?

"Answer: So I entered the room and the entire staff was waiting there. I intended to report to the commander that I had taken the flyer at Nerburger Street from the people, but I was told immediately to leave the room again. At this moment something flew against the table. I turned around and saw that the flyer had been pushed by Lassak, who wanted to pass by. I left the room immediately then with the flyer and waited outside with the flyer. A short while later Mr. Lassak came out again and said, 'He comes, the flyer comes to the Gestapo for interrogation.' Since we were still standing in the narrow hallway, he told the flyer, 'Get out of my way', and went up the stairs. Approximately six, seven minutes later he called into the cellar the flyer should come upstairs. I went upstairs with the flyer, and there was an employee of the Gestapo, and Lassak said, 'This is the man.' ....The flyer had walked a few steps and since he was alone and turned around once, so I thought maybe the crowd was still excited, so I thought it is better I accompany him to the Gestapo. At the Gestapo I went with him up to the stairs, and there I saw they were already waiting for him, and they said, 'He will be brought to Brenner.'..."

And then Branner admits that he did the killing. Now, by any stretch of the imagination, can this court take Lassak out of that picture?

When we talk about Lassak and people like Hoehler, for example, it occurs to me that they played roles we are familiar with from reading accounts of murder and crime committed elsewhere and that we know as lawyers, have been brought before courts many, many times in this form. A man who is on the look-out for a murderer is equally guilty. Hoehler drove the car. He drove the car and took the murderers to the place where the murder was committed. In any jurisprudence, in any court of law, that would be accepted as the man being an actual participant. It takes only one bullet to kill, but sometimes you have to have four or five people cooperate to see that the deed is done. Hoehler, for example, took a very active part.

Rohrgang tries to tell that he had nothing to do with it, but you recall he said in his statement that he was the superior officer of those other men and he did nothing to prevent it. Some of those men did not fire shots, but certainly, they had positions of authority and they did nothing to prevent what happened.

Now, with respect to the second paragraph in that motion, in recent days we have heard of an expression which I think is very apropos It is applicable to this situation. A few years ago, there was broken up a combine of men, and they were labelled, "Murder, Inc." The board of directors, Streop and Seaman and Trussler, are right over there right now. The agents of the corporation, the vice president, treasurer and secretary, were the trigger men. There they are. They carried out the board of directors' wishes. And also the stockholders back there, who contributed and who were interested in the results of the venture. They are just as much a part of that corporation as the board of directors and the vice president and the treasurer, and we know that situation is comparable to this. Suffice it to say that the prosecution urges upon this court that it has made out a prima facie case.

DEFENSE COUNSEL: We have been trying, may it please the court, to keep out of our argument any aspect of appeals to the emotions, of emotional argument. I don't intend to get down to that now. It is a commonplace that two lawyers, or sometimes half a dozen, can take the same case and squeeze out of it interpretations to suit each one of them. The Yamashita case, now, that case said plainly that Yamashita was guilty because he was in command at the time these things were done, and irrespective of what he might have been able to do to stop it, he tried nothing. That is all that case decided, and how can that case be quoted as authority to convict Seaman, who was three or four hundred miles away at the time these things happened.

The prosecution says to the court that Seaman should be found guilty of seven murders on the statements of Hellenbroich and a man who escaped because he didn't have the courage to face the accused. The rules of evidence in this case have been changed, there is no question about that, because of the exigencies of war. But the rule that a man has to be found guilty beyond a reasonable doubt has not been changed, and that is

still the law. This court still can't convict on surmise or suspicion or by an appeal to the emotions; "how dastardly these crimes were." They were, they stunk to the high heavens, but they were no more murder than the murder of Lindburgh's baby was. Murder is still murder, it doesn't make any difference how it was done or who did it, and the law is still the law.

I have one more thing and I am through. Germany was over here. Four of these murders were committed by people over there. The argument I made for Trumler, that he had to be found not guilty of four murders, or four charges, because they were committed by people over in the lower lefthand corner over whom he had no control applies equally to Hossann. I ask for the court's judgment.

I request permission for Mr. Rachael to address the court briefly with respect to Charge VIII.

PRESIDENT: Permission granted.

MR. RACHAEL: I listened with amazement to the description of the prosecution of what happened over at that court. He referred to the area as a stage and the people in it as actors with a pre-rehearsed plan. He said also that he had four characteristics of evidence which he used voluminously, he says, to prove guilt of the persons charged in Charge VIII. Circumstantial evidence -- there isn't a bit of it. Every bit of evidence in Charge VIII came: one, out of the mouths of the prosecution witnesses, live witnesses; two, they came out of the accuseds' statements; three, they came out of what was purported to be a proved corpus delicti. There was no circumstantial evidence. What happened there is very simple and very logical. Two policemen brought a flier down the road and they were taking him to Bieber and there was an air raid. They wanted to protect themselves from the air raid and so they came to the closest shelter, and when they found out there was an air raid shelter

up where it says, "Shelter Eichel Command Post," that was where they wanted to take this prisoner to protect themselves. They had the prisoner with them and they were supposed to guard him, so those policemen went with Fay, who knew the area and who knew those dangerous steps down there to the command post. Then their own evidence, the confession, says that the flier hit Fay on the chest and made a break, and Fay shot two shots after him. Now, if that was a pre-rehearsed plan, why would Fay shoot two shots at a flier and miss him? Why would he miss him? He had a chance, right close to him, to shoot the flier, but there was no pre-rehearsed plan and it is not what the prosecution is trying to tell you happened there. The flier made a break. The shots were fired and missed and then what happened? The one who did the killing, who was not even there and not even knew what happened, but who only heard that the flier is escaping, runs out of the guard room unarmed and takes the gun away from a guard standing at Point B and is chasing an escaped flier. Now, under any rule of law, whether it be military law or civil law or any kind of law, if he is chasing an escaped flier — which he has a perfect right to do — and the flier is about to take off into the woods, and he aims on a dark night and hits the flier and kills him, is that murder? He couldn't possibly have been guilty of murder. And Fay, who was not even there, who himself was hit on the chest by the escaping flier, and Nahrgang, who was not even around, he was in the guardhouse when this happened, and where was Eichel? He was in the command post. He didn't even know what was going on. And they are saying that that is murder? I will stop, if the court please.

PROSECUTION: I hope the court will not forget that Eichel sent those two policemen out there to have this man shot. The evidence is all clear on that subject. It was not a convenient air raid situation. I agree with the defense that it was not murder; it was killing by a war criminal. It was a war crime, greater than murder.

(Whereupon the Court opened at 1335 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Prosecution, all members of the Defense, except Dr. Trost, who is absent sick, all the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: May we ask the Court to recess in place for two minutes while we pull the tables out?

PRESIDENT: The Court will recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: The Court will come to order.

The motion made on behalf of some of the defendants for a finding of not guilty of certain charges and each branch of said motion is denied.

DEFENSE COUNSEL: Before I proceed with the introduction of Defense's evidence, I would like an opinion from the Court. Some time in the course of the trial, we will have character testimony to offer, and it occurs to the Defense that the best time to offer that would be after the findings--between the findings, such as they may be, and sentence. That's the course we would like to follow.

CAPTAIN VANCE: We will object to that, because if the Defense puts the character of these accused in issue and attempts to prove good character, then we will attempt to prove bad character. If both the Prosecution and Defense have rested, then we would not be permitted to put on any testimony.

DEFENSE COUNSEL: The right of the Prosecution to put on rebuttal testimony as to character would not be taken away. If there is any legal question about this right to do it after we put it in, we will stipulate that they may introduce such character testimony, if they desire.

CAPTAIN VANCE: May it please the Court, in answer to that, character is, in a way, a matter of defense. Under the laws here--the procedure for these courts--if both sides have rested and the Court has made a finding in the case, then the Court permits the accused to put on testimony in mitigation or extenuation as to go to punishment that may be awarded by the Court. If they are permitted to go into the character, they would be in effect going into defensive matters rather than mitigation. If the Defense so desires to put the character of these accused in issue, we have no objection whatsoever, but it must be brought up during the proceedings of the Court and not when the Court hears matters in mitigation.

PRESIDENT: The Court rules that character testimony must be presented by the Defense before the Defense rests its case.

DEFENSE: For the record, I want to state that the Defense waives its right to make an opening statement of a general nature.

The Defense will now offer Jurgen Stroop as a witness for the sole, limited purpose of identifying certain exhibits and certain explanatory matter with respect to those exhibits.

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JURGEN STROOP, an accused, voluntarily took the stand in his own behalf and made the following unsworn statement through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY THE DEFENSE COUNSEL:

Q May it please the Court, your name is Jurgen Stroop?

A My name is Jurgen Stroop.

Q Are you an accused in this case?

A Yes.

DEFENSE COUNSEL: The usual questions about address and age, I am going to waive because they were asked by the Court in preliminary examination.

I hand the reporter a document and request that it be marked Defense Exhibit 1 for identification.

(The document referred to was marked Defense Exhibit 1 for identification.)

QUESTIONS BY THE DEFENSE COUNSEL:

Q I show you a paper which has been marked Defense Exhibit 1 for identification only and ask you to examine it and then tell the Court what this paper represents.

A This photostatic copy represents the organization and official channels of the SS and the police in my former area of duty.

Q Will you explain just a bit more what organizations are represented by that photographic copy--illustrated by that photographic copy?

A Do you want me to do this by this small copy, or by the big one there?

Q Just explain what organizations are shown on that chart--that and nothing more.

A Yes. It says here Reichsfuehrer SS, in his capacity also as Reichsminister of the Interior and Chief of the German Police. Then directly below it are the main offices of the SS.

Q Before going into details, Stroop, does it also show the organization of the Security Police and SD?

A Yes, on the right side, the organization of the Security Police and SD is represented, and on the left side the organization of the Order Police or Regular Police.

Q I call your attention to the fact that on the left side, it is composed of some additional sheets. Turning these things over, what does the right side of the sheet as you face it represent?

A As I see it now, as it is before me now, the right side shows the organization of the Security Police until 1 September 1944.

DEFENSE COUNSEL: I think the record should show that the two sheets lying on top of the chart have been turned over so that he is looking at the chart itself.

QUESTIONS BY THE DEFENSE COUNSEL:

Q Now, turning back one sheet, what does this chart represent?

A This represents the organization until 31 December 1944.

Q The organization of what?

A Of the Security Police.

Q Up until what date did you say?

A It says here until 31 December 1944.

Q Now, turning over to the top sheet, what is that?

A The top sheet shows the organization of the Security Police and the SD after January, 1945.

Q And how long did that organization and chain of command exist?

A Until the end.

DEFENSE COUNSEL: Now, may it please the Court, I offer this into evidence as Defense Exhibit 1 and ask that it be received as a chart showing the organization of the Security Police and the Ordinary Police, with the chains of command, channels of command, for the dates set forth thereon.

PROSECUTION: No objections by the Prosecution.

PRESIDENT: Defense Exhibit 1 will be received in evidence and made a part of the record.

(The document heretofore marked Defense Exhibit 1 for identification, was received in evidence as Defense Exhibit 1, is attached hereto and made a part of the record.)

QUESTIONS BY THE DEFENSE COUNSEL:

Q Now, I call your attention to the big chart standing up against the wall and ask you to tell the Court what that represents.

A This big chart on the wall represents the same thing. It is an enlargement of what I just had in my hand as a photostatic copy.

Q I show you Defense Exhibit 1 and ask you to tell the Court just what portion of Defense Exhibit 1 that big chart represents.

A It represents exactly what I have in front of me now.

DEFENSE COUNSEL: I ask the record to show that the witness by the remark "what I have in front of me now" refers to Defense Exhibit 1, with the two superimposed sheets turned over.

I ask that the reporter mark the wall chart Defense Exhibit 2 for identification.

(The wall chart referred to was marked Defense Exhibit 2 for identification.)

DEFENSE COUNSEL: I ask that the big chart be received in evidence, subject to withdrawal at the end of the case, as Defense Exhibit 2.

PROSECUTION: No objections by the Prosecution.

PRESIDENT: Defense Exhibit 2 will be received in evidence and permission is given to withdraw it after the trial.

(The wall chart heretofore marked Defense Exhibit 2 for identification, was received in evidence as Defense Exhibit 2.

QUESTIONS BY THE DEFENSE COUNSEL:

Q Now, beginning in the center portion of the exhibit, Defense Exhibit 2, Stroop, will you explain to the Court just what this chart indicates?

A The center portion deals with my job in greater detail.

Q Start at the top--what is this thing up here?

A Up there I see represented the Reichsfuehrer of the SS, the Reichsminister of the Interior, and the Commanding Officer of the Replacement Army.

Q And who is that individual?

A That is the former Reichsfuehrer of the SS, Himmler.

Q And directly underneath the bracket showing the office of Himmler, there is an arrow pointing to the squares here. Will you explain just what those are?

A This rather big rectangle represents the main office of the SS, subdivided into the individual main offices.

Q Take them one at a time. I direct your attention to this abbreviation here "Pers Stab". What does that mean?

A This means the personal staff of the Reichsfuehrer of the SS.

Q And the next one is the"SS Hauptamt". What is that?

A The SS Main Office used to include all the main offices, it was mainly a chart of organization.

Q What was it in 1944?

A In 1944 it was the old SS Hauptamt, main office, decreased in size. It's main job was to organize all the organisations of the SS.

Q The next bracket, "Personal Hauptamt"; what was that?

A The Personnel Main Office was in charge of working out all personnel matters, office of replacement, etc.

Q The next one--"Fuehrungs Hauptamt"?

A The "Fuehrungs Hauptamt", the Leadership Office, was the chief office of the Waffen SS.

Q And the next one, "Wirtschafts und Verwaltungs Hauptamt"?

A Economic and administration main office, for all matters concerning economics.

Q And the "Hauptamt SS Gericht". What was that?

A That was the chief legal office in the SS under the Reichsfuehrer of the SS.

Q And the next one, "Rasse und Siedlungs Hauptamt"?

A The next one--the race and settlement main office. It was particularly in charge of working out problems arising from the SS marriage law and to work on the personnel files of every SS man who was admitted.

End ta 120, pls fols

Q And the next one, Reichskommissar?

A The next one, the Reichskommisar for the Fortification of the German Nation, was in charge of taking care of German nationals who were resettled in Germany proper from foreign countries.

Q And the next one?

A The next one, Main Office for Welfare of German Nationals. They were in charge of the welfare of all German nationals.

Q And the last one?

A The last one, Main Office Meissmeyer, was primarily in charge of taking care of Nationalist Socialist schools.

Q I call your attention to this heavy line from the Main Headquarters to the Reichssicherheitshauptamt, and likewise to the heavy line from Himmler's office to the Hauptamt Ordnungspolizei. What does that heavy line signify?

A These lines represent the channels of command to these main offices.

Q The channels of whose command to whom?

A From the Reichsfuehrer of the SS office to the Reichshauptamt and the Reichssicherheitshauptamt and the Hauptamt Ordnungspolizei.

Q According to that chart who was the commanding officer of the Ordnungspolizei?

A General Wuennenberg was the commanding officer of the regular police.

Q Was he the commanding officer of the regular police throughout the years '44 and '45?

A Yes.

Q And who was the ranking officer of the Reichssicherheitshauptamt?

A General Kaltenbrunner.

Q And was Kaltenbrunner the ranking officer of the Security Police during the years '44 and '45?

A Yes.

Q Now, these two lines we are talking about, the one from Himmler to Kaltenbrunner and the one from Himmler to Muehlenberg -- when you say that these are the channels of command do you mean by that that Himmler was in command of the Ordnungspolizei as well as the Security Police?

A Yes, he was the chief of the German police.

Q Now, coming down underneath the various subdivisions of Himmler's office, there is an arrow which points to Hoeherer Polizeifuehrer Stroop. Is the Stroop mentioned there yourself?

A Yes.

Q Now, limiting our questions to the years 1944 and '45, did you occupy the office of Higher SS and Police Leader during these two years?

A Yes.

Q Now, beneath the bracket referring to your name are the words "Rhein-Westmark". What does that mean?

A That is a description of the area of which I was in charge.

Q Both on the lefthand side and the righthand side of the bracket bearing your name are four squares or a total of eight. Will you explain them to the Court beginning with the one on the lefthand side marked "Adjutant"?

A Yes. As the name indicates, the first square indicates my adjutant. The next one, IA, representing one office, GS. I might say, the Operational Section. The next square says Reichskommissar for the Fortification of the German National. That is a sub-office of the one that I have already explained above.

(Stroop-direct)

Q Which one?

A Of the main office, Reichskommissar for the Fortification of the German Nation, the third one from the right.

Q Now the one, "Werwolf".

A Werwolf was an office in charge of Werwolf matters in my area.

Q Remaining with the Werwolf for the time being, will you point out to this court if on the chart the top headquarters of the Werwolf is indicated?

A Yes, it is to be found between the Main Office for the Order Police and the Personal Staff of the SS.

Q Will you read what it says there?

A It says Werwolf SS Major General Prutzmann.

Q Now I call your attention to the heavy black line from Himmler to the Werwolf. What does that indicate?

A That means that General Fruetzmann, who was the chief of the whole Werwolf in the Reich received his orders directly from Himmler.

Q I call your attention to a heavy black line underneath the bracket "Fruetzmann" which goes to the square containing your name and ask you what that line means.

A That means that the communications and the orders coming from Major General Fruetzmann went through my office.

Q The orders respecting what?

A The instructions concerning the Werwolf.

Q Turning to the four brackets on the righthand side, will you explain to the court -- no there are five of them -- what they are?

A The Nachrichten Fuehrer was in charge of maintenance of all facilities needed by the Higher Police officers and in charge of

(Stroop-direct)

extending those, also.

Q And the next one?

A The next one was the Administration. They were in charge of all administrative matters.

Q And the next one?

A The next man again is the man in my staff who was a representative of the Race and Settlement Main Office. That is a sub-division of the fourth main office from the right, the Race and Settlement Main Office.

Q And the next one -- Fuersorge?

A The Welfare Department was in charge of all welfare matters, particularly as far as the relatives of SS men killed in action were concerned.

Q And underneath that?

A The Personal Section was in charge of personal matters for the Higher SS and police officers as well as for the SS Chief of Rhein-Westmark.

Q Right underneath the bracket bearing your name is one using the words "Stabsfuehrer Oberst Schluns." What is that?

A This Colonel Schluns was my permanent deputy as commander of the main section of the SS in Rhein-Westmark.

Q What does the bracket "Oberabschnitt, Rhein-Westmark" mean?

A That square means that in my area there also was a main sector, Rhein-Westmark, of the Allgemeine SS. I was its leader as well.

Q Now, from the bracket bearing your name there is a heavy black line going down here to Hoeherer Kommandeur der Kriegsgefangenen. What does that mean?

A At the time at which the then Reichsfuehrer of the SS became the commanding chief of the prisoners of war the higher SS and police

(Streep-direct)

leaders became the leaders of the prisoners of war.

Q Can you tell the court when that was?

A As far as I remember in October '44, I believe on October 1st.

Q So that beginning on or about October 1, 1944 you were in command of the prisoners of war within the Rhein-Westmark area, is that correct?

A The higher commander, yes. If I might explain this right now, the commander of the prisoners of war who until that time had been in the 12th Corps, joined my staff and became the commander of the prisoners of war.

Q Then, underneath the bracket "Higher Commander of the Prisoners of War" is another one, "Commander of the Prisoners of War" and also the one here, "KGF Lager". Will you explain that.

A That is what I was just talking about. That is what I just explained. The commanding officer of the prisoners of war, a Major General of the regular army, joined my staff and through that means he, as well as all the other Kriegsgefangenen prisoner of war camps, came under me.

Q This KGF merely typifies prisoner of war camps?

A Yes.

Q I call your attention to a broken line between the word "Westmark" under your name, to this bracket, "Gerichtsherr des SS u. Polizei-Gerichts." Will you explain that.

A There also existed an SS and police court for my area. I was the chief of this court.

Q As the chief of the court what were your duties and responsibilities?

A Prior to any action being taken by this court the papers would be put before me and after any business had been transacted by the court it would be submitted to me to be countersigned or confirmed as the case might be.

(Savage-direct)

Q Do you mean by that that you were the reviewing authority of the decisions arrived at by the SS courts?

A Yes, the SS judges had to present their matters to me and I had a choice of either countersigning or refusing to do so or to let matters go on.

Q The little bracket underneath with the words "SS u. Pol. Gericht". What does that mean?

A This indicates the existence of this SS and police court about which we have been talking.

Q Going back to yourself -- the chain of command includes your adjutant, then goes down through the Oberabschnitt, Rhein-Westmark. What are those three lines forming a triangle which lead to the Abschnitt Frankfurt, Abschnitt Saarbrucken and Abschnitt Koblenz? What do they mean?

A The SS main sector Rhein-Westmark was subdivided into three sectors.

Q Do I understand you that the Rhein-Westmark area which was your jurisdiction had the German word or the German title "Oberabschnitt"?

A Yes.

Q And the Abschnitte of Frankfurt, Saarbrucken and Koblenz are the three sub-divisions of the Rhein-Westmark?

A Yes.

Q Did these three Abschnitte have someone in charge of them?

A In peacetime an Abschnittsfuehrer would be in charge of each Abschnitt or sector.

Q Was this Abschnitt a peacetime organization?

A Yes, that was built for peacetime.

Q Was it carried over into wartime?

A In wartime the organization kept existing but almost all the men were drafted as soldiers and the offices of the Abschnitt sector leaders were not filled.

(Streep-direct)

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Q Then under each Abschnitt you have three lines forming a triangle. What do these lines mean?

A That means that there were three SS regiments for every sector, three regiments on foot.

Q Were they located in any particular place?

A The headquarters of the regiments were but the regiments proper were distributed over rather large areas.

Q Now, going back up to the left-hand side, there is a heavy black line going directly down from the Hauptamt Ordnungspolizei (Orpo) to a bracket marked "Befehlshaber der Ordnungspolizei". What does that bracket represent?

A It represents a direct line of command from the Main Office of the Regular Police to the commanding officer of the Regular Police.

Q Is the area represented by that office or commanded by the Befehlshaber, Rhein-Westmark, analogous to the area over which you had command?

A The area of command of the commanding officer of the Regular Police was the same.

Q This heavy black line that goes from the bracket including your name down to the bracket "Befehlshaber der Ordnungspolizei", what does that line indicate?

A This indicates the channel of command from the Higher SS and police leader to the BDO, commanding officer of the Regular Police.

Q So that in addition to the direct line from Himmler to General Juennenberg, that channel of one and, there was also one from you to the Befehlshaber of the Ordnungspolizei in Rhein-Westmark?

(Strop-direct)

A Yes, but the main channel of command, of course, was from the Reichsfuehrer to the Main Office of the Regular Police, to the commanding officer of the Regular Police.

Q Was there any distinction in the orders which went from Himmler direct to Wuensdorf and then down the line? Were they different in any way from the orders which went from Himmler through you, through the Befehlshaber of the Ordnungspolizei?

A Well, the difference consisted of the fact that of course all orders did not go through me.

Q Would there be any distinguishing factor to determine which orders went through you and which did not?

A You might say that all matters concerning personnel or less important orders would not go through the Higher SS and police leader but through the Main Office for the Regular Police.

Q Underneath the office of the Befehlshaber of the Ordnungspolizei there is an arrow directed to the Chef des Stabes. Will you explain what that is with all the words under it?

A These boxes below there represent the same sub-divisions as there are in the boxes around my name. You might call it the working staff.

Q In other words, they are the staff of the Befehlshaber of the Ordnungs polizei; just as you had a staff?

A Yes.

Q Was the Ordnungspolizei made up of different types of police or were they all of the same class?

A No, there were different ones. There was a Protective Police and the Flood Police, the Fire Protection Police, Air Raid Police.

DEFENSE COUNSEL: I think you translated Wasserschutzpolizei as Flood Police. Shouldn't that be Water Protection?

A Yes, but the main channel of command, of course, was from the Reichsfuehrer to the Main Office of the Regular Police, to the commanding officer of the Regular Police.

Q Was there any distinction in the orders which went from Himmler direct to Woermannberg and then down the line? Were they different in any way from the orders which went from Himmler through you, through the Befehlshaber of the Ordnungspolizei?

A Well, the difference consisted of the fact that of course all orders did not go through me.

Q Would there be any distinguishing factor to determine which orders went through you and which did not?

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DEFENSE COUNSEL: I think you translated Wasserschutzpolizei as Flood Police. Shouldn't that be Water Protection?

(Streep-direct)

THE INTERPRETER: Water Protection Police.

QUESTIONS BY DEFENSE COUNSEL:

Q Coming over here on the lefthand side, NSDAP, Bormann, what does that represent?

A Bormann was the business manager of the National Socialist German Workers Party.

Q Is that the same as the Nazi Party?

A Yes.

Q Coming down under Bormann where the words "Personal-Union des Gauleiters" are and with the word "Gauleiter" underneath, explain that.

A The Gauleiters were the representatives of the Nazi Party for certain areas of the Reich.

Q Did the Rhein-Westmark area have a Gauleiter in it?

A Yes, three.

Q And they were what?

A The Gauleiter of Westmark, the Gauleiter of Hessen-Nassau and the Gauleiter of Moselland.

Q What were the areas over which the various Gauleiters had control?

A The Gauleiter of Westmark was Burckel.

Q I don't mean their names. What area did he have, what was it called, did he have an area for himself?

A Yes, the so-called Gau area, Hessen-Nassau.

Q In other words, each Gauleiter was in charge of an area called a Gau?

A Yes.

Q And the red lines from the word "Gauleiter" to the word, "Kreisleiter", what does that indicate?

(Stroop-direct)

A The Kreisleiter, as you can see, was in charge of a Kreis, a district, for political affairs, and they were directly under the Gauleiter.

Q You mean by that that each Gau was divided into districts and each district was headed by a Kreisleiter?

A Yes.

Q Underneath the Kreisleiter you have the red line including the "Parteidruck" to the line "Ortsgruppenleiter", what does that indicate?

A The district areas were sub-divided into so-called Ortsgruppen areas and the chief of such an area would be the Ortsgruppenleiter.

Q Coming back up to the bracket with the words "Personal Union des Gauleiters" I call your attention to the words "Reichsverteidigung Kommissar, Oberpresident and Reichsstatthalter, what do they indicate?

A In many cases, and Hessen-Nassau was one of those cases, the Gauleiter had some other job besides being Gauleiter. He could be the Reich Defense Commissioner, the President in Chief or the Reich State Representative.

DEFENSE COUNSEL: (To Interpreter) Reichsverteidigung Kommissar in English is the Reich Defense Minister. Did you translate it that way?

INTERPRETER: Reich Defense Commissioner.

Q What were his duties and responsibilities?

A To do everything to defend the Reich.

Q Does that mean against internal, external enemies, or both?

A Against everything.

Q What are the functions and the duties of Oberpresident?

A The Oberpresidents were the chiefs of the so-called provinces which existed in only a few cases any more.

Q In other words, the man who was Gauleiter in some cases also held these other three offices; is that correct?

A The other three as well.

Q Under neath the bracket Reichsstatthalter is an arrow pointing to Kommandeur der Ordnungspolizei. What does that mean?

A That was more or less a liaison officer of the Reichsstatthalter, for the commanding officer of the regular police, through whom he could transmit wishes or desires.

Q Just exactly what do you mean by that? Can you expand a little bit on that last answer?

A The Reichsstatthalter was in some cases entitled to give instructions to the Higher SS and Police Officer, but in most cases he could not contact this Higher SS and Police Officer directly but could transmit his desires through the commanding officer of the regular police.

Q In one of your gaus there was a man who was not only a gauleiter but also Reichsverteidigungs Kommissar and Reichsstatthalter, was there not?

A Yes, in the gau of Hessen-Nassau.

Q You mean by your answer that that man who was not only gauleiter but also Reichsstatthalter could give you orders?

A Yes. As I said, from the Reichsstatthalter to the Higher SS and Police Officer, meaning the Reichsstatthalter of Hessen-Nassau and Westmark.

DR. RAU: I object to the translation.

DEFENSE COUNSEL: I am sorry, that by-play missed me. I did not hear it.

PRESIDENT: Will you repeat what the translation was?

(Thereupon the last answer was read by the reporter.)

DEFENSE COUNSEL: If any of the associate defense counsel object to the interpretation, I wish they would say so to the court and not directly to the interpreter. Dr. Rau, if you have an objection direct yourself to the court.

DR. RAU: In my opinion, what the witness said was that "I, as Higher SS and Police Officer, was assigned to the gauleiters and reichsstatthalters of Hessen-Nassau and Westmark."

CAPTAIN VANCE: We would like to ask the interpreter if that is what he said. We do not speak German and have no way of knowing.

QUESTIONS BY DEFENSE COUNSEL:

Q There has been a difference of opinion as to the correct translation of your last answer. Will you please tell

the court which interpretation of your answer is correct.? (To the Interpreter: You tell him what the two translations were and ask him which is right.)

A What I was intending to say, if I can repeat it again precisely, was that I was assigned to the Reichsstatthalters of Westmark and Hessen-Nassau.

Q Will you explain just what this assignment meant?

A In the first place, assignment as far as the areas was concerned, and, in the second place, as far as instructions from these men were concerned.

Q To what extent did this assignment subject you, if at all, to the command of the Reichsstatthalter?

A Well, as soon as I became the Higher SS and Police Leader of Rhein-Westmark.

Q After you so became, what command jurisdiction, if any, did the Reichsstatthalter have over you in the performance of your office as the Higher SS and Police Leader?

A The Reichsstatthalter could give me instructions concerning the police. You might say, for instance, that the police was to do a certain job. He could submit all complaints he might have about the police.

Q Under the word "Oberpraesident" is an arrow which comes to a bracket marked "Regierungspraesident", and under that is "Stabsoffizier" and some other words. What do these two mean?

A The Regierungspraesident--government president--was the chief officer of a government district, and the staff officer of the protective police and the staff officer of the rural police were responsible to him for the execution of police measures within their district.

Q This arrow which goes from the Befehlshaber up to the Kommandeur der Ordnungspolizei: What does that line indicate?

A That means that the commander of the regular police was under the Befehlshaber of the regular police and received his orders from him.

Q In other words, this man here, the commander of the ordnungs police; had to take orders from the Befehlshaber der Ordnungspolizei and the Reichsstatthalter; is that correct?

A Yes. And he was more particularly the liaison officer.

Q Now, the Befehlshaber der Ordnungspolizei had to take some instructions from you, according to that line. He also had to take instructions from General Wunnenberg, according to this line. He also had to take instructions from the Reichsstatthalter, who at the same time was a Gauleiter, indicated by this line. What happened in the event that three of these officers gave him contradictory orders?

A If contradictory orders had been received in one place, the Reichsfuehrer of the SS would have had to make a decision.

Q Assuming that the contradictory orders came down to here, to the Befehlshaber, what would he do about it?

A The orders from the Reichsstatthalter and from who?

Q And from you and from Wunnenberg.

A Well, at first, at least, the Befehlshaber of the regular police would have to follow me.

Q And what happened later on?

A Well, that is merely a theory. That never occurred. But I suppose I would have had to ask the Reichsfuehrer for a decision or the Gauleiter would have done that, who had a direct channel of command to the Reichsfuehrer, since he was also the Reich Minister of the Interior.

Q I call your attention to three arrows, one coming directly down from the Reichsverteidigungs Kommissar to this point, one coming from the Kommandeur der Ordnungspolizei to this point, and one coming down through the Oberpraesident, all pointing to a bracket including three rectangles, Landrate, Oberburgermeister, and Polizeipraesidenten. Will you please explain these three brackets to the court?

A These rectangles further on down represent the subordinate offices within the police sector.

Q Explain "Landrats".

A The chief officer of a Landkreis--country district--was a Landrats.

Q And who was the Oberburgermeister?

A The Oberburgermeister was a chief of a so-called Kreisfrein Stadt. That is a city which was not under the jurisdiction of any Kreis or district.

Q And the Polizeipraesidenten?

A There were police presidents or police directors in these towns which were in charge of an Oberbergmeister. Which it would be depended on the cities.

Q I call your attention to the arrow crossed in red, pointing from Kreisleiter to the three brackets, Landrats, etc. What does that arrow in red indicate?

A That is supposed to indicate that the same Personal Union as existed frequently in case of a Gauleiter could also exist there.

Q In other words --

A I wasn't finished yet. And, further, the arrow is supposed to indicate the pressure from the Party which the Kreisleiter would exert on the district, particularly on those offices.

Q In other words, where in some cases the Gauleiter also held other offices, as indicated above, the Kreisleiter, in addition to being Kreisleiter, could also be the Landrats or the Oberburgermeister or the Polizeipresidenten; is that correct?

A Yes.

Q Underneath the Landrats you have a line "Gendarmerie Kreisfuehrer". What does that mean?

A Whereas in a city you would have a commanding officer of the protective police under the command of the police president--the police director--as the diagram indicates, you would have a district chief of a gendarmerie district--chief of the rural police--in country districts, who would be in charge of the rural police.

Q There is a line from Landrats to Burgermeister Gemeindepolizei. What does that mean?

A The Burgermeister in the small communities, in the small towns, was simultaneously the police authority, total police authority, together with the community police officials. Not state police officials, but community police officials.

Q This bracket "Gendarmerie Posten" -- What does that mean?

A That again was a state rural police man under the command of the Gendarmerie Kreisfuehrer -- rural police district.

Q Under the Kommandeur der Schupo you have two lines, one leading to the bracket Polizeireviere and another one to the Feuerschutzpolizei and Luftschutzpolizei. What does that indicate?

A That is the command responsibility of the commanding officers of the protective police in the bigger cities. These were the so-called Polizeireviere, police district, who were in charge of certain sectors of the town. The Feuerschutzpolizei, fire police, and Luftschutzpolizei, air raid/protection police, were similarly organized.

Q Will you explain once more the distinction between Gemeindepolizei, Gendarmerie, and Schutzpolizei?

A Yes. The Gendarmerie was the state police. The Schutzpolizei, protective police, was a city police, but also under the state supervision. And the Gemeindepolizei was a community police--the so-called community police.

Q I call your attention to the red arrow pointing from the Ortsgruppenleiter to the Burgermeister, another red arrow to the Gendarmerie Posten, another red arrow to the Polizeireviere, and ask you to explain the meaning of these three red arrows.

A These arrows are supposed to indicate that the Ortsgruppenleiter, being a political man who was around, had a very great influence on these other boxes--the town mayor, and the rural police stations, and the city police districts.

Q What do you mean by "very great influence"?

A Well, in every respect, because the Ortsgruppenleiter received their political instructions from the Party, and everything went on pretty well the way the Party wanted it to.

Q I call your attention to the fact that there is no channel between Himmler and Bormann, who was the head of the Party. Can you explain that?

A Well, that was probably ommitted intentionally. I don't suppose that this chart was made with the intent of representing the connections between Bormann and Himmler.

Q But, at any rate, Himmler, through the direct channel of command over Wunnenberg and through you, exercised control over the Ordnungspolizei; is that correct?

A Yes.

Q And that same channel of command functioned over the fire police, the air police, and the water police; is that correct?

A Yes.

Q And in addition to the command exercised by Himmler and Wunnenberg there was also a very direct chain of command over the Ordnungspolizei through the Gauleiter representing the Party; is that correct?

A Yes.

Q So that when you come down to the lower brackets you had individuals who took orders from the Party, from the heads of the Ordnungs police, and from Himmler directly; is that correct? By Himmler directly I mean through you.

A Yes.

Q Now let us turn our attention for a time over to this section of the chart. The first line we refer to is the direct chain of command from Himmler to Kaltenbrunner; is that correct?

A Yes.

Q And under Kaltenbrunner there were some seven subdivisions. Will you tell the court what each one was?

A Well, I can do this only sketchily, and in order to have the security police explained to you I request you hear Colonel Prummler and Colonel Somann, who know this in every detail much better than I would.

Q Then I will ask you just one or two more questions. Under the bracket "Kaltenbrunner" is a line which leads to another bracket, to the words "Inspekteur der SIPO und SD". What office was this?

A This line is supposed to represent the chain of command from the Reich Main Security Office to this inspector, with the exception, as these many lines indicate, that some of the orders would circumvent this inspector.

Q Limiting ourselves to one question: This Inspekteur der SIPO und SD--according to the map, who was that man at the time?

A According to this chart, applicable until 1 September 1944, it was the SS Colonel Somann.

Q What was the territorial jurisdiction, according to this map, under the inspector's office?

A That was the area of the Gau Moselland and Hessen-Nassau, so that area did not coincide with the area of my command.

Q Was his area larger or smaller than yours?

A Smaller.

Q This was the situation, as you testified, up until the 1st of September, 1944; is that correct?

A Yes.

Q Do you know when Somann first became inspector?

A I don't know when he first became inspector. I think it was in the beginning of 1943.

Q Can you tell the court when he ceased to be inspector?

A Towards the end of July 1944.

Q So that this map represents a period of time after Somann ceased to be inspector; is that correct?

A Well, the chart does include 1 September.

DEFENSE COUNSEL: Will you read my question, please?

(Whereupon the last question was read by the reporter.)

THE WITNESS: Yes. From the time when I left until 1 September.

Q There is a broken line between the bracket representing your name to the bracket of the inspector of the SIPO and SD. Will you explain that?

A I, as the Higher SS and Police Leader, was responsible for the internal security of my area, and the whole SS and the whole police, including the security police, would be under me if any internal disorders would break out. This broken line is to indicate that this chain of command between the Higher SS and Police Leader on one hand, and the inspector or commanding officer, security police, on the other hand, would exist only in such extraordinary circumstances; and, furthermore, if I may add, the inspector or the commanding officer, security police, were required to keep me informed, and that is the reason for this other broken line--the channel of information.

Q So that the police not only were subject to the orders of Himmler but were also subject to orders from the political leadership of the nation; is that correct?

A Yes, by way of the Reichsstatthalter.

DEFENSE COUNSEL: You may examine.

PRESIDENT: Court will recess for 30 minutes.

(Whereupon at 1500 hours court recessed until 1530 hours.)

(Whereupon court reconvened at 1930 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Frost, who is absent sick, all of the accused, the reporter and the interpreter are present.

DEFENSE COUNSEL: May it please the court, the defense requests permission to change the numbering of its first exhibit, which was introduced and marked in toto as Defense Exhibit Number 1. For the sake of easier examination I would like to offer this one sheet as Defense Exhibit 1, the next one as 1-A and the top sheet as 1-B.

CAPTAIN VANCE: No objection.

LAW MEMBER: Will you make that in the form of a motion?

DEFENSE COUNSEL: Yes, sir, I will make it in the form of a motion.

CAPTAIN VANCE: No objection.

PRESIDENT: Motion sustained.

(The documents referred to were marked Defense Exhibits 1-A and 1-B and received in evidence as Defense Exhibits 1-A and 1-B, are attached hereto and made a part of the record.)

JURGEN STROOP, an accused, voluntarily took the stand in his own behalf and made an unsworn statement through an interpreter as follows:

DEFENSE COUNSEL: I would like to ask a few more questions, may it please the court.

DIRECT EXAMINATION (Continued)

QUESTIONS BY DEFENSE COUNSEL:

Q Some time in 1944, did Himmler become possessed of any command powers over the army or any portion of the army?

A Yes, he became the commander of the replacement army.

(Stroop-Direct)

Q What date was that?

A I can't recall the exact date but I think it was in July or August 1944.

Q Now, at the beginning of your testimony you said that Defense Exhibit 1, 1-A and 1-B, which together comprise the entire chart, was an accurate representation of the organisation of the Security Police and the Ordnungs Police, as well as an indication of the various chains of command. Is that a complete description?

A I said so, but two lines on this diagram are missing.

Q I call your attention to Defense Exhibit Number 2, which is an enlargement of Defense Exhibit Number 1 and ask you to point out on Defense Exhibit Number 2 just where these lines should be?

A One line is missing from the main office of the Order Police to the higher SS and police leader, to my office.

Q You say there is a line missing from the Hauptamt, the Order Police, to your office. What type of line?

A There should be a black line like this one here (indicating). Most of the orders came from the Reichsfuehrer SS to the main office of the Order Police and from the main office of the Order Police to the higher SS police. Special orders came directly.

Q In other words, the general chain of command for the ordinary orders from Himmler to you came through Wuennenberg. Is that what you mean to say?

A Yes.

Q Are there any other things missing?

A Yes, furthermore, there is missing a line for a channel of command from the Reich Security Main office to my office.

Q What kind of a line?

A There should be a line like this one here (indicating) which should indicate that for information the Reich Security Main Office sent

printed matter and other matters to the higher SS office.

DEFENSE COUNSEL: Let the record indicate that the witness illustrates the type of line by pointing to a broken line which goes from "Streep" to a bracket including the word "Inspector."

THE WITNESS: A line from the Reich Security Main Office to the higher Security SS leader which should indicate that the Reich Security Main Office did give copies of information to higher SS police. I wish to stress the point in some cases, not all.

QUESTIONS BY DEFENSE COUNSEL:

Q Is there anything else missing?

A In order to make the map still more complete, a line could have been shown from the "Personal-Union Des Gauleiters", black-red, like this one here (indicating), from the "Personal-Union Des Gauleiters" over to me, since the Gauleiters in Personal-Union could give me orders too. If I am allowed to say so, I would like to bring to your attention furthermore that

here is the pressure of the Party. I want to say that the Party was the State and the State was the Party. You might say the Party had the spiritual leadership of the State, starting from Adolf Hitler as leader of the Party and the highest authority of the State, over Bormann, gauleiter and kreisleiter.

Q Were there ever times when there was a question in your mind or the minds of your associates as to just what the channels of command were?

A Yes, sometimes there were doubts, especially for this reason: That the position of the higher SS and police leader had not been legally determined. I know definitely that the Reichsfuehrer SS did not establish a legal basis for the higher SS and police leader because he wanted this position to develop by itself and possibly he intended to use the experiences gained this way later on to establish a basis for this position. In his opinion, the main job of the higher SS and police leader in the

beginning was to keep up the liaison between the Fuehrer and to coordinate police measures.

DEFENSE COUNSEL: You may inquire.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANC :

Q Stroop, who made the chart which has been introduced as Defense Exhibit 1 and Defense Exhibit 2?

A This map was worked out by several of us in meetings which we had with Colonel Berman.

Q Who furnished the information for this chart?

A It was like this: For the center part and for the part about the Order Police, I was mainly responsible and for the part of the right, that means Security Police and Security Service, the inspector of the Security Police was the responsible man.

Q You mean Bomann and Trumpler?

A Yes.

Q During direct examination you were asked what the block "Werwolf" meant and you said that pertained to Werwolf matters. Will you tell the court what Werwolf matters were in your command?

A The purpose of the Werwolf was to interrupt enemy supply lines and to furnish information from the areas which were occupied by the enemy.

Q Who was your officer in charge of this Werwolf?

A In my area, Major Best.

Q Didn't Captain Gunther precede him?

A Before Best, yes.

Q Did you relieve Gunther and put Major Best in command?

A You can't put it this way. Captain Gunther was not relieved,

but General Pruetzmann asked me whether I would not like to have Major Best for this job. When Best arrived it wasn't necessary for Gunther any more to be occupied in this matter.

Q Now, General Stroop, I am going to show you an organisational chart of the police and ask you who made this chart?

A As the signature says, I did.

Q Now, the large wall chart which was introduced by the prosecution is Prosecution Exhibit 14. Is that chart similar to the chart which you prepared?

A Yes, -- what do you mean by similar? I can't say offhand; I can't check it right away.

Q I will ask you, is there anything wrong with the chart Prosecution Exhibit 14?

A No, nothing is wrong, but it is incomplete.

Q In other words, the chart, Defense Exhibit Number 2, just goes more in detail than Prosecution Exhibit Number 14, is that correct?

A It goes more into detail too but I can't say, especially in regard to the Security Police whether it is correct.

Q Now, Colonel Berman asked you about conflicting orders that may come from various sources and I believe you stated there were no conflicting orders, is that correct?

A Oh, yes, about the question who has to make the decision?

Q Yes.

A Yes, -- I don't remember that such decision had ever to be called for.

Q All of these various headquarters were in accord and in harmony about these orders, were they not?

A May I ask which officers?

Q Himmler, yourself, Kaltenbrunner, Juennenberg, Somann and Brunnler?

A I can't answer this question because I don't know. Sometimes one found out that it was not the case.

Q Could you explain to me again what the dotted line means running from your name over to Somann's name on the chart?

A That broken line has to indicate an extraordinary channel of command.

Q What do you mean by "extraordinary"?

A That only in special cases the Security Police was absolutely under orders of the higher SS and police leader, that means only in case of emergency.

Q When did the first emergency occur when you took command?

DEFENSE COUNSEL: I pray the court's judgment. I submit I have not said anything so far ---- the prosecution has already gone far beyond my line of direct examination of this man. I object. He is going too far.

PRESIDENT: The objection is overruled.

THE WITNESS: Such an emergency did not happen.

QUESTIONS BY CAPTAIN YARC:

Q When the allied fliers began to bomb Germany, that was not such an emergency that you would take over command; is that what you meant

A No.

Q You tell the court that you never did take command of the Security Police, is that right?

A No, -- yes, I want to say that.

(Stroop-Cross)

Q I believe you testified that Colonel Somann left the Security Police in July, 1944, is that right?

A Yes, he was transferred from Wiesbaden.

Q Were you his commanding officer?

A No, his immediate superior was the Reich Security Main Office.

Q Who took command after he left?

A In between, Lieutenant Colonel Wiebens.

Q How long did he stay there?

A He stayed there until Colonel Trumpler arrived.

Q Were you Wiebens' commanding officer?

A No, Wiebens was a leader of the Security Service.

Q When did Trumpler take over command?

A I think on the 1st of September.

Q Were you his commanding officer?

A No.

Q Did Somann and Trumpler occupy the same position at different times?

A No, Somann was inspector of a smaller area and Colonel Trumpler came there as commander with greater authority and different orders.

Q In other words, Trumpler had a larger jurisdiction than Somann had?

A Yes.

CAPTAIN VANCE: No further questions.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q I call your attention to Prosecution Exhibit 14, and particularly that portion of it which shows the Gauleiters Burkel, Sprenger and Simon. Is this description of the position of the gauleiters as it appears on Prosecution Exhibit 14 the correct description of their powers and authority, or is that one as shown on Defense Exhibit 1 the correct portrayal?

CAPTAIN VANCE: I am going to object on the ground that he is going to impeach his own witness. His own witness has said he supplied the information which made this chart. If he wants to impeach his own witness, I have no objection.

DEFENSE COUNSEL: He said it was made in part on his information, if I am not mistaken.

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: I will withdraw the question.

QUESTIONS BY DEFENSE COUNSEL:

Q Prosecution Exhibit 14 -- was that prepared entirely by you?

A As it is over there, no.

Q Under what circumstances did you participate in its preparation?

A I was in the prison in Wiesbaden and there the first lieutenant -- I think his name was Hodges -- came and asked me I should draw a sketch to indicate approximately how my office was organized. They had all the names and all the offices of the officers and all the names, but if they would discuss this case now, they couldn't get any clear picture of it. Sometimes they saw this man belonged on the chart and then he wasn't there, etc., and for this reason they asked me to draw up a chart. And then I drew up a chart on the cover of a file, especially the part in the center, but not the part about the Security Police.

Q This plan, this Defense Exhibit 2, was prepared under what circumstances?

A Probably the same reasons existed to make up this chart, and especially for the reason because such a clear picture did not exist before, because this other chart is still full of doubts.

Q And by "full of doubts" which one are you referring to?

A If I say that plan leaves doubts, though, I am referring to the one on the left which is incomplete.

DEFENSE COUNSEL: Indicating Prosecution Exhibit 14.

Nothing further.

CAPTAIN WALCH: Nothing further.

THE COURT: No questions by the court.

(Whereupon the accused Stroop resumed his seat in the dock.)

DEFENSE COUNSEL: Defense calls as its next witness Otto Sommann.

OTTO SOMMANN, an accused, voluntarily took the stand in his own behalf and made the following unsworn statement through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Your full name is Otto Sommann?

A Yes.

Q And you are an accused in this case?

A Yes.

Q Sometime during the year 1944, were you an inspector of the SIPO and SD?

A Yes, from January, 1943, until the 28th of July, 1944.

Q I now call your attention to the righthand section of Defense Exhibit 2, that part of it immediately under the word Reichssicherheits-hauptamt. What was the Reichssicherheitshauptamt?

A The Reichssicherheitshauptamt was the Reich Main Security Office, was the Security Police and the Security Service together combined.

Ps 114-ps-60-6/7-3

Q What made up the Security Police?

A The Security Police consisted of the Gestapo, the secret state police, and the Criminal Police.

Q And what is the familiar abbreviation for Criminal Police?

A Kripo.

Q Who was the commanding officer of the Reichssicherheitshauptamt Police and the SD?

A Dr. Kaltenbrunner.

Q These seven subdivisions of the Reichssicherheitshauptamt -- what do they represent?

A That was the subdivision of the Reich Security Main Office in seven departments.

Q What was the first one?

A Office No. 1 was the Personal Office.

Q What was its function?

A Through this office all personal matters of the Security Police and the Security Service came through.

Q Now, Amt No. 2. What was that?

A Department No. 2 was economics and administration.

Q And No. 3?

A No. 3 was Security Service.

Q The SD?

A Security Service.

Q And the abbreviation for that was SD?

A SD.

Q No. 4 was what?

A No. 4 was the department Gestapo.

Q No. 5?

A No. 5 was the department Kripo.

Q In other words, the Criminal Police?

A Yes.

Q No. 6?

A No. 6 was defense.

Q Just exactly what did that include?

A The counter intelligence and the foreign information.

Q And No. 7?

A No. 7 was the department to make use of all the information available in the Reich Security Main Office.

Q Now, coming down to this bracket, "Inspekteur der SIPO u.a.SD," what was that office?

A The job of the inspector of the Security Police was to be a liaison officer first to the Higher SS and police leaders; second, ——

Q Wait a minute. Who was that?

INTERPRETER: I did not translate the whole answer.

A (Cont'd) First, to the higher SS and police leaders; second, to the gauleiters; third, to the commanding general of the army in this district; fourth, to supervise activities of the Security Police in the district.

Q And when you say that you were the liaison between higher SS and police leaders, do you mean between this bracket with the name "Stroop" in it and yourself?

A Yes.

Q The second one was between whom?

A Liaison to the gauleiters.

Q All right. Go ahead. The third one was what?

A And the third one was the liaison to the commanding general.

Q Who were the parties in addition to the commanding general between whom you acted as liaison officer?

A And the chief of the Security Police.

Q By that, you mean between the army and Kaltenbrunner?

A No, only for the district between the general command Wiesbaden.

Q Now, I call your attention to this bracket under Amt 1 and 2, with a straight line coming down to the bracket containing your name. What does that straight line indicate?

A There was a direct channel of command from the department 1 and 2 to the inspector.

Q I call your attention to this broken bracket which embraces 3, 4, and 5. What does this broken bracket mean, with the broken line coming down to you?

A That was the chain of command for special orders -- you could better say for orders of fundamental importance.

Q I direct your attention to the brackets Frankfurt, Koblenz and Darmstadt directly under the bracket containing your name. What do they indicate?

A In these three cities there were headquarters of the State Police, Criminal Police and the Security Service.

Q Were these the three main subdivisions for these three organisations within the territory under your jurisdiction?

A Yes.

Q Underneath each of the three, Frankfurt, Koblenz and Darmstadt, the words "Stapo," "Kripo" and "SD" -- what do they mean?

A These were the offices of the State Police, Criminal Police and SD for a certain definite area.

Q So that in each of these cities representing an area, there were independent offices of the STAPO, the KRIPO and the SD, is that correct?

A Yes.

Q These Aussendienststellens which appear underneath the three cities -- what do they mean?

A These offices were branch offices under the main offices at

Frankfurt, Koblenz and Darmstadt.

Q In each of these Aussendienststellens, these branch offices, did they have offices of the STAPO, the KRIPO and the SD?

A Yes.

Q I call your attention to this broken black line between the SD, between Amt No. 3 which is the SD in Kaltenbrunner's office with the SD under Frankfurt, Koblenz and Darmstadt and ask you what that indicates?

A That was a direct channel of command from the department No. 3 Security Service to the Security Service offices at Frankfurt, Koblenz and Darmstadt, without coming through my office.

Q What would be the chain of command for the subdivisions of each?

A This all was forwarded from the Main Office, Frankfurt, Koblenz and Darmstadt, to the branch offices.

Q I call your attention to the bracket indicated in red underneath 4 and 5 and the black line with the red dots on the side going down to STAPO and KRIPO under each, Frankfurt, Koblenz and Darmstadt, and ask you what that means?

A The black and red line from department 4 and department 5 indicates the direct channel of command in matters to the offices of the Criminal Police and the State Police at Frankfurt, Koblenz and Darmstadt respectively.

Q So that from the headquarters of the SD, the normal channel of command to its offices in Frankfurt, Koblenz and Darmstadt was a direct line bypassing your office, is that a correct statement of what you said?

A Yes.

Q And through Frankfurt, Koblenz and Darmstadt gave their orders to the substations in the other communities?

A Yes.

Q Then the STAPO and the KRIPO, the Criminal Police and the State

Police, I understand you to say, also had a direct chain of command to the STAPO and Criminal Police in these three cities, bypassing your office, is that correct?

A Yes.

Q Which was the channel of command normally used?

A The ordinary channel of command was a channel of command right from the departments at the Reich Security Main Office to the offices at Frankfurt, Koblenz and Darmstadt.

Q I direct your attention to the line, the broken line, from Amt No. 6 to Kommando - Meldegebiet? What does that mean?

A On 20 July 1944, after the attempt at Hitler's life, the counter-espionage offices were put under the jurisdiction, authority, of the Reich Security Main Office, Department 6. These offices received the new name Kommando - Meldegebiet, and this black interrupted line was a direct channel of command from department 6 to Kommando - Meldegebiet.

Q By "broken black line," you mean this line here? (indicating)

A Yes.

Q What is this line that goes from the Kommando - Meldegebiet back up here with the arrow pointing towards you?

A The chief of the Kommando - Meldegebiet had the order to give information from time to time to the inspector or the commander of the Security Police.

Q Now, coming back to Amt 1 and 2, then was the direct chain of command through the inspector? Where did that chain of command go to from your office down?

A This channel of command went from my office then to the offices of the STAPO, KRIPO and SD at Frankfurt, Koblenz and Darmstadt.

Q So that the normal direct channel of command for orders issuing from 1 and 2 to STAPO, KRIPO and SD at Frankfurt, Koblenz and Darmstadt was through your office?

Ta 124-ps-80-2/7-8

A Yes.

Q And when this Kommando - Heldengebiet was established, orders from 1 and 2 never went through you after that, is that correct?

A No.

Q And orders from No. 7 — did they ever go through the office of the inspector?

A No.

Q I will call your attention to the square with the black and red line "Gauleiter" with the red arrow pointing in the direction of your name. What does that indicate?

A I was inspector. That means I was a liaison officer to two gauleiters in my area; that is, Gau Moselland and Gau Hessen-Nassau.

Q In other words, your area included two of the gaus under General Stroop, but not the Gau Westmark that was under General Stroop, is that right?

A Yes.

Q What was the relationship which existed between yourself and the gauleiters?

A The Party, under the leadership of the gauleiters, tried to gain influence in the work of the Security Police and tried to use its influence by making requests to the various offices.

End ta 124
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Q Now, I call your attention to the other red arrow, the one marked "Parteidruck" and the one "Parteidruck" down here, "Kreisleiter" and "Ortsgruppenleiter". What do those four things indicate on that sheet?

A That should indicate that the pressure of the Kreisleiter and Ortsgruppenleiter in their respective areas was very strong. These Kreisleiters and Ortsgruppenleiters had various requests and they tried to use pressure in order that the officers of the Security Police should follow their requests. If any differences of opinion arose, it was my job to straighten out these differences.

Q What was your title?

A Inspector of the Security Police and the Security Service.

Q Now you testified before that part of your duties was to act as Liaison Officer between four separate groups and organizations. What other duties, if any, did you have?

A My job was the supervision of the entire organisation of the Security Police and the Security Service.

Q How was that duty of supervision exercised?

A Either by visiting the various offices from time to time and also by calling the heads of the various offices to my office for conferences.

Q What command authority did you have over the Gestapo in Frankfurt, Koblenz and Darmstadt? When I say "you", I mean the office of Inspector.

A It was my duty to pass on to the various heads

of the offices the orders of fundamental importance which came to me. I only could pass on the orders which I received from the Department of the Reich Security Main Office--had neither the right now the possibility to give them any orders of my own.

Q What authority did you have to enforce obedience by the heads of the Gestapo in Frankfurt, Koblenz and Darmstadt, of orders which they received either direct or through you?

A Whenever it came to my knowledge that an order had not been executed, I made a report to the Reich Security Main Office, and this office would take care of the matter.

Q If it came to your knowledge that an order from Amt III, the SD, came to Frankfurt directly through you and was not obeyed, in addition to making a report to the Amt III under Kaltenbrunner, could you force by any means the leader of the SD in Frankfurt to obey that order?

CAPTAIN VANCE: I object. The question is leading--he is putting words in the mouth of the witness.

DEFENSE COUNSEL: I will withdraw it.

QUESTIONS BY THE DEFENSE COUNSEL:

Q What authority did you have to enforce orders issued from the Amt III under Kaltenbrunner by the SD in either Frankfurt, Koblenz or Darmstadt? What could you do in addition to reporting the matter to higher authority?

A No.

(Somann-Direct)

of the offices the orders of fundamental importance which came to me. I only could pass on the orders which I received from the Department of the Reich Security Main Office--had neither the right now the possibility to give them any orders of my own.

Q What authority did you have to enforce obedience by the heads of the Gestapo in Frankfurt, Koblenz and Darmstadt, of orders which they received either direct or through you?

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Q If it came to your knowledge that an order from Amt III, the SD, came to Frankfurt directly through you and was not obeyed, in addition to making a report to the Amt III under Kaltenbrunner, could you force by any means the leader of the SD in Frankfurt to obey that order?

CAPTAIN VANCE: I object. The question is leading--he is putting words in the mouth of the witness.

DEFENSE COUNSEL: I will withdraw it.

QUESTIONS BY THE DEFENSE COUNSEL:

Q What authority did you have to enforce orders issued from the Amt III under Kaltenbrunner by the SD in either Frankfurt, Koblenz or Darmstadt? What could you do in addition to reporting the matter to higher authority?

A No.

Q What could you do if it came to your knowledge that an order issued from Amt IV, the Gestapo, either directly to the Gestapo in Frankfurt, Koblenz or Darmstadt, or through you, had been disobeyed? What could you do about enforcing that order?

A I had to make a report to the Reich Security Main Office, and I had to make a complaint about the man in charge of this particular office.

Q In addition to making a report that the Gestapo head in Koblenz had failed to obey the order which came from Amt IV, what else could you do about that disobedience?

A I could punish him with small fines, as a matter of discipline. In a case of greater importance, an investigation was started through the Reich Security Main Office.

Q Now, in the event it came to your knowledge that the leader of the Kripo in these three cities had failed to obey an order issued by Amt V, Kripo in Kaltenbrunner's office, through you, what could you do to enforce the Kripo in these three cities to carry out that order?

A I only could make a complaint to the Chief of the Reich Security Main Office.

Q So that as I understand it, your command authority over the Gestapo, the Kripo, and the SD, throughout your entire area was limited to matters emanating from Amt I and Amt II?

A Yes.

Q And if I understand you correctly, correct me if I am wrong, your authority over the Gestapo, the Kripo and the SD throughout your area to enforce obedience to orders

was limited almost entirely, with one single exception, to reporting that disobedience to higher authority under Kaltenbrunner.

CAPTAIN VANCE: I object--the question is leading.

DEFENSE COUNSEL: I asked him whether my assumption was correct, I pray the Court's judgment.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: Nothing further.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q For what period of time were you stationed in Wiesbaden, Germany?

A 30 January 1943 until 28 July 1944.

Q And what was your rank or title?

A At the end, SS Colonel and Colonel of the Police.

Q When did you become an SS Colonel?

DEFENSE COUNSEL: Now, I stated, if I remember correctly, that I was putting Stroop, Trumpler and Somann on the stand for the sole purpose of identifying the chart and explaining it. That's the only thing I asked him about on direct examination, and if I did anything more than that I don't recall it.

CAPTAIN VANCE: If you did, I didn't hear you as to this man. You did as to Stroop.

DEFENSE COUNSEL: All right, then, I think you are going far beyond the limits of my direct examination. I object, and furthermore, I would like to say that I haven't offered any evidence as yet as to the ten charges. I haven't

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SO

touched the ten charges.

PRESIDENT: Did you object?

DEFENSE COUNSEL: Yes, sir.

LAW MEMBER: What is your question again?

CAPTAIN VANCE: How long he had been a Colonel and when he became one. That's cross examination of an accused.

DEFENSE COUNSEL: I know, but it has to be limited to the direct examination. If I ask him one question about a charge, that entire charge is open, but I have not touched a charge.

PRESIDENT: The objection is overruled.

WITNESS: Since January 1941.

QUESTIONS BY CAPTAIN VANCE:

Q And how long have you been with the Police forces of Germany?

DEFENSE COUNSEL: I object, may it please the Court. I am sorry; I am going to be compelled to object to every single question.

PRESIDENT: Objection is overruled.

WITNESS: Since I came to Wiesbaden, January, 1945.

PRESIDENT: Court will recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: The Court will come to order. The Court will recess until Monday morning at nine o'clock.

(Whereupon at 1645 hours the Court recessed.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on .....194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....

(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

(14)

Pages 765 - 829

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 10 FEBRUARY 194 7

~~Members of Court:~~

WITNESSES:
OTTO SOMANN

FRIEDRICH HILDEBRANDT

HANS TRUMMLER

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Herbert B. Rosenstock

Reporter Patricia Stewart, Imogene Butler, John McDonald, Paula Silverman, Peter Di Curti

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *furtner term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES vs. JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

10 FEBRUARY 1947 Pages 765 -

TESTIMONY

WITNESSES:	Direct	Cross	Redirect	Recross	Court
OTTO SCHAEN		766			
FRIEDRICH HILDEBRANDT	772	801	808		
HANS THUMSLER	810	823			

EXHIBITS

No.	Description	Marked	Received in Evidence
D-2-A	Wall map; same as D-1-A	815	815
D-2-B	Wall map, same as D-1-B	819	819

MORNING SESSION

(Thereupon at 1015 hours the court reconvened.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court and all members of the prosecution and defense except Dr. Trost who is absent sick; all of the accused except the accused number 13, Bernhard Fay are present. Bernhard Fay, accused number 13 is absent sick. The reporter and interpreter are present.

May it please the court there is a new reporter to be sworn. Mr. Peter L. Di Curti.

(Thereupon, Peter L. Di Curti, U. S. Civilian, was sworn as reporter.)

PRESIDENT: The court, at this time, advises both counsel for defense and the prosecution that it will be guided by the following rule in this case:

The rule limiting cross examination to matters brought out on direct examination is inapplicable when an accused is the witness. He may be cross examined as to the whole case and any matters relevant to the charges against him or having a legitimate bearing on his guilt or innocence.

DEFENSE COUNSEL: The defense, on behalf of each of the accused takes exception to the ruling.

CAPTAIN VINCH: If it please the court, at the last session of the court the accused Somann was on the stand being cross examined by the prosecution. We request that he be returned.

DEFENSE COUNSEL: I understand that that rule takes effect immediately.

PRESIDENT: That is right.

DEFENSE COUNSEL: I'd like a recess in place for two minutes to consult with my associates.

PRESIDENT: The court will take a recess in place.

(Thereupon the court recessed in place.)

(Thereupon the court reconvened.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that the accused May, number 18, has resumed his place in the dock.

OITO KOMATSU, an accused, voluntarily took the stand in his own behalf and continued to make the following unsworn statement through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN YANDA:

Q Colonel Sokuki furnished the information for the preparation of the affidavit which has been introduced as evidence as Defendants Exhibits one and two?

A I decline to answer this question.

CAPTAIN YANDA: If it please the court, he was asked that question on direct examination.

DEFENSE COUNSEL: I would like, if we could, to shorten this thing which really begins to disturb me a great deal, he is refusing to answer every question on my instructions. That is a perfectly fair question to ask him. Rather than object to me but not object to the other I have issued a blanket order to answer nothing, and he is going to do that to every question that is asked until I put him back on the stand. I would like to agree on something rather than have the prosecution ask the same of a lengthy series of questions to which the answer will be the same, if there is such a way.

PROSECUTION: May it please the court, the order should show what specific records the accused refuses to answer.

DEFENSE COUNSEL: I ask the court's judgment. There ought to be some comity about this business, particularly as I discussed the matter with some members of the prosecution.

PRESIDENT: The court will take a recess in place.

(Whereupon the court recessed in place.)

(Whereupon the court reconvened.)

PRESIDENT: The court will come to order.

CROSS EXAMINATION, continued

QUESTIONS BY CAPTAIN VANCE:

Q Colonel Somann, calling your attention to the part of the chart which pertains to Security Police, Kaltenbrunner down; who furnished the information for the preparation of that part of the chart?

A I decline to answer this question too.

Q Now on this chart, the personnel section, Amt land Amt 2, which you testified was supplied--that line in command goes direct to you does it not?

A I decline to answer this question too.

Q You drew that line on this chart, did you not?

A I decline to answer this question too.

Q I notice that the other section from Kaltenbrunner's office which is marked SD, Gestapo or Kripo, as a direct chain skips your headquarters and goes down to the headquarters at Frankfurt, Koblenz and Darmstadt. I will ask you if you didn't draw that line and furnish that information yourself?

A I decline to answer this question.

Q Tell the court what is meant by the line going from SD to Gestapo and Kripo, the line with the jagged teeth on it which goes down to your headquarters.

A I decline to answer this question.

Q By your preparation of this chart you show that you had no connection with the SD, Gestapo and Kripo, is that correct?

A I decline to answer this question.

Q I believe on direct examination you described your position as inspector of the Sipo and SD, is that correct?

A I decline to answer this question.

Q Tell the court, exactly, what your duties were as inspector of the Sipo and SD.

A I decline to answer this question.

(Somann-cross)

Q Do you know, or I should say did you know one Heinrich Himmler?

A I decline to answer this question.

Q Did you know the high SS police leader General Stroop back in 1941?

A I decline to answer this question.

Q Did you know the head of the security police, one Dr. Kaltenbrunner?

A I decline to answer this question.

Q Did you know the chief of the ordnance police, one General Wunnenberg?

A I decline to answer this question.

Q An inspector of the security police in Rhein-Westmark area from whom did you receive your orders?

A I decline to answer this question.

Q And to whom did you pass the orders that you received from that source?

A I decline to answer this question.

Q You did pass on those orders which you received from higher headquarters with instructions to pass them on to lower headquarters?

A I decline to answer this question.

Q On your direct examination last Friday you testified in reference to the party putting certain pressure on members of the police. I will ask you if it wasn't also the duty of the police, particularly the Gestapo, to put pressure on the party?

A I decline to answer this question.

Q Last Friday, on direct examination, you testified that orders had come from the SD branch of Kaltenbrunner's office down the line to the SD in Frankfurt, Koblenz and Darmstadt, and that if orders were disobeyed that you would report that fact. To whom would you make that report?

A I decline to answer this question.

Q How would you know of such violations on behalf of the Gestapo and the SD?

A I decline to answer this question.

(Sommer-cross)

If the various officials in Frankfurt, Koblenz and Darmstadt were not carrying out the orders that came down from Kaltenbrunner, how would you know that they were not carrying them out unless those orders had passed through your headquarters?

A I decline to answer this question.

PRESIDENT: The court will be closed.

(Thereupon at 1010 hours the court was closed.)

(Whereupon the court was opened at 1060 hours)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense except Dr. Trost who is absent sick; all the accused, the reporter and interpreter, are present.

PRESIDENT: Proceed with the question.

OTTO OHLENDORF, an accused, voluntarily resumed the stand in his own behalf and continued to make the following unsworn statement through an interpreter:

CROSS EXAMINATION (continued)

QUESTIONS BY CAPTAIN VARCA:

Q Mr. Ohlendorf, will you explain to the court what was the connection between General Streep's office of the Higher Police and your office as Inspector of the Sipo and SD?

A On orders of the defense I am declining the answer to this question, too.

Q How many times during the period you were Inspector of the Security Police in Wiesbaden did you attend conferences with General Streep.

A I decline to answer this question, too.

Q How many times during the same period were you in conferences with Mr. Kaltenbrunner?

A I decline to answer that question, too.

Q During this period of time you were Inspector of the Security Police, how often did you have conferences with the chiefs of Frankfurt, Koblenz and Darmstadt?

DEFENSE COUNSEL: I pray the court's judgment to the question because there are any number of chiefs in all three of these places.

CAPTAIN VANCE: I will amend my question.

QUESTIONS BY CAPTAIN VANCE:

Q With the chiefs of the SD in Frankfurt, Koblenz and Darmstadt.

A I decline to answer this question.

Q During the period of time you were Inspector, how many conferences did you have with the chiefs of the Gestapo in Frankfurt, Koblenz and Darmstadt?

A I decline to answer the question.

Q Now, Colonel Semmann, it is a fact that when you did have those conferences with the Gestapo chiefs in Frankfurt, Koblenz and Darmstadt you discussed the treatment being given to allied fliers, that is right, isn't it?

A I decline to answer that question, too.

Q And you issued orders that those fliers would be shot, didn't you?

A I decline to answer the question.

Q You don't deny that, do you?

CHIEF COUNSEL: I pray the court's judgement. I think that goes far beyond the limits of any decent cross examination.

CAPTAIN VANCE: We will agree this is unusual cross examination without any answers.

DEFENSE COUNSEL: I object to the question independently of what this witness will do about the answer.

PRESIDENT: Objection overruled. Repeat the question, please.

(Thereupon the reporter read the last question.)

THE WITNESS: I decline to answer the question.

QUESTIONS BY CAPTAIN VANCE:

Q When did you cease to be Inspector of the Security Police of Rhein-Westmark?

(Semmann-cross)

police including the channels of command. It also includes the party pressure of the various party officers indicated here--pressure upon the police.

Q That chart was prepared where and by whom?

A It was prepared by the defense in conjunction with the accused.

Q I call your attention to the right hand side of Defense Exhibit A, that section under the word Kaltenbrunner. What is that?

A That is the Reich Main Security office, the highest headquarters of the security police and the SD and the German Reich.

Q What does the whole part of the paper under Karltenbrunner show?

A It shows the organization of the Reich main security office and also the organization under the inspector of the security police and the security service in Wehrkreis Number 12.

Q I now call yourattention to Defense Exhibit Number 2--this big chart (Indicating)--and ask you if you recognise that? If so what is it?

A That is the same drawing that I have in my hands here.

Q You mean the drawing without those two sheets?

A Without those two sheets.

DEFENSE COUNSEL: For the record the witness is referring only to Defense Exhibit Number 1.

Q I call your attention to this date that appears on the top here (Indicating)--September 1, 1944. What is the significance, if any, of that date?

A On 1 September, 1944 I was officially appointed inspector of the security police and the SD in Rhein-Westmark, but I only opened my office and actually started working in the capacity in Wiesbaden on 20 September, 1944.

Q What was the title of the office to which you were assigned on September 1, 1944?

A The Befehlshaber der Ordnungspolizei, the SD Rhein-Westmark.

DEFENSE COUNSEL: What is the translation of Befehlshaber?

INTERPRETER: Commanding officer.

(Trummler-direct)

Q Wh t was the territory of which you were the commanding officer at the time you first took command?

A My area was the same area as the area of command of the high SS and police leader General Stroop.

Q Who was your predecessor in office?

A It was the SS colonel and colonel Somann, and the SS brigadier and Brigadier General of the Police Dunkern.

Q What w s the territory under Somann's jurisdiction, if you know?

A My comrade Somann had under his command the area Hessen Nassau and Moselland.

Q What territory was under your command?

A In addition to these the Gau Westmark and that part of Lorraine which was not occupied by the enemy yet.

Q When was the change in territorial command made?

A At the time of my arrival. At the time of my assumption of office. At the time I took office SS Brigadier General Dunkern became the police president of Metz and SS Colonel Somann was transferred to Berlin and took charge of the border duty command.

Q Do you know when Somann left Rhein-Westmark?

A That must have been about July.

Q Do you know who exercised the command of jurisdiction between Somann's departure and your arrival?

A The chief of the SD District Koblenz, SS Lieutenant Colonel Wibens was at that time in charge.

Q Now sometime in September, 1944 was there any change made in the organizational setup and chane of command of the security police in the SS in the territory under your jurisdiction?

A In the first place, as I have already stated, I got the additional Gau of Westmark and part of Lorraine and furthermore my headquarters was organized according to knew policies which I had received from Dr. Kaltenbrunner.

(Trummler-direct)

Q Was the new situation with respect to your headquarters illustrated by any portion of Defense Exhibit 1, 1-A or 1-B?

A Yes.

Q By which part is this change indicated? Between which of the three? Will you point to the part which illustrates the change first?

A Here (Indicating).

DEFENSE COUNSEL: He calls it 1-B, but the actual marking is 1-A. Will you read what it says down there?

A 1-A.

Q Is it the sheet marked 1-A which shows the first changes in your headquarters?

A Yes.

PRESIDENT: The court will recess until 3:

(Thereupon at 11:55 hours the court recessed.)

(Thereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense except Dr. Trost who is absent sick; all the accused; the reporter and interpreter, are present.

DEFENSE COUNSEL: Before the recess there was some question about the translation of the word "Standgericht" and the interpreter has a dual translation he wishes to present to the court.

THE INTERPRETER: According to the military dictionary of the War Department dated 20 May 1944, Standgericht is a summary court-martial but according to other dictionaries it is translated as a "drum head" court-martial or regimental court-martial.

DEFENSE COUNSEL: I think you also said, may it please the court, that these dictionaries were commercial dictionaries?

THE INTERPRETER: Commercial dictionaries.

HANS TRUMMLER, an accused, voluntarily resumed the stand in his own behalf and continued to make the following unsworn statement through an interpreter, as follows:

DIRECT EXAMINATION (continued)

QUESTIONS BY DEFENSE COUNSEL:

Q Before the recess, Trummler, I asked you what changes were indicated between Defense Exhibit 1, the righthand side of the page under the word "Kaltenbrunner" and Defense Exhibit 1 A, and I think you mentioned that one change which had taken place was the fact that you acquired a larger territory in your command than Zoellner had?

A Yes.

Q I call your attention to this addition over Defense Exhibit 1 and ask you what that is, if you know?

A What do you mean by that?

(Trummler-direct)

Q What does it represent?

A That map shows the channels of command, the organisation in my area, until approximately 31 December 1944. At top of this map it says "from January 1945". This is a mistake, it should say "until 31 December 1944" but otherwise this map over there is in accordance with the map which I am holding in my hands.

Q In accordance with what part of what you are holding in your hands?

A 1 A.

DEFENSE COUNSEL: I should have had you mark that for identification as Defense Exhibit 2 A.

(The document referred to was marked Defense Exhibit 2 A for identification.)

DEFENSE COUNSEL: I ask that it be received in evidence as a larger reproduction of Defense Exhibit 1 A and marked Defense Exhibit 2 A.

PROSECUTION: No objection.

PRESIDENT: It will be received in evidence as Defense Exhibit 2 A and made a part of the record.

(The document heretofore marked Defense Exhibit 2 A for identification was received in evidence as Defense Exhibit 2 A, and made a part of the record.)

DEFENSE COUNSEL: I should like to ask permission to have it withdrawn at the conclusion of the trial.

PRESIDENT: Permission is granted to withdraw it at the end of the trial.

QUESTIONS BY DEFENSE COUNSEL:

Q Calling your attention to Exhibit 1 A, what date is indicated there?

A Until 31 December 1944.

Q That should have been the date of the map (indicating), is that correct?

A Yes, this date here should be up there on the map.

Q Which date, sir, do you mean?

A I am referring to the date "until 31 December 1 '4".

Q In addition to the changes in territory what other changes are indicated between the situation as shown on 1 A and 2 A and the situation as shown on the righthand side of 1 under Kaltenbrunner and the righthand side of No. 2 under Kaltenbrunner.

A First of all my headquarters was reorganized in accordance with new orders received from Dr. Kaltenbrunner, because the duties and powers of a commander of the Security Police and the Security Service were other and larger ones than the ones occupied by an Inspector of the Security Police and Security Service. In accordance with these orders my headquarters as mentioned has to be organized. While the Inspector of the Security Service and Security Police had only three departments, the Personal Assistant had the Personal Adjutant, Department 1 and Department 2. The Commander of the Security Police, in addition to these departments, had Departments 3 up to 6.

Q Just a second. You say that under the Inspector there were just those three departments, Personal, 1 and 2?

A Yes.

Q And you reorganized them to include, in addition, 3, 4, 5, and 6?

A Yes, that was in accordance with the organization of all staffs for the commanders of the Security Police.

Q At one time you were talking about an Inspector, another time you were talking about Befehlshaber. What is the difference?

A The Inspector, in general, had only rights of inspection. The Befehlshaber had also the right to have his hands in technical matters.

(Translator-Grant)

Q Which was Seemann?

A Seemann was inspector.

Q What were you?

A I was Befehlshaber, commander.

Q Do you know when that change was made?

A This change was ordered on the 1st of September 1944 but was put into effect only after my arrival at Wiesbaden on the 20th of September 1944.

Q Any other changes indicated on 1 A and 2 A?

A In view of the events my relationship to the Higher SS and Police Leader was a different one than the one of my comrade, Seemann. In the beginning, the Inspector and the commander of the Security Police were supposed to be only liaison officers to the Higher SS and Police Leader. That means that in general the orders came only from Dr. Kaltenbrunner, the Reich Security Main Office, so that the Higher SS and Police Leader gave direct orders only in very few cases. For instance, only in very fundamental matters which were of importance for the entire SS and Police force. When I arrived at the Service Command XII, this Service Command had become, in the meantime, near-front area. For this reason the so-called emergency case came into existence. In this case the responsibilities and the rights of the Higher SS and Police Leader became much larger. Under these conditions the Higher SS and Police Leader gave orders to me on several occasions.

Q Let me interrupt you just a second. At the time we are talking about now, when you had all these sections, what changes were made in the channels of command from the way they existed under Seemann, if there were any?

A In this case I prefer to give you a short description of my duties as the commander. This way you will get a better picture.

(Trummler-direct)

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Q We will come to that. For the time being I want to stick to the chart -- we are explaining the chart. So far as the chart is concerned, the channels of command between 4, 5 and 6, the Gestapo, Orpo and Abwehr, as indicated, are the same, is that correct?

A The channels in general are the same.

Q And the same thing is true of the SD?

A Yes.

Q Now, were there any subsequent changes in the organizational setup in the chain of command made after January 1945?

A The beginning of January 1945 fundamental changes took place in the organization as well as the channels of command.

Q Are these fundamental changes indicated anywhere in the defense exhibits?

A On this page here (indicating).

Q How is that page marked?

A 1 b.

Q That date up there which is January 1945 you say should be December 31, 1944?

A Yes.

Q I call your attention to this sheet I have just let down and ask you if that is a reproduction of Defense Exhibit 1 B?

A Yes, it is an exact reproduction of 1 B.

MR. COUNSEL: I should have had it marked Defense Exhibit 2 B for identification.

(The document referred to was marked Defense Exhibit 2 B for identification.)

MR. COUNSEL: I ask that it be received in evidence and marked Defense Exhibit 2 B with the right to withdraw it at the end of the trial.

(Trumbler-direct.

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PROSECUTION: No objection.

PRESIDENT: Defense Exhibit 2 B will be received in evidence and made a part of the record and permission is granted to withdraw it at the end of the trial.

((The document heretofore marked Defense Exhibit 2 B for identification was received in evidence as Defense Exhibit 2 B, and made a part of the record.)

QUESTIONS BY DEFENSE COUNSEL:

Q Will you explain to the court the differences in command responsibilities and organisational setup which took place in the Security Police, the SD, as shown in Defense Exhibits 1 B and 2 B?

A Yes. The organisation as shown on 1 B was the organisation which was intended to be used in peacetimes. I should like to point out that it was not possible to carry through this reorganisation entirely on account of the war events. The first difference with the organisation as it existed under the inspector and the organisation up to 31 December 1944 was that all orders and all written correspondence of the Departments 1 to 5 of the Security Main Office went through the command of the Security Police to the other headquarters with the exception of Department 6 which gave its orders directly to the headquarters at Wiesbaden of the Commando Meldegebie. There are no changes in Department 7 because Department 7 did not give any orders to the other offices anyway. The second change which started at the beginning of January 1945 was the combining of the Gestapo and Criminal Police, Cripo, and the so-called Security Police, in each Gau under one commander of the Security Police. That worked out like this -- the headquarters of the Gestapo and Cripo were now combined as far as orders were concerned as well as for their location and for this reason they had one office in each locality. The three SD sections, Koblenz, Frankfurt and Saarbrucken, remained in the same organisational setup as before since they were not really State

police organizations but were Security offices. Provisions were made to put the [illegible] under the authority of the Commanders of the Security Police. There are three more important changes which took effect at the beginning of January 1945. Furthermore, there was one more change which affected me personally as the Commander Befehlshaber. From the Chief of the Security Police, from Dr. Kaltenbrunner, I received the right of better, all the rights to keep up the work and enforce the orders for all offices under my jurisdiction. This enlargement of my rights was a result of the special emergency which existed in the Service Command Ost and was created through the advance of the enemy and the air warfare.

Q By the word "rights" do you mean privileges or orders and responsibilities?

A I understand under this the following -- first I received the right to deal out punishment, if necessary even the death penalty. Second, I received the right to establish subordinate headquarters and to transfer same from one place to another without the consent of the Reich Security Main Office, and third, I received the right, without consent of the Reich Security Main Office, to transfer civil service employees of all branches of the police forces under my jurisdiction, from one department to another. Furthermore, I had the right to transfer some branch offices to other headquarters. That means to headquarters to which they really did not belong. In other words, I got all the rights necessary to keep up the work of the Security Police and the Security Service in this emergency area and I made use of these rights and duties in accordance with my best conscience.

DR. PFAU (Counsel): May I ask the interpreter through the court whether that interpretation of the word "right" should not better be the word "authority".

THE INTERPRETER: I will change it to authority. "I got the duties and with the duties I got the authority."

(Pummler-direct)

A I decline to answer this question.

Q Were any allied fliers executed in your jurisdiction during the time that you inspected the Security Police for the Rhein-Westmark area?

A I decline to answer the question.

Q You don't deny that, do you?

A I decline to answer the question.

Q During the time you were Inspector at Wiesbaden who was your immediate commanding officer?

A I decline to answer the question.

Q It was General Stroop, was it not?

A I decline to answer the question.

CAPTAIN VANCE: No further cross examination.

DEFENSE COUNSEL: No questions.

CAPTAIN VANCE: Any questions by the court?

PRESIDENT: No questions by the court. Witness will be excused.

(Whereupon the witness was excused and withdrew.)

FRIEDRICH HILDEBRANDT, called as a witness by the defense, having been duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name?

A Friedrich Hildebrandt.

Q What is your present status?

A Civilian internee.

Q What is your home address?

A My home address is now in Schleswig-Holstein, Flensburg.

(Hildebrandt-direct)

Q At the time of the end of the war what was your occupation?

A I was Reichsstatthalter, Gauleiter and Reichskommissar for defense for Mecklenburg.

Q When did you become the Gauleiter of Mecklenburg?

A 1925.

Q When did you become Reichsverteidigung Kommissar?

A March 1943.

Q When did you become the Reichsstatthalter for Mecklenburg?

A May 1933.

Q Were you ever the Oberpraesident of Mecklenburg?

A No.

Q Are you familiar with the area, Rhein-Westmark?

A Yes.

Q Can you tell the court into how many Gaus Rhein-Westmark was divided?

A Three Gaus there were.

Q Will you tell the court what the three Gaus were and who was the Gauleiter of each?

A That was Gauleiter Sprenger.

Q Which Gau?

A For the Gau Hessen, including Frankfurt; then Saarpfals, Gauleiter Buerkel, and Gauleiter Simon. I don't know right now the name of his Gau. I can't recall the name of his Gau.

Q Have you anything that would refresh your recollection as to the names of the three Gaus into which Rhein-Westmark was divided?

A Yes.

(Hildebrandt-direct)

Q What have you?

A In regard to the organization and as far as the channel of command are concerned during war times.

Q I don't think you understood my question. I call your attention to Prosecution Exhibit P-14 which is this entire chart (indicating) and ask you to examine it and then tell the court whether that chart refreshes your recollection as to the three Gaus into which Rhein-Westmark was divided, and please answer yes or no, does it or does it not?

A Yes.

Q Will you then tell the court the names of the three Gaus into which Rhein-Westmark was divided?

A In Frankfurt, Saarbrucken and Koblenz.

Q What was in Frankfurt?

A Gauleiter Sprenger was located in Frankfurt.

Q What was the name of Sprenger's Gau?

A The name of his Gau was Hessen-Nassau.

Q What were the names of the other two Gaus?

A Gau Saarpfals and Koblenz-Trier

Q Was there any other name given to Koblenz-Trier?

A Later on it was changed into the three Gaus, Westmark, Hessen-Nassau and Moselland.

Q You say Sprenger was the Gauleiter of the Gau Hessen-Nassau?

A Yes.

Q Who was the Gauleiter for the Gau Westmark?

A Westmark was Simon.

Q In the years 1944 and 1945?

A Buerckel was the Gauleiter for the Gau Westmark.

Q In the years 1944 and 1945 who was the Gauleiter of the Gau Moselland?

A Simon.

Q Did you know these three men personally?

A Yes.

Q In addition, in the years 1944 and 1945, to being Gauleiter, Reichsverteidigung Kommissar and Reichsstatthalter, did you have any other positions?

A Yes, I was ordered by the Fuehrer to make inspections over air raid protection measures and war damage in various Gaus.

Q And by the Fuehrer you mean whom?

A Adolf Hitler.

Q What were the names of the Gaus that you were ordered to inspect for air raid protection and war damage?

A Gau Saxonia, the Protectorate Krakow, Gau Brandenburg, East Hannover, these were the ones I had to inspect.

Q In the course of your official duties did you have anything to do with Rhein-Westmark?

A Yes.

Q And what was that?

A I had to ascertain from the Gauleiters and Reichsstatthalters about the war damages and the air raid protection and the anti-aircraft protection in their areas.

Q Throughout for any the Gauleiters, in addition to the title of Gauleiter had, from time to time, other positions, is that true?

A Yes.

Q For instance, in addition to being Gauleiter you were also Reichsverteidigung Kommissar and Reichstatthalter?

A Yes.

(Hildebrandt-direct)

Q Now, coming down to Buerkel, do you know what title he also had in addition to being Gauleiter?

A Buerkel was also Reichskommissar for Lorraine.

Q In addition to being the Gauleiter of Gau Westmark, do you know whether he held any of these other positions such as you held?

CAPTAIN VAN CE: I am going to object as being immaterial, irrelevant and incompetent. These Gauleiters are not on trial before this court and we fail to see where these questions are relevant to the issues before this court.

PRESIDENT: Objection overruled.

THE WITNESS: Yes, he was Reichskommissar for Defense.

QUESTIONS BY DEFENSE COUNSEL:

Q Now, did the Gauleiter Sprenger of Hessen-Nassau have any of these positions (indicating) in addition to being Gauleiter?

A Yes, he was, furthermore, the President of the Cabinet for Hessen-Nassau.

Q Into which one of these three groups does that title come, Minister President?

A Under Oberpraesident.

Q Is Oberpraesident and Minister President one and the same thing?

A No.

Q What is the difference?

A Oberpraesident exists only in the State of Prussia. President of the Cabinet exists in other States which formerly were existing in the German Reich.

Q Where do Oberpraesidents exist?

A In Prussian provinces only.

Q Did Gauleiter Simon have any of these three positions?

A He was Reichskommissar for Defense and he was also Reichskommissar for Luxemburg.

(Hildebrandt-direct)

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Q Do you know whether any one of those three -- Huerkel, Sprenger or Simon, was also Reichsstatthalter?

A Sprenger was Reichsstatthalter and Huerkel, too.

Q Now, Herr Hildebrandt, I call your attention to Defense Exhibit 1, 1A and 1B, and ask you to examine them.

A Yes.

Q Do you know what is represented by Defense Exhibit No. 1?

A Yes.

Q Have you seen it before?

A Yes, I saw it before.

Q Where?

A Here at the Defense's office.

Q What is represented by Defense Exhibit No. 1?

A This Exhibit 1 of the Defense is to show the pressure of the Party on the Security Police, the Regular Police and, furthermore, the entire Police organization of the Reich.

Q Do you know what 1A is?

A This one here (indicating).

Q What does 1A indicate?

A 1A is supposed to show the pressure of the Party on the various branch offices of the Security Police.

Q Do you know what the difference is between Defense Exhibit 1A and that portion of Defense Exhibit 1 which deals with the Security Police?

A Yes, from this you can see that the pressure of the Party was exercised in the beginning against the Reichs Security Main Office and later on was exercised on the lower offices of this organization.

Q What, if anything, does 1B indicate to you?

A 1B shows how the Party pressure from the Reichsleitung was exercised against the branch offices and also against commanders of the Security Police.

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Were the powers and duties of the Gauleiters [illegible]

throughout Germany?

A Yes.

Were the powers and duties of the Reichsorganisationsleiter [illegible]

the same throughout Germany?

A Yes.

Were the powers of the Reichsstatthalter the same throughout

Germany?

A Yes.

Q Will you explain to the court the powers and duties and prerogatives of a Gauleiter in Germany with particular reference to the years 1944 and 1945?

CAPTAIN MARCUS: No objection on the ground that the question is immaterial. We are not trying a Gauleiter here.

PRESIDENT: Objection overruled.

Q (Question by DEFENSE COUNSEL:

My question was to explain the powers, duties and prerogatives generally, but with particular reference to 1944 and 1945?

A The Gauleiter had various prerogatives and powers in his hand, as Reichsstatthalter he appointed the men of the Regular Police, the Order Police, the Criminal police and the Fire protection police. The officers were appointed and promoted in the Reich Ministry of the Interior but the political opinion of the Party was necessary for that. The Reichsführer had ordered the Gauleiters, especially, in some orders to the Kreisleiters that they should use their influence, especially with the local police organizations for all crimes against the economics of the Reich and all criminal investigations resulting from them.

(Continued next sheet)

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Q Let me interrupt -- when you talk about Reich Minister of the Interior, by that do you mean the Reichsstatthalter?

A Yes, but furthermore, the Reichs Fuehrer was Reichs leader of the Party so that as Reichs leader he could influence the Gauleiters, too.

Q When you said that the Reichsstatthalter appointed the personnel of the police, at what level would the Gauleiter make those police appointments?

A The Gauleiter did not appoint any police officers as Reichsstatthalter.

Q Did he appoint membership to the police in any capacity?

A On the enlisted men.

Q Limiting ourselves to the enlisted personnel, to what areas did his powers of appointment reach?

A The appointments for the Order Police were made through the Higher Police President.

Q But over what area, did it cover the entire Gau? What part of the Gau?

A The entire Gau.

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Q You said something about promotions and appointments of officers. Did the gauleiter in any capacity have anything to do with the appointments and promotions of officers in the Ordnungs Police?

A The gauleiter, as gauleiter, gave his political opinion in regard to the officer who was to be appointed or promoted.

Q To whom did he give that?

A To the Reich Minister of the Interior.

Q And who was that?

A At the end it was Himmler--from 1943.

Q Did he have anything else to do with appointments and promotions of officers in the Ordnungs Police in any capacity?

A No, but he could, if he considered the police officer unreliable or politically unreliable or unfit for duty--he could turn to the commander of the order police or directly to the Higher SS and Police Leader or to the Reichsfuehrer himself.

Q And he could turn to these people and do what?

A And he could request the transfer or the elimination altogether of this police officer from the service of the police.

Q I call your attention to Defense Exhibit 2 and ask you if you recognize it.

A Yes.

Q And that is what?

A The entire map?

Q Yes.

A A reproduction of the organization as it existed in practice.

Q Is that a complete representation of the organization and the channels of command for the security police on the one hand, the Ordnungs Police on the other hand, and the Party, represented by the gauleiters, on the third hand?

A Yes. It is a complete reproduction of the legal, normal procedure.

Q Are there any other additional channels which, in your opinion, should be represented on that chart?

A Yes. There were also oral orders.

Q Taking them one at a time, tell the court what additional indications of channels of command should appear on this chart?

A The position of Bormann and the influence he had on the entire organization is not shown sufficiently in this chart.

Q What organization do you refer to?

A Especially I am referring to the state organization.

Q Which state organization?

A Bormann was a Reich minister without portfolio.

Q Limiting ourselves to this representation of police, and leaving out any other aspect except police, what channels of command should be indicated on that chart, in your opinion, which do not appear there now?

A Bormann used to pass on orders from the Fuehrer directly, orally over the telephone and over the teletype system. Weeks or months later then he would pass on these orders from the Fuehrer in a written form.

Q In going over this chart with me in my office you indicated several channels of command which you thought should appear on that chart. Which were those?

A Channels of command from the gauleiter as Reichskommissar for the defense to the Landrats, the mayor of the town, and the police presidents and police directors.

Q Well, that shows from here down; is that correct (indicating)?

A Yes.

Q Any others?

A Right now I don't know what Colonel Berman is leading to. In 1944 an order was issued by the Fuehrer that in the front near areas military tribunals should be established--Standgericht. The Reichskommissar for the defense was the appointing and reviewing authority for these courts.

Q Just a minute. The gauleiter as the Reichsverteidigungs Kommissar was the appointing and reviewing authority, did you say?

A Yes.

Q For which courts?

A For these Standgerichts.

Q Over whom did these courts have jurisdiction and for what offenses?

A They had jurisdiction over everything with the exception of the only military section.

Q Was there any channel of command from the gauleiter, say, towards the Reichsfuehrer SS, that is, towards Himmler?

A Yes.

Q Was there any channel of command from the gauleiter

in any capacity with the Higher SS and Police Leader?

CAPTAIN VANCE: We object to leading questions--putting the words in the mouth of the witness.

PRESIDENT: Read the question, please.

(Whereupon the question was read by the reporter as follows:

"Q Was there any channel of command from the gauleiter in any capacity with the Higher SS and Police Leader?")

PRESIDENT: Objection overruled.

THE WITNESS: Yes.

QUESTIONS BY DEFENSE COUNSEL:

Q Was there any channel of command between the gauleiter in any of his capacities with Kaltenbrunner?

A No, not with Kaltenbrunner.

Q Coming down to September 1944, were you present at a meeting which took place between the gauleiters Buerkel, Sprenger and Simon, and Hitler?

A Yes. We had a conference at the offices of the Fuehrer with the gauleiter and the Reichsfuehrer SS Himmler and the Fuehrer himself.

Q And who was present at that time?

A Gauleiters Simon, Sprenger, Buerkel, Reichsfuehrer SS I said already before, and a few other gauleiters, too.

Q Did that conference have to do with the conduct of affairs, among other things, in the Rhein-Westmark area?

A Yes.

Q Tell the court what the conference was about, what was said, and by whom.

A The gauleiters Sprenger and Simon did not understand clearly what front near area and area in greatest emergency

meant. The Fuehrer defined that the Gau Westmark, in which the area of these two gauleiters was located, and the entire area of the Higher SS and Police Leader Stroop, was front near area.

Q Front what?

A Front near, and in the greatest emergency.

Q Was anything said as to what that language meant?

A Yes.

Q And what was that?

A It is necessary to explain to the court how these orders came about.

Q Go ahead.

A Until 1939 it was so organized that all the executive power in case of war was supposed to be in the hands of the commanding general of the army corps. In 1939 the executive power in the civilian sector was transferred to the Reichskommissar for the defense. There is no doubt that all the powers which the commanding general of the army corps had before, as far as civilian sectors are concerned, were transferred to the Reichskommissar for the defense; and, as a result of this, certain powers to give orders to the police force, too.

Q Just a minute. By the Reich Defense Commissioner you mean the gauleiter in his capacity as Reichsverteidigungs Kommissar?

A Yes.

Q Continue and tell what these powers over the police became.

A For instance, when it was necessary to requisition something or other forces had to be put into effect--requisitioning of apartments, vehicles; furthermore, changes in the civil

law. The Reichskommissar for the defense could give the appropriate orders to the police force.

Q Just a moment. What do you mean by "police force"? Which police force?

A Various police forces.

Q Name them.

A For the rural districts, the rural police; for the cities, the order police--regular police; the air raid protection and fire protection police; for the security police; as appointing authority and reviewing authority of the special courts--Standgericht--to execute the man sentenced by this court; to order the imprisonment of people who were politically dangerous.

Q Who decided whether or not they were dangerous?

A This decision was made by the Wehrmacht, which contacted the Reichskommissar for the defense; and in the end and for the last time on the 24th of February, 1945, the Fuehrer requested the gauleiter, the Reichskommissar for the defense, and the Reichsstatthalter in Personal-Union that in a case of highest emergency, if necessary they themselves with their weapons should eliminate such dangers.

Q What do you mean by that? Explain it a little bit more fully--what you meant by that order.

A In case of disobedience of orders of the Fuehrer, or in case of propaganda in the army, or in case of disobedience to certain orders of the Reichsfuehrer.

Q Who was he?

A Himmler.

(Hildebrandt - Direct)

Q Yes?

A If necessary to execute personally, the person who refused to carry out this particular order.

DEFENSE COUNSEL: (To Interpreter) By shooting, he said, did he not?

THE INTERPRETER: By shooting; to execute by shooting.

QUESTIONS BY DEFENSE COUNSEL:

Q In other words, the gauleiters received an order, as I understand your testimony, to shoot personally any person who refused to carry out an order of Hitler's or Himmler's; is that a correct statement of the testimony you have just given?

CAPTAIN VANCE: I object to the question. It is leading. It is putting the words in the mouth of the witness. He has not testified to all those facts stated in the question.

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q You testified that an order was issued directed to the gauleiters of Germany in February 1945; is that correct?

A For the last time. That was for the last time. Before that time already orders were given orally as well as in writing by the Fuehrer to the gauleiters.

Q Let us limit ourselves to the time referring to the order of February 1945. That order was given to the gauleiters by whom?

A From Fuehrer.

Q I am asking what subject that order covered. Nothing but the subject.

A On all subjects. The gauleiter was supposed to get tough in case if somebody did not carry out his orders or some order was not carried out.

Q And what do you mean by "get tough"? What did the order say, if anything, that the gauleiter should do?

A Whenever an order from higher authority, either the police or Bormann or the Fuehrer or the Reichsfuehrer SS was not carried out.

Q And in the case of a refusal by someone to carry out any one of these orders, what was the gauleiter himself ordered by Hitler to do?

A To act immediately, and in case he could not enforce the obedience of the order to do it with his weapon, if necessary.

Q Do you know of any cases of any gauleiters who got into trouble for failure to carry out that order?

CAPTAIN VANCE: We object on the ground that it is immaterial about a gauleiter getting in trouble. There is no gauleiter involved in this trial.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: I would like to discuss that with the court for a minute or two.

PRESIDENT: Open court or closed court?

DEFENSE COUNSEL: I would like to discuss it. I would like to make a request for a reconsideration.

PRESIDENT: We will hear your discussion.

DEFENSE COUNSEL: An integral part of the defense in this case is going to be the defense of superior orders, and we are trying to show by this testimony the pressure put on what the prosecution is so happy to call the trigger-men, from

all sides; not only from the immediate superiors, so far as formal superiors are concerned, but from all sides. For instance, some of those lines in the Ordnungs Police and the gauleiters from Himmler, from Hitler, from Bormann, from Kaltenbrunner, from all of them, show the pressure put on them from all sides and the means used to enforce obedience--blind obedience. Now, we could show by my question, and this is an offer of proof: The testimony has been that that order was given to the gauleiters themselves--very important individuals--by Hitler. My question is: What would have happened to a gauleiter who refused to obey the order? That is the purpose of my question, and that is the question that was objected to. I would like to say that we ought to be given every reasonable latitude of putting in a defense.

PROSECUTION: May it please the court, in view of the statements made by the defense and the anticipated defense of superior orders, I not only object to the question but move that all the testimony be stricken out. If the court desires to hear me at length at this time, I would like to do so. However, I can reserve that argument for later in the case. I wish to state, however, one thing apropos of the defense of superior orders.

This testimony led up to the Fuehrer as the man who gave the orders down to the gauleiters and down on through to the other people. Therefore, following out their defense to its logical conclusion, there is only one man that can be tried for these offenses, and that is Adolf Hitler.

DEFENSE COUNSEL: May I say just this: that I have read the decisions on the defense of superior orders, as well as the prosecution, and I am not so silly, and neither is any

member of the defense so silly, as to think we can dump this in Hitler's lap. However, the court might very well consider, in determining the degree of guilt, the position which some accused in this box actually occupied and how many fingers were pointing at him and how many people were threatening to cut his throat. I submit that that is legitimate, and very decent and reasonable evidence to put in.

PRESIDENT: Court will recess until 1:30.

(Thereupon at 1200 hours the court recessed until 1330 hours.)

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AFTERNOON SESSION

(Thereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent sick; all of the accused; the reporter and interpreter are present.

FRIEDRICH HILDEBRANDT, called as a witness by the defense, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

DIRECT EXAMINATION (Continued)

QUESTION BY DEFENSE COUNSEL:

PRESIDENT: In view of defense counsel's statements, the decision of the court sustaining the objection is withdrawn and the objection is overruled. The question may be answered.

QUESTION BY DEFENSE COUNSEL:

Q Was anything said at that conference in February, 1945, as to what could happen to a gauleiter who failed to carry out the orders? Please answer yes or no.

A Yes.

Q Who said it?

A The Fuehrer.

Q What did he say would happen to any gauleiter who failed to carry out the order you said that he gave?

A He would be shot.

Q Was anything said as to who would shoot the gauleiter?

A That would be ordered.

Q Do you know by whom?

A By Bormann.

Q Do you know of any gauleiters who were shot at any time subsequent to the issuance of that order?

A Yes.

Q What was his name?

A Gauleiter Wiesbaden.

Q What was his name?

A Heyenrath.

Q Now, this morning you were testifying about chains of command. Is there a difference between the chains of command and spheres of influence?

A Yes.

Q What is the difference between a chain of command and a sphere of influence?

A Chain of command means that the gauleiter can issue direct orders to the officers concerned; in this case, the police.

Q And what is a sphere of influence?

A A sphere of influence concerns a political pressure, technical advisor to politics at the Reichsstatthalter office and the direct path to the higher SS and police leaders or the Reichsführer.

Q Did the gauleiter in any of his capacities as Reichsverteidigung Kommissar or Reichsstatthalter have spheres of influence in addition to the chains of command which pertained to his office or any one of his offices?

A No.

Q Will you please explain to the court how the spheres of influence operated?

CAPTAIN VINER: May it please the court, we object unless he confines that to the 12th Wehrkreis which is the matter in this court. It is not shown that he was in this Wehrkreis and the same condition may not exist in the Wehrkreis he was in.

DEFENSE COUNSEL: I will ask him.

QUESTIONS BY DEFENSE COUNSEL:

Q Did the conditions with respect to the spheres of influence of the gauleiter in Koblenz-Trier, to your knowledge, pertain in all the

other gaus as well?

A Yes.

DEFENSE COUNSEL: Will you read my question?

(Thereupon the question referred to was read by the court reporter as follows:
"Q Will you please explain to the court how the spheres of influence operated?")

A If it was the opinion of a gauleiter in his capacity as Reichs Defense Kommissar and Reichsstatthalter that there was a necessity for energetic action against political individuals who were performing active acts of resistance, and he would turn to the State Police office chief. He would talk the matter over with him and would demand energetic action.

Q What would happen?

A The STAPO, State Police chief, office chief, could then take action or else he would turn to the Inspector, and if he considered it necessary, he in turn would turn to the Main Office, to Kaltenbrunner, but if the results were not to the satisfaction of the gauleiter, he would turn to the Inspector personally or to Kaltenbrunner or to Hitler personally.

Q By "he," whom do you mean?

A The Reichsstatthalter.

Q Could he in the same way go to Nuremberg?

A As far as the regular police was concerned, he could.

Q Would the degree of the sphere of influence or the extent of the sphere of influence vary according to the personality of the gauleiter?

A Yes.

Q In what way could the personality of the gauleiter affect the sphere of influence?

A There were certain gauleiters who were naturally more active

and did not have a personal legal means with them, and in accordance with that he would use his influence and expression.

Q You have testified before that you knew personally Streicher, Bruckner and Himmler. Do you know whether or not these people or any one of them were the type of individuals you just described who would use their sphere of influence?

A All three of them would.

Q You testified about a conversation with Hitler himself in which the Rhein/Westmark was declared to be a near-front area. What effect, if any, did that declaration have on the authority and obligations of the police officials, of the head police officials, in that area?

A The higher police leaders, with that act, joined the staff of the army commanders.

Q By "higher police leaders" do you mean people occupying positions that Stroop had at that time?

A Yes.

Q What other differences took place after that?

A He had the executive power and the police area.

Q Who had the executive power?

A The higher police and SS Fuehrer and in conjunction also the inspectors and commanders.

Q By "inspectors" do you mean people who occupied the position in that bracket here (indicating)?

A Yes.

Q Where Lohmann's name is mentioned?

A Yes.

Q What effect, if any, did this decision of September 1, 1944, have on the position described as Inspector of the SIPO and SD?

A There were changes in great powers which had before that, in principle, been included in the Reichsfuehrer's office or the main Office.

A Yes. The Inspector, who did not prior to that time have the authority to commit people into jail or concentration camps received this authority also.

Q Do you know when the title of Inspector of the SIPO and SD was first given to this office?

A No.

Q Do you know whether or not the title of that office was ever changed?

A No.

Q I asked you this morning whether or not, in your opinion, that chart correctly indicated all the chains of command and spheres of influence, and you said it did not. Will you please indicate to the court which lines should be added to that map, if any, to indicate spheres of influence not shown thereon?

(Whereupon the witness left the stand.)

A From the gendarmes, a direct path to the Reich Main Office.

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Q Was there any change in the name of the office?

A No.

Q Was there a time when the office no longer was that of Inspector but became known as that of Examiner?

CAPTAIN WISE: We object. He is leading the witness. The witness has answered.

EXAMINER: Repeat the question.

(Whereupon the last question was read by the court reporter.)

EXAMINER: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q After September 1, 1944, after this meeting, you stated that this office here, or wherever held it, had executive powers given him which he did not have before. Did that order of September 1 make any other changes than the one you have already mentioned?

Salzburg; a direct path to the Reichsfuehrer; a direct path to the higher SS and police leaders; the same from here (indicating).

Q Repeat them.

A To the main office of the regular police; to the Reichsfuehrer; to the higher SS and police officers.

(Thereupon the witness resumed the stand.)

Q If a difference of opinion had arisen between yourself as Gauleiter and the higher SS and police leader of your gau, whose wishes and interpretations would control?

A That can't be said. The decision would be made between Bormann and Himmler.

Q In the event of such difference of opinion, what could you do about it?

A A complaint to Bormann and to the Fuehrer himself.

Q On September 1, 1944, did any change take place throughout Germany so far as the command is concerned of all the civilian forces and the reserve army?

A Yes.

Q What was that change?

A The change was that the Reich Ministry of the Interior, the Reichsfuehrer SS Himmler, became the chief of the reserve army.

Q What was the effect of that?

A In my opinion, the effects were disastrous.

Q What was the effect of that so far as Himmler's power and authority was concerned?

A The power and authority of Himmler? I did not get it.

Q Did that order, in your opinion, give Himmler greater or less control over the internal defense control of Germany?

A Unlimited authority.

(HILDEBRANDT-Direct)

Q Over whom did that unlimited authority extend?

A Over everybody.

Q After September 1, 1944, when the Rhein/Westmark area was declared to be a near-front area, what would have been the consequences to any person who was a member of the Ordnungs Polizei, the Schutzpolizei, the Fire Police, the Air Police, the Water Police, the Gendarmerie, the Criminal Police or the SD, a member of any one of these organizations -- what would have been the effect upon any individual who had failed to carry out implicitly and completely any order which he received from a superior?

A Immediate death penalty.

Q Ordered by whom? Who had the power to order it?

A The Fuehrer had issued the order that the Reichs Defense Commissar had the authority to do so. Furthermore, the Reichsfuehrer of the SS Himmler, also the commanding generals of the army.

Q In other words, Sprenger and Simon, who were also Reichsstatthalters in Rhein/Westmark, had the power to order immediate death, is that correct?

A Yes.

Q Coming down to the police, did any of the officials of the Ordnungs Police or the Security Police likewise have the same power?

A Yes, roving courts were instituted.

Q What did these roving courts consist of?

A They consisted of members either of the police force or the armed forces.

Q And how did they operate?

A They would pronounce death sentences within very short periods of time and have these carried out.

Q You called these roving courts. What do you mean by "roving courts?"

A Those were courts instituted by the Reichsfuehrer and the commanding officers of the proper Wehrmacht district and who would be assigned to these proper districts.

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Q Were there such courts in the Rhein/Westmark area?

A Yes, everywhere.

Q How many such courts would there be in the Rhein/Westmark, if you know?

A I can't say.

Q How many such courts were there in Gau Mecklenburg?

A Five.

Q Do you know whether or not the other gaus had more or less than five for each gau?

A It is quite probable that this may have been true for larger gaus.

Q Was Gau Westmark larger or smaller than Gau Mecklenburg?

A A little bit larger.

Q Was Gau Hessen-Nassau larger or smaller than Mecklenburg?

A Just about the same size.

Q How about Gau Moselland? How did that compare to Mecklenburg?

A Gau Moselland was a little bit smaller.

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Q And having in mind the areas of Gau Westmark, Moselle-Nassau and Moselland, can you give the Court an opinion as to how many of those roving courts existed in the entire Rhein-Westmark area?

A At least five, but I would estimate ten.

Q How large were these courts?

A These courts would consist of one president and two or three other judges.

Q Who could bring a complaint against anyone before such a court?

A Anybody.

Q In other words, anybody could complain to such a court against anyone?

A From the Police Forces to the roving courts of the SS and Police, and from the armed forces to the roving court of the Army, and for the Summary Court of the Reichs Defense Kommissar from anybody of the civilian sector.

Q What would happen when anybody made a complaint to one of these courts--what was the procedure that would follow?

CAPTAIN VANCE: We object, may it please the Court. That's too general. We don't know whether the man is going to complain of rape, murder, disobeying an order or what.

DEFENSE COUNSEL: Let's talk only of failure to obey orders which came down from higher authority.

PRESIDENT: Have you a complaint?

CAPTAIN VANCE: I have an objection.

DEFENSE COUNSEL: I amended the question.

CAPTAIN VANCE: That's satisfactory.

(Hildebrandt-Direct)

QUESTIONS BY THE DEFENSE COUNSEL:

Q The question is this: What would happen when somebody made a complaint to one of these roving courts that someone failed to carry out an order passed down from a higher authority?

A In case of a complaint for disobedience of an order, and in case of an extreme emergency--in this case an extreme emergency would become extreme in close vicinity of the front, about 15 miles behind the front--in such cases the Reichs Defense Kommissar had to have the man shot immediately. In other cases when there was an emergency, he would make a request for a sentence to one of these roving courts.

Q How much of an investigation was made by a court after a complaint was made?

A The courts would interrogate the witnesses and the accused, and they would base their sentences on that.

Q How long after sentence was it until the execution of the sentence?

A It would have to be executed promptly--without delay.

Q Was the Rhein-Ostmark area declared to be such an area by the order of September 1, 1944?

A Yes.

Q In addition to punishment of the individual himself, who failed to carry out an order, was any provision made for the punishment of additional persons?

A Yes, they had that, too.

Q Who else would be punished, in addition to the

man who failed to carry out the order?

A For subversive activities, sabotage or political obstruction?

Q I am a married man with a family, and I fail to carry out an order after September 1, 1944 in the Rhein-Westmark area--what happens to my family and myself?

CAPTAIN VANCE: Objection on the ground that the question is leading and suggesting an answer to the witness.

DEFENSE COUNSEL: I pray the Court's judgment.

PRESIDENT: Objection sustained.

QUESTIONS BY THE DEFENSE COUNSEL:

Q What is mean by the German word "sippenhoft"?

A There were two such concepts of "sippenhoft". One of these concepts existed within the SS and carried out by the Reichsfuehrer of the SS, Himmler.

Q What was it?

A That he, that is the Reichsfuehrer, could apply "sippenhoft," to the members of a family of an SS man sentenced to death under dishonorable conditions--that is, by putting them in jail or declaring them unfit for society.

Q And what was the second interpretation?

A This concept came up on the 20th of July, 1944, against the family of Count Stauffenberg. It was applied against his family, and the wife and children were also arrested. This "sippenhoft" was later abolished in accordance with the protests of several Gauleiters. The Fuehrer then directed that only in cases in which a perpetrator would not report himself to the authorities, one of the members of the family of this person would be put under arrest.

DEFENSE COUNSEL: You may inquire.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q In which Wehrkreise was your Gau located?

A Wehrkreise Number 2.

Q And where was the Headquarters of Wehrkreise 2?

A Stettin.

Q Was that anywhere near Wehrkreise 12?

A No.

Q About what is the distance between your Gau and Gau Hessen Nassau?

A Six hundred kilometers, perhaps.

Q And how far from Gau Westmark?

A Six or seven hundred kilometers.

Q And from Gau Moselland?

A About the same--600.

Q Now, in each Wehrkreise did they have approximately the same Police setup as shown on this chart?

A Yes.

Q In Wehrkreise 2 that you were in, was the Police setup similar to this?

A Yes, exactly the same.

Q Did you have a Higher Police Leader?

A No, he was located in Stettin.

Q Did Wehrkreise 2 have such a person?

A Yes.

Q And did it have an Inspector of the Security Police?

A Yes.

Q Now what was the relationship between the Higher

SS Police Fuehrer and the Inspector of the Security Police?

A That was a community between each other.

Q Who was the highest official?

A The SS and Police Fuehrer.

Q And the Inspector of the Security Police was his subordinate--is that correct?

A Yes.

Q And likewise the Chief of the Ordnung Police was a subordinate of the Higher Police Fuehrer--is that correct?

A Yes.

Q Who was the chief of all of the police in a certain Wehrkreise?

A The overall chief?

Q Yes, for a Wehrkreise?

A The Highest SS and Police Leader.

Q Who is the Commanding Officer of the Inspector of the Security Police?

A Kaltenbrunner, and above him, Himmler.

Q Is the Higher SS Police Fuehrer also the Commanding Officer of the Security Police?

A Yes.

Q I believe you testified that a Gauleiter in some capacity could employ the enlisted men for the police force, is that correct?

A Yes.

Q If a man wanted a job with the police force, he would go to the Gauleiter and request employment, is that correct?

A No.

Q How did he make application?

A He would make an application to the Headquarters of the Protective Police.

Q And would that be subject to the approval of the Gauleiter?

A Yes, the political approval would be called in effect.

Q In your capacity as Gauleiter, did you employ or approve the employment of enlisted men for the police force in your Gau?

A No, I delegated this authority.

Q Was anyone forced to accept employment with the police forces?

A Yes, later on the emergency draft laws came into effect.

Q When did that begin?

A With the start of the war.

Q Prior to that time was it voluntary?

A No, persons were detailed usually from the police forces, but sometimes also from other branches of the civil service to the police.

Q Now you have testified about certain lines that should be on the chart running from the Gauleiter to Himmler. Do you mean that the Gauleiter could tell Himmler what to do?

A No.

Q Himmler would tell the Gauleiter what to do--is that right?

A Yes, as Minister of the Interior.

Q Now you indicated lines should be here from the Gauleiter to the office held by General Stroop. Do you mean

that the Gauleiter could tell General Stroop what to do?

A No, he couldn't do that--only in such cases he could where he as the Reichs Defense Kommissar would order instructions from the Fuehrer or from the Army to take effect.

Q But you or no other Gauleiter could tell General Stroop what he had to do, could you?

A No, I couldn't do that.

Q Now, you indicate lines should be from the Gauleiter to the Inspector of the Security Police. Could a Gauleiter tell the Inspector of the Security Police what he should do?

A No, only in his capacity and within the area of his capacity as Reichs Defense Kommissar.

Q Did the Gauleiters run the police system of Germany, or did Himmler run it?

A The Gauleiters had no business running the police themselves.

Q Then they did not run it, did they?

A In cases such as the ones described by me just now--orders were issued.

Q Now, you spent some time telling about these roving courts. Who appointed these roving courts?

A The High Command of the Armed Forces, of the Navy and the Air Force, and the Chief of the German Police, Himmler, and the Summary Courts were appointed by the Reichs Defense Kommissars.

Q What connection did the Higher SS Police Leader have with these courts in his districts?

A He would be subject to their activities just like anybody else.

Q Didn't he appoint them and didn't he review their findings?

A As far as the military and civilian matters are concerned, he did not. As to the Police, I can't say.

Q You testified that anyone failing to obey orders that came from higher Headquarters of the Police Force would be shot, and by whom did you say they would be shot?

A Anybody who would have orders to do so. In cases of extreme emergencies, the Highest SS and Police Leaders of the Reichs Defense Commissary, and in the Army also the Commanding General.

Q We are talking about the police--we are not talking about Army personnel. Do you mean that the Higher SS Police Leader could give the order?

A In the case of the greatest emergency he could--in fact, he had to give it.

Q I believe you stated that if you didn't have time for Court, that the Gauleiter could order a shooting. Is that right?

A In the greatest emergency he could.

Q As a Gauleiter, how many executions did you order for failure to obey an order?

A None.

Q You testified that one Gauleiter named Wiechtler was shot, is that right?

A Yes.

Q Who shot him and what for?

A He was shot by an SS detail.

Q For what?

A Because he had dissolved the home guard and was not planning on continuing the fight.

Q In other words it was for cowardliness or desertion.

A No, he was shot because he failed to obey the Fuehrer's order to fight to the last.

Q Now, this morning, in explaining this chart, Defense Exhibit Number 2, you explained that certain marks were to indicate political pressure being put on the police--that's right, isn't it.

A Yes.

Q Now, you are testifying about what the chart shows, are you not?

A Yes.

CROSS EXAMINATION, continued.

QUESTIONS BY CAPTAIN VANCE:

Q You did not prepare this chart, did you?

A No.

Q You don't know exactly what the political setup was in Rhein-Westmark in 1944, do you?

A Exactly the same as it was in the rest of the Reich.

Q Haven't you previously testified that some Gauleiters would exert more pressure than others?

A Yes. It was up to the personality and activity of the Gauleiter concerned whether he wanted to get mixed up in these matters.

Q How often were you in the Rhein-Westmark area during 1944?

A I wasn't there in 1944.

Q How do you know what was taking place there in 1944?

A Because I had to talk to these Gauleiters in Berlin about such things as the air raid situation, the protection of the population and other matters.

Q What about the police officials in the Rhein-Westmark area? You had no knowledge of what they were doing, did you?

A That is not up to me to decide anyway.

Q Do you know about it?

A No, I don't know anything about it.

Q Did you know General Stroop back in 1944?

A I knew his name and we had seen each other in meetings of higher officials.

Q Did you know Colonel Sommann back in 1944?

A Yes.

Q Did you know Dr. Trumpler back then?

A Yes.

Q They attended meetings with the Gauleiters?

(Wildebrandt-cross)

A No. Colonel Somann was from my district and we have probably known each other ever since we were young. Dr. Trummler was in charge of the setup of the police school at Furstenberg in my district.

Q Mr. Hildebrandt, was the fighting going on between the party and the police system or were they in accord and in harmony on matters at that time?

A The only difference existing between the police and the party was of a personal nature.

Q Orders that were coming down from higher authority were in accord, is that what yo mean?

A The channel of command of the police was organized within itself and we had no hand in it.

CAPTAIN WANCE: No further questions.

DEFENSE COUNSEL: I may have one or two after the court is finished.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q In case of a conflict of orders received by the inspector between orders he received from Kaltenbrunner and orders he received from Stroop, whose orders would he have to obey?

A Who me? I don't understand it. Police official? What orders? The police official? I didn't understand the question.

Q In case the inspector of police received an order from Kaltenbrunner, and Stroop tried to tell him something different from the order, whom did the inspector have to obey?

A The inspector would have to carry out the orders of Kaltenbrunner.

Q In addition to orders which Stroop may have received from Himmler affecting the security police did Stroop have any authority over the Sipo?

A No, as far as I know he didn't.

Q Would that also apply to the Befehlshaber der Ordnungspolizei?

A Yes, the same.

DEFENSE COUNSEL: Could I ask the interpreter through the court to translate the German word Standgericht?

INTERPRETER: Summary court.

DEFENSE COUNSEL: The defense takes exception to the translation. May it please the court, I understand it means a martial court or a military court.

DOCTOR RAU: Will you tell the court it is an ordinary court and a martial court is an extraordinary military court.

DEFENSE COUNSEL: I could let that go until the recess so as not to hold up the court any further but I would like to have you check it.

QUESTIONS BY DEFENSE COUNSEL:

Q You said something before in which you referred to the Standgericht. Would you be good enough to tell the court what you said before about the Standgericht?

A The defense kommisser would appoint a standgericht in his area.

Q What were the duties and powers of the Standgericht?

A The Standgericht would sentence the accused.

Q What offenses did the Standgericht have jurisdiction over?

A Against all offenses which might be directed against the continuing resistance or against the Reich or any offenses concerning subversive activities.

Q What penalties could the Standgericht enforce?

A All punishments.

Q How many members comprised a Standgericht?

A Five members.

Q They were appointed, you say, by the Gauleiter in his capacity as Gericht Hauptsfuehrer?

A Yes.

Q Were these Standgerichts not similar to the roving courts you testified about before?

A Yes.

DEFENSE COUNSEL: Nothing further.

PRESIDENT: No questions by the court, the witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: Could I ask the court to recess in place, I would like to discuss something with Colonel Dwinell?

PRESIDENT: The court will recess in place.

(Whereupon the court recessed in place.)

(Whereupon the court reconvened.)

PRESIDENT: The court will come to order.

DEFENSE COUNSEL: The defense will now call Hans Trummler.

I would like to state for the record that the defense is calling the accused Trummler at this time for the sole and limited purpose of testifying to the organization set up of the police and the various channels of command.

CAPTAIN VANCE: I would like to state to the court that the prosecution is not bound by any such statement made by the defense counsel.

PRESIDENT: The court understands that.

HANS TRUMMLER, an accused, voluntarily took the stand in his own behalf and made the following unsworn statement through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Your name is Hans Trummler?

A Yes.

Q You are an accused in this case?

A Yes.

Q The questions about your name, age and civilian occupation have already been asked previously?

A Yes.

Q I call you attention to Defense Exhibits 1, 1-A and 1-B and ask you if you recognize them?

A Yes.

Q Will you tell the court what it is?

A That is the organization under the higher SS and police officer of the

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QUESTIONS BY DEFENSE COUNSEL:

Q Were there any changes in the situation between the time Sommer was inspector and the time you were commander? Were there any changes so far as the Party was concerned?

A What do you mean? The Party itself or my relationship to the Party?

Q Your relationship to the Party and the Party's relationship to you. By "you" I mean your office.

A The pressure of the Gauleiters became stronger and stronger. Among other things the Gauleiters had requested from me and also from the Higher SS and Police Leader that the political leaders of the Party should have the right to take people into custody. It wasn't easy for me to deny these requests. Of course, I denied these requests. Of course also, the pressure of the lower Party authorities was increasing all the time from the Kreisleiters and Ortsgruppenleiters, the Gestapo and the SD branch offices in accordance with the ever increasing emergency.

Q How was this pressure exercised?

A In this way -- that the Kreisleiters and Ortsgruppenleiters, either personally or through their representatives, contacted the chiefs of my Gestapo, Cripo or SD offices and requested them to take people into custody to requisition things to evacuate the areas.

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(Examination direct)

Q You said it was not easy for you to say no to the gauleiter when he wanted authority to take people into custody. Why was that?

A Why wasn't it easy?

Q Why wasn't it easy to say no?

A Because the gauleiters had the possibility to complain about me directly to my immediate superior, Dr. Kaltenbrunner, or to the Reichsfuehrer SS Himmler or to Bormann. And there was a possibility that I would have been put before a special court-martial if conditions and the whole incident was not reported correctly. I had one incident in Gau Westmark where a gauleiter requested that a criminal commissioner should be transferred immediately out of his gau because he did not obey the requests of the Kreisleiter. That was in Neuenkirchen-Pfals. In a personal conference with the gauleiter then I had success so that the man could stay on his job.

Q So far as the organization and the channels of command are concerned, what tieup was there between the Befehlshaber der SIPO und SD and the Ordnungs Police?

A What do you mean by tieup between these two?

Q What authority did the Befehlshaber der SIPO und SD have over the Befehlshaber der Ordnungspolizei?

A We were on the same level. We both as commanders--Befehlshabers--were under the Higher SS and Police Leader.

Q What authority did you have to give him orders and what authority did you have to give orders to the Ordnungs Police through him?

A I couldn't give any orders at all to the commander of the Order Police. The same way, the commander of the Order

Police couldn't give any orders to me or to my subordinate officers. There were two absolutely separate channels of command. The only office which could give orders to both of us was the Higher SS and Police Leader.

DEFENSE COUNSEL: No further questions.

Cross-Examination

QUESTIONS BY CAPTAIN VANCE:

Q You say the only person that could give orders to both you and the commander of the Order Police was the Higher SS and Police Fuehrer; is that right?

A On orders of my chief defense counsel, I decline to answer this question at this time.

Q Has your chief defense counsel explained to you that if you refuse to answer my question that the court can draw any inference they care to from your refusal to answer?

DEFENSE COUNSEL: I object to the question.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q When did you cease to be commander of the security police in Rhein-Westmark?

A On orders of my chief defense counsel, I decline to answer this question at the present time.

Q Is it on orders of the defense counsel or is it your own desire to refuse to answer these questions?

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q As commander of the security police for Rhein-Westmark, from whom did you receive your orders in reference

to the treatment of Allied fliers?

A I decline to answer this question on orders of my chief defense counsel at the present time.

Q During the period of your office were you ever in a conference with Kaltenbrunner where a discussion was had in reference to the treatment of Allied fliers?

A I decline to answer this question on orders of my chief defense counsel.

Q During the time that you were commander of the security police did you attend any conferences with General Stroop where you discussed the treatment of captured Allied fliers?

A Same answer.

Q And is it not a fact that during your tour of duty with the security police you called various and sundry conferences in your headquarters where you had representatives from Frankfurt, Koblenz, Darmstadt, and Saarbrucken, wherein you gave orders and directives as to the treatment of captured Allied fliers?

A Same answer.

Q Is it not a fact that when an emergency began to exist in the Rhein-Westmark area General Stroop took over command as your next higher commander of the security police for Rhein- estmark?

A Same answer.

Q On direct examination you testified that the gauleiters and political leaders were putting pressure on you and the lower offices under your command. What was the nature of that pressure? What did they want done?

(Trumbler - Cross.)

A Same answer.

Q Was the Party putting any pressure on the police in reference to the treatment of captured Allied fliers?

A Same answer.

Q Was the Party complaining that too many or too few captured Allied fliers were being murdered?

DEFENSE COUNSEL: I object to that question. I think it is far beyond the limits of proper cross examination.

PRESIDENT: The objection is overruled.

THE WITNESS: Same answer.

QUESTIONS BY CAPTAIN VANCE:

Q You have heard by written statements signed by the accused Arthur Fuehr to the effect that you ordered him on two occasions to take a captured prisoner of war out and shoot him. Do you deny that?

A I decline to answer this question at the present time by orders of my chief defense counsel.

Q I show you a document which is in evidence, Defense Exhibit 1, calling your attention to the right-hand side, which deals with the security police. Who furnished the information for making that part of this exhibit?

A Same answer.

Q What was that?

A Same answer.

Q Who gave the information for the making of Defense Exhibit 1-A?

A Same answer.

Q And who gave the information for making Defense Exhibit 1-B?

A Same answer.

CAPTAIN VANCE: If it please the court, the prosecution moves that Defense Exhibits 1, 1-A, 1-B, 2, 2-A, and 2-B be excluded on the ground that no person has identified them that had knowledge that they furnished the information for their making.

DEFENSE COUNSEL: The evidence is plain. Stroop testified that he gave the information with respect to the center, the left-hand part, and that the right-hand section about Kaltenbrunner was drawn up by collaboration of all the accused, and it has been testified by three people that it is a correct representation. What more can anybody ask? Furthermore, Hildebrandt identified it as a correct transcription of the situation in the Rhein-Westmark area. Furthermore, they were already received without objection.

PRESIDENT: The motion is denied.

QUESTIONS BY CAPTAIN VANCE:

Q Can you offer any explanation to the court as to why Colonel Somann was called an inspector and you were designated a commander?

A Same answer.

Q Before you went to Wiesbaden and took command of the security police, and during the time that Colonel Somann was in charge, were you familiar or do you know anything about the chain of command at that time?

A Same answer.

CAPTAIN VANCE: Nothing further.

PRESIDENT: No questions by the court.

(Whereupon the accused Trummler resumed his seat in the dock.)

(Trummler - Cross)

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2-10-47;JGMcD;6

DEFENSE COUNSEL: May it please the court, I would like to make a brief statement of explanation as to the plan by which the defense will put on its case:

We will put in a defense to the particular charges 3 to 10 first, in the numerical order in which they normally come. In other words, we will put in a particular defense to Charge 3 first, and so on down through Charge 10. Then we will come back to a general defense under Charges 1 and 2. At that last stage we will raise the particular defenses which we have in mind to raise for these people.

It will be inevitable that as we go from 3 to 10 we will touch on matters which relate particularly to 1 and 2 and to the general defense for the entire case.

Major Saxon will put in the defense to Charge 3.

MAJOR SAXON: If it please the court, this court on February 3 considered a motion for a finding of not guilty as regards the accused Julius Lassak, who is one of the accused in Charge 3. Some few days ago I served on the prosecution and gave to the Law Member of the court what I have termed a "Motion to Quash as to the Accused Julius Lassak." That wording "Motion to Quash" might be all right, but I do not think it is quite right, so I want to amend that motion and call it a "Motion for a Finding of Not Guilty as to the Accused Julius Lassak," and I respectfully would like to ask the court to permit me, or rather to reopen its decision on that particular motion as regards this particular defendant, and permit the defense at this time to submit this supplemental motion for a finding of not guilty as to the accused Julius Lassak, and permit me to submit to you in further support thereof what we think we have.

want to say further to the court that this is not directed to the benefit of the other accused, Branner, but is solely for the benefit of the accused Julius Lessak. It is not an idle motion submitted before this court, but one that the defense believes has great merit. I believe, in any event, that I should at this time, with the permission of the court, read this motion into the record before the court rules one way or the other.

PRESIDENT: Proceed.

MAJOR SAXON: "This will, with the court's permission, be entitled a "Motion for a Finding of Not Guilty as to the Accused Julius Lessak as to Charges 1, 2, and 3." It is dated February 5, 1947. We have termed it a "Motion to Quash."

"Comes now the accused Julius Lessak through Counsel for the Defense and moves this Court to quash the charges and particulars against him which are identified as Charges 1, 2 and 3 for the following reasons to-wit:

"Insofar as Charge 1 is concerned, there is no evidence that this accused conspired with any of the other accused in any manner insofar as the elements of the charges and particulars are concerned. Nor is there any evidence before this Court that this accused conspired with any other known or unknown persons to violate any of the laws and usages of war as so described in Charge 1.

"Insofar as Charge 2 is concerned, the defense moves that the same be quashed as to this accused for the reason that there is no evidence before this Court other than the fact that this accused was merely a member of the Allgemeine SS without any authority or function and no evidence of any kind that he ever participated in, aided or abetted any of the crimes charged against the SS as found in the Nuernberg Decision.

"The Defense further moves" -- and I have used the word 'quash' there when I should have said 'further moves for a finding of not guilty'--"to quash Charge 3 for the reason that there is no evidence before this Court that this accused in any way injured, insulted or participated in the assistance or even a consenting part in the death of an unknown member of the United States Army as set forth in Charge 3. The evidence clearly shows that as

Director of the Schutzpolizei, this accused received an order to turn the flier over to the Security Police for interrogation which order he complied with.

"Attached to this motion are the reference pages in the transcript to the evidence which supports the position of this accused."

"Keene Saxon, Major, CVP
Counsel for the Defense"

If it please the court, if I understand it correctly, my request is a matter strictly of discretion with the court, but I do not feel that it is unreasonable, and we do feel that this Motion for a Finding of Not Guilty as to this particular accused is highly important and with merit. I take it that before I can proceed further I have to wait until the court rules.

PRESIDENT: Any remarks by the prosecution?

CAPTAIN VANCE: If it please the court, we will object to opening it up at this time. A motion was made as to this very accused. That was argued by the prosecution and the defense. We think it would be repetitious to what has already been before the court.

PRESIDENT: Recess in Place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will adjourn until tomorrow morning at 9 o'clock.

(Whereupon at 1645 hours the court adjourned until 0900 hours, 11 February 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on .....194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13

Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

(15)

830 - 918

Case No. Superior Orders

Prosecutor Lt. Col. Dwinell

~~General~~ ~~Intermediate~~ Military Court.
*General

Defence Counsel Lt. Col. Berman

Interpreter Rudolf M. Nathanson
Herbert B. Rosenstock

Place DACHAU, GERMANY

Date 11 FEBRUARY 194 7

Reporter Patricie Stewart, Imogene Butler, John MacDonald, Paula Silverman, Selly Rose Hayett, Peter L. DiCurti

~~Members of Court~~
WITNESSES:

ERNST MUENK — CONRAD HACK
KARL ZIMMER
OTTO RAU
FRITZ AUGUST HIST
JULIUS LASSAK

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
    or in case of default of payment to serve a *furtner term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES VERSUS JURGEN STROOP, ET AL

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

11 FEBRUARY 1947 - Pages 880 - 918

TESTIMONY

	Direct	Cross	Redirect	Recross
ERNST KUEMM	884	842		
KARL ZIMMER	845	850	852	
OTTO RAU	852	855		
FRITZ AUGUST HUST	856	861	862	863
CONRAD HACK	863	865		
JULIUS LASSAK	868	905		

MORNING SESSION

(Whereupon the court reconvened at 0909 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent sick; all of the accused, except the accused Fay, No. 13, and Rost, No. 14, who are absent sick; the reporter and interpreter are present.

PRESIDENT: The court having already passed on similar motions by the accused Julius Lasnak, made together with others of the accused as to Charges No. 1 and No. 3, and the court having had before it and having considered the same evidence the accused Lasnak would now depend on in support of the motion he now desires the court to consider, finds no reason for granting the motion of the accused to reconsider the court's previous findings. Motion denied.

DEFENSE COUNSEL: May it please the court, due to the continued absence of Dr. Trost and the probability that she will be incapacitated for a number of days, certain changes have been made in the representation of German counsel which I would like to present to the court. The accused Fay will now be represented by Dr. Rau. The accused Girke and the accused Klemann will be represented by Dr. Aheimer. I would like at this time to present Dr. Richard Wagner, for whom permission is requested to represent Fuchr, Eichel, Schmann and Lasnak. The situation with respect to Dr. Wagner is identical with that with respect to Drs. Aheimer and Buerger, which was explained to the court when the case was first opened, and permission is therefore requested from the court that he be permitted to represent these four people in this case only.

PRESIDENT: Permission is granted, with the same understanding that we had with the other counsel. Proceed.

MAJOR SAXON: May it please the court, as regards the accused Julius Lassak, the defense desires to make a brief opening statement. This charge, known as Charge XIX, and the defense that will now be offered, will apply strictly to the accused Julius Lassak.

The evidence will show you that Julius Lassak, a man around 60 years of age, has all of his life been a railroad man, working for the German railroad, better known to most of us as the Reichsbahn. He undertook that employment in 1913 and continuously worked for the railroad until January 11, 1944. He lived a great deal of his life at Regensburg, Germany. He joined the NSDAP in 1925, when it was in its infancy, and when it was purely an economic and political proposition regarding the internal affairs of Germany. He joined the Allgemeine SS in 1926, when it was still, of course, in its infancy and while it was merely a political and economic proposition so far as the internal government of Germany was concerned. Lassak never held any function in either the Nazi Party nor in the Allgemeine SS except for a period of two years in 1935 and 1936, at which time he attempted to manage and operate a school for the Allgemeine SS. Some difficulty arose in the operation of that school, and from the honorary title of colonel he had in the SS, he was reduced to a Tech/Sergeant. Subsequently he was reinstated and continued to hold this title of colonel in the SS, which, the evidence will show you, is purely an honorary proposition.

The evidence will show you further that as the war progressed and the need for manpower became more intense here in Germany, he was drafted into the police work, of what we know as the Order Police or Ordnungs Polizei. He had never been in police work in his life, but sometime in the fall of 1943 they sent him to a police school for a few weeks and then placed him in charge of the police departments, on January 11, 1944, in Bad Nauheim, Friedburg and Giessen. He was known

as the Police Director of those three cities. What he had charge of is what is commonly known as the Schutzpolizei, the police only within the city. He had no charge over the Gendarmerie, which were out in the country, or sometimes known as the State Police. He had three or four lieutenants under him, and a captain, and probably 60 to 75 policemen. He continued up until the end of the war in 1945 in that work.

The evidence will show further that, as such a police officer, he performed his duty in accordance with the rules and regulations as laid down to him by his superiors. I might add that the evidence will also show that he was under General Wunnenberg as his top superior, and that Colonel Niemann — both of which names you will find on that chart — was his immediate superior, and that he was also under Reichsstatthalter Sprenger, who appears on that chart, from a political standpoint, and who was gauleiter of this particular area.

The evidence will show you that he did receive orders throughout the summer of 1944, and, I believe the evidence will show you, probably in the latter part of August and first of September, two of which clearly indicated that enemy agents were parachuting to earth in his area, along with disabled fliers who parachuted to earth because of the flak and planes falling, etc.; that he had instructions to turn all of these parachuted fliers over to the Gestapo or to the political party leaders for the purpose of interrogation. One order came to him stating, in substance, that all parachuted fliers were to be shot.

The evidence will show you further that on receipt of these orders which came directly to him by mail or by courier, he destroyed these orders and never passed them on to any of the police that served under him or to anyone else. The evidence will show you that he never ordered, countenanced or permitted the execution of a parachuted flier in the zone in which he had control, and that no police officer that served under him or any of his subordinates ever participated in such an

offense. The evidence will show you further that, as regards the particular flier who is unknown in Charge III and who parachuted to earth on October 3, 1944, that this flier was apparently apprehended by members of the Gestapo, that these members of the Gestapo wanted to keep their identity secret, and that when the officer Muenk and the Wehrmacht soldier who relieved these two Gestapo men and the other civilians of this flier -- not wanting to give away their identity, they immediately reported this fact to their superior, Winser. Winser, by the way, the evidence will show you, was the commander of the Gestapo in the same area in which Lassak was the commander or director of the police. Winser attempted to contact Lassak on the telephone and Lassak was out of his office at that time.

The evidence will show you that Muenk and the Wehrmacht soldier brought this flier to the headquarters and Lassak returned to his headquarters, and when he got back and found a telephone call from Winzer, that he called up Winser and Winser told him the story, that two of his Gestapo men had taken the flier away from him and they wanted him back for the purpose of interrogation and that they would send for him.

The evidence will show you that in view of the orders previously given to Lassak in the latter part of August and first of September that he was to turn fliers over to the Gestapo for interrogation, and by virtue of this request from Winser, he directed that the flier be turned over to a member of the Gestapo who came to his headquarters and who received him there, accompanied by Muenk, and Muenk went along to see that the flier was safely returned to the Gestapo for interrogation; that this flier was so turned over to Winser for interrogation, and that is the last and only part that Lassak had to do with this flier in question in any way.

The evidence will show you, which I think is already in evidence

now, and it is, as a matter of fact, that the accused Winser escaped here from Dachau sometime in August of this last year. The evidence will further show you that Winser, who is charged here, had something to do with the death of this unknown flier, was apprehended by the Americans and committed suicide.

The evidence will show you further, as regards part of the statement made by the accused Lassak, and which has been read into evidence here, that that part of that statement was procured by means which were not lawful, by threats and by intimidation and by physical force used against this accused. That, in substance, will be the evidence in behalf of the accused Lassak.

ERNST MUENK, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your full name, address, occupation, age and residence.

A Ernst Muenk, police sergeant, Bad Nauheim, Riegstrasse No. 12, 49 years old.

Q What was your occupation and where did you live in 1944?

A I was a police sergeant in Giessen, at police headquarters in Giessen.

Q How long had you lived there?

A For 15 years in Giessen.

Q How long have you been a police officer in Germany?

A In my 27th year of service.

Q You came in about 1920, is that correct?

A I came to the police in 1920.

Q Have you ever had any other occupation?

A Before 1914, a moving picture operator.

Q Were you a member of the NSDAP?

A After the end of 1937.

Q Were you ever a member of any of the SS organizations?

A No.

Q You are acquainted with the accused Julius Lassak, are you not?

A Yes.

Q You testified here as a prosecution witness some few weeks ago?

A Yes.

Q At that time, you identified Julius Lassak here in the accused's box, didn't you?

A Yes.

Q When did you first know Julius Lassak?

A When he was transferred to the police headquarters, Giessen.

Q When was that?

A I don't know it exactly, towards the beginning of 1944, I think.

Q How long did you know him there as the director of the Polizei?

A Until the end, until the Americans came.

Q Were you a policeman there throughout the summer of 1944?

A Yes.

Q During that period of time throughout the summer of 1944, was Lassak the Police Director of that area?

A Yes.

Q What area did he cover there?

A In his capacity as police director, he was in charge of all the administrative police and the protective police.

Q In what area?

A In Giessen, including Bad Nauheim and Friedburg, as far as the police is concerned.

Q Were you in Giessen on the 3rd of October, 1944?

A Yes.

Q Do you recall an incident that day that involved you and some American flier?

A Yes.

Q Will you just tell the court what your part in the affair regarding this particular flier was?

A I had taken the flier away from the excited populace in order to take him along to police headquarters. Since an air raid alarm was going on, all the people were in the headquarters. In the entrance, Lassak was standing next to the door and told me to go down with the flier. I went on down and in the hallway, where it was a little bit dark, Lassak followed me and gave the flier a push so he would go to the side and he opened the door to the C.P. The whole staff, the whole air raid protection people, were there. I walked up to the table and reported to the commanding officer that I had taken the flier away from the populace on the Marburger Strasse. They were attempting to take the flier out of town. Upon that, the CO told me, "I haven't got any use for him. Take him on out." At that time something moved on the table and I turned around and saw that Lassak had walked behind us and had pushed the flier against me as he was walking over to the telephone in the corner. I went out to the hall right away, and after I had been standing there for a short period of time, Police Director Lassak came out and told me, "This guy goes to the Gestapo for interrogation," and there where the hallway was narrow again, he pushed the flier again. I went out to the exit and remained standing down there and a few minutes later he called for me to take the flier up, for the flier to come up. I went up there and there was somebody standing there, I don't know who it was, a Gestapo official, and he said, "Here he is," and he was supposed to go along to the Gestapo, but I went along behind them all the way to the Gestapo. There was several employees standing there already and they told him to go in for interrogation by Branner. I was standing there for a while and I just saw Branner making him stand next to the door and he asked me

whether I had searched him for weapons. I said, "No," so they raised his hands up and searched him for weapons and as soon as they saw that several people were looking in as they were searching him, they closed the door. I then went on back to my office.

Q Did you see this flier any more yourself that day?

A No, I didn't see him any more.

Q What time of the day was it that you took him away from the civilian population?

A I can't give you the time, it must have been between 1 and 2 o'clock, but I can't tell you exactly.

Q How many people were in charge of the flier when you came up and took him away from them?

A 10 or 12.

Q Did you know them or who they were?

A There were — I don't know, I didn't know many of them. Kiefer was among them, but I think he just came with me, running over there. And since there were several men there, the man living in the house, Pfc. Willi Mahr, offered to assist me.

Q Was he a Wehrmacht soldier?

A He was.

Q Do you know whether any of this crowd of 10 or 12 were members of the Gestapo?

CAPTAIN VANCE: I object on the ground the question is leading. I don't mind his telling who the crowd was.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q Do you know to what organizations, if any, these 10 or 12 persons who had charge of the flier belonged to?

A The one who had the flier in the beginning?

Q Yes, that is right.

whether I had searched him for weapons. I said, "No," so they raised his hands up and searched him for weapons and as soon as they saw that several people were looking in as they were searching him, they closed the door. I then went on back to my office.

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A He was.

Q Do you know whether any of this crowd of 10 or 12 were members of the Gestapo?

CAPTAIN VANCE: I object on the ground the question is leading. I don't mind him telling who the crowd was.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR MAXON:

Q Do you know to what organizations, if any, these 10 or 12 persons who had charge of the flier belonged to?

A The one who had the flier in the beginning?

Q Yes, that is right.

A Men and women, all kinds of people.

Q Where were they taking the flier?

A Who?

Q These people, these 10 or 12 people.

A Well, there was several fires there due to the debris of the plane coming down, and they were trying to take him out of town. That is why somebody called me, I don't know why.

Q Did you feel that this flier was in danger and was that why you took him away from the people?

A Yes.

Q Did you think the public was going to lynch the flier or kill him?

A Yes, that is what I thought.

Q Now, in rescuing this flier, tell the court from whom you had orders to proceed in that kind of manner?

A We had orders from our office, from our headquarters, that we were supposed to take all fliers to our headquarters.

Q Your headquarters was in charge of the accused Julius Lassak, was it not?

A Yes.

Q During any time that Lassak was in charge of the police at Giessen, did you ever receive an order from him to shoot a flier?

A No.

Q Did you ever receive an order of any type to mistreat a flier from Lassak?

A No.

Q Did any of the other members of the police department that you belonged to ever receive such an order from Lassak that you heard of?

A No.

Q You did have an order to the contrary, though, to protect and take care of parachuted fliers, is that correct?

A Yes.

Q Did Lassak ever tell you of having received orders from higher headquarters regarding the shooting of fliers?

A No.

Q Getting back to the time you brought this flier into the command post, that command post was in a bomb shelter, was it not?

A Yes.

Q You have mentioned here that on two or three different occasions Lassak pushed the flier. Will you just tell the court whether or not he did that to intend to injure the flier, or was it because of the narrowness of the hallway there?

CAPTAIN VANCE: We object on the ground it calls for a conclusion.

PRESIDENT: On what ground? I didn't hear you.

CAPTAIN VANCE: It calls for a conclusion as to what mental operation was in Lassak's mind, what he intended to do by pushing him.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q What was the size of this hallway in which you and the flier and Lassak were proceeding?

A The hallway might have been one meter 30 to one meter 40 wide.

Q Tell the court why it was that Lassak apparently pushed this flier, from what you observed.

CAPTAIN VANCE: I object on the same ground.

MAJOR SAXON: I will withdraw that question.

QUESTION BY MAJOR SAXON:

Q Do you think, or could you tell by your observation, that Lassak pushed this flier with any intent to do any harm?

CAPTAIN VANCE: I object on the same ground.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q Did Lassak's actions in pushing this flier aside indicate on his part any malice or effort to do this flier harm?

CAPTAIN VANCE: I object on the same ground.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q Tell the court why it was necessary, if it was, to push this flier aside.

A Maybe he wanted to get through faster.

Q Was it with any intention to do him harm?

CAPTAIN VANCE: I object on the same grounds as stated.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q Did you see Lassak do this flier any harm?

A No.

Q Was the flier injured in any way while he was in your custody?

A In no way whatever.

Q Was he even searched for his personal effects or weapons of any kind?

A No.

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Q Now, do you know what Lassak's general reputation was in Giessen for being a police official that attended strictly to his duty and performed it in accordance with instructions?

A It was all right. He was all right and he was just.

Q Did you ever hear of Lassak's in any way injuring, mistreating or insulting any fliers or prisoners of allied countries that were apprehended in his area?

A No.

Q Now, during the 15 months to a year and a half that you knew Lassak, did he ever attempt to induce you to join the SS or any part of the SS organization?

CAPTAIN VANCE: I object to that as being immaterial, irrelevant and incompetent testimony.

MAJOR SAXON: Now, if it please the Court, one of the charges against Lassak here is that he is a member of this organization allegedly now found to be criminal. It's our effort here to show that while he was a member he took no active part and held no function and did not try to induce others to join, which we think goes to his defense.

PRESIDENT: Objection overruled.

WITNESS: No.

QUESTIONS BY MAJOR SAXON:

Q Did you ever hear him speak to any other members of the Police Department along the line of inducing them to join the SS?

A No.

Q During the time that Lassak was Police Director

in these three towns, was an allied flier or an allied prisoner of war ever shot or mistreated by any member of the police force which Lassak had charge of?

CAPTAIN VANCE: I object on the grounds that this witness is not qualified to answer this question. The Court well knows that killings were held in secret places; therefore, this witness could not know.

MAJOR SAXON: If he knows he should be able to tell--if he does not he cannot.

PRESIDENT: Read the question, please.

(Thereupon the reporter read the question.)

PRESIDENT: The witness will answer the question. The objection is overruled.

WITNESS: No.

MAJOR SAXON: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Musmk, this American flier that you captured on the 3rd of October, you didn't take that flier away from any Gestapo people, did you?

A No.

Q You took him away from, I believe, ten or twelve civilian people, among which were men, women and children, is that correct?

A Yes.

Q And you took that flier in custody in an effort to protect his life--that's correct, isn't it?

A To protect his life, that's right.

Q And as you had been directed to deliver captured fliers to your police station, you took him to your police station?

A Yes.

Q And the only reason that the flier fell into the hands of the Gestapo is because Mr. Lassak directed him to be taken there--that's correct, isn't it?

MAJOR SAXON: Just a moment. I object to that question as calling for a conclusion of this witness and asking for something without the realm of his knowledge at all. I say that for this reason. He has testified already that he knows nothing about orders. They are asking about orders that came about. The Prosecution's effort here is to show some act of Lassak's. The evidence will take care of that as we go along.

PRESIDENT: Read the question, please.

(Whereupon the reporter repeated the question.)

PRESIDENT: Objection overruled.

WITNESS: Yes.

QUESTIONS BY CAPTAIN VANCE:

Q Now, you were asked if any killings took place in Julius Lassak's district in which police did the killing, and to which you answered "no"--is that correct?

A That's right.

Q Now, do you mean to state that there were no killings, or that you do not personally know of such killings?

A If something like that would have happened, we would have heard about it.

Q Now, what about under the Gestapo in that district--did you hear of any killings?

MAJOR SAXON: I object to that as not having any bearing on this accused. He was no member of the Gestapo. What the Gestapo did or what other persons did has nothing to do with this accused.

CAPTAIN VANCE: There is another accused, Leonard Branner, who is being tried in absentia. That is cross examination.

PRESIDENT: Objection overruled.

INTERPRETER: Would you read the question, please?

(Whereupon the reporter read the question.)

MAJOR SAXON: Now, if it please the Court, that is beyond the realm of direct examination, for the further reason I object to this witness' being called on to answer that question. We have gone into nothing about the Gestapo.

PRESIDENT: The Court's decision stands.

WITNESS: No.

QUESTIONS BY CAPTAIN VANCE:

Q You never have heard of any killings by the Gestapo?

A No.

Q Did you testify before this Court that you heard that this flier you captured was killed by Leonard Branner?

A I heard that later--weeks later.

Q Well, you have heard then of killings by the Gestapo?

A After this incident.

Q Now, Mr. Muenk, I believe you said that you considered Mr. Lassak a good police official, is that right?

A Yes.

Q He was the type of man that would receive orders from higher Headquarters and carry out those orders, wasn't he?

A Yes.

Q And he delivered orders to his subordinates and expected them to be obeyed, is that correct?

A Yes.

CAPTAIN VANCE: No further questions.

MAJOR SAXON: Nothing further.

PRESIDENT: Any questions by any member of the Court? No questions by the Court. The witness is excused.

(Thereupon the witness was excused and withdrew.)

KARL ZIMMER, called as a witness by the Defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your full name, address, occupation, age and residence.

A Karl Zimmer, Giessen Am Riegelpfad 28, at this time a merchant. 54 years old.

Q Were you at one time a member of the Police Department in Giessen?

A Yes, I have been in Giessen since 7 October 1921.

Q Did you become a member of the police department there at that time?

A I was with the police.

Q And how long were you with the police there?

A I have been with the police ever since the first of July, 20.

Q And were you with the police up until the end of the war in that area?

A Yes.

Q Now were you a member of the NSDAP?

A Yes.

Q Were you ever a member of the SS organizations?

A No.

Q Were you a member of the Police Department there in Giessen throughout the year of 1944 and up until the end of the war?

A Yes.

Q Was Julius Lassak your commander there?

A Yes.

Q You know him, do you?

A Yes.

Q Could you identify him here in this court room?

A Yes.

Q Will you do so?

A Number 18.

MAJOR SAXON: Let the record show that this witness identified the accused, Julius Lassak, as number 18 in the accused's box.

QUESTIONS BY MAJOR SAXON:

Q Now, what was your particular duty there in 1944 and until the end of the war?

(Zimmer-Direct)

A I was air raid protection officer.

Q What rank did you hold as such?

A First Lieutenant of the protective police.

Q During that time was Hellwege-Emden a Lieutenant Colonel of the Police there?

A Yes.

Q And what was his position as regards Julius Lassak?

A Hellwege-Emden was the Commanding Officer of the protective police.

Q Was he the subordinate of Julius Lassak?

A The orders for the protective police which would come through the Police Director would be turned over to the Commanding Officer of the protective police and he would have to carry them out.

Q During 1944 and 1945, did you ever receive an order from Julius Lassak to mistreat or kill any allied fliers or prisoners of war which were apprehended in your area?

A No.

Q What were your instructions from Julius Lassak as regards allied fliers or prisoners of war that you took custody of?

A The orders were that we should turn them over to the troops of the Air Corps by way of the air raid protective police.

Q Was that done by the police of your unit there?

A The order?

Q When you would apprehend some flier or prisoner of war, was he turned over to the Wehrmacht and Luftwaffe?

(Zimmer-Direct)

A Well, we didn't have any to turn over except this one case. All other cases, the criminal police had them.

Q Do you recall--

DR. RAU: I object--ever, thing was not translated.

MAJOR SAXON: I ask the Court then to request the interpreter to translate it as he heard it.

PRESIDENT: Repeat the question.

(Thereupon the reporter read the question.)

WITNESS: We didn't have any other prisoners.

QUESTIONS BY MAJOR SAXON:

Q I want to ask you, Herr Zimmer, if you didn't testify a little bit ago that your instructions were to turn them over to the Luftwaffe and Wehrmacht?

A Well, yes, but in Giessen it was handled this way--that we turn them over to the criminal police, and then they in civilian clothes would turn them over. That's the way we turned them in.

Q Now was there ever an incident, Herr Zimmer, within your knowledge in which the police of your department ever injured or mistreated an allied prisoner of war or flier?

A No, not in the area of Giessen.

Q Did you ever receive from Julius Lassak an order of any kind to mistreat or execute allied fliers when they were captured?

A No.

Q Do you know Julius Lassak's general reputation for being a good citizen and good police official in that area? You can answer that yes or no.

A Well, we didn't have any to turn over except this one case. All other cases, the criminal police had them.

Q Do you recall--

DR. RAU: I object--ever thing was not translated.

MAJOR SAXON: I ask the Court then to request the interpreter to translate it as he heard it.

PRESIDENT: Repeat the question.

(Thereupon the reporter read the question.)

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QUESTIONS BY MAJOR SAXON:

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Q Now was there ever an incident, Herr Zimmer, within your knowledge in which the police of your department ever injured or mistreated an allied prisoner of war or flier?

A No, not in the area of Giessen.

Q Did you ever receive from Julius Lassak an order of any kind to mistreat or execute allied fliers when they were captured?

A No.

Q Do you know Julius Lassak's general reputation for being a good citizen and good police official in that area? You can answer that yes or no.

A I can't say anything of disadvantage to him.

Q The question is, do you know his general reputation for being a good citizen and a good police official?

A I have to answer this question yes, as far as I am concerned. Otherwise, I can't do it.

Q Well, was it good or bad?

A Towards me, good.

Q I am asking you, Herr Zimmer, what was his general reputation in the community--not whether it was good toward you, but was it good in the community?

A Well, I have to say frankly, that I didn't hear much about it.

Q Did you ever hear anything bad?

A No.

Q As I understood you to say, in your immediate area you turned fliers and captured prisoners of war over to the criminal police?

CAPTAIN VANCE: I object, may it please the Court. He answered he had no prisoners of war and did not turn anybody over.

MAJOR SAXON: Maybe I am mistaken.

PRESIDENT: Objection overruled.

INTERPRETER: Repeat the question, please.

WITNESS: We didn't actually turn any over. We only had one captured there by the protective police.

MAJOR SAXON: Your witness.

PRESIDENT: The Court will recess for 20 minutes.

(Whereupon at 1000 hours, the Court recessed.)

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(Thereupon the court reconvened at 1020 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Frost, who is absent sick, all the accused, except Ley, number 15, and the accused Best, number 14, who are absent sick, the reporter and interpreter are present.

MAJOR SAXON: In order to maintain some order about the examination of these witnesses I have agreed with the prosecution that if the German counsel want to ask some questions, they ask them before cross examination.

PROSECUTION: That is agreeable with the prosecution.

KARL ZIMMER, called as a witness by the defense, having been previously duly sworn, resumed the stand and testified further through an interpreter as follows:

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Zimmer, you were asked about the order as to what was to be done with captured allied fliers and you answered in Giessen they had some different arrangement, is that correct?

A No, I didn't say that.

Q What did you say, something in reference to Giessen particularly?

A That we transferred the captured enemy fliers to the Criminal Police to be handed over to the Air Force.

Q And Colonel Lassak gave you that instruction, is that correct?

A Not me personally. This order existed already and was passed on through the commander of the Order Police.

Q From whom did you get the order?

A From the commander of the Order Police.

Q Who is he?

A Hellwege-Emden.

Q Who is the superior to that officer?

A As far as the technical matters of the Order Police were concerned it was the inspector of the Order Police in Wiesbaden.

Q Who was his local commanding officer in Giessen?

A There was no superior officer; he was the highest one.

Q What was Mr. Lassak's position in Giessen?

A Police director.

Q Was he not over you?

A My position was an exceptional one because as an officer of the Air Raid Protection Police, the police department was my superior officer.

Q From whom did you receive your orders?

A As far as the Air Raid Protection is concerned, from the police department.

Q And as far as other matters, from this Hellwege-Emden?

A But I didn't work there because all my time was occupied by my work for the Air Raid Protection Police.

Q Did you ever hear of any contrary orders that Lassak gave about captured fliers?

A No.

Q Did you consider Lassak an efficient police officer?

A According to our standards, Lassak was not a police officer, -- he was a police director.

Q Would you say he was an efficient police director?

A Yes.

Q Was he a type of man who would receive orders and obey them?

A Yes.

Q Was he the type of man when he ordered a subordinate to do something he expected it to be done?

A Yes.

CAPTAIN VANCE: Nothing further.

MAJOR SAXON: If the court please, Dr. Rau, on behalf of General Stroop, wants to ask this witness a question.

REDIRECT EXAMINATION

QUESTIONS BY DR. RAUD:

Q Do you know what the Criminal Police did with the fliers?

A The Criminal Police turned over the one flier I know about to the Air Force.

Q When did this happen?

A I don't know exactly; it must have been in 1944 but I don't know the date any more, -- or it was at the beginning of '45.

MAJOR SAXON: That is all.

PRESIDENT: There are no questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

OTTO RAU, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your full name, address, occupation, age and residence.

A Otto Rau, 57 years old, Giessen, police inspector.

Q How long have you been with the German Police Department in Giessen?

A Since 1935.

Q How long have you been in the police service in Germany?

A Since 1919.

Q Are you a member of the NSDAP?

A Yes.

Q How long have you been such a member?

A Since the first of May, 1937.

Q Were you ever a member of any of the SS organizations?

A No.

Q Are you acquainted with Julius Lassak?

A Yes.

Q Can you identify him here in the courtroom?

A Yes, number 18.

MAJOR SAXON: Let the record show that the witness identified the accused Julius Lassak as number 18 in the accused's box.

QUESTIONS BY MAJOR SAXON:

Q When did you first know Julius Lassak?

A In January, 1944.

Q In what capacity did you first know him?

A I worked in the administration and I was in charge over his office.

Q Were you a subordinate to Julius Lassak?

A Yes.

Q What were your particular duties there?

A I was in charge of personal matters of the administrative police, I took care of commercial matters, and I was in charge of price supervision.

Q Were you there continuously up to the end of the war?

A Yes.

Q Julius Lassak was your superior continuously until the end of the war?

A Yes, from '44.

Q During this period of time did you ever see any orders received by Julius Lassak regarding the treatment or disposition of fliers or allied prisoners of war?

A No.

(Rau-Direct)

Q Did you ever receive from Lassak any orders regarding the treatment of fliers or allied prisoners of war after they had been apprehended?

A No.

Q During the time 1944 and 1945 was there to your knowledge any allied flier or prisoner of war ever mistreated or executed by the police over whom Lassak had control?

A No, I don't know of any.

Q Had such a thing happened there would you have known of it?

A I would have heard about it.

Q Do you happen to know what Julius Lassak's orders were regarding the disposition of fliers or allied prisoners of war?

A No, I don't know that. I had nothing to do with that.

Q Do you know what Julius Lassak's general reputation was in that vicinity for being not only a good citizen but a fair and just police officer? You can answer that yes or no.

A Yes.

Q Was it good or bad?

A You can say good.

Q Did Julius Lassak ever suggest to you or request that you join the SS?

A No.

Q Did he talk of the SS and its operations in any way at all to you?

A No.

Q Did he ever attempt to enforce his will on you or any other members of the police department because he happened to be a member of the SS?

A No.

MAJOR SAXON: Your witness.

(Neu-Direct)

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Tau, do you know the meaning of an oath?

A Yes.

Q In your answer to the fact that there were no killings of allied fliers that took place in Julius Lassak's district, do you mean to swear that there were not any killings or that you do not know of such killings?

MAJOR SAXON: If it please the court, the question was directed to him as to these members of the police department that Lassak had control of. If it please the court, I think the prosecution's question is too wide.

CAPTAIN VANCE: I will restate the question.

QUESTIONS BY CAPTAIN VANCE:

Q Do you mean to say that there were no killings by members of the police under Julius Laasak, or do you mean to state that you do not have any knowledge of such killings?

A I don't know anything about such killings.

Q There could have been such killings happen without your knowing about them. That is right, is it not?

A Yes, they could have happened but I would have heard about it later through talk about it.

Q Did you hear of any killings being executed by the Gestapo?

MAJOR SAXON: If it please the court, I object to that question as going beyond the field of direct examination and beyond the scope of direct examination on this charge.

PRESIDENT: The objection is sustained.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Rau, do you know the meaning of an oath?

A Yes.

Q In your answer to the fact that there were no killings of allied fliers that took place in Julius Lassak's district, do you mean to swear that there were not any killings or that you do not know of such killings?

MAJOR SAXON: If it please the court, the question was directed to him as to these members of the police department that Lassak had control of. If it please the court, I think the prosecution's question is too wide.

CAPTAIN VANCE: I will restate the question.

QUESTIONS BY CAPTAIN VANCE:

Q Do you mean to say that there were no killings by members of the police under Julius Lassak, or do you mean to state that you do not have any knowledge of such killings?

A I don't know anything about such killings.

Q There could have been such killings happen without your knowing about them. That is right, is it not?

A Yes, they could have happened but I would have heard about it later through talk about it.

Q Did you hear of any killings being executed by the Gestapo?

MAJOR SAXON: If it please the court, I object to that question as going beyond the field of direct examination and beyond the scope of direct examination on this charge.

PRESIDENT: The objection is sustained.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Sau, do you know the meaning of an oath?

A Yes.

Q In your answer to the fact that there were no killings of allied fliers that took place in Julius Lassak's district, do you mean to swear that there were not any killings or that you do not know of such killings?

MAJOR SAXON: If it please the court, the question was directed to him as to these members of the police department that Lassak had control of. If it please the court, I think the prosecution's question is too wide.

CAPTAIN VANCE: I will restate the question.

QUESTIONS BY CAPTAIN VANCE:

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A I don't know anything about such killings.

Q There could have been such killings happen without your knowing about them. That is right, is it not?

A Yes, they could have happened but I would have heard about it later through talk about it.

Q Did you hear of any killings being executed by the Gestapo?

MAJOR SAXON: If it please the court, I object to that question as going beyond the field of direct examination and beyond the scope of direct examination on this charge.

PRESIDENT: The objection is sustained.

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Rau, would you consider Mr. Lassak an efficient police official?

A Yes.

Q Would you say that he was the type of police official who would receive orders and carry them out explicitly?

A Yes.

Q Was he the type of official who would give orders to his subordinates and expect them to be carried out explicitly?

A Yes.

CAPTAIN VANCE: No further questions.

MAJOR SAXON: Nothing further by the defense.

PRESIDENT: There are no questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

FRITZ AUGUST HAST, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your full name, address, occupation, age and residence.

A Frits August Hast, 53 years old, Friedberg in Hessen. I was captain of the police.

Q Herr Hast, when did you first join the police department in Germany?

A 1st of September, 1919.

Q Was that your work continuously up until the end of the war?

A Yes.

Q Where were you so employed?

A I was in charge of the police office at Friedberg.

(Hast-Direct)

Q Who was your commanding officer?

A At the end, SS Colonel Lassak.

Q You mean through the year 1944-45?

A Yes.

Q Do you know Julius Lassak?

A Number 18.

MAJOR SAXON: Let the record show that this witness identified the accused Julius Lassak, number 18, in the accused's box.

QUESTIONS BY MAJOR SAXON:

Q Were you continuously the ceptain of the police in Friedberg through 1944 and 1945 during the war?

A Yes.

Q During that time what instructions did you receive, if any, from Julius Lassak, as to the disposition you should make of allied fliers and prisoners of war?

A The official order was that parachuted enemy fliers should be taken into custody but protected against the population and should be handed over to the Wehrmacht;later on, we got an additional order, "without interrogation."

Q Just tell the court what you mean by "without interrogation."

A We were not allowed to interrogate these fliers about their personal duty and purpose, where they came from and so forth.

Q I see. Did you ever receive any contrary orders to these and what you have just stated, from Julius Lassak?

A No.

Q During your term of office there in 1944, did you have occasion to apprehend an allied flier or more?

A Yes.

Q Will you just tell the court the situation, what you did in connection with this flier?

A It might have been in May or June, 1944, and a four-motor bomber crashed at Bayernheim near Friedberg. I saw it happen from the police office because the police office is located on a pretty high ground and I saw through my glasses two fliers who parachuted in the neighborhood of Dorheim. One of them stayed on the ground, the other one got up. I thought that this one flier was wounded and ordered the medical troop which was assigned to me to pick up the wounded flier. He had one shot through his chest and one through the upper leg. I had him taken over to the hospital at Bad Nauheim. That was done in accordance with the order which I had received, although I had no jurisdiction any more over the place where this wounded flier had parachuted.

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DIRECT EXAMINATION, continued

QUESTIONS BY MAJOR SAROS:

Q Who had jurisdiction over the particular area where this flyer came down?

A It was part of the County Friedberg. It was under the jurisdiction of the rural police.

Q Were either of these parachuted flyers injured by any of the population or the police after they came to earth?

A No.

Q What disposition was made of the flyer who was not injured?

A He was taken into custody by the rural police and was handed over to the Wehrmacht.

Q Herr Rust, did you have a little trouble with someone from the Kreisleiter's office regarding the disposition of the flyers sometime in the summer of 1944?

A Yes.

Q Will you just tell the court about that?

A It might have been in June, 1944. There was called by the Stabsamtsleiter Hemschal of the Kreisleiter Friedberg that from now on parachuted flyers had to be transferred to the Kreisleiter. I declined that for the reason that I had different orders from the command of the protective police and from the police director at Giessen. Then he told me that the Gauleiter was at the same time the Reichs Kommissar for the defense and therefore I was under his jurisdiction in this matter. Anyway I declined this order.

Q When you mentioned that you had contrary orders, were these orders from Julius Lassak's headquarters in Giessen?

A From the police director at Giessen.

Q The order you spoke of relative to the matter in which you treated the wounded flyer, did that order come to you from Julius Lassak?

(Mast-direct)

A Yes. Based on the orders which he had given.

Q Let me ask you, Herr Rust, whether you were a member of the NSDAP?

A Yes. The first of May 1933.

Q Were you ever a member of the SS or any of the subsidiary organizations?

A No.

Q During the time that you served under Julius Lassak did he ever attempt to induce you to join the SS?

A No.

Q Did he ever talk to you about the SS in any capacity?

A No.

Q Do you know Julius Lassak's general reputation in the area which you served as being a good citizen and also a fair and just police officer?

A I got to know the SS Colonel Lassak in office as a just and fair official.

Q Did you, at any time, hear of Lassak authorising the mistreatment or ordering the execution of any allied flyers or prisoners-of-war?

A No.

Q How far was Friedberg from Giessen?

A Twenty-nine kilometers.

Q How far was Friedberg from Bad Nauheim?

A That might be 27 kilometers.

Q Lassak's jurisdiction just extended to those three towns?

A Yes. Giessen, Bad Nauheim and Friedberg.

Q What was the number of personnel that served at Friedberg under you?

A Thirty.

PROSECUTION: Let the record show that the accused Rost, Number 14 has resumed his place in the dock.

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MAJOR SAMON: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Hast I believe you stated that you were Police Captain back in 1944. What is your position today?

A Today I am without profession.

Q Are you employed?

A No.

Q On the occasion when you had the two flyers, the injured one which you say you sent to the hospital and the other one to the Wehrmacht, did you call Colonel Lassak?

A In regard to every incident a report was made to Giessen.

Q Was that afterwards or before disposition was made of the flyer?

A Afterwards.

Q So you sent that injured flyer to the hospital on your own initiative and not upon instructions of Colonel Lassak, is that correct?

A No, on account of this order.

Q What order?

A That we should take into custody parachuted flyers and should hand them over to the air force and in this case, the man was wounded, to the hospital.

Q And Colonel Lassak told you what to do with injured flyers?

A No. I drew this conclusion. When a soldier is wounded I have to see that he gets the right treatment.

Q You wanted to see the flyers get right treatment, is that correct?

A Yes.

Q So Colonel Lassak can't take credit for this man going to the hospital?

A I wouldn't say that because if he would have given another order--anyway he would have gone to the hospital.

(Next cross)

Q If Colonel Lassak had given you contrary instructions to deliver this flyer or these two flyers to the Gestapo or for interrogation, what would you have done?

A We had no Gestapo at Friedberg. We had the order to deliver them to the Wehrmacht.

Q I am going to ask you to answer my question. Suppose Colonel Lassak had ordered you to deliver these two flyers to the Gestapo Chief at Giessen, what would you have done?

MAJOR SAXON: I object to that question as being beyond the scope of direct examination. I don't think it is a fair question to the witness anyway.

PRESIDENT: Will you repeat the question?

(Whereupon the reporter repeated the last question as directed.)

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q You consider, or did consider Colonel Lassak as a good police official didn't you?

A Yes.

Q Would yo say that he was the type of man that would receive instructions from his higher headquarters and carry them out explicitly?

A Yes.

Q If he gave orders to his subordinates, was he the type of man who expected those orders to be carried out explicitly?

A Definitely.

CAPTAIN VANCE: No further questions.

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q In order to clear up some little question here Herr Rust. When you took this wounded man to the hospital did I understand you to say, originally, that you were acting on a standing order given you by Julius Lassak?

A I drew the conclusion from the standing order I had.

Q Now suppose you had captured a flyer within the city limits of Friedburg who was not wounded, what was your standing order from Lassak as to his disposition?

A He had to be protected against the population and had to be handed over without interrogation to the Wehrmacht at Friedberg. There was the 36th Infantry Regiment at Friedberg.

MAJOR SAXON: That is all.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q On the occasion that you had these two flyers, it is a fact, isn't it, that Colonel Lassak didn't even know that you had these flyers at all until after you had disposed of them and made your report?

A Yes, but in this case I was acting in behalf of the police director Lassak who had to carry out this order.

Q Well, can you answer the question. Did he even know you had them until after you----

A No, he couldn't know it.

CAPTAIN VANCE: Nothing further.

MAJOR SAXON: Nothing further.

PRESIDENT: No questions by the court. The witness is excused.

(Thereupon the witness was excused and withdrew.)

MAJOR SAXON: Send in Hack.

CONRAD HACK, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your full name, address, occupation, age and residence.

A Conrad Hack; 52 years old; engineer; Weiden, Upper Pallantate.

Q Is that your residence at this time? [illegible] can you state to [illegible] since 1948. [illegible]

Q Do you know the accused Julius Lasek?

A Yes.

Q Can you identify him here in the courtroom?

A Yes. [illegible] was good. He was a railroad inspector.

Q Will you do so?

A Number 18 (Indicating).

MAJOR BARNES: Let the record show that the witness identified the accused Julius Lasek by pointing him out as number 18 in the prisoners dock.

Q In what relationship did you know Julius Lasek?

A I got to know Julius Lasek in 1935, 1936 when he came to the railroad administration at Regensburg as an assistant. I was in charge there.

Q Have you known him, more or less, from there on up until the end

of the war, I don't know more.

A Until 1940 when I was transferred to France. Since then I didn't hear from him anymore.

Q During that period of four or five years that you know him you were fellow railroad employees, is that right?

A Yes, we didn't say that.

Q Did you know that Lassak was a member of the SS?

A Yes, from his personal appearance and when I saw him in uniform.

Q Did he, ever, at that time and during that period of time, attempt to induce you to join the SS?

A No, we [illegible]

Q Did he ever bring the subject up with you at all?

A No, we [illegible]

Q Did you belong to the NSDAP?

A Yes, I [illegible]

(Hack-direct) [illegible]

[illegible]

(Recess)

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Q During this period of time that you knew Lasnek can you state to this court whether or not you knew his general reputation and character in that community as being good or bad as a citizen?

A Yes.

Q What was it?

A His reputation was good. He was a railroad inspector.

MAJOR SAXON: Your witness.

CROSS EXAMINATION

BY CAPTAIN VANCE:

Q Mr. Koch, you know Mr. Lasnek in 1935 and 1936, but I believe you said that you lost contact with him in 1940, is that right?

A Approximately when I returned from Poland in 1942 I was transferred to Weiden.

Q You don't know what he has been doing since 1940 do you?

A No, I don't know that.

Q You don't know anything about his reputation since 1940?

A No.

Q You wouldn't attempt to tell the court whether it was good or bad since 1940, would you?

A No, I couldn't say that.

Q How did you know he was a member of the SS?

A First from his personal records and then I saw him in uniform.

Q He was wearing the SS uniform back in 1935 and 1936?

A Yes, on special occasions.

Q What was his rank at that time?

A As far as I can remember he was an SS Colonel.

Q That was during 1935 and 1936?

A Definitely 1936.

CAPTAIN VANCE: Nothing further.

MAJOR SAXON: Nothing further.

PRESIDENT: No questions by the court. The witness is excused.

(Koch-cross)

(Thereupon the witness was excused and withdrew.)

MAJOR SAMOS: Now, if it please the court, in order to make an orderly presentation of this accused's case I have attempted to call upon one more witness, Helwege-Emden, who fits in at this place. He has been ordered over a week ago. I was informed that he was here Friday and then I was later informed that he got as far as Munich. We have been constantly in touch with the Apprehension Section in Augsburg and up until a few moments ago he wasn't available. I would like a short recess, at this time, so that I can call Augsburg again and find out whether or not I am going to get that witness at all.

PRESIDENT: The court will recess.

(Thereupon the court recessed at 1115 hours.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 Hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Dr. Trost, who is absent sick, all of the accused, the reporter and interpreter, are present.

DEFENSE COUNSEL: Sir, before the court goes into the evidence, may I ask if the court intends to sit tomorrow, Lincoln's birthday.

PRESIDENT: It has not been declared a holiday, as far as I have been able to determine. We can figure on sitting.

DEFENSE COUNSEL: It lies within the power of the court, does it not, sir, to give proper respect to such an occasion?

PRESIDENT: We will convene at the usual time.

MAJOR SAXON: May it please the court, the defense has so far been unable to find the witness Helwege-Enden, whom we are very anxious to have. We are going to proceed with the defense to Charge 3 without him, but I would like to have the right to introduce his evidence if and when he can be found. I would like to know if that is permissible to the court.

CAPTAIN VANCE: It is agreeable to the prosecution.

PRESIDENT: No objection on the court's part.

MAJOR SAXON: In this Charge the accused Lassak is going to take the stand in his own defense, and we desire to call the court's attention to the fact that the court should

apprise the accused, I believe, of their rights when they take the stand. It has been the thought of defense counsel that they might be apprised en bloc, as they are sitting in the accused's box. That would save repetition.

PRESIDENT: That was done at the beginning of the trial. The record will so show.

MAJOR SAXON: That slipped me, if it please the court. I did not know that. Julius Lassak.

JULIUS LASSAK, an accused, voluntarily took the stand in his own behalf and made the following unsworn statement through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q For the record, state your name, age, and present domicile.

A Julius Lassak; prisoner of war. At that time I was present in Dachau.

Q You are one of the accused in this case?

A Yes.

Q What is your age?

A Fifty-nine years.

Q When were you born?

A On 28 May 1887.

Q And where?

A In Gross Goschitz, in Upper Silesia.

Q What is your nationality?

A German.

Q Are you married?

A Yes.

Q Where does your wife reside?

A My wife resides in Schwandorf, in the Upper Palatinate.

Q Of what does the rest of your family consist?

A Of two sons.

Q Where are they?

A One of them returned home sick from Russian captivity, and the other one still is a Russian prisoner of war.

Q What has been your lifetime occupation?

A My profession was that of a technical chief inspector of the Reich railroads.

Q When did you first go with the railroad?

A In 1913.

Q Has that always been your occupation up until the time of the war?

A Until the beginning of the war I was technical Reich railroad chief inspector.

Q Where were you located immediately before the war started?

A At the headquarters of the Reich railroad at Regensburg.

Q Were you a member of the NSDAP?

A Yes.

Q When did you join that organization?

A 1925.

Q Were you a member of the Allgemeine SS?

A Yes.

Q When did you join that organization?

A 1926.

(Lassak - Direct)

Q Did you have any function or official position in the Allgemeine SS?

A From 1934 until 1936 I was tried out as an SS Colonel in Detmold.

Q What happened to that trial?

A I was tested as to whether I'd be capable of being taken in the SS as a main occupation.

Q How did that finally end?

A I was demoted to a technical sergeant in Spring of 1936.

Q Since that time and up until the war ended, what was your rank or title, as it may be called in the Allgemeine SS?

A In 1937 I was put back. I got my rights back and I became an SS Colonel again.

Q Did that carry with it any command responsibilities or functions?

A Yes. In December 1940, when the commanding officer of the SS regiment in Regensburg was drafted, I honorarily received the command of this regiment.

Q What were your duties there?

A My duties were the welfare of the relatives of SS men killed in action, and of the wives of SS men at the front, and the taking care of the SS hospitals.

Q Did you receive any pay or compensation for this work?

A No. That was honorary.

Q Did your rank as Colonel carry with it any pay or other stipend of any kind?

A No.

Q Prior to 1944 did you have any other position other than working for the railroad from which you earned a living?

A Yes, when I became the temporary colonel in Detmold.

Q That ended in 1936. After that time did you receive any pay?

A No.

Q Were you ever in the police service of Germany prior to January of 1944?

A No.

Q At that time what police service did you undertake?

A From the 1st of October until the 31st of December I had received my orientation at the police headquarters in Regensburg.

Q Tell the court what brought that about. Was that a voluntary request of yours or were you ordered there?

A No. In accordance with orders of the Reichsfuehrer of the SS.

Q Where did you go after you had taken this orientation and training?

A On the 11th of January, 1944, I was then transferred to Giessen.

Q Did you take your family there with you?

A No.

Q When you went to Giessen, what was your position there?

A I was police director in Giessen.

Q Referring you to the large wall chart that has been offered into evidence here as Defense Exhibit 2, can you point out to the court your position on that chart?

A Yes.

Q Will you do so?

(Whereupon the witness left the witness stand and assumed a position near Defense Exhibit 2.)

A (Witness indicates.)

PRESIDENT: Let the record show what he pointed to.

MAJOR SAXON: Let the record show that the witness has pointed to the square known as "Polizeidirektoren", which appears down on the left-hand lower part of the chart known as Defense Exhibit 2.

QUESTIONS BY MAJOR SAXON:

Q Calling your attention to the square immediately below, which says "Kommandeur der Schupo", who held the position that that square represents?

A That was the Lieutenant Colonel of the Police Helwege-Emden.

Q Calling your attention to the two arrows that point off from the square you have just identified, tell the court what they represent?

A This arrow here (indicating) represents the organization of the districts.

What does the other one represent?

A I, as police director, was also the acting chief of the air raid protection service, and as such I had under me the air raid police and the fire protection police.

MAJOR SAXON: Let the record show that the witness has identified the three squares which are joined with the Kommandeur der Schupo, called the Polizeireviere, the Feuerschutzpolizei, and the Luftschutzpolizei.

(Lassak - Direct)

QUESTIONS BY MAJOR SAXON:

Q Now, Herr Lassak, is the Polizeireviere the same as the Schutzpolizei?

A Yes. Those are the Reviere--the districts of the Schutzpolizei.

Q Who was your immediate commanding officer?

A My immediate commanding officer--I had several of these. The Reichsstatthalter Sprenger was my immediate superior. Also in his capacity as Reich defense commissioner Gauleiter Sprenger was my immediate commanding officer. On top of that, the main office of the Regular Police and the chief of the Regular Police.

Q Who was in command at that time of the Orpo?

A The commanding officer of the Orpo was at first General Hilla, and later on Colonel Niemann.

Q I ask to have you recheck that, Herr Lassak. Do you mean that General Niemann was of the Orpo or of the HDO?

A The HDO. Of the Regular Police.

Q Go ahead and tell the court who else were your various commanders?

A An immediate commanding officer was also the chief of the Regular Police, General Kunnenberg, and then the Higher SS and Police Leader General Stroop.

Q Were there any other sources that you received orders from than those you have now mentioned?

A I could also receive orders from the Gauleiter.

Q Could you receive orders directly from these various sources that you have mentioned?

A Yes.

(Whereupon the accused resumed the witness stand.)

Q Calling your attention again to this chart, which is known as Defense Exhibit 8, what was your relationship with the Kreisleiter as far as your functions were concerned?

A The Kreisleiter was a deputy of the Gauleiter, and in view of the fact that the Gauleiter was also Reich defense commissioner, the Kreisleiter also attempted to take the Gauleiter's place in that capacity.

Q Who was the Kreisleiter in the Giessen area when you were there?

A That was Kreisleiter Brusk.

Q Besides being Kreisleiter, did he hold any other office?

A No. He was only a Kreisleiter.

Q Who was the Landrats in that particular area?

A I don't know the name.

Q Do you recall the name of the Oberburgermeister?

A No, I don't either.

Q When you went to Giessen as the Poliseidirekterem, tell the court just what your area of command consisted of there.

A My area included Giessen, Bad Nauheim, and Friedberg.

Q Did you have any area outside of these cities?

A No.

Q How many officers and policemen were under your command in Giessen?

A There was Lieutenant Colonel Holwege-Emden, one captain of the protective police as his deputy, two first lieutenants as district commanders, one first lieutenant an an

air raid officer, and in addition one captain each in every district in Bad Nauheim and Friedberg.

Q What number did the personnel amount to, first, in Giessen?

A Between 40 and 50, approximately.

Q What was the number of personnel you had in Friedberg?

A Between 35 and 30.

Q And in Bad Nauheim?

A The same.

Q Will you just tell the court what your duties were over this area consisting of these three towns?

A Primarily I was a local air raid protection commander. I was responsible for all measures for air raid protection in the three towns. Then, further, I was police director in an administrative capacity. Then I was the chief of the protective police, who had to obey my orders concerning action.

Q That was Lieutenant Colonel Helwege-Emden, was it?

A Yes.

Q In the summer of 1944 did you receive any orders from any source relative to the future disposition of fliers or enemy prisoners of war that may fall into your hands?

A Yes.

Q Do you recall how many such orders you received?

A As far as I remember there were three such orders, but there might have been more.

Q Do you recall approximately the date that these three orders or a similar number were received by you?

A I can't remember it according to dates.

Q Do you know what month you received them in?

A It might have been towards the end of August or the beginning of September.

Q How did you receive these orders? In what manner did they come to you?

A By insured mail.

DIRECT EXAMINATION (continued)

QUESTIONS BY MAJOR SAKON:

Q To whom were they addressed?

A To the Giessen Police Director.

Q What did you do with these orders when you received them?

A After I received these orders, particularly the three orders concerning enemy fliers, I destroyed them.

Q How quickly after receiving them did you destroy them?

A Immediately.

Q In what manner?

A By tearing them up and destroying them with a match in an ash tray.

Q Did you ever show these orders to anyone in your command?

A No.

Q Did you ever tell anyone in your command the contents of these orders?

A No.

Q Going back to the early part of your command of these three towns in the Sehutzpolizei, what instructions did you have earlier in 1944 as to the disposition of fliers and prisoners of war who came into your hands?

A I had received an order that the fliers would be turned over to the armed forces.

Q Did you convey that particular instruction to your subordinates?

A Yes.

Q Was that the procedure that was followed in your area by your subordinates up until October 8, 1944?

A Yes.

Q Prior to October 3, 1944 had you had any requests made to you by anybody such as the Gestapo or Kreisleiter, to turn over to them fliers or prisoners of war?

A Yes.

Q Will you tell the court just when that was?

A The first case was on the 3rd of October at 12:00 o'clock noon and the second case between 1:00 and 2:00 P.M.

Q I mean, did you have any such requests prior to that time?

A No.

Q After you received these three orders in August and September 1944 did you ever have occasion to attempt to tell anyone the contents of these orders until you were interviewed sometime in the summer of 1945 by the American army?

A No.

Q At this interrogation which was held on the 7th of August 1947 were you then requested at that time to attempt to remember the contents of these orders?

A Yes.

Q At no other time, for two years, had you been requested to recall these orders, is that correct?

A No.

Q Where were you at the time the war ended?

A I was captured on the 8th of May 1945 in Wassertrompten in the Sudeten area.

Q Where were you taken after your capture?

A I was locked up in jail in Neiden after I was captured.

Q How long did you remain there?

A I remained there until the 28th of May.

(Lassak-direct)

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Q Then where were you taken?

A On the 28th of May I was taken to the internment camp of Natternberg near Deggendorf.

Q How long did you remain at Natternberg?

A I remained in Natternberg until the 23rd of June 1946.

Q Shortly after you arrived at Natternbergwere you interrogated by any member of the American forces?

A Yes, in August '45.

Q Were you interrogated more than once at that time?

A I was interrogated once only.

Q Do you know the name or names of the person or persons who interrogated you?

A I only knew the Chief of the SIS, that was Lt. Sichel.

Q He was in charge of the SIS at Natternberg?

A Yes.

Q Was he the one who actually interrogated you or was it one of his agents?

A No, he was just the Chief.

Q Was a record made of your interrogation at that time?

A As far as I remember it wasn't.

Q Were you asked to sign any written papers at that time?

A No.

Q What were you interrogated in regard to at that time?

A About my position as SS Colonel and Police Director.

Q Were you interrogated regarding any other matters at that time?

A Yes, about how many people I had killed in the concentration camp; how many Jews I had hanged; how many people were murdered upon my orders and how many were sent to the concentration camp upon my orders.

(Lasak-direct)

Q Tell the court the punishment you went through during that day of your interrogation.

CAPTAIN VANCE: If it please the court, we object on the grounds it is immaterial. The interrogation he is talking about he said was not reduced to writing, he did not sign that document, it is not before this court, so any means or methods used at that interrogation are immaterial and have no bearing on this case since nothing in regard to that interrogation has been brought before this court.

MAJOR SAXON: Now I will tell the court why I want to do this. It is the contention of the accused here and the defense that two subsequent statements were procured from this accused which are now in evidence here and were procured with this man in great fear, with his being and having been previously mistreated, and this is the foundation to show the reason why, as well as to point out to the court as we go along here, errors that appear in these two statements of his. This is the foundation for the basis of that build up. I think that counsel for the prosecution has urged this court many times that an accused can be asked anything under the whole wide world and this man is on the stand now and he is going to be asked everything the court will permit me to.

PRESIDENT: Objection overruled.

CAPTAIN VANCE: I should like to state one more ground, may it please the court -- that he suggested to the witness that he was tortured in some manner. This witness has not mentioned he was mistreated in any manner up until this time.

MAJOR SAXON: I will correct the question and withdraw the previous question.

(Lassak-direct)

Ta 139 80
pla/t

QUESTIONS BY MAJOR SAXON:

Q On the interrogation in 1946 in Hatternberg, will you tell the court what time of day that interrogation started?

A It was in the afternoon, 4:00 o'clock.

Q Now, will you just tell the court how many people interrogated you?

A Two persons interrogated me, Lt. Siebel whenever he was present and one of his agents. Later on another American soldier appeared.

Q Just tell the court what happened to you during this interrogation.

A When I answered the questions by "no" I was told to go to the corner of the room. I received a weight in each of my hands, seven and a half kilograms each. I had to do knee bends for half an hour. When I couldn't do it anymore I collapsed unconscious. Water was poured down my throat. When I got up again I received a blow in the face, on the chin that is, thus losing this tooth here (indicating) and the tooth above it. When I collapsed the second time I was kicked with the feet and trampled upon. When I got up again the official loaded the pistol in my presence and said, "I'll shoot you, you dog." When I couldn't get out anymore I was carried out. I don't know what else happened to me.

Q How long did this interrogation last?

A One hour.

Q Where were you when you later regained consciousness?

A When I regained consciousness I was lying in the barracks in my bed.

Q Were you ever interrogated again at this place?

A No.

Q You were not asked to sign or make any statement at this time?

A No.

(Lassak-direct)

Ta 159 20
1f pls/s
rla/7

Q Were you questioned at all about this charge that you are now confronted with? [illegible] Exhibit 87 is dated the 7th of August

A No, in Wiesbaden, Germany.

Q How much longer did you stay in Hattenberg, Camp No. 5?

A Until the 23rd of June 1946. [illegible] statement you made and which is a

Q Then where were you transferred?

A I was then sent to Wiesbaden to the Wiesbaden Penitentiary.

Q When were you first questioned about the charge that you are now confronted with? [illegible] given by you, as found on page 51

A The beginning of July to which the Kreisleiter was referring?"

Q You mean 1946?

A Yes. [illegible] order was signed by the Reichsstatthalter Sprenger which [illegible] as follows: 'Lately many hostile agents are coming down [illegible] Such fliers as come down by parachute and are captured by

Q Were you ever questioned about this charge or any other charge during that period from August 1945 up until July 1946? [illegible] or to the Gestapo.'"

A No.

Is that one of the three orders that you testified to a little earlier?

Q I hand you a photostatic copy of Prosecution Exhibit No. 87

A Yes.

that has now been received in evidence, not this copy but Exhibit 87, I [illegible] and in that manner given from your memory of the order you and ask you whether you have seen this before?

[illegible] testified to here before?

A Yes.

A Yes.

Q Where did you first see it?

[illegible] Later you gave, in answer to this question, the following answer.

A In Wiesbaden.

In order to make this clear I will read two or three preceding questions

Q I mean this photostatic copy, where did you first see it?

to you. I want to state to the court that I am doing it in this manner

A I didn't see it anywhere.

because it is all in English and I can't read it to him to read in German.

Q I'll refresh your recollection. Did you not go over this copy

[illegible] Show me the other order!

with me once here in the last thirty days?

A The [illegible] once from the head of [illegible] 20. [illegible]

A Yes. Public Chief, Schedule VII, Wiesbaden, stating about the [illegible] same thing with the difference that these [illegible] had to be

Q Does this signature appear to be a correct copy of your signature?

A Yes.

(Recess-direct)

(Recess-direct)

Q I call your attention to the fact that this instrument which is a photostatic copy of Prosecution Exhibit 57 is dated the 7th of August 1946 in Wiesbaden, Germany.

A Yes.

Q Is that a photostatic copy of the statement you made and which is now in evidence here?

A Yes.

Q Calling your attention to this exhibit, this question was put to you and this answer given by you, as found on page 8:

"Q What was the order to which the Kreisleiter was referring?"

Your answer:

"A One order was signed by the Reichsstatthalter Sprenger which ran as follows: 'Lately many hostile agents are coming down by parachute and are doing a lot of damage behind the lines. Such fliers as come down by parachute and are captured by civilians are to be turned over either to the Party or to the Gestapo.'"

Is that one of the three orders that you testified to a little earlier?

A Yes.

Q And is that answer given from your memory of the order you destroyed two years before?

A Yes.

Q Later you gave, in answer to this question, the following answer. In order to make this clear I will read two or three preceding questions to you. I want to state to the court that I am doing it in this manner because it is all in English and I can't hand it to him to read in German.

"Q What was the other order?

A The other order came from the head of the SD, the Higher SS Police Chief, Wehrkreis XII, Wiesbaden, stating about the same thing with the difference that these fliers had to be turned over to the Gestapo.

(Lesch-direct)

Q Who signed that order?

A This order was signed either by Somann or his successor.

Q When was it issued?

A This order had been issued in August or before.

Q Was there not an order to the effect that these fliers had to be executed?

A Yes.

Q Give us the details of that order.

A That was a very short order which stated about as follows: 'Emergency landed fliers are to be shot.'

Q Now, all these orders, these orders and the third one you referred to here -- you attempted to quote strictly from memory, did you not?

A Yes, I kept emphasising that I was stating these orders merely according to their gist.

Q Did you advise the interrogator at that time that it was merely from memory?

A I pointed out to him that they ought to give me time to think it over.

Q What did they say to that?

A The official didn't give me any time.

Q I hand you what has been marked Prosecution Exhibit No. 56 and ask you to state what it is, if you know.

A That is my own statement.

Q When did you make that?

A On July 11, 1946.

Q Where did you make that?

A I made that in the police jail in Giessen.

(Lassak-direct)

Q Was that the first statement that you made of any kind since the time you made the one in Natternberg the year before?

A Yes.

Q What was said to you preliminary to your making this statement?

A Before I made the statement I was first pushed into a cell which was filthy all over and I was told by the official to "think it over" and I'd be interrogated by the Giessen CIC at 2:00 A.M. and if the statement wouldn't come out the way he had talked it over with me, then there would be a rope thrown into my cell and if I didn't hang soon thereafter two negroes would take care of it.

Q What else was said?

A Then he told me he would like to have a statement by tomorrow morning.

Q Did he give you a paper and pencil and tell you to write out a statement?

A Yes.

end ta 139
pm fols

(Lassak-direct)

Q What did he tell you before that that you were supposed to be charged with?

A That I shot fliers, that I gave orders to shoot the fliers.

Q Did he tell you how many fliers you were supposed to have shot and how many orders you were supposed to have given to that effect?

A Yes.

Q How many?

A He said that up to now fourteen fliers had been shot.

Q When he put you in that cell, did you remember at that time what had happened to you up in Natternberg a year before?

CAPTAIN VANCE: We object to him leading the witness.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q What was your feeling about the future treatment you expected to get there in Wiesbaden?

CAPTAIN VANCE: We object on the same ground, he is leading the witness.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q Were you in fear of personal bodily injury when you were put in that cell that night and told to write this statement?

CAPTAIN VANCE: We object, he is leading the witness.

PRESIDENT: Objection sustained.

CAPTAIN VANCE: I don't mind your asking him how he felt. Let him tell, don't suggest it to him.

QUESTIONS BY MAJOR SAXON:

Q How did you feel when you went in that cell that night?

A Not well.

Q And what did you anticipate?

CAPTAIN VANCE: We object, he is leading the witness.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q Why did you not feel good when you went into that cell that night?

A Because the picture of Natternberg kept re-appearing in my mind.

Q What happened the next morning?

A The next morning the officer came into my cell and after he had read the statement, he struck a blow in the area of my heart and I collapsed, with the words, "You German pig, you violated the Geneva Convention."

Q What did he do then?

A Then he took me along to Wiesbaden again.

Q And you remained at Wiesbaden then for some time?

A I remained in Wiesbaden until the 28th of August.

Q Then where did you go to?

A Then I went to Dachau.

Q Now, while you were still in Wiesbaden, were you called upon to give this statement, which is known as Prosecution Exhibit No. 57, a question and answer form statement?

A Yes.

Q Where was that statement taken?

A In Wiesbaden, in the prison.

Q How did you feel when you were called on to give this statement?

A Same as in Giessen.

Q Do you mean you did not feel good, is that right?

A No.

Q Why didn't you feel good?

A Because I had fears of being beaten again, which actually did happen.

Q Were you beaten again in Wiesbaden?

[illegible] Yes, I did pushed. In your [illegible] first or [illegible] station?

A [illegible] after you had given this statement known as Prohibition [illegible], was crash-landed.

A [illegible] interrogated three times, sworn three times, and the interrogation interrupted three times [illegible] headquarters.

Q Now, referring you to Prosecution Exhibit 57, I want to call your attention to this question and to your answer, found on Page 4:

"Q Which of that time already knew about the secret order that these fliers had to be shot?"

Just tell the court what he first told you.

and your answer, given as "Yes." Will you explain to the court what

A This official said that he had first captured the flier and you attempted to answer at that time and what you really meant?

then that fellow Sergeant Schenk came and took the flier into custody.

CAPTAIN VANCE: No objection to any explanation. The witness

Q Did you receive a phone call from anyone about that time regarding

can testify whether he gave that answer or not, but I don't think it

the flier?

calls for an explanation.

A Yes, from the Stapo police of Giessen, Criminal Official Wimmer.

QUESTIONS BY MAJOR SALOM:

What did he tell you?

Q Did you give that answer or not, the answer "Yes"?

A He said that his official had reported to him that he had

A Yes.

captured the flier and that Police Sergeant Schenk had taken the enemy from

Q Will you explain to the court just how you came to give that

him and that he needed him for interrogation.

answer and what you actually meant?

Q What did you do then after he told you that?

CAPTAIN VANCE: No objection. It calls for no explanation; he

A I told Police Sergeant Schenk he was to turn this flier over to

said he gave it.

the Gestapo, because it was not a prisoner of mine out of the Geneva

PRESIDENT: Objection overruled.

I also instructed Sergeant Schenk to accompany him to the Stapo place.

THE WITNESS: What was the question, please?

Q Was anything said or was by anyone at that time or later that

(Whereupon the last question was read by the court reporter.)

this flier was going to be shot or might be shot?

THE WITNESS: I was of the opinion that the fliers had been

A No.

turned over at first to the Gestapo or to the Party, and if it turned

What did you think would be done with this flier after you had

out that they were spies or agents, perhaps, that they might be shot

turned him over to the Gestapo [illegible]?

by the Wehrmacht.

[illegible] Criminal Official Wimmer has told

QUESTIONS BY MAJOR SALOM:

Q Getting back to the 3rd of October, 1944, when did you first

[illegible]

[illegible]

[illegible] there was a flier in your command post or police station?

A When I returned from the scene of the accident where two enemy planes, enemy bombers, had crash-landed, [illegible] previous return you had received upon your coming back from there?

A I returned from there and went to my headquarters.

Q Who told you about this flier when you first arrived at your headquarters? Not when this flier was being turned over, because that was not an official of the Secret State Police.

Q [illegible] first told you.

A This official said that he had first captured the flier and upon that Police Sergeant Hunk came and took the flier into custody.

Q Did you receive a phone call from anyone about that time regarding this flier and of his war, did you ever pass on to anyone the instructions you received from the SSPS chief or Criminal Official Winzer?

A What did he tell you?

A He said that his official had reported to him that he had captured the flier and that Police Sergeant Hunk had taken his away from him and that he needed him for interrogation.

A What did you do then after he told you that?

A I told Police Sergeant Hunk to turn this flier back over to the Gestapo men, because it was not a prisoner of war but of the Gestapo, and also instructed Sergeant Hunk to accompany him to the SSPS place.

A Was anything said to you by anyone at that time or later that day that this flier was going to be shot, or might be shot, or like, what instructions had you given them as to how to dispose of them?

A What did you turn this flier over to the Gestapo for, for that purpose? [illegible] applicable even more strictly after the attack for interrogation, just like Criminal Official Winzer had told me he needed the man for interrogation[illegible] officer, Lt. Col. Helmuth [illegible]. Q Was there any other reason that you dropped this flier over to

(CONTINUED)

the Gestapo?

A No.

Q Had you given any thought at all to these previous orders you had received and destroyed?

A Yes, I had to give thought to them.

Q In conjunction with turning over this particular flier?

A No, not when this flier was being turned over, because that was not my prisoner.

Q You were turning him over principally because he was first a prisoner of the Gestapo, is that correct?

A Yes.

Q Now, during your tenure in office there from January, 1944, up until the end of the war, did you ever give out to anyone the instructions you received in these three orders you destroyed?

A No.

Q Did you ever give directly to any of your subordinates an order that American fliers or Allied fliers and prisoners of war would be mistreated or shot?

A No.

Q Did any of the Schutzpolizei or any of the subordinate police under your command ever mistreat or kill a flier in your area while you were in command there?

A No.

Q Now, when fliers did come into the hands of your police, what instructions had you given them as to how to dispose of them?

A Primarily to take the fliers into custody and protect them from the excited populace. I made this order applicable even more strictly after the attack on Darmstadt.

Q Was it necessary for your executive officer, Lt. Col. Holunga-Emden, to report to you the capture and the turning over to the Wehrmacht

or Luftwaffe of Allied fliers?

A It was not, because they came through message center channels.

Q Did you have to keep any written record of how many were captured and turned over to the Wehrmacht or Luftwaffe?

A No.

Q Did you have to even so much as get a receipt when you turned them over to the Wehrmacht or Luftwaffe?

A Yes, we did get a receipt every time.

Q Coming back to Prosecution Exhibit 57 and going on to Page 5 therein, I want to ask you regarding this question and the answer that you gave. Near the bottom of the page, a question was put to you as follows:

"Q Did you know what was going to happen to this flier once he had been turned over to the Gestapo?
A I realized very well that this flier would be shot, too, because there was an order to that effect."

The next question and answer are as follows:

"Q Why did you not deliver this flier to a PW camp?
A Because there was an order from the head of the SD stating that captured fliers had to be turned over to the Gestapo."

The next question:

"Q At that time, were you aware of the order that these fliers were to be shot?
A Yes."

Did you hear those questions, and did you make those answers?

A Yes, under influence.

Q Just explain to this court what you mean by influence.

A I was weighing 97 pounds, I had heart cramps at night on account of the blows directed at the heart and I decided to answer the questions in the way the CIC man wanted me to, because everything was all the same to me in that day.

Q Did he tell you how to make these answers?

CAPTAIN VANCE: We object. He is leading the witness.

PRESIDENT: Objection sustained.

you turned this flier over to Hinter that you knew this flier was going to be shot?

CAPTAIN WEBER: Some objection, may it please the court.

[illegible]: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q When you received these orders in August of 1944, will you tell the court what you understood and understand to this time was the intention of those orders so far as the disposition of Allied fliers was concerned?

A My opinion was that these fliers in accordance with the two existing orders, were to be turned over to the Party or to the Gestapo. They would be turned over to the armed forces after the interrogation, and if it was found out that they were agents or spies, they would be shot by some army headquarters.

Q What did you understand about who would determine whether they were agents or spies, and if they were so determined, what process would be had before they were shot?

A Well, my opinion is that the Gestapo would have made a written

(CAPTAIN Hinert)

[redacted]

report and sent it to the proper Army headquarters.

Q And how would that be acted on from there on?

A And they might have been shot after the trial by summary court there.

Q Did you have any idea at all when you turned over this flier on Winser's order on the 3rd of October, 1944, that he might be shot?

CAPTAIN VANCE: We object. It is leading.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q When you turned this flier over to the Gestapo; that is, to Winser on his order there in Giessen on the 3rd of October, 1944, what did you think was going to happen to him at all events?

CAPTAIN VANCE: We object. It is leading. He is leading him to the fact that Winser ordered it.

PRESIDENT: Objection overruled.

QUESTIONS BY MAJOR SAXON:

A He would be interrogated.

Q And then what would happen to him?

A He would then be turned over to some army headquarters.

Q Was there ever any report made to you officially about what disposition was made of this particular flier?

A No, I only found out, the first interrogation, that the flier was shot.

Q When you turned him over to Winser, it was not necessary that he make a report to you, was it?

A No.

Q Herr Lassak, there has been some evidence here about your pushing this flier in the bomb shelter. Will you just tell the court what you did in the bomb shelter there, as far as this flier was concerned?

A Well, in the first place, I don't remember a thing; and in the

second place, it is possible but I can't say for sure that I might have

(Whereupon the Court reconvened at 1500 hours.)

shoved the flier aside in order to be able to get to the phone booth, but

PRESIDENT: The Court will come to order.

it was a pretty narrow passageway, so narrow that two people could barely

DR. KUTTER: May it please the Court, let the

pass each other.

record show that all members of the Court and all members

Q Did you intend to hurt this flier in any way there?

of the Prosecution and all members of the Defense, except

A Of course not. If I had given even the slightest push to this

Dr. Trost, who is absent sick, all of the accused, the

flier, he would have been mistreated by the populace. That was shortly

reporters and interpreter are present.

after the air raid attack on Darmstadt.

JULIUS LASSAK, an accused, volunta[illegible] the stand

in his own behalf, was duly sworn, and testified through an interpreter:

Q Was this flier injured or hurt by yourself or anyone there

in this bomb shelter?

DIRECT EXAMINATION

A No.

QUESTIONS BY DR. SAXON:

Q Herr Lassak, do you speak English at all yourself?

A No.

Q When you passed this flier, you think you might possibly have,

and 57, do you have any recollection as to your pushed him in getting by? You couldn't speak English to talk to him

orders?

yourself, is that correct?

A As far as I can recall, one order came from the

A I might have done it.

higher SS and Police Leader, another from the

PRESIDENT: Court will recess for half an hour.

Reichsstatthalter; and, if I remember right, a copy of the

(Whereupon the court recessed at 1500 hours.)

same statement from the Gestapo Headquarters at Darmstadt

through channels over the Gestapo office at Giessen.

Q Now, the one that you got from Gestapo Headquarters

in Giessen or Darmstadt, would that be an order as you

merely an information copy.

End ta 140
IB fols

A That was only information.

Q You didn't receive orders, do you, from the

Security Police.

A No.

Q And you didn't have [illegible] always appeared on

the orders other than the names [illegible]

[illegible]

(Whereupon the Court reconvened at 1530 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court and all members of the Prosecution and all members of the Defense, except Dr. Trost, who is absent sick, all of the accused, the reporter and interpreter are present.

JULIUS LASSAK, an accused, voluntarily took the stand in his own behalf and continued to make the following unsworn statement through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q Now, Lassak, referring again to these orders that you have attempted to quote in Prosecution's Exhibits 56 and 57, do you have any recollection as to who signed these orders?

A As far as I can recall, one order came from the Higher SS and Police Leader, another one from the Reichsstatthalter; and, if I remember right, a copy of the same statement from the Gestapo Headquarters at Darmstadt through channels over the Gestapo office at Giessen.

Q Now, the one that you got from Gestapo Headquarters in Giessen or Darmstadt, would that be an order to you or merely an information copy?

A That was only information.

Q You didn't receive orders, did you, from the Security Police?

A No.

Q And you didn't know whose signature appeared on the orders other than the source from which it came, is that correct?

A Only the source, yes.

Q Are you acquainted with the accused, Jurgen Stroop?

A Yes.

Q Just state the extent of your acquaintance with this accused.

A I knew him as a High SS and Police Leader who visited my Headquarters in July or August, a second time after the heavy air attack at Giessen when he inspected the damages together with the Commanding General of the Army.

Q Now was this visit visit in July, 1944?

A 1944.

Q Was that the first time you had ever met him?

A Yes.

Q And was that a visit merely to make your acquaintance or a matter of inspection of your quarters there?

A Yes, it was an inspection.

Q Had you ever been to Jurgen Stroop's Headquarters in Wiesbaden?

A No.

Q Were you ever there at any conferences?

A No.

Q Has he ever been to your Headquarters for conferences other than this one visit?

A No.

Q Now did you know the accused Hans Trummler while you were in office there in Giessen?

A No.

Q Had he ever visited your Headquarters?

A No.

Q Had you ever visited his in Wiesbaden?

A No, I don't know where it is.

Q When did you first meet Hans Trummler?

A Here in the bunker.

Q When was that?

A When he came to our first meeting on account of the charge sheet--when we received the charge sheet.

Q Did you ever have any correspondence with the accused Hans Trummler when he was in office or have any conferences with either him or his subordinates?

A No.

Q Now, did you know the accused Somann while you were in office in Giessen?

A No.

Q Did you ever have occasion to go to his office in Wiesbaden?

A No.

Q Or did he ever come to your Headquarters?

A No.

Q Did you ever have any correspondence with him or his Headquarters while you were in office?

A No.

Q Now, Herr Lassak, do you know any of the other accused outside of the three that we have just spoken of? I mean, during the time you were in office.

A Yes, Number 19, the accused Girke.

Q Tell the Court the extent of your acquaintance with that accused during 1944 and 1945.

A When Girke took charge of the Gestapo Headquarters at Darmstadt he made a visit to me after he had inspected his office at Giessen.

Q When was that?

A It might have been the end or middle of July.

Q 1944?

A Yes.

Q Did you ever have occasion to see him or correspond with him after that?

A No.

Q Now, is there any other one of the accused that you know back in the time when you were in office?

A Yes, the accused number 8, Albrecht.

Q When was it you knew Albrecht?

A In February, 1945, when he was transferred to my Police Headquarters.

Q And whom did he serve under in your area?

A Under his commander, the Lieutenant Colonel Hallwage-Kaden.

Q Did you ever have occasion to know him personally or merely as a subordinate officer?

A He was introduced to me in the usual manner as being transferred to my command.

Q Is that the extent of your acquaintance?

A Yes.

Q Now are there any more of the accused that you know while you were in office in 1944 and 1945?

A No.

Q I call your attention to Charge Number 1, the particulars thereunder, wherein it says that you conspired with all of these other accused sometime between the 8th of December 1941 and the 8th of May 1945 at

"sundry places within the then German Reich.

individually and collectively, as principals, accessories, leaders, organizers, instigators, and accomplices, did engage in, formulate and participate in a common plan or design to commit or cause to be committed, violations of the Laws of War and pursuant thereto did willfully, deliberately and wrongfully encourage, aid, abet, order and participate in, or took a consenting part in the mistreatment of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, abuses and indignities.

Did you ever [illegible] with any of these other accused in a conspiracy to the ends which have just been enumerated?

CAPTAIN VANCE: I object to that question. It calls for a legal conclusion. It's going within the province of this Court--it's the province of this Court to determine that question and not this witness.

MAJOR SAXON: May it please the Court, he has the same right to answer that question that he would to deny any guilt that he might be charged with--just the same as if he is asked if he committed a robbery. He has the right to deny it.

PRESIDENT: Objection overruled.

WITNESS: No.

MAJOR SAXON: Did any of these accused ever approach you on such a conspiracy?

CAPTAIN VANCE: I object on the same ground, if it please the Court, and move that the answer to the former question be stricken from the record.

PRESIDENT: The Court will recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: The Court will come to order. The

(Lassak-Direct)

objection is overruled and the motion is denied.

WITNESS: No, I had no connection with that.

MAJOR SAXON: Did you, during the time you held office in Giessen, know of any plans or schemes or ideas even that any of these accused had, if any of them did have such, to violate any of the laws or usages of war as charged in Charge one, and the particulars thereof, including those charges up through number ten?

CAPTAIN VANCE: The same objection, may it please the Court, and I would like to read an authority to the Court.

LAW MEMBER: Read the question, please.

(Whereupon the reporter read the question.)

CAPTAIN VANCE: Now, may it please the Court, I will renew my objection. I am objecting to it because it calls for a legal conclusion. It invades the province of this Court. It is one of the very issues for this Court to decide and not the accused by his testimony. I would like to read a statement from Underhill's "Criminal Evidence", Chapter 20, on page 429;

> "General rule. As a general rule witnesses are not allowed to testify to their opinions or conclusions on material matters, but must state facts within their knowledge relevant to the issue, as it is the province of the jury to draw deductions and conclusions from the pertinent facts placed in evidence and to decide matters directly in issue. No witness, be he expert or nonexpert is allowed to testify to the legal effect of a transaction."

Now, at the present time the accused Lassak is on the stand testifying as a witness in his own behalf and in behalf of other co-accused.

MAJOR SAXON: If it please the court, first let me answer what he said. Lassak is not a witness here at this time for any other accused but himself. He is not testifying in behalf of these other accused relative to the conspiracy so far as they are concerned, but he is testifying now in denial that he was ever approached or knew of any conspiracy, if they did have one. He is not testifying here is a witness, -- he is testifying here as an accused, who is denying the charge against him, which I believe he has every right in the world to do. He is not testifying as a witness. This indictment, as it were, in this charge is so all-comprehensive that you could not go far enough afield to ask this witness questions which he has a right to deny because they say, -- did he take a consenting part? -- almost to the place, or -- did he just stay and look on? He has a right to deny this conspiracy in every form of speech that we can concoct to give him. I think it is a well known fundamental principle of law that when you ask an accused a question which results in his denial, you have a right to ask him any kind of leading questions you want. If he is charged with killing John Doe, you have a right to ask him, "Did you kill John Doe?"

PRESIDENT: The objection is overruled.

THE WITNESS: No.

QUESTIONS BY MAJOR SAXON:

Q Did you, while you were a member of the Allgemeine SS, ever commit any of the crimes of which that organization has been charged?

CAPTAIN VANCE: We object on the same ground, if it please the court.

PRESIDENT: The objection is overruled.

THE WITNESS: No.

QUESTIONS BY MAJOR SAXON:

Q From 1939 up until the end of the war, did you carry on any work of the Allgemeine SS?

A Yes.

Q That is the work you had reference to in aiding the widows and children of the deceased soldiers, is that correct?

CAPTAIN VANCE: I am going to object on the ground that it is leading.

PRESIDENT: The objection is sustained.

QUESTIONS BY MAJOR SAXON:

Q Did you carry on any official function for the SS other than that which you have already testified to?

A No.

Q Now, since September 1st, 1939, have you paid any dues into the Allgemeine SS?

A No.

Q And other than the charity work that you did for the wives and children of the deceased SS and those who were at the front, did you perform any other service in the SS?

CAPTAIN VANCE: I object. The question is leading. I have not heard this witness testify that he did any work for widows or children.

PRESIDENT: The objection is overruled.

THE WITNESS: No.

QUESTIONS BY MAJOR SAXON:

Q I call your attention to Charge Number 3. Did you, on or about the 3rd of October, 1944, at or near Giessen, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich?

PROSECUTION: I object. Certain forms of procedure have been long established. One is that when the accused has read the charges, as the accused is doing now, he denies it. This is a new procedure,

to rehash each charge and ask him whether or not he did it. The The accused has pleaded not guilty and that is sufficient.

MAJOR SAXON: May I say this to the court? Counsel pleaded this man not guilty. This is the first time he has ever had a chance to get on the stand and deny the exact charge which is now thrown at him. In addition to that, he has a right to prove his not being guilty by all of the surrounding evidence necessary and by categorically denying the charge. That is what he is now attempting to do.

PRESIDENT: The objection is overruled.

THE WITNESS: No.

QUESTIONS BY MAJOR SAXON:

Q Do you have any relatives in the United States?

CAPTAIN VANCE: We object on the ground that it is immaterial.

PRESIDENT: The objection is sustained.

MAJOR SAXON: If it please the court, I will tell the court what I am drawing to. I want to show that this accused is not only not guilty of the charges of which he is being accused here, but that he had relatives in the United States Army, close relatives, who were in the American Army and over here; and that in addition to the fact that he did not violate the laws and usages of war, that he would not have obeyed an order to shoot an allied prisoner of war or a parachuted flier to earth.

PRESIDENT: The ruling of the court stands.

MAJOR SAXON: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Colonel Lassak, when you joined the Allgemeine SS in 1926, why did you join?

A That was voluntary.

Q I know it was voluntary, but why did you join?

A Because I was a member of the Party.

Q What was the purpose of the Allgemeine SS?

MAJOR SAXON: If it please the court, I object to that. The witness has not been shown to be qualified to testify as to its purpose. Besides, the court knows its purpose from the Nuernberg decision. It is immaterial to the issues in this case.

PRESIDENT: The objection is overruled.

THE WITNESS: The Schutz Staffeln, the SS, were made up for the purpose of the protection of the Party speakers.

QUESTIONS BY CAPTAIN VANCE:

Q It was also made up to persecute the Jews and undesirable political persons, was it not?

MAJOR SAXON: If it please the court, I object to that question. It is argumentative with the witness. The witness has already answered.

PRESIDENT: The objection is overruled.

THE WITNESS: No.

QUESTIONS BY CAPTAIN VANCE:

Q You mean to say that the SS took no part in the persecution of the Jews and other people, is that right?

A Not during the time of the fight. They beat back only when they were beaten.

Q Well, during what time did they do it?

A Until '33, during the time of the fight.

Q You were still a member in 1933, were you not?

A Yes.

Q The defense counsel has stressed a great point, that you did not receive any pay from the Allgemeine SS. As a matter of fact, no one got paid from the SS, did they?

A Yes, the leaders who had a full-time job, they were paid, they got their salary.

Q But you were not a full-time job member, were you?

A No, with the exception of the two years when I was in Detmold and temporarily in charge of the SS regiment.

Q Your main occupation was railroading?

A Yes.

Q And your membership in the Allgemeine SS was part-time duty?

A Yes.

Q You joined this organization voluntarily?

A Yes.

Q Didn't anyone force you to do it?

A No.

Q You remained a member until the end of the war?

A Yes.

Q Why did you leave the railroad and go with the police department?

A On the orders of the Reichsfuehrer SS, at that time the Reich Minister of the Interior.

Q What was your pay from the railroad at the time you left its employment?

A 518 marks a month.

Q What was your pay as chief of the Giessen police department?

A Until I got my permanent appointment, the same salary which I had as chief inspector of the railroad.

Q And later on your salary was increased, was it not?

A Yes, up to 538 marks.

Q Who was the highest police official in the Giessen district while you were there?

A I.

PRESIDENT: May I remind those present in the courtroom that this is a serious matter and we will stop this laughing.

(Lassak-Cross)

QUESTIONS BY CAPTAIN VANCE:

Q Who was the next higher commander while you were with the police force in Giessen?

A That was the Lieutenant Colonel of the police, Hellwege-Emden, the commander of the police.

Q Was he not a subordinate of yours?

A Yes, a subordinate.

Q I mean, who was your next superior higher than you?

A That was the gauleiter in his position as Reich Kommissar and Reichsstatthalter.

Q Was his name Sprenger?

A Yes.

Q Did you take his orders and carry them out?

A Yes.

Q Who else was your commanding officer besides Sprenger?

A The commander of the Order Police.

Q Is that indicated on the chart at this position where it says, "Ordnungspolizei BDO"?

A Yes.

Q And did the next chain of command go from the chief of the Ordnungspolizei to General Stroop?

A Yes.

Q Did you receive orders from him and carry them out?

A I received an order but I did not carry it out.

Q In your testimony you have talked about a man named Winzer who was head of the Gestapo in Giessen. What was his rank?

A He was criminal counselor.

Q Were you a higher ranking officer than Winzer?

A Yes, as police director.

(Lassak-Gross)

Q Mr. Lassak, I believe you testified that you received three orders which concerned the treatment of captured allied fliers, is that right?

A Yes.

Q Are they about as you have stated in your written statement? I mean, the contents of these orders.

A Yes, approximately the meaning.

Q I believe you stated upon receipt of these orders that you destroyed them by burning, is that correct?

A Yes.

Q Now, those were your instructions, to burn them and destroy them upon receipt, were they not?

A Yes.

Q So, by burning these orders you did nothing but carry out part of the orders contained in them, is that right?

A I had to burn them because it was a secret order.

Q That is right. You were told in the order to burn them upon receipt and that is what you did with them?

A Yes, because it was a secret order.

Q Before you received these three secret orders about the treatment of fliers, what had been your policy with reference to the treatment of captured fliers?

A To deliver enemy fliers to the Wehrmacht.

Q When did you change those instructions?

A I didn't change them at all.

Q Well, when did you desire to change your course and begin turning fliers over to the Gestapo?

A Not at all.

Q Do you deny that you turned this flier who was captured the 3rd of October, 1944, to the Gestapo?

A At the request of the Gestapo, because this was a prisoner of the Gestapo, and not a prisoner of the police.

Q What makes you state that he was a prisoner of the Gestapo? Did you not hear Mr. Muenk testify that he took him from the civilian population and brought him to you?

A The official who informed me, as well as the criminal counselor Winzer, told me that the man of the Gestapo was in civilian clothes at that date.

Q What did Mr. Muenk tell you?

A That he had taken the prisoner from civilians.

Q Why did you not keep this flier in custody and turn him over to the Wehrmacht?

A Because he was a prisoner of the Gestapo.

Q Were you ordered by the Gestapo chief Winzer to turn this flier over?

A I didn't get the order. That was a matter of course. After the official told me that Muenk had taken the prisoner away from him, I had to give him the prisoner because he was not our prisoner. He was a prisoner of the Gestapo.

Q On this date you were already familiar with the fact that fliers turned over to the Gestapo would be executed, were you not?

A No.

Q Let us back up a little. Tell the court the contents of these three orders we have been discussing.

A According to the meaning, one of the orders said that behind the front lines agents and saboteurs were dropped and that they were creating great damages; therefore, in the future, parachutists have to be delivered to the Gestapo, also at the request of the Party in order to be interrogated.

(Lassak-Cross)

Q When did you receive the order which I quote -- "Emergency landed fliers are to be shot"?

A It might have been the end of August or beginning of September.

Q Now, if that was August or September, in October you certainly knew of that order, did you not?

A Yes, I knew about this order.

Q All right. Now, you knew when you told Mr. Muenk to take the flier over to the Gestapo headquarters that this order was in existence, that the fliers were to be shot, is that right?

A At the Gestapo?

Q Yes.

A No.

Q Who did you think was to shoot the flier?

A I mentioned already in the beginning I thought the fliers would be questioned and interrogated whether they were agents and spies and then after this interrogation they would be delivered to the Wehrmacht and sentenced.

Q In other words, you knew they would be shot by someone, but you did not know by whom, is that correct?

A By whom I didn't know but certainly not through the Gestapo or the Party.

Q Major Saxon asked you the question on direct examination if on the 7th day of August, 1946 you were asked to make a statement and if that was the first time you had ever been requested to quote these orders and you said yes. Is that correct?

MAJOR SAXON: If the court please, I think the Captain must have misunderstood my question because what I had in mind when I mentioned that was the first request to make some mention of the orders in July when he made that first statement. If that confusion has arisen I may be at fault or he may have misunderstood my question.

PRESIDENT: Will you read the question, please?

(Whereupon the last question was read by the reporter as follows:

"Major Saxon asked you the question on direct examination if on the 7th day of August, 1946 you were asked to make a statement and if that was the first time you had ever been requested to quote those orders and you said yes. Is that correct?")

MAJOR SAXON: Frankly, I cannot remember whether I asked that question. However, I will withdraw my objection.

THE WITNESS: Yes.

pld-145-1

CROSS EXAMINATION, continued

QUESTIONS BY CAPTAIN VANCE:

Q You had quoted those orders that you had received previously to that time, and you noted [illegible] Can you give any [illegible]

A Yes, [illegible]

Q You have just mentioned that them, is that correct?

A Yes. I mistake the first time. There was a statement I made, a verbal statement I made, and the first was the written statement I made.

Q Then, when Mr. Mueck first brought this flyer to the air raid shelter on the third of October, 1944 why did you go to the telephone and call the Gestapo [illegible] Mueck take this course and [illegible]

A Because I wanted to ascertain whether the information which the Gestapo official had given me in front of my headquarters - the information that he had taken the [illegible] right or not. I came in and lied. He told me [illegible] who was that Gestapo official?

A I don't know to anymore because I didn't know any Gestapo officials.

Q At that time did you know that an American flyer had been captured?

A I knew it through this official who told me that Mueck had taken the prisoner into custody and was on his way to my headquarters. [illegible]

Q Now, Lasch, you know that you called the Gestapo Headquarters to make arrangements for that man to be shot, don't you? He didn't recognize [illegible]

MAJOR SAXON: I object to that question as being argumentative.

PRESIDENT: Objection overruled, here?

THE WITNESS: [illegible] this Gestapo official told me that. Mr

QUESTIONS BY CAPTAIN VANCE: [illegible]

Q Now, you know that if you hadn't sent that American flyer to the Gestapo Headquarters he would be living today don't you? [illegible]

A I don't know that. I didn't know that he would be shot. He wasn't my prisoner.

(Lasch-cross)

Q He wasn't your prisoner? What was he doing in your headquarters?

A Because Mazuk had taken the prisoner away from the Gestapo official. He didn't know this Gestapo official because he was in civilian clothes.

Q You have heard Mazuk testify before this court. Can you give any reason why Mr. Mazuk would not tell the truth about that?

A He said the truth--that when he came out the Gestapo Official was already standing there.

Q I am talking about where he got the flyer from. You heard him testifythat he took him from men, women and children?

A Yes.

Q How do you know any reason why Mr. Mazuk would come into this court and lie about that?

MAJOR SANDS: If it please the court, that is repetitious, argumentative and there has been no statement at all that Mazuk came in and lied. He said he told thetruth.

PRESIDENT: Objection overruled.

THE WITNESS: He didn't make a wrong statement.

QUESTIONS BY CAPTAIN VANCE:

Q Well he did take the flyer them from the civilian population and not from the Gestapo, is that correct?

A The Gestapo official was in civilian clothes. He didn't recognize him.

Q How do you know that? Were you there?

A I have to assume this when the gestapo official told me that. For this reason I tried to ascertain from his superior officers, the criminal counsel, what had happened.

Q Lesnik, when did you say was the first time you were interrogated by the Americans in regard to war crimes activities?

(Lesnik-cross)

A In August.

Q What year?

A 1945.

Q You said you were mistreated at that time?

A Yes, severely.

Q What is the man's name that mistreated you?

A I don't know his name, but the man in charge was there--Lieutenant Seischel--and he must know his name.

Q You say no statement was taken from you and neither did you sign anything upon that occasion, is that right?

A No, exclusively about my personal data, my background.

Q He didn't even discuss the matters with which you were charged with at the present time on that occasion, did he?

A No.

Q Is today the first time you have ever mentioned what happened to you on that occasion?

A No.

Q You made a written statement in Giessen in July, 1948, is that right?

A The beginning of July, yes.

Q Who requested you to make that statement?

A The CIC officer.

Q Do you know who he was?

A I don't know his name.

Q Where were you at that time?

A At the police prison in Giessen.

Q I believe you said that you felt very bad when you were put in that cell in Giessen, is that correct?

A Yes.

Q That is the same jail that you used to be the master over wasn't it?

pldbl6-4

A No. The offices of the police headquarters at Glogau were destroyed during an air raid attack. I would have been ashamed to have cells like this.

Q You wrote the statement made on 11 July, 1946 in your own handwriting, did you not?

A Yes.

Q You were alone at the time you wrote the statement, were you not?

A Yes.

Q Where did you get the paper and pencil that you wrote that statement on?

A From the CIC officer.

Q I show you a document which has been introduced as Prosecution Exhibit 56 and ask you if that is the statement that you wrote at that time?

A Yes.

Q You say the CIC furnished you this pink stationery?

A Yes.

A Yes.

Q How long did it take you to write this statement?

A From six o'clock in the afternoon he had given me time until two o'clock in the morning, then I would be interrogated at the CIC offices in Glogau if the statement wouldn't be the way he expected and wanted it to be.

Q Did he tell you to tell the truth?

A He said, "Write the statement the way we discussed it."

Q Did he tell you to tell the truth?

A Yes. He always insisted upon that I gave the order for the shooting.

Q You said that he told you to tell the truth. Tell the court if that statement written by you contains the truth.

A No.

Q Point out to the court what part of the statement is not the truth.

A Just a moment please. First: "Perhaps they will be shot while trying to escape." You know the order in accordance to which parachuted flyers

(interrogation)

have to be shot. I answered the question with a "Yes, Kreisleiter."

Q That is not the truth?

A No, that is not the truth.

Q Why did you put that in there?

A Because he wanted the statement this way. He said, "You know about the order and you know what would happen."

Q You were alone when you wrote that part of the statement?

A Yes.

Q Tell the court anything else wrong about the statement.

A More. Then furthermore this passage, "I called immediately the criminal constable Wimmer from my headquarters over the phone and asked him to pick up the flyer immediately." This was a mistake, but it was wrong, but I was forced to write it this way.

Q Who forced you?

A The CIC officer. He always insisted, "You called Wimmer and asked him to pick up the prisoner."

Q The CIC agent wasn't there when you wrote this statement was he?

CAPTAIN VANCE: I object to the answer as not being responsive. I ask that he be instructed to respond to the question.

MAJOR SAXON: I think the answer ought to be made a part of the record. It has got to be translated.

THE WITNESS: But the CIC officer told me by two o'clock you will be put in the cellar and by two-thirty you will hang. That was the impression I had.

QUESTIONS BY CAPTAIN VANCE:

Q Tell the court what else is wrong with that, if anything.

MAJOR SAXON: If it please the court, I know the thing he will find wrong with that statement he will want to tell about on cross examination, but it will take another ten or fifteen minutes here.

PRESIDENT: What do you want to do?

(Lassak-cross)

CAPTAIN VANCE: It is customary to run court until five o'clock.

MAJOR VANCE: Quarter of five.

PRESIDENT: If you deem it advisable the court will carry on until you are finished.

CAPTAIN VANCE: I would like to point out everything wrong with this statement before he leaves the stand, if it please the court. I would like the court to instruct the witness to take his time and be able to pick out anything wrong on that piece of paper there.

LAW MEMBER: He is doing that.

THE WITNESS: Then here where it said, "Captured enemy flyers have to be shot immediately." It should have said, "Captured enemy flyers who are agents, spies or saboteurs have to be shot immediately.", but at that time I couldn't remember these words anymore.

QUESTIONS BY CAPTAIN VANCE:

Q All right, what else is wrong with that statement, if anything?

A Here where it says, "Signature Sommer." It should say, "Trummler or his predecessor," whose name I don't know.

Q Why did you put Sommer's name on that?

A Because I got mixed up with the name of Trummler.

Q That was your mixup. You didn't do that because the CIC agent told you, did you?

A That is my own mistake.

Q All right, what else is wrong with that statement, if anything?

A I couldn't remember the name anymore.

Q Have you finished reading the statement?

A And here on page three it shouldn't say that I went to my "enterprise", but only to the headquarters.

Q All right. Are there any other corrections you want to make on that statement?

A No.

(Lasch-cross)

Q Have you read that statement through thoroughly at least one or two times since you have been sitting in the chair?

A Once.

Q With the exception of the changes you have made does that statement state the truth Mr. Lassak?

A Yes.

CAPTAIN VANCE: We can take a recess. I haven't finished with him.

[redacted] COUNSEL: May I take a moment to present a matter to the court? On behalf of the German counsel associated with the defense, I request an adjournment of one day for the following reasons: Due to the illness of Dr. Frest, who has been with the case since before the trial began, it was necessary to bring other German counsel into the case. That is indicated by the record this morning. Dr. Haeber, so far as I know, knew nothing about the issues before this morning. He has had no time to talk to any of the accused as yet. What he knows about the case, so far as I know, he picked up in court today. The very next case coming on after this one is one in which he represents some of the accused. In addition Dr. Bau is compelled to take on additional of the accused and Dr. Aheimer took on additional of the accused.

They both require time to talk over with the new accused they represent and familiarize themselves with their particular problems. They feel they need at least one day in which to do so.

Originally I consulted Colonel Dunnell of the prosecution and he personally had no objection. I am informed that Captain Vance, associated with him, does have an objection.

CAPTAIN VANCE: If it please the court, I speak for myself and perhaps not for the prosecution staff in the case. First: I would like to say that this court gave the defense eight days time, excluding a Sunday, within which to prepare its defense. On other occasions the court has recessed at several minutes to a half hour before quitting time in the afternoon, which gave them time to prepare this case. I think they have had sufficient time to prepare

(Lassak-cross)

the defense of this case.

Secondly, for purely personal reasons on my part, I was ordered to return and be discharged from the army prior to this case. I voluntarily stayed for this trial. I expect to leave the day the case ends and for this reason I object to the continuance and insist that the case continues in the morning.

PRESIDENT: Will you read the prosecutions last statement?

(Whereupon the reporter read the last statement of the Captain as directed.)

PRESIDENT: The court will take a one day recess. We will meet again on Thursday Morning at 9 o'clock.

(Whereupon the court recessed until 0900 hours 13 February, 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on .....194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 — Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

16

919 - 1016

Case No. Superior Orders

Prosecutor Lt. Col. Dwinell

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Place DACHAU, GERMANY

Interpreter Herbert B. Rosenstock

Date 13 FEBRUARY 194 7

Reporter Patricia Stewart, Imogene Putler
John MacDonald, Paula Silverman,
Sally Rose Hayett, Peter L. DiCurti

~~Members of Court.~~
WITNESSES:

JULIUS LASSAK ERNST KUENK

ERWIN COSS

GERALD COATES

GUNTHER NIEMANN

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

(Lauer - 1203)

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

DACHAU, GERMANY tried at BEGINNING 10 JANUARY 1947

13 FEBRUARY 1947 : Pages 919 to 1016 Incl.

TESTIMONY

WITNESSES:	Direct	Cross	Redirect	Recross
JULIUS LASSAK	919		940	945
			944	
GUNTHER SIEMANN	944	949		
ERNST MEMEK	950		952	
ERWIN GOSS	959	1007		
	981			
	999			
GERALD COATES	984	988	979	980
	994	998	998	998

EXHIBITS

None

Camp Dachau, Germany

15 February 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Dr. Trost, who is absent sick, all of the accused, the reporter and interpreter, are present.

JULIUS LASSAK, an accused, voluntarily resumed the stand in his own behalf and continued to make an unsworn statement through an interpreter as follows:

CROSS EXAMINATION (continued)

QUESTIONS BY CAPTAIN VANCE:

Q Lassak, when the court adjourned last Tuesday you had just finished reading the document that you wrote, which is in evidence as Prosecution Exhibit 56, and you pointed out four corrections that you wanted to make in your statement.

A Yes.

Q I believe you stated that with the exception of those four corrections you wanted to make the rest of that statement was the truth. Is that right?

A As far as I could see it. Well, the short time I had available.

Q You read it for about a period of 15 minutes, did you not?

A I don't know, because I have no watch.

Q Did you read it all the way through?

A Yes, I read it all the way through.

Q Are you satisfied with it now?

MAJOR SAXON: If it please the court, at this time the defense would like to request that the accused be permitted to read that statement over again and ascertain whether he is willing to say that the statement is correct. We have had a lapse of a day here in between. The witness testified the other day and he read it over rather hurriedly. I think he should have an opportunity to read it again before he answers that question.

PRESIDENT: The court feels that the accused Lassak has had plenty of time to read the statement during the last session.

MAJOR SAXON: Would the court permit me to ask the witness one question at this time?

PRESIDENT: Any objection from the prosecution?

CAPTAIN VANCE: No, sir.

MAJOR SAXON: Mr. Lassak, do you feel that you need the opportunity of reading that statement once more before you make an answer to the prosecution's last question?

ACCUSED LASSAK: Yes.

CAPTAIN VANCE: I would like to ask one question now.

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Lassak, you have seen your own statement many times since the time the charges were served on you and the day you appeared in this court, have you not?

A No.

Q Your defense counsel did not show you this statement?

A No.

Q Did he show you a photostatic copy of this statement?

A Yes.

MAJOR SAXON: I might add one word, if it please the court. One of the vital points of our defense is that this statement and the next one were procured under duress and without a fair opportunity for this accused to know what he was doing in signing, and signing afterwards words that were put in his mouth and in his hands, as it were, and in his pencil when he wrote this statement. It seems to me that he ought to have an opportunity to examine it again.

CAPTAIN VANCE: If it please the court, it is not the question of duress I am examining on. I am just asking him whether it is the truth or not. He knows whether or not it is the truth.

PRESIDENT: The court's ruling stands, that he has had enough time.

THE INTERPRETER: Will you read the last question, please?

(Whereupon the question referred to was read by the reporter as follows:

"Q Are you satisfied with it now?")

THE WITNESS: As far as I can remember, yes.

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Lassak, on direct examination you testified that you received one order concerning the treatment of flyers from the Higher SS and Police commander. Was that General Stroop?

A Yes.

Q Now I am going to read you an order which you described in your statement and ask you if this is the order that you received from General Stroop:

(Lassak -Cross)

"Lately many cases have happened where enemy agents have parachuted down from planes. I order hereby that all bailed out fliers who are captured by the civilians or police should immediately be turned over to the Party or the Gestapo. This order is to be destroyed immediately upon acknowledgement."

Marked "Secret Matter".

A No. This is the order from the Reichsstatthalter.

Q And who was he?

A That was Gauleiter Sprenger.

Q I will read you the second order that you described:

"Secret Rush Order:

"Captured enemy fliers will be shot immediately. This order will be destroyed immediately upon acknowledgement."

Signed "Stroop, Higher SS and Police Leader, Wiesbaden."

A Yes, sir.

Q Now I will read you the third one:

"Captured enemy fliers will be turned over to the Gestapo. Secret Rush Order. This order to be destroyed upon acknowledgement."

Signed "Seyss-Inquart or his successor."

This is the one that you said should be signed "Trummler"; is that correct?

A Yes.

Q And you received that order from Dr. Trummler or his headquarters; is that right?

A Yes.

Q When you finished writing this document and signed your name to the bottom of it was anyone present?

A No, because I was alone in my cell.

Q I believe you stated you did not know the man's name that furnished you this paper and told you to write this statement. Is that correct?

A Yes.

Q Can you describe him to the court?

A Yes. He was a small man; full-faced; a little bit broad shouldered; thick neck; dark hair; with glasses.

Q Did he speak German or English?

A He spoke German and English.

Q Did he come back the next day to get this paper after you had written it?

A Yes. At this occasion he beat me, with the words "You have violated the Geneva Convention", and he pushed me against the wall.

Q That was after you had already made the statement?

A Yes. Before he threatened me I would be taken to the C.I.C. by 8 O'clock, would be interrogated there, then a rope would be thrown into my cell. If I wouldn't hang myself within half an hour then two Negroes would take care of me, with the words, "You German pig. You will croak."

Q Would you recognize that man if you were to see him today?

A Yes, because I was together with him on several occasions.

Q Mr. Lassak, you made a second statement in Wiesbaden on the 7th of August, 1946; is that correct?

A That is a question and answer sheet?

Q Yes.

A Yes.

(Lassak -Cross)

Q Do you know the names of the people that interrogated you on that occasion?

A It was a certain Mr. Coates and this same official.

Q Which same official do you mean?

A The one I mentioned before who mistreated me.

Q The one who requested the statement you wrote yourself?

A Yes.

Q And that is the same man that was with Mr. Coates when you gave this second interrogation in Wiesbaden; is that correct?

A Yes.

Q Could that man's name be Mr. Zinn? Does that sound familiar?

A I don't know the name.

Q But you remember the name Mr. Coates?

A Yes, because this name was made known to me through some other gentleman.

Q Did one of these men act as interpreter and the other one propound the questions to you?

A Yes.

Q Did they ask you certain questions and you gave certain answers on that occasion?

A Yes. It wasn't admitted that I could make a statement. I only had to answer certain questions, yes or no.

Q Did you answer those questions truthfully?

A No. Under duress.

Q What duress? Tell the court what was done to you in Wiesbaden.

(Lassak - Cross)

A In Wiesbaden, when I intended to make my first statement, this same gentleman came over to me and pushed me against the wall. If I wouldn't make the right answers he would go back with me right away to Giessen to the C.I.C. and would hand me over there for proper treatment. He couldn't guarantee whether I would be able to return to Wiesbaden once more.

Q What did he do to you?

A What I answered the questions in such a manner that these two gentlemen were satisfied, because I wanted to defend myself before an American court and not before people who mistreat human beings.

Q Can you answer my question? What mistreatment did you get at the hands of this man in Wiesbaden?

A As I said before, in Wiesbaden I got a slap against my chest around the heart, and then he grabbed me on my neck and pushed me against the wall.

Q We are talking about Wiesbaden now. He pushed you against the wall. Is that what you said?

A Yes.

Q Did he strike you with any object?

A That was enough. He didn't need any object.

Q Did he strike you with anything?

A Not in Wiesbaden, but in Giessen.

Q Mr. Lassak, you know we are talking about what happened in Wiesbaden. Do you understand that?

A Yes.

Q Were you struck in Wiesbaden? Yes or no, please.

A Yes.

(Lassak - Cross)

Q With what?

A With the fist; with the hand.

Q By whom? This same interrogator that struck you in Giessen?

A Yes.

Q What did Mr. Coates do to you, if anything?

A Nothing. He behaved very correctly.

Q Who got pushed the hardest? You in Wiesbaden or this American flier in Giessen by you?

MAJOR SAXON: If it please the court, I object to that question. That is something that, so far as this accused and that flyer in Giessen are concerned, has no purpose in this cross examination. There has not been any evidence here that I know of that this man mistreated any flyer. In fact, the evidence has been to the contrary.

CAPTAIN VANCE: He said he pushed him. He tried to mitigate it and explain it.

MAJOR SAXON: I withdraw the objection.

THE WITNESS: I.

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Lassak, do you remember what happened on the 3rd of October, 1944, at Giessen in reference to an American flyer?

A Yes.

Q Everything that happened on that day is clearly in your mind at this time, is it not?

A It isn't clear anymore in my memory, because after the mistreatments at Natternberg I started to suffer troubles of my blood circulation; and, furthermore, I got a heart disease.

(Lassak - Cross)

Q What effect does that have on your memory? Does that have an effect upon your memory?

A Yes.

Q Do you remember having a conversation with the Kreisleiter on that day?

A Yes.

Q What was the Kreisleiter's name?

A Kreisleiter Bruock.

Q Tell the court what you and Kreisleiter Bruock talked about in reference to an American flyer.

A That was not a conference; that was only a very short talk on our way to the police headquarters at Wiesock.

Q What did you talk about?

A The Kreisleiter received me when I intended to go to the place where this bomber had crashed at Wiesock with the words that at my police headquarters would be three fliers, and he needed these fliers for interrogation at the Kreisleiter's Then in reply I said, "I have no policemen available, because all my policemen are at the spot where the bomber had crashed." Then he said he would send three men of the political staffel and they would pick up the fliers.

Q What business did the Kreisleiter have with these bailed out fliers?

A On orders of the Reichsstatthalter, to interrogate the fliers in regard to the opinions in foreign countries and the final results of the war.

Q That was a job for the Wehrmacht and the police, was it not?

A I don't know that. I know only the order that at

the request of the Party I had to hand over these fliers to the Kreisleiter, and as far as I could understand it was for interrogation.

Q Previous to this time you had already received the order that the fliers were to be shot. That is correct, is it not?

A Yes.

Q And you knew of the existence of that order on this date in question?

A Yes.

Q Did you turn those three fliers over to the Kreisleiter?

A Yes.

Q Did you know what was going to happen to these fliers when they were turned over?

A No.

Q Now I am going to read you your answer to the same question which I just propounded to you:

"Answer: I realized that they would be shot if I turned them over to the Party or the Gestapo, but, of course, I did not know who was going to do the shooting."

Did you say that?

A I said so under duress, forced by the official who wanted it this way, because he didn't want any additional statement from me.

Q What happened to these three fliers after you turned them over?

A I don't know that.

Q I am going to read you the answer to that question. It is contained in this statement:

(Lassak - Cross)

"Next day the Kreisleiter called me up and told me that all three fliers were shot while trying to escape."

Did you make that answer?

A Yes.

Q Was that the truth?

A Yes.

Q Why did you give me a different answer when I asked you the question the first time?

A The question was whether I knew what had happened to the fliers afterwards.

Q Well, you know they were shot, do you not?

A Yes. On account of the telephone call the next day.

Q It was later, after these three fliers were turned over, that you turned this flyer over to the Gestapo in Giessen on the 3rd of October, 1944; is that correct?

A Yes, because he was a prisoner of the Gestapo, not a prisoner of the police.

Q I believe you testified that you were a superior in the police force. That is right, is it not?

A Me? No.

Q You have testified that you were the highest police official in the Giessen area, have you not?

A That has nothing to do with the matter. The Order Police is not identical with the Secret State Police.

Q Do not argue with me. Were you the highest official in the Giessen area?

MAJOR SAYLOR: Just a moment. I have let the prosecution go on here with this line of questioning, which is an effort to draw an answer from this accused, and it is misleading.

(Lassak - Cross)

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The evidence has been clear before this court from the very beginning of this trial, so far as the defense is concerned, that this man was the Polizeidirektoren of the Schutzpolizei in this area. It is clear before this court that the Gestapo is a separate entity and force entirely, and I object to the prosecution asking this witness that type of question. He should ask him if he was the highest police officer in the Schutzpolizei in Giessen, Bad Nauheim, and Friedberg. When he speaks about the area, there were General Stroop and others.

PRESIDENT: Objection overruled. Was this flyer shot?

A THE WITNESS: Yes. In order to do so you would have done that.Q In When you had this flyer in your custody you had the power and authority to keep him in your custody, did you not?

A No, because he was a prisoner of the Secret State Police and not my prisoner. I have nothing to do with the that Secret State Police. In Giessen but the Gestapo all over

Q Was Mr. Munk an employee of your police department?

A Yes. If it please the court, I object to that Q And Mr. Munk had a prisoner in his custody, did he not? question. There is no evidence here from this accused to such Yes. This is not my own knowledge. It was no hearing of Q And you could have held that prisoner if you had wanted to, could you not? objection is overruled

A Yes, if the Secret State Police wouldn't have requested the prisoner. that no one who knew American flyers

Q Why did you not deliver this prisoner to a PW camp?

A A. I have to stress the point once more. This man was a prisoner of the Gestapo and not a prisoner of the police force.

(Lassak -Cross)

Q I am going to read your answer to that same question in your statement:

"Because there was an order from the headquarters of the SD stating that captured fliers had to be turned over to the Gestapo."

Did you make that answer?

A Yes. The order existed.

Q At that time were you aware of the order that these fliers were to be shot?

A Yes.

Q Then why did you not personally have this flyer shot?

A Because I had no order to do so.

Q If you had had an order to do so you would have done that. Is that what you mean?

A I can't say that. I can't say that at this time. That is a question of conscience.

Q It was familiar to you at that time, was it not, that not only the Gestapo in Giessen but the Gestapo all over Germany were executing American fliers?

MAJOR SAXON: If it please the court, I object to that for the reason that it is going beyond the scope of the direct examination. There is no evidence here from this accused in any manner that he had any such knowledge. It has no bearing on the case. He is charged here with a particular offense.

PRESIDENT: The objection is overruled.

THE WITNESS: I can't say that because I had no time to find out whether the Gestapo was shooting American fliers all over Germany. It was the only case which happened in Giessen, yes.

(Lasak - Cross)

QUESTIONS BY CAPTAIN VANCE:

Q Your answer is that you just do not know; is that right?

A I didn't know it, yes.

Q At the time you sent this American flier over to the Gestapo, did you have any pity or sympathy for him?

A Why pity? I didn't know what would happen to the flier. I acted as a German officer exactly in the same manner as American officers acted in accordance with orders they have received.

Q You mean to tell the Court you didn't know what was going to happen to him when you said you already had these orders you received?

A No.

Q Did you think that they were just going to ignore the order that all fliers were to be killed?

A I didn't know that the flier was to be shot. I said before that I handed over the three fliers for interrogation and that I handed over this one prisoner to the Secret State Police, because he was not my prisoner, but the prisoner of the Secret State Police.

Q And in a very short while, all four of these men were dead--that's correct, isn't it?

A I don't know that. I heard only about the three fliers when the Kreisleiter told me so over the phone.

Q Was General Stroop one of your commanding officers?

A Yes.

Q What was the purpose of his visit to your office in July or August, 1944?

A First, I was at Giessen only for a short while, and he visited the Headquarters in Giessen to greet me there as a new officer because he had made an inspection in the neighborhood.

Q Did you discuss allied fliers?

A No.

Q I believe you said when Girke took over as Chief of the Gestapo in Darmstadt he came over and made a visit to you, is that correct?

A Yes.

Q And you and Girke had a conference at that time?

A No, I didn't say that.

Q What did he come for?

A He made only a visit to me as a new officer.

Q You were highly interested in the operation of the Gestapo, weren't you?

A What business of mine is the Gestapo? I had enough to do with the police and the air raid protection at Giessen, Bad Nauheim, and Friedberg.

Q Tell the Court why he came there--what you did--and what you talked about.

A Girke came to Darmstadt as a new Chief of the Gestapo Headquarters there, and since he had a branch office at Giessen, he, as chief of the Gestapo Headquarters at least has to know who is in charge of the Gestapo Branch Office at Giessen; and, as Chief of the Gestapo Headquarters at Darmstadt he visited not only me, but also the mayor of the town, all other political organizations, the Kreisleiter, etc., as was the custom in Germany.

Q He wanted to visit all the officials to coordinate matters, didn't he?

A How do you mean that? It seems that the Prosecution doesn't know what the Secret State Police was.

Q Well, I don't care about your telling me about that--just answer my question, if you can. If you can't

don't answer it.

DR. HACKER: I would like to make an objection, because the witness has said something which hasn't been translated yet.

WITNESS: The Secret State Police would not be so careless to tell everybody what the work of the Secret State Police was all about.

CAPTAIN VANCE: I move to strike that--that's not answering my question at all.

WITNESS: Otherwise, the Secret State Police would lose all its importance and its meaning as secret.

PRESIDENT: Did you make a correct translation of the first statement he made before the objection?

INTERPRETER: Yes, sir, he had made two sentences. I translated the first one; and I was interrupted by Captain Vance; and now I translated the second sentence which he made right after the first one.

CAPTAIN VANCE: I move his answer be stricken from the record. I asked him a question, and he starts telling me about the police system of Germany, which I think I am pretty familiar with.

MAJOR SAXON: I want to say for the Defense that that is a responsive answer. They asked a question about the police, and that's his answer.

CAPTAIN VANCE: I withdraw my objection.

QUESTIONS BY CAPTAIN VANCE:

Q The Order Police and Secret Police worked together

and assisted each other, didn't they?

A How? In which respect?

Q By assisting each other, by your arresting people and turning them over to the Security Police.

A No, the meaning is given already in the words "Order Police" and "Secret State Police." We took care of the order, and the Secret State Police took care of the security of the Reich.

Q Well, if the Security Police wanted one of your prisoners, you turned him over, didn't you?

A What kind of prisoner?

Q Any kind.

A That can't be done so fast. First, you have to know what crime the man has possibly committed. First, the District Attorney has to be heard, or should we let the criminals run away?

Q Now let's get back to Girke. He came to you as a new official, seeking your advice and guidance, didn't he?

A My advice? The first visit of a new official--is that made for the purpose of getting advice?

CAPTAIN VANCE: I am asking you the questions.

PRESIDENT: The witness will answer the questions and not ask questions.

INTERPRETER: Repeat the last question please.

(Whereupon the reporter read the question.)

WITNESS: Girke didn't ask me for any advice because the purpose and the work of the Secret State Police

(Lassak-Cross)

was entirely different from the work of the Order Police.

Q Can you explain why the Order Police would get copies of the same orders that would go to the Security Police--for instance, these "flier orders"?

A Because it said in the order that captured enemy fliers, captured by the police forces or by the population, should be turned over to the Secret State Police, or, in accordance with the order of the Reichsstatthalter, should be turned over to the Party.

Q In what capacity did Mr. Albrecht work under you?

A He was First Lieutenant of a Police District and had been transferred to Giessen.

Q How long did he work for you?

A He came in February of 1943.

Q Did he stay until the end of the war?

A Until the end.

Q You heard the incident with which he is connected. Was he a subordinate of yours at that time?

A Yes.

MAJOR SAXON: I beg your pardon. May it please the Court, I want to ask that that question be restated to the witness and be made clear, because the witness has now stated to the effect that Albrecht was the subordinate of this accused at the time of this offense.

CAPTAIN VANCE: That was my question.

MAJOR SAXON: The question was not clear.

PRESIDENT: Ask the witness if the question was clear to him.

(Thereupon the interpreter did as directed.)

WITNESS: Directly, he was not my subordinate

(Lassah-Cross)

because he was under the command of the Order Police.

QUESTIONS BY CAPTAIN VANCE:

Q All right, now, Mr. Lassak, I believe you testified on direct examination that when you received these three orders in question, you burned them and did nothing to enforce them except on this one occasion. Is that correct?

A Yes.

Q And in doing that you defied the orders of both General Stroop and Colonel Trummler, is that correct?

A How do you mean, violate the order?

Q Well, you failed to carry out the instructions.

A I couldn't carry them out.

Q That's right, and now as you failed to carry them out, state to the Court if you suffered any punishment whatsoever for your failure to carry out these orders?

A I didn't have any failure to carry out any orders, because nothing else happened in Giessen.

Q I am not asking you that. I merely asked you if you passed these orders on to anyone, and you said no, you tore them up and kept them secret to yourself. Is that true?

A Yes.

Q Now my question is did you receive any punishment for that from Stroop, Scmann, Trummler or anyone?

DR. WACKER: I object to this question. No basis has been created for it. So far, it hasn't been brought out that the accused was under any obligation to pass on the orders to his subordinate officers.

PRESIDENT: Objection overruled.

WITNESS: No, because it was not said on the order that these orders have to be passed on.

QUESTIONS BY CAPTAIN VANCE:

Q Well, why did you spend so much time on direct examination explaining that you didn't pass them to anyone?

A I didn't pass them on.

CAPTAIN VANCE: No further questions.

MAJOR SAXON: May it please the Court, Dr. Rau on behalf of General Stroop wants to examine the witness at this point.

PRESIDENT: The Court will recess for twenty minutes.

(Whereupon at 1000 hours, the Court recessed.)

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(Whereupon the court reconvened at 1020 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, except Colonel Robertson, who has been temporarily excused by the appointing authority; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent sick; all of the accused, the reporter and interpreter are present.

I believe the defense has something to say to the court with respect to German counsel Dr. Trost.

DEFENSE COUNSEL: I would like to have the record continue to show that Dr. Trost is absent sick for this reason: while the probabilities are that she may not return, there is a possibility that she might, but that is not the important reason. She became seriously ill while at Dachau, and if I can, I am going to recommend that she be paid for the entire period of the trial on the ground that her illness was incurred while she was actually in service. I have in mind, if the record shows that she is completely out of the case, that that may be some impediment in accomplishing what I have in mind.

PRESIDENT: That is agreeable with the court.

JULIUS LANGBEHN, an accused, voluntarily resumed the stand in his own behalf and continued to make the following unsworn statement through an interpreter:

REDIRECT EXAMINATION

QUESTIONS BY DR. MAX:

Q At that time, did you ever report to General Stroop that Allied fliers had been shot in your area?

A No. I had no reason to do so.

MAJOR SAXON: If it please the court, I would like to re-examine the accused on two or three points that I left in mid-air, as I view it, on direct examination.

QUESTIONS BY MAJOR SAXON:

Q Mr. Lasnik, you were asked on cross examination by Captain Vance whether or not Wilhelm Albrecht was a member of your command on the 22nd of February, 1945. Is that correct or not?

A No. He came only on the 11th of March.

Q Did you know Albrecht at all before he came to your command as a new policeman?

A No.

Q You have been asked at some length by Captain Vance regarding those three orders that you attempted to quote in your statements of July 11 and August 7, 1946, and you have been asked many times by Captain Vance as to why you turned them over to the Gestapo or the Kriminalpolizei when you knew they were going to be killed. I want to ask you first, Mr. Lasnik, when you turned these fliers over to Kriminalpolizei Brunn, and the one that you returned to the Gestapo, did you at that time have any idea that they were going to be killed?

A No.

Q Will you tell the court what your understanding was of these three orders that I have referred to?

CAPTAIN VANCE: I object on what his understanding was. He has quoted the orders as best he can remember, he has stated that is the truth as best he can remember. They are simple orders and it requires no explanation as to the meaning.

PRESIDENT: Objection overruled.

QUESTIONS BY MAJOR SAXON:

A In regard to the three orders, I understood in regard to the shooting of the flier and the transfer of the fliers to the Gestapo and other offices that the fliers would be taken for interrogation, and after they were found out to be saboteurs or spies, they would be handed over to the Wehrmacht, would be put before a military tribunal of the Wehrmacht,

Q I may be repeating, but I want to ask you again, Mr. Lassak, did you ever receive from any of your higher commanders or subalitte commanders any orders directing that you or any of the policemen under you might do injure any Allied prisoner of war?

A No.

Q You have testified here regarding the mistreatment that you received prior to the making of the statement of July 11 in the jail at Oleszno. Would you be able to recognize the person that inflicted those injuries and made those threats upon you and against your person?

A Yes.

Q I call your attention and hand you Prosecution Exhibit 144-I and ask you to state to the court whether or not one of the three persons appearing in that picture exhibit is the man who made the threats against you and personally injured you in Oleszno in 1946?

A Yes.

Q Will you point him out on this picture?

A This one.

(LASSAK-Redirect)

and would be them also.

Q You may report some mail to you by the State Police as to the disposition of the fliers that you had thereby return to the Sheriff?

A No.

Q Was there any reason or occasion why they should have reported it to you?

A No.

Q This order that you have published to have me, I believe, in quotes it says, "Emergency. Persecuted fliers are to be killed." -- was that an order directed to you or was that an informational copy of an order sent to you?

A This order was only for my information.

MAJOR SAXON: Let the record show that on this particular exhibit the accused identified the one who made the threats against him and personally injured him by pointing to the man on the righthand side of this picture, out of the three persons who appear in the picture.

QUESTIONS BY MAJOR SAXON:

Q I now refer you to Prosecution Exhibit 11b-B and ask you to state whether or not one of the three men that appear on that picture is the same person you have just identified in Prosecution Exhibit 11b-I?

A Yes.

Q Will you point him out on that exhibit?

A (Indicating.)

MAJOR SAXON: Let the record show that the accused identified this man as being the person out of three, the person being the one on the lefthand side in that picture.

Let the record further show that it has been stipulated between the prosecution and the defense that it is Joseph B. Zinn who has been identified by this accused. Is that correct?

CAPTAIN VANCE: We so stipulate that the man pointed to on the picture is Joseph B. Zinn.

PRESIDENT: The stipulation is accepted by the court.

MAJOR SAXON: Does the court care to see this?

PRESIDENT: You may proceed.

MAJOR SAXON: That is all.

CAPTAIN VANCE: I would like to ask one more question.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Lanzak, if you understood that these orders were above-board, that these men were to get a fair trial before a Wehrmacht court, can you explain why the orders were marked top secret and you were instructed to burn them?

A Because it was only for acknowledgment and so that spies and agents couldn't get hold of these orders.

Q They were classified the very highest secret matter, weren't they?

A Yes.

Q This man Zinn that you have identified in this photograph — isn't he a kid about 18 years old?

A No, he is older. He is between 35 and 40.

Q You are sure about that?

A Definitely over 30.

Q And definitely over 20?

A Yes.

CAPTAIN VANCE: No further questions.

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q You mentioned in your cross examination by Captain Vance that he spoke German also?

A Yes.

Q Do you know whether or not, Mr. Isaak, he is a native-born Austrian or German?

A I don't know that.

MAJOR SAXON: That is all. No further questions on the part of the defense.

CAPTAIN VANCE: Nothing further from the prosecution.

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness resumed his seat in the dock.)

GUNTHER HIEMANN, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q Will you state your name and age?

A Gunther Hiemann, 46 years old.

Q What is your permanent residence?

A Essen, Misthoffweg 26.

Q Where are you now residing?

A Special camp Dachau.

Q What is your status here?

A I am an internee.

Q You testified here in behalf of the prosecution earlier in this case, did you not?

A Yes.

Q Where were you taken prisoner?

A In Egerland, in the village Wassertroupeten.

Q When was that?

A On the 6th of May, 1945.

Q Where were you taken and confined after that date?

A On that day, I marched with my comrades and other units of the Wehrmacht to Bischoftinits.

Q Where were you next taken from that place and confined?

A From Bischoftinits we were taken in trucks to the prisoner of war camp Weiden.

Q Did you finally reach a camp called Natternberg No. 5?

A Yes.

Q When did you reach there?

A I arrived there on the 28th of May, 1945.

Q How long were you confined there?

A Until the 26th of January, 1946.

Q Do you know why you are confined here in Dachau?

A I am as a witness here in the flier trial for the Wehrkreis XII. Why I am in the class of war criminals, I don't know.

Q You have never been charged with a war crime, have you?

CAPTAIN VANCE: We object on the ground that it is immaterial,

irrelevant and incompetent testimony as to this man's status.

MAJOR SAXON: I think it has some bearing on his credibility as a witness.

CAPTAIN VANCE: Let me remind the defense counsel that he is your witness.

MAJOR SAXON: I know it. I want to show his good standing.

PRESIDENT: Objection overruled.

QUESTIONS BY MAJOR SAXON:

A No.

Q Were you in Hattersberg, Camp No. 5, when the accused Julius Lasnak was also a prisoner there?

A Yes.

Q Were you there on the day that he was subjected to interrogation?

A Yes.

Q Will you just tell the court what you know regarding the treatment given Lasnak that day during his interrogation and what you saw of him afterwards?

A I myself wasn't present during the interrogation.

CAPTAIN VANCE: May it please the court, I am going to object right there. He said he was not present, so I am going to object to him testifying about anything that took place. He said he was not there.

MAJOR SAXON: I intended my question, when I made it, to cover during that time and what he saw afterwards regarding Lasnak, so he can't testify until he has laid that foundation, not at the actual interrogation, but what he saw afterwards.

PRESIDENT: Objection overruled.

QUESTIONS BY MAJOR SAXON:

A (Cont'd) After the interrogation, we were waiting for Lasnak, because it was sometime. We knew that other examples who had been taken for interrogations before Lasnak, to a special interrogation barracks

outside the camp, had been beaten. We saw them when Lassak returned from the interrogation barracks to the camp, from the interrogation barracks, which was approximately 150 meters from the entrance gate to the camp. Lassak couldn't walk straight. He had his head down. He came through the camp gate and when he reached the place in front of the camp gate, he fell to the ground. Some of the comrades ran over to him and picked him up. Lassak was moaning. He was beaten up in his face. His face was swollen up and at the beginning he didn't say anything. We carried him and I don't remember exactly any more whether we carried him first to the doctor and then to his quarters. Anyway, at the end he was put into his bed. The doctor was there and we were not allowed to see him. Lassak then said a few incoherent words that he had been beaten. Sometime later then, I received the permission to go to him. I then gave him my hand and told him to keep his head up and not to lose his courage. His head was bandaged over the front head with a white bandage, and Lassak gave me a sign with his head like he understood what I said to him.

A few days later, Lassak asked that I should visit him. I went to him with a colonel of the Order Police, Hink. He is now at Ludwigsburg. During this conversation, Lassak was able again to talk, but his face was still blue and green and at this occasion, he told us that during the interrogation outside the camp he had been beaten severely. A few methods of interrogation were used on him and during these interrogations he was beaten on several occasions. He told us that whenever he got unconscious, water was poured over him so that he regained consciousness. Furthermore, he said he didn't know any more exactly what he had said, but it seems to him there was something about a confession he had to make. I can't make too exact a statement in regard to this matter, because there was a lot of talking going on at that time about beatings in the camp because all the comrades were beaten. As far as I can recall, he was supposed to make a confession also to the effect that he had been the chief of the Gestapo. I can't say any more about this.

Q Have you had any opportunity to see or talk with Lassak at all in the past thirty days since this trial started?

A I saw and spoke with Lassak for the last time when he was taken from the Special Camp to the bunker.

Q When was that?

A Just a moment I put it down on paper. I think on Friday, the 13th of December.

Q Will you just tell the court what Lassak's appearance was before he underwent this interrogation, what his physical appearance and weight and so forth were?

A I came to this camp on the 28th of May and Lassak came either with me or two days later. Although we all were beaten when we entered the camp, we still were not beaten in such a manner that we had marks of beatings on our bodies and Lassak was in good condition as all of us were.

Q What did you observe as to his condition as far as weight and appearance were after this interrogation?

A He was very much depressed on account of the beatings. He did a lot of thinking about the confessions which he had made and which supposedly were not correct, and we noticed that not only through the prisoners food and the fact that he was a prisoner but also for other reasons, he was losing weight and was getting weaker.

Q Did you state that he had black and blue marks on his face from this beating?

CAPTAIN [illegible]: I object to his leading the witness.

MAJOR [illegible]: I think he said blue and green marks. I didn't mean black and blue.

PRESIDENT: Objection sustained.

(Niemann-direct)

QUESTIONS BY MAJOR SAXON:

Q What kind of marks did you observe on his face after this bandage was removed?

CAPTAIN VANCE: I object on the grounds it is repetitious.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q Do you recall how long these discolorations on his face remained?

A It might have been eight, ten or twelve days, as usual when you are beaten, the same way as when a child gets beaten, first it's blue and then it gets yellow.

Q Did Lassak tell you what they interrogated him in regard to?

A Yes, I just remember it now through your question. He had given my name as a witness because I would know his headquarters, but I was not interrogated. He wanted me to testify that he was not the chief of the Gestapo at Giessen.

Q Were you ever called as a witness to verify his statement?

A No.

Q Mr. Niemann, when Lassak was Polizei Director in Giessen, you, for at least part of that time, held a position as the Befehlshaber of the Ordnungs Polizei, is that right?

A Yes, from the 10th of October 1944.

MAJOR SAXON: That is all. Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q What was your military rank when you were Chief of the BDO of Rhein-Westmark?

A When I took over this office I was Lt. Colonel of the Rural Police. On the 14th of October I became Colonel of the Rural Police.

Q At that time you were the immediate superior officer of Colonel Lassak, is that correct?

A No.

Q He was not under your command?

A No. The Police Directors were not under the Commanders of the Order Police. Only the Order Police at Giessen was under my command.

Q Did you know Colonel Lassak at that time personally?

A I got to know Lassak on an official trip to Giessen, perhaps in November.

Q 1944?

A Yes, 1944.

Q And you have known him continually from that time up to the present date?

A Yes, but I was in Giessen only once and I got acquainted with him more closely only during our retreat.

Q Now, I believe you said you saw Colonel Lassak after his interrogation, is that correct?

A At Hattenberg?

Q Yes.

A Yes.

Q Your knowledge of what happened and what was said about what took place at the interrogation is what Lassak told you, is that correct?

A Yes.

Q Lassak told you that they had made him make a confession, is that correct?

A Yes.

Q And he told you that they had questioned him about Gestapo activities in Giessen, is that right?

A Yes. May I say something else, too? It just comes in my mind.

(Niemann-dross)

a general at Hatternberg, everything had to be presented to the general and immediately the treatment improved. The beatings during the interrogations stopped immediately; we got better food and the American soldiers, I mean the American front soldiers, always treated us decently.

Q Did Colonel Lagnak also tell you that they questioned him about a flier who had been killed in Giessen in October 1944?

A No.

Q Were you interrogated at Hatternberg?

A I was interrogated at Hatternberg only on the 17th or 18th of January 1946 when I came out of the automatic arrest class and there was an application for my release.

Q Were you beaten?

A At Hatternberg yes, when we entered the camp, all of us.

Q Colonel Wiemann, about how long have you known me?

A I know Captain Vance from Wiesbaden.

(Wiemann-cross)

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Q Yes.

A He told me also that he had been confronted with the organization of the Police Director at Regensburg because at Regensburg the organization -- what I didn't know because I had nothing to do with it -- was different from the organization at Giessen because supposedly at Regensburg the Police Director, who had the same position as Lassak had at Giessen, was also the chief of the Gestapo.

Q Did Lassak tell you further that he was beaten and forced to sign his name to a confession in Nuremberg?

A There was so much talking going on about confessions and revocations of confessions that I couldn't say under oath whether he really said he signed the confession. I know he only said he was supposed to make a confession and if I remember, he later on made application. There was

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Q Since you have known me, have you been mistreated in any way whatsoever?

A No. Captain Vance always treated me very correctly, very properly and during my sta, at the hospital in Wiesbaden when I was very ill he took care of me so I got many improvements.

CAPTAIN VANCE: That is all.

MAJOR SAXON: Nothing further.

PRESIDENT: Questions by the court? The witness is excused.

(Whereupon the witness was excused and withdrew.)

ERNST MUENK, recalled as a witness by the defense, having been previously sworn, resumed the stand and testified further through an interpreter as follows:

PRESIDENT: You are reminded you are still under oath.

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q Mr. Muenk, did you know the Kriminalrat Winzer in Giessen?

A Yes.

Q Do you know what became of him?

A The end of November '46 the rumor was going around that he hung himself.

Q From whom did you got that rumor?

CAPTAIN VANCE: I object to this, may it please the court. I can't understand the materiality of it.

MAJOR SAXON: I told the court to start with that Winzer was Kriminalrat at that time and there is evidence to show he directed the death of that flier and that Winzer has now committed suicide.

CAPTAIN VANCE: I am willing to stipulate he committed suicide while in the custody of the Americans in an American jail.

MAJOR SAXON: That is the only purpose I called this witness for.

(Muenk-redirect)

PRESIDENT: The stipulation is accepted. The court does not desire to question this witness, he is excused.

(Thereupon the witness was excused and withdrew.)

MAJOR SAXON: If it please the court, the defense has only one other witness and that is Lt. Colonel Hellweg-Emden. I have exercised every possible means in my power to get him here. I want to state to the court that information from the Apprehension Section in Augsburg is to the effect that he was placed in a train in Frankfurt by one of the War Crimes teams Thursday night, last Thursday night, I believe February 6th and directed to report here as a witness. Since that date we have not heard from him. We cannot learn where he is. I have learned this morning that he has not returned to his home. I am trying to locate him in Munich at the hospitals and through the police and the Apprehension Section is also trying to do so. I would like to have a right to present the evidence of that witness when and if I find him at any time during this trial.

CAPTAIN VARGO: We have no objections.

PRESIDENT: No objection by the court.

DEFENSE COUNSEL: I don't suppose it is necessary, may it please the court but as a matter of record perhaps I should make this statement. When we go from one charge to another we are not resting on any charge. We reserve the right to come back. Normally we expected to go from Charge 3 to Charge 4 but it so happens that Dr. Aheimer's mother died and he is leaving tonight for the funeral. He is involved in Charges 4 and 5 so, with the court's permission, we are now going to jump to Charge 9 which is the first charge with which Dr. Aheimer is not connected. Major Saxon will conduct that.

PRESIDENT: Court will take a recess in place.

* * *

Boerger is special counsel engaged by these accused -- that is, Georg Best, Erwin Goss, and Heinrich Micholy.

PRESIDENT: Proceed.

MAJOR SAXON: The evidence of the defense here will disclose to the court that the accused, Goss, Erwin Goss, was a soldier in the Wehrmacht of the German Forces from sometime around the beginning of the war; that he was seriously wounded on the Eastern Front, having lost an eye in this engagement besides receiving some forty or fifty distinct wounds from exploding shells; that he was hospitalized for a long time and that subsequently and until the Fall of 1944, after having been back in civilian life for a year or two, he was drafted into the Waffen SS. I think this was in October 1944. That when he left the Wehrmacht he held the rank of Lieutenant and when he was drafted into the Waffen SS he was given that same rank and at that time he was assigned to General Streop in Wehrkreis XII as liaison officer between the Werwolf School and General Streop's headquarters in Wiesbaden; that around the first of the year 1945

PRESIDENT: Court will come to order.

CAPTAIN WAGNER: If it please the Court, I'd like to state
before we open the proceedings, that each one of the members of the Court
signed an oath every effort to locate witnesses which have been requested
and prepare the case for trial. We did not locate all of the witnesses
requested. We did locate Lieutenant Colonel Hall and Lieutenant Colonel
Bowman. We have every reason to believe that we can produce them before
the end of the week.

PRESIDENT: Very well.

MAJOR SAXON: I'd like to state, sir, that the defense has
requested the presence of certain witnesses and evidence by the writing
dated 15 August 1945, addressed to the Commanding General, Army Forces
Western Pacific, and that the defense has been informed that the witnesses
requested are not available. I would like to state that the defense
considers the presence of these witnesses essential to the defense of
the accused.

PRESIDENT: Very well.

MAJOR SAXON: I'd like to state that the defense has been informed
that the witnesses requested are not available by the writing dated
15 August 1945, addressed to the Commanding General, Army Forces Western
Pacific.

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ovidance will show he was appointed as a sort of superintendent in charge of this Werwolf School in Wallrabenstein. This school was also located in another town near there for a few months and then moved to Wallrabenstein. This Werwolf School had about three to five instructorsand there was an average of thirty to fifty students in the school. That the mission of this school was to train defien it in the art of defense with small arms and in demolition for the purpose mainly of destroying bridges and highways as the enemy approached and for the further purpose of destroying rear lines of communication of the enemy such as bridges after the enemy had passed, if they were rebuilt, and the destroying of the advance of supplies and equipment. Further than that, it will show that around the 1st of January General Streop also made Lt. Goss a sort of a Provost Marshal of this town of Wallrabenstein for the purpose of maintaining order generally in thatimmediate vicinity. The evidence will show further that at this time Lt. Goss was informed of the instructions that had been handed down from the highest headquarters, that is Himmler, to the effect that certain parachuted fliers who were found to be enemy agents, saboteurs or other persons who were coming behind the German lines for the purpose of destroying and damaging property, were to be executed.

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The evidence will show that Lieutenant Goss continued in his work, without any particular thing unusual happening until the 15th day of March, 1945, at which time a parachuted flier was apprehended by some of Goss' personnel at this school and was brought to headquarters; and Lieutenant Goss called in to Wiesbaden, asking for advice as to how he should dispose of this flier. At this point the court should be informed that in Wiesbaden, the accused Major Georg Best was a staff officer of General Stroop's, and was in charge of the Werewolf activities in Wehrkreis 12. Lieutenant Goss attempted to contact Major Best and therefore secure from him information from General Stroop as to the disposition of this flier. Major Best happened to be out at the time so a message was left with Major Best's assistant and on his return, learning of the telephone call, he made inquiries of General Stroop as to what disposition he should make of this flier. General Stroop gave the order that the flier was to be executed and directed Major Best to convey that order to Lieutenant Goss. This was some time in the afternoon of March 15th, 1945. That message was not conveyed at once, but around six o'clock, Lieutenant Goss and Major Best met in a sort of rectangular set of barracks near the area of Wiesbaden, which was the usual place to meet in the evening, providing they were unable to communicate with each other by telephone, and Major Best conveyed General Stroop's order to Lieutenant Goss. Lieutenant Goss returned by motorcycle to Wallrabenstein and directed that one of his subordinates named Buhlmann execute this order by taking the flier from the city of Wallrabenstein and shooting him on the outside of the city. Buhlmann started out with the flier, and due to difficulties of too many civilians around and many other things interfering, decided not to execute the flier. He returned with the flier and told Lieutenant Goss that he had brought the flier back. Lieutenant Goss then directed

The evidence will show too that either Richely nor Goss ever participated, before or after that time, in the mistreatment or execution of any flier or allied prisoner of war. That they were acting directly under the direct superior order that they had, coming down from Himmler, to execute this particular flier. That Major Rost in no way directed the execution of this flier or the one on March 15th. That he merely conveyed to Goss either Streep's order or Himmler's order that Streep was conveying down. That Major Rost held no command function but was strictly a staff officer and in this capacity was nothing further than a courier.

That will be the evidence disclosed to this court in Charge 9.

If it please the court, before the defense commences with the presentation of this evidence, it is so near adjournment time, I

minutes or half hour and captured him and brought him before Goss. At that time he was interrogated -- this was some time between two and three in the afternoon. He was kept there until evening and Goss then directed that Michely take this flier ostensively to another place of security, and that he was to execute him. Around seven or eight o'clock that night Michely took the flier out on this road halfway and did shoot him. The evidence will further show that Michely returned and made his report to Goss. This report was written up by Michely and Michely turned it over to Goss, who certified it and turned it over to headquarters in some other town. It had to be sent by way of a courier, and this report reached Wiesbaden headquarters, or General Streep, probably the 19th, 20th, or 21st. A great state of confusion existed. The time of its reaching there is not important to this issue.

wonder if it would be possible to adjourn at this time and start it off at one-thirty.

PRESIDENT: I think we are delaying too much. Let us proceed.

ERWIN GOSS, an accused, voluntarily took the stand in his own behalf and made an unsworn statement through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your name.

A Erwin Goss.

Q Your age?

A 41 years of age.

Q Your home residence?

A Frankfurt-Main.

Q Your occupation in civilian life?

A Economist.

Q Where are you presently confined?

A Prisoner of war at Dachau.

Q You are one of the accused in this case?

A Yes.

Q Are you married or single?

A Yes.

Q Married?

A Yes.

Q What does your family consist of?

A My wife, one son and one daughter.

Q How old are your children?

A My children are ten and eleven years old.

Q What was your occupation in civilian life?

A I was a federal employee of the Reichs organization, Rhein-Main.

Q Where was your headquarters at that time?

A Darmstadt.

Q Will you tell the court what that kind of work consists of?

A The Reich planning organization since the year 1936 was part of the Reich department for the reorganization and redistribution of ground.

Q Well, it meant building and planning of new road, did it not?

A The Reich planning organization had to do with the proper distribution of property, of real estate, and with the proper settlement of industry in cities and out of the country.

Q When did you first join the armed forces of Germany?

A In 1939 I was drafted into the field.

Q What branch of the service did you go in at that time?

A I was a member of the 14th company of the infantry, regiment 81, with headquarters at Frankfurt.

Q Was that a part of the Wehrmacht?

A Yes, it was a machine gun company of this regiment.

Q After your training to what front did you proceed?

A I participated in the entire war on the western front and at the eastern front until I was wounded severely.

Q What date was that?

A On the 23rd of July 1941.

(Goss-Direct)

Q What did your wounds consist of?

A I got a full hit which destroyed my right eye, my hearing of my right ear, and my right leg, and furthermore, several shrapnel splinters in my head.

Q Do you know how many shrapnel splinters you received altogether in your body?

A I had over sixty splinters.

Q Are these shrapnel splinters still in your brain?

A Two splinters are still in my brain and they have the size of a pea.

Q How long were you in the hospital as the result of this accident?

A I was in the hospital for over one year.

Q Where was that?

A First I was brought to Koenigsberg by airplane. There I was operated several times. For four weeks I was blind and for six weeks I was out of my mind, since my second eye was affected too and I had a grave eye disease from this shot.

CAPTAIN VANCE: If it please the court, I fail to see where this is material, -- this man's health during the war and his injuries. Maybe I am wrong.

MAJOR SAXON: Here is a man who is up for a charge that is the most serious of all kinds. I think the court has a right to know something about his military background. That might be the reason for his doing some of the things he did or was ordered to do.

PRESIDENT: The objection is overruled. I would like to caution the defense that the court only desires the things that are material to the case.

MAJOR SAXON: Yes, sir.

(Goss-Direct)

QUESTIONS BY MAJOR SAXON:

Q After you were released from the hospital, were you then discharged from the army?

A Yes.

Q Were you sent home from military service as unfit for further duty?

A Yes.

Q About when was that?

A The end of 1943.

Q Were you later called back into military service?

A Yes, in 1944 I was drafted once more.

Q What month in 1944?

A August I had my examination and in October I was ordered to General Streep's headquarters.

Q Was that in Wiesbaden?

A Yes.

Q Into what branch of the service were you drafted?

A I was transferred to the Waffen SS as first lieutenant or first lieutenant of the SS respectively.

Q Was that the same rank you had when you were discharged as being unfit for active service?

A Yes.

Q What was your assignment when you first reported to General Streep's headquarters?

A General Streep told me that he was in need of an adjutant who was a front officer because his present adjutant had no front experience. Since I fulfilled his requirements he asked me whether I was willing to accept this assignment. I accepted this assignment with the remark that if he is satisfied with my work on account of my very heavy wounds.

Q Did you then commence to act as adjutant?

A No.

Q Tell the court what happened then or what you did next.

A In order to hand over my professional business matters I requested a ten-day leave in order to hand all these matters over into the hands of my successor. At the beginning of October, 1944 -- I don't know the exact date any more -- I reported for duty at General Stroop's headquarters at Wiesbaden. Since General Stroop was not present I reported to his chief-of-staff, Colonel Schlums.

PRESIDENT: Court will recess until one-thirty.

(Thereupon at 1200 hours the court recessed until 1330 hours.)

AFTERNOON SESSION

(Thereupon the court reconvened at 1330 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all members of the court are present with the exception of Colonel Robertson who has been temporarily excused by order of the appointing authority; all members of the prosecution, all members of the defense except Dr. Frost whose absence is caused by sickness, all of the accused, the reporter and interpreter are present.

CAPTAIN VANCE: If it please the court, the prosecution announced before the noon recess that it would get the witnesses and attempt to rebut the testimony of Julius Lasaak to the effect that he was beaten. By coincidence the witness, Gerald Coates, is here in Dachau. I saw him during the noon hour. I talked to Mr. Coates an told him we would want him and the court would want him before this court at a later time. He stated that he was leaving the employment of War Crimes. He is on his way now on ten days leave. He will not be available in the next ten days. Any time after that he will be in military government in Berlin. He is present here physically if the court should desire to call him as a witness.

I realize the customary procedure, that the prosecution would not be entitled to place a witness on the stand while the defense is presenting its case.

PRESIDENT: Any objection?

DEFENSE COUNSEL: Normally, may it please the court, there would be very strenuous objection, but in view of the fact that the witness may be outside the jurisdiction of the court we will accept the court's decision as to the desire of the court to hear Coates at the present time.

PRESIDENT: Under the circumstances the court desires to hear the witness, preferably this afternoon.

CAPTAIN VANCE: If it please the court, this witness is all packed and ready to leave. I wonder if it is possible to hear him at this time?

PRESIDENT: We will hear him right now.

CAPTAIN VANCE: Call Gerald Coates.

GERALD COATES, called as a witness in rebuttal by the prosecution, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q State your full name.

A Gerald Coates.

Q Mr. Coates are you a U. S. Civilian Employee employed by the War Department?

A Yes.

Q By what branch of the War Department are you employed?

A I work with the War Crimes Group in Augsburg, with the control section.

Q During the month of August, 1946 were you employed by War Crimes Group?

A Yes.

Q Where was the headquarters of War Crimes located at that time?

A In Weisbaden, Germany.

Q Mr. Coates, do you know another War Crimes civilian employee by the name of Joseph B. Zinn?

A Yes.

Q In August of 1946 was Mr. Zinn working for the War Crimes Branch at Wiesbaden?

A Yes.

Q What was his job or position with War Crimes?

A He was an investigator with War Crimes Group.

(Coates-direct)

Q Mr. Coates do you know a person by the name of Arnold Mela?

A Yes, I remember him.

Q Who was he?

A He was a court reporter with War Crimes Group in Wiesbaden.

Q What was his nationality?

A He was an Australian.

Q Do you know where Mr. Mela is today?

A As far as I know he went back in January to Australia.

Q Do you know where Mr. Joseph A. Winn is today?

A He returned to the States in December, 1948.

Q Mr. Coates, I show you a document which states as the testimony of Julius Lasak taken at Wiesbaden Germany, which statement has been introduced as Prosecution Exhibit 57 and ask you to examine that document. State whether or not you were the interpreter who translated at the time that that interrogation was made.

A Yes, I remember it.

Q Were you present during the entire time of this particular interrogation?

A Yes I was.

Q Who propounded the questions to Mr. Lasak?

A Mr. Winn.

Q Were his questions propounded in English?

A No, in German.

Q You mean he propounded his question in German to the accused Lasak?

A I have to correct myself. He propounded the questions in English. I translated his questions into German and then I retranslated to Mr. Winn into English again.

(Coates-direct)

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Q Was this civilian employee, Arnold Mola, present during this interrogation?

A Yes, he was.

Q What were his duties, and what did he do?

A He just took down the testimony into English.

Q Was he a stenographer?

A Yes.

Q Was he present during the entire interrogation of the accused Lasaak?

A Yes, he was.

Q Will you, in your own words, tell the court what took place in the interrogation room from the time you, Zinn and Mola entered until the time that you left?

A The prisoner Lasaak was brought in. We were sitting at the desk waiting for him. Mr. Zinn asked him to sit down. He asked questions and after a while when Mr. Zinn had the impression that Mr. Lasaak lied to him he said to Mr. Lasaak, "Stand up." and took the chair away from him.

More questions were asked and again Mr. Zinn had the impression that Mr. Lasaak lied to him so Mr. Zinn lost his patience, rushed around the desk and took the prisoner Lasaak and pressed him against the wall. He told him that he is not going to stand for any nonsense and he should stop that lying. Then he went back to his chair and again Mr. Zinn asked him questions up to the end of the statement.

Q On this occasion did this man Zinn beat the accused Lasaak?

A No, he did not.

Q Did he hit him with his hand or with any other object?

A No, he did not.

Q Did you truthfully propound and translate the questions propounded by Mr. Zinn into the German language?

A Yes, I did.

(Coates-direct)

Q Did you truthfully translate the answers given by Lasenk back into the English language?

A Yes, I did.

Q Do you speak and understand the German language and the English language fluently?

A Yes, I do.

Q Where did you learn your German?

A Here in Germany. I was born here.

Q How long did you live in Germany?

A About 29 years.

Q How long did you live in America?

A About eight years.

CAPTAIN VANCE: No further questions.

CROSS EXAMINATION

QUESTIONS BY [illegible] COUNSEL:

Q When did you live in Germany?

A 1929.

Q Now these questions that were asked, were they prepared in advance of the interrogation?

A No.

Q Where did this interrogation take place?

A At the jail--at the city jail in Wiesbaden.

Q Was that the same building that housed the accused?

A Yes.

Q Were you present at Giessen during an interrogation of Lasenk?

A No, I was not.

Q Your knowledge of the interrogation of Lasenk is limited to Wiesbaden, is that correct?

A That is right.

(Continued)

Q Do you know whether or not Zinn talked to Lassak in his cell at any time before Lassak was brought into the room for interrogation?

A No, not at that time when he interrogated Lassak at Wiesbaden, because we both came from our office together and Lassak was asked--the director of the jail was asked to get Lassak into the interrogation room.

Q Did you leave at the same time that Zinn did?

A Yes, I did.

Q How well does Zinn speak German?

A Zinn was born in Austria and was living in Austria for about--as far as I can recollect--about 15 years.

Q How old is he now?

A He is about 28, 4 or 5.

Q So that during the interrogation at Wiesbaden you were with Zinn all the time that he was in jail on that occasion?

A Yes I was.

Q Is it part of the procedure of investigators to push persons interrogated against the wall if you don't believe they are telling the truth?

CAPTAIN VANCE: I object, if it please the court.

PRESIDENT: The objection is sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q How long did this interrogation take place?

A About an hour.

Q Was anything said to Lassak when he was brought into the room prior to the first question that was put to him?

A I don't remember it.

Q Do you remember whether or not there was any preliminary conversation between you and Lassak or Zinn and Lassak or between Zinn and yourself before the interrogation began?

A No, there was not.

(Coates-cross)

Q Did you not ask Lassak at that time, "Why are you looking so scared?" and Lassak said, "I didn't want to be beaten again." and you said, "Never mind, I will take care of that."?

A I don't remember that.

Q Will you deny that such a statement took place?

A It could have happened that I told him that he doesn't have to be afraid.

Q Why would it be necessary for you to make such a statement?

A Because he said that he was beaten before and I told him--it is very well I could have told him that we don't use methods like this.

Q Did he tell you who had beaten him before?

A Yes. He said that some agents of the CIC.

Q Didn't he mention Zinn by name to you?

A No, he did not.

Q Didn't he indicate in some way that Zinn was the man who previously had beaten him?

A No, he did not.

Q Was Zinn at any time a member of the CIC? Did he

A I don't think so.

Q How long did you know Zinn prior to this meeting at which the interrogation took place?

A I knew him ever since March, 1945.

Q Were you working since March 1945 all of the time with Zinn or did you have duties apart from him, and did he have duties apart from you?

A We worked apart from each other.

Q What did you say when Zinn pushed him up against the wall?

A I said to him, "Joe, come back. Don't do a thing like this. We don't touch prisoners."

Q What did you say to him when he took Lassak's chair away?

(Coates-cross)

Q Did he slam him up against the wall.

A He slammed him against the wall, yes.

Q The first time that he lost his patience what did he say?

A "I have enough of this lying Iasenk, you tell me the truth now."

Q Did he tell Iasenk what would happen if Iasenk didn't tell the truth?

A I don't remember that.

Q Do you remember whether or not there was any more conversation other than what you have just testified to?

A That was all.

Q The second time he lost his patience and shoved him up against the wall was anything said?

A As far as I remember he only lost his patience once.

Q Well, Mr. Coates, you said the first time he lost his patience Zima took the chair away and the second time he lost his patience he shoved him up against the wall, is that correct?

(Coates-cross)

A I didn't say anything.

Q At what time during the course of the interrogation was the chair removed?

A It was around the beginning of the interrogation. I don't remember the exact time.

Q At what time during the interrogation was he pushed against the wall by Zinn?

A Around the middle.

Q How was this push accomplished?

A He went up to him, took him by the blouse and pressed him against the wall.

Q How far did he push him?

A About a yard.

Q Did he shake him at all?

A No.

A That is right.

Q What did he say the second time he lost his patience?

A That is what he said the second time. "Now don't lie to me."

Q Did Zinn, at any time, tell Lassak what the truth in the case really was?

A Yes, he did.

Q How often did that sort of business take place?

A Which business do you mean?

Q How often did Zinn tell Lassak, "Well Lassak you know the real way it happened to 'so and so' and not the way you said it."?

A About four or five times.

Q Were you armed on that occasion?

A I don't think so.

Q Was Zinn?

A I don't think so either.

Q Will you think back, Mr. Coates, search your memory, and then tell the court whether or not either you yourself or Zinn carried a pistol or were a pistol or had a pistol on your person or there was a pistol in the room, at any time during the interrogation?

A As far as I remember we didn't wear any pistols, because we don't carry pistols around during interrogations. We only carry pistols while we are transporting prisoners.

Q That may have been your custom, Mr. Coates. I am not questioning your general custom. But on this particular occasion is it not true that Zinn was carrying a pistol on his right hip?

CAPTAIN YANCY: I object to the question on the grounds that the question is repetitious. The question has been asked twice and answered.

BY MR. CONNALLY: I pray the court's judgment.

PRESIDENT: Objection overruled.

QUESTIONS BY DEFENSE COUNSEL:

Q Was Zinn, on this particular occasion, during at least part of the time when he was being interrogated, didn't Zinn carry a pistol on his right hip in a holster?

A As far as I can remember he did not.

Q Is it not also true that during that same time he carried a sap--I think that is the slang for a billy--in his right rear pocket?

A I have never seen such a thing on him.

Q Did you ever see Zinn carry one of these leather contraptions about a foot long that makes a very effective club--a loaded blackjack?

A I have never seen it.

Q On these four or five occasions when Zinn told Lassak "Lassak, that is not the truth" -- I am giving the paraphrase of his words; I am not trying to quote them, because I do not know that they are -- but on these four or five occasions when Zinn said to Lassak, "Lassak, that is not the truth, it happened so and so," how did the statement finally come out--the way Zinn said it should be as being the truth or the way Lassak said in the first place the way it should be as being the truth?

A It came out to Zinn's satisfaction.

Q At any time was there some discussion back and forth between Lassak and Zinn before the answer was given to Zinn's satisfaction?

A Yes.

Q Tell me: As long as Zinn understood German so well, why were the two of you there?

A He asked me to act as an interpreter, which was very unusual because he took Mr. Weller, who didn't speak any German at all, with him. He acted as a court reporter, and he wanted Mr. Weller to put the whole statement down at the spot into English.

Q Was there any reason for this unusual procedure?

A Not especially. Zinn apparently wanted to get this thing over with as quickly as possible and wanted to have the statement all prepared and ready.

Q In propounding his questions did Zinn have any papers in front of him to which he made reference from time to time?

(Costas - Cross)

A I don't remember.

Q During these four or five times that Zinn differed with Lassak, did he on each of these four or five occasions say, "Lassak, stop lying; that is not the truth!?

A Yes, he did.

Q Isn't this the real truth: that what Zinn wanted that night was a statement to Zinn's satisfaction and not a statement of what Lassak wanted to tell?

A Zinn, in my mind, wanted the truth!

DEFENSE COUNSEL: Will you repeat the question I originally asked?

(Whereupon the last question was read by the reporter.)

CAPTAIN VANCE: We submit the question has been answered and that the defense counsel is arguing with the witness.

DEFENSE COUNSEL: I pray the court's judgment. His answer was that Zinn wanted him to tell the truth, which was not responsive to my question.

CAPTAIN VANCE: What do you want him to give, the untruth?

PRESIDENT: Objection overruled.

THE WITNESS: I can only state what I said before--that Zinn wanted nothing else but what was, in his opinion, the truth.

QUESTIONS BY DEFENSE COUNSEL:

Q And is it not true that he insisted that the answers be given according to his interpretation of the truth and not what Lassak wanted to say? That can be answered yes or no, Mr. Coates.

(Coates - Cross)

A I can only answer this question as I see fit, because I tell the truth. But I can't be forced into saying anything which I don't think is right.

DEFENSE COUNSEL: I pray the court's judgment. I do not want to be contumacious, but I submit that answer also is not responsive, and I appeal to the court to ask the witness to answer my question.

PRESIDENT: The witness will give the answer as he can and will not be confined to yes or no.

QUESTIONS BY DEFENSE COUNSEL:

Q Let us leave it this way: that at least four or five times during that interrogation Lasaak gave certain answers to certain questions which did not please or suit Mr. Zinn for one reason or another. That is true, is it not?

A Yes.

Q And on each of these four or five occasions Zinn said, "Lasaak, that is not the truth. The real truth is so and so." Is that true?

A Yes.

Q And on each of these occasions when this thing happened, the interrogation as finally completed contained as his answers what Zinn said was the truth and not what Lasaak said originally; isn't that true?

A I only remember that at the final end of the statement the Lasaak statement came out as Zinn wanted it.

Q Was that statement read back to Lasaak in German after it was completed?

A As far as I remember he read it himself. We gave it to him to read, and then after he was finished reading it, signed it.

(Coates - Cross)

Q You know that statement was taken down in English, do you not, Mr. Coates?

A That is right. I am sorry. That is right.

Q Did you read it back to him?

A Yes, we read it to him.

Q Who? You or Zinn?

A I did.

Q I would like to call your attention to the exhibit itself, Mr. Coates (handing paper to witness) -- the attestation clause signed by Zinn. Read that to yourself--the attestation clause signed and sworn to by Zinn--and then I will ask you a question about that.

A Yes.

Q According to that attestation clause Zinn swears that he himself read it back. Is that not true?

A Yes.

Q Now, is that attestation clause sworn to by Zinn the truth?

CAPTAIN VANCE: May it please the court, I want to interpose an objection. That whole thing reflects that everything was done through an interpreter. This man acted as interpreter. I might make a statement that I read something to the accused, and very often you do make a statement, but you know when you use an interpreter you do it through him. I think the question is unfair and it is an attempt to trick this witness.

PRESIDENT: Objection sustained.

(Coates - Cross)

DEFENSE COUNSEL: I would like, before the court stands by that ruling, to take the trouble to read the attestation clause. When a man who speaks German says in there "Do hereby certify that by reason of my training, experience, and education, I read, write, speak, understand, and interpret both the English and German languages, that I have correctly translated the oath in the foregoing statement administered by me, and that the statement given by Julius Lassak . . . was read over to the said Julius Lassak by me in German, am I asking a trick question? I pray the court's judgment. That is what he says--"by me".

PRESIDENT: The court changes its ruling and overrules the objection.

QUESTIONS BY DEFENSE COUNSEL:

Is the statement contained in that attestation clause, signed and sworn to by Joseph Ziun in Prosecution Exhibit 57, wherein he says that he interpreted and translated to Lassak the questions and answers appearing above, true or not?

A I was an interpreter during that statement, and I translated the statement to Lassak.

Q Did Ziun translate that statement to Lassak in addition to your translation, or was yours the only translation made?

A Mine was the only one.

DEFENSE COUNSEL: Could I ask for a recess in place for two or three minutes, because there is a possibility that the witness' testimony may be essential in a similar situation in another charge. I can tell in two or three minutes.

PRESIDENT: Recess in place.

(Coates - Cross)

(Thereupon the court recessed in place.)

PRESIDENT: Court will come to order.

DEFENSE COUNSEL: Nothing further on this matter.

REDIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Coates, Colonel Herman asked you why you and Zinn both, being German speakers, were present at this interrogation. I want to ask you: Is it customary for a man to interpret and translate his own work?

A No, it isn't.

Q And even though Mr. Zinn spoke German you were there to translate so the statement could be taken from German into English; is that correct?

A That's right.

Q And from English to German likewise?

A That's right.

Q Can you furnish the court with the last address or the last information you have about Joseph Zinn?

A The only information I can give you is this: that he wanted to get back to New York City College, I think, and he wasn't even sure if he could get in.

Q When did he leave Germany? Do you know the approximate time he left War Crimes and returned to the States?

A I think it was December 1946.

CAPTAIN VANCE: Any questions by the court?

DEFENSE COUNSEL: I would like to ask him just one more question, with the court's permission.

(Coates - Redirect)

RECROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Would you recognize Lassak if you saw him again?

A Yes, I would.

Q Will you please point him out?

A Number 18.

DEFENSE COUNSEL: Let the record show that he identified the accused No. 18.

CAPTAIN VANCE: Any questions by the court?

PRESIDENT: No questions by the court.

CAPTAIN ANCE: Request the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

MAJOR SAXON: Is the court ready to proceed with 9?

PRESIDENT: Proceed.

PROSECUTION: Let the record show that the accused Goss, No. 15, resumed the stand.

DEFENSE COUNSEL: In an effort to expedite this thing, with the court's permission I would like to take Somann and Hellenbroich outside the courtroom and see if I can find out what these statements are about. It might save the time of everyone concerned.

PRESIDENT: Any objection?

CAPTAIN VANCE: No objection.

PRESIDENT: Permission is granted.

(Whereupon the accused Somann and Hellenbroich withdrew from the courtroom.)

DEFENSE COUNSEL: I would also like to take Girke, No. 19.

PRESIDENT: That will be permitted.

(Thereupon the accused Girke withdrew from the courtroom.)

ERWIN GOSS, an accused, voluntarily resumed the stand in his own behalf and continued to make the following unsworn statement through an interpreter:

DIRECT EXAMINATION (continued)

QUESTIONS BY MAJOR SAXON:

Q Lieutenant Goss, just before the noon recess we left off with you reporting to Colonel Schlums, chief of staff of General Stroop. After you reported there what did you do next?

A By order of Colonel Schlums I went out to Tiefenthal, where I reported to Captain Kriegsheim, who was in charge of setting up this school.

Q How far was Tiefenthal from Wiesbaden?

A 12 kilometers.

Q Was this school at that time just in the process of being established?

A Yes.

Q And what was this school known as?

A The name was Werewolf.

Q How long had the school been in operation before you arrived there on that day?

A It wasn't in operation at all; it was in construction.

Q What was your assignment of duty at that time?

A The first day I was out there, I didn't have any idea of what I was supposed to be doing. I was told only to report out there to be a liaison officer at that school.

Q About what day was that?

A I can't say that exactly. It was the beginning of October.

Q What were your duties from then up until the first of January?

A I was told that I was supposed to be in charge of the personal welfare of the 35 men who were taking part in various courses in this school.

Q What did you actually do yourself during this time from October through December?

A I took this job as liaison officer at the school between the school and General Stroop. I reported all incidents which mostly concerned personal matters of these men to General Stroop, as well as everything concerning

plans and operations of interest to General Stroop.

Q Did you finally take charge of the operation of this school?

A I, myself, was a liaison officer and did not have any training whatever concerning these Werewolf matters.

Q Were you given any training at that time?

A No, after differences of opinion arose between Captain Kriegsheim and General Stroop, I was scheduled to take charge of the school itself.

Q And when was that?

A The arguments started between October and Christmas, 1944.

Q When did you take charge of the school, Lt. Goss?

A In order to take over this school, I was sent to school at Brandenburg which lasted from Christmas, 1944 until New Year's.

Q What was your training there?

A That was some engineering training where all of the men participating in this course were familiarized with the latest discovery of blasting technique.

Q Now, when you completed that course, did you then take charge of the school?

A Yes, I then took charge of the school.

Q Was it still at Tiefenthal or was it then at Wallrabenstein?

A The school remained in Tiefenthal until the 13th of January, 1945, the day in which we were bombed out completely.

Q When, when you took charge of it, it was at Tiefenthal. Where were you when you were informed that you were in charge of the school?

A I was told this by General Stroop upon my return from Brandenburg.

Q That was at Tiefenthal?

A The school was still in Tiefenthal.

Q What did General Stroop tell you your duties were from then on?

A My duties in this school were to instruct the men in the new techniques which I had been instructed in in Brandenburg, and to increase and continue the previous training of these men.

Q What were the aims and intentions of the instruction that you were to give at the Werewolf school at Tiefenthal?

A The training of these men in Tiefenthal was purely a military course as far as engineers and infantrymen are concerned.

Q What kind of training actually was it?

A The men got demolition training, as far as materials were available, and as far as we had any opportunity at all to make them familiar with blasting--demolition.

Q Did you have training there in small arms also?

A During the time I was training these men there were only two instructors available. Those were Uhlman and myself.

Q Did you have other duties in that area besides operating the school?

A During that time I had the additional duties of taking care of the personal welfare of the men there and to

keep up the liaison between the men and General Stroop by my personal action.

Q Were part of your duties the maintenance of order in that town and the area?

A In the school itself, yes.

Q Now, what was said to you by General Stroop at that time, if anything, regarding your duties provided parachuted fliers or enemy agents came down in the area in which you resided there?

A On occasion of a meeting in Wiesbaden, I was told by General Stroop that if any allied fliers, terror fliers, would come into my hands these were to be shot.

Q About when was that meeting, Lieutenant Goss?

A In my opinion that meeting took place in February.

Q Had you then moved to Wallrabenstein at that time?

A Either we were there already or else we were in our temporary quarters which we had moved into after we had been bombed out of Tiefenthal.

Q About how many students did you have in school after you got to Wallrabenstein?

A I can't say the exact number any more, but I am sure all that were left were the last fragments, primarily boys from the Hitler Youth. I assume there was a total of 12 or 14 of us.

Q When you were then transferred or moved your school to Wallrabenstein, were you given instructions as to other duties you were to perform there?

A Yes, as senior officer in that area at that particular time, I was appointed commander of this town by General Stroop.

(Cons-Direct)

Q What did those duties entail--what were you supposed to do as such?

A As community commander, my duties were to see that good order prevailed, to report any incidents, and to see that any disadvantageous incidents did not take place or would cease.

Q Now, during the time and after you assumed command of this school, were you personally familiar with the Bormann "non-interference" order and the Goebbles' propaganda that has been testified to in this case?

A Yes.

Q And Stroop had also spoken to you of the disposition of terror fliers, is that correct?

A Yes.

Q What date was it that the first allied flier came down in your zone?

A About the middle of March.

Q Was it the 15th of March, do you happen to recall?

A As far as I remember, it was.

Q Just tell the Court about your work in the apprehension of that flier and your disposition of him.

A About noon, my attention was drawn to a free field by the population of the town running in that direction and by the noise of motors passing by. Several people pointed up in the air, in the direction where, as I noticed later when I looked there later on, a parachute was visible.

(Goss-direct)

Almost the whole town was up there at that time. A large part of the people were running to the spot where the flier could be expected to drop. I, myself, told Buhlman, who was near me, to run over there, pick up the flier and bring him over to me. I gave this order because I wanted to prevent the population from expressing their attitude toward the flier in any way. In the meantime I heard about two or three shots. Buhlman brought the flier to me in school as he had been ordered.

Q Just one moment. Did you wait at the school after you sent Buhlman after the flier?

A Not exactly at the school. I had walked up about the next house were there was a slight rise in the area so you could see where the flier came down.

Q Who fired these shots you heard?

A I can't say that--I really don't know. Anyway, the flier wasn't injured and nothing had happened to him.

Q All right, continue.

A The flier was taken to the school upon my orders and taken into the first building of that school where we had arranged one room to be a mess hall. There I ordered Buhlman to search the flier for weapons. In the meantime, a rather large crowd had accumulated in front of the school house, which I tried to disperse. I succeeded in doing that only after repeatedly asking these people to go home.

Q Let me ask one thing. Was this crowd displaying a threatening attitude toward this flier?

A I can't answer the question this way because the way in which the crowd was accumulated out there showed on the one hand curiosity, and probably on the other hand threats.

Q Continue them.

A Buhlman conducted the search of the flier and put the objects which he wasn't supposed to have and wasn't permitted to have at that particular time on the table. I then had the flier sit down in the room next door to the one he was in. At that time Buhlman was there as a guard, and I had given the additional order that the men were to relieve each other as guards at approximately half-hour or hour intervals.

Q About what time of the day was this that you brought the flier to the school house?

A It must have been between two and three P. M.

Q Then what did you do next, relative to the disposition of this flier?

A I went to the Major's office, and by way of Lieutenant called up Major Rost in order to tell him I had a flier here and to ask for instructions what I was supposed to do with him.

Q Go ahead.

A I couldn't get Major Rost, because he wasn't there, and I left him a message that I would be at this appointed place called Unter den Linden--that I would be at this particular place in the evening and could receive further instructions there.

Q Were you asking instructions from Major Rost or

General Stroop?

CAPTAIN VANCE: I object on the grounds that the question is leading.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q From whom did you expect to get your instructions as to the disposition you should make of this flier at Major Best's headquarters?

A The instructions, or rather the orders concerning what I was supposed to be doing with the flier could be issued only by General Stroop, and that's why I was asking Major Best. He was supposed to call General Stroop and find out what I was supposed to do with the flier.

Q What happened next concerning this flier?

A I met Major Best at Unter den Linden, and Major Best transmitted to us the order that the flier was to be shot.

Q He transmitted to you what order?

A The order that the flier which was in our custody was to be shot by us.

Q From whom did that order come?

A From General Stroop personally.

Q What did you do next?

A I discussed with Best the matter of when we had best a point to carry out this order.

Q Whom did you designate to carry out this order?

(Goss-Direct)

A We agreed upon Buhlman because he was an old soldier.

PRESIDENT: Recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: Proceed.

QUESTIONS BY MAJOR SAXON:

Q Getting back, what time of the day was it that you met Best?

A It was about six.

PROSECUTION: Major, may we interrupt a minute? Let the record show that the accused Baumann, Girke and Hellenbreich, who previously left the court room have resumed their places in the dock.

QUESTIONS BY MAJOR SAXON:

Q After you talked to Best, where did you then go?

A I mounted my motorcycle and rode back to Wallrabenstein.

Q Did Major Best go with you?

A No.

Q And when you got to Wallrabenstein, what did you next do then?

A I transmitted to Buhlman the order which I had received from Best, which he had received from General Shroep.

Q Continue telling the Court what next transpired.

A Buhlman then received the order to take this flier to Buerbach and to shoot him on the way. Buhlman left with the flier and returned after about three-quarters of an hour to one hour and reported that he had not been

able to carry out his instructions because some civilians had always butted in.

Q What did you next do, then, as far as this flier is concerned?

A Since I did not have any facilities for keeping the flier in a safe place where he couldn't get away, I decided to have the flier taken down to Idstein and turned over to a special services battalion there.

Q Who did you appoint to take him down there?

A I told two of our younger men to take the flier to Idstein and turn him over there.

Q Did you transmit to these two new guards the instructions you had received from General Stroop about disposing of the flier by shooting him?

A No.

Q Why didn't you?

A These new guards were boys 15 or 16 years of age, and I did not consider it proper to burden these young people with a deed which would probably rest upon them for the rest of their lives.

Q How did you expect to avoid punishment yourself for not having carried out the order given you by General Stroop?

A I did carry out General Stroop's orders which I had received by way of Best by ordering Buhlman to take the flier to Bauerbach and shoot him on the way, and I had then received the report from Buhlman to the effect that it was impossible to carry out this order because civilians were around all the time, and even more now civilians would

be around and would be following the flier around, if, for no other reason than to find out what would be happening to him. I, therefore, had a good cause for exonerating Buhlman and keeping him out of trouble as well as myself; since he could see that I had done everything to carry out the order.

Q You knew what would happen to you if you didn't have a good excuse, didn't you?

CAPTAIN VANCE: We object. The question is leading.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q What would have happened to you had you not carried out the order of General Stroop, and had you not had a good excuse for not carrying it out?

A In order to answer this question, you have to pay particular attention to the conditions in this area at the particular time.

Q Just explain to the court what you mean by the conditions in the area at this time.

A The enemy was at the door and had already approached Giessen from the other side of the Rhine to our north due to the treason and the trouble at the Remagen Bridge, a place that has been established, from which the enemy had been able to push up the Lahn River and the Rhine-Main area. The enemy was pushing from both directions as well as from Giessen where I had crossed the Rhine near Oppenheim, and spearheads of the enemy were approaching and in fact had reached Frankfurt and part of it had already crossed the Main line between

Hanau and Frankfurt on the Main, and we were practically surrounded. All that was necessary was one push upwards from Giessen and one in the other direction, from Frankfurt, and the disaster of the Remagen Bridge which was not destroyed due to the failure of the officers there, resulting in disaster to all concerned. Several officers, including two majors, were sentenced to death and executed on the spot for this and their families too were suffering from it. These facts were reported in official Wehrmacht reports and also over the radio and were, of course, known to us.

General Stropp, who, in his capacity as Commanding Officer of the 12th Army Corps, was responsible for repelling the enemy and maintaining order in his area, was not the sort of a man to sit by while an order issued by him was disobeyed and it was perfectly clear to me that the only thing that was waiting for me was promptly executed death sentence. In spite of this, I was unable to transmit this order that had been given to me because in the first place Buhlman had reported to me that it was impossible for him to carry out the order given him by me because of the interference of the civilian population, and in the second place I was not able to decide that these young persons, who were in fact only boys, would take a burden upon their conscience.

PRESIDENT: The court will recess for thirty minutes.

(Whereupon at 1506 hours the court recessed for thirty minutes.)

* * *

(Whereupon the court reconvened at 1535 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, except Colonel Robertson, who has been temporarily excused by the appointing authority; all the members of the prosecution; all the members of the defense, except Dr. Frost, who is absent sick; all of the accused; the reporter and interpreter are present.

MAJOR SAXON: May it please the court, in Charge III, the accused Lasaak, we had six witnesses here and they are still here. We don't need them any further. We have talked to the prosecution and they say they don't need them any further. I would like to ask the court if it desires that they be kept here longer.

PRESIDENT: The court does not desire to have them stay.

MAJOR SAXON: Thank you.

DEFENSE COUNSEL: May it please the court, I am ready to proceed and finish with the witness Coates, subject to the court's approval.

GERALD COATES, called as a witness by the defense, having been previously sworn, testified as follows:

(Whereupon the proceedings were translated into the German language)

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

DEFENSE COUNSEL: I would like to state for the information of the court that the next examination has nothing to do with the charge on trial, but does have to do with an exhibit introduced in evidence. I will put this examination in the record now for such value as the court decides to give to it later on.

May I ask the court to remind the witness he is still under oath?

PRESIDENT: You are reminded you are still under oath.

PROSECUTION: May it please the court, may I interrupt? I think the record should show that the defense is calling this witness at this time to expedite the release of this witness from the jurisdiction of the court.

DEFENSE COUNSEL: I am assuming that is so. When we are through, he can be dismissed.

PROSECUTION: The record should show that the witness Coates is now being called as a witness for the defense.

DEFENSE COUNSEL: I have no objection.

QUESTIONS BY DEFENSE COUNSEL:

Q Mr. Coates, I call your attention to Prosecution Exhibit 30, which is a statement by Heins Hellenbroich, and Prosecution Exhibit 30-A, which is a translation of that, and ask you to examine it.

A Yes.

Q Do you know Hellenbroich, Mr. Coates?

A Yes, I do.

Q Will you point him out, identify him?

A He wears No. 20.

DEFENSE COUNSEL: Will the record indicate the witness has identified the accused Hellenbroich, wearing Placard No. 20.

QUESTIONS BY DEFENSE COUNSEL:

Q Do you know Girke?

A Yes, I do.

Q Will you identify him, please?

A He is wearing No. 19.

DEFENSE COUNSEL: Will the record indicate that the witness has identified the accused Girke, wearing Placard No. 19.

QUESTIONS BY DEFENSE COUNSEL:

Q During the intermission, there was some conversation between you and Hellenbroich, Girke and myself with respect to Exhibit 30 and the

English translation of it, 30-A.

A Yes, there was.

Q Addressing ourselves first to Hellenbroich, during this conversation he called your attention to certain things having to do with his statement, which is Prosecution Exhibit 30?

A Yes, he did.

Q That conversation had to do with the last paragraph on Page 4 and one paragraph, the first paragraph, on Page 5. Will you refresh the recollection of the court as to the contents of those two paragraphs and then tell the court just what that conversation was?

A I asked Hellenbroich about the orders which were issued from his superiors. He put down all superior orders which were issued ever since 1943. Then I asked him to make a summarization, or rather, an analysis, of these orders stating why they were given.

Q By that, you mean his opinion why they were given?

A Yes. Whereupon he put down in his statement that these orders were given to weaken the Geneva Convention and to weaken the Geneva Convention for the prisoners of war. Then he asked me that this might lead to more misunderstanding and to put in an additional statement saying that all these orders were given in order to weaken the Geneva Convention on account of terror fliers.

Q Now, Mr. Coates, the language of the paragraph dealing with all prisoners of war — that was to a large extent your language, was it not?

A I couldn't say so, no.

Q Partly your language?

A We formulated this statement together.

Q And after reading it, Hellenbroich was dissatisfied with it and asked you, or, rather, drew up this second statement limiting the analysis to so-called terror fliers, is that correct?

A Yes. He read it and he said, "This might lead to misunderstandings,"

and he asked me to put in an additional statement saying that the Geneva Convention was supposed to be weakened on account of terror fliers.

Q So that that second statement dealing with terror fliers is not a purely additional statement separate and apart from prior statements, but is a limiting statement on the larger, preceding paragraph, is that correct?

A That is right. It was supposed to specify.

Q Now, you at one time read that statement of Hellenbroich's to Girke, did you not?

A Yes, I did.

Q And you had some conversation with him about that statement, discussing the treatment of prisoners of war in general?

A Yes, I did.

Q And during the course of that statement, during the course of that discussion, rather, Girke requested an opportunity to make a statement submitting his views on that same subject, is that correct?

A He didn't offer an explanation. He only said, after he was through with the reading, that he doesn't quite agree with the analysis of Hellenbroich.

Q And asked, did he not, for an opportunity to express his own views on the subject?

A Yes, he did.

Q Which wasn't done because, in your opinion, his views on the subject had no particular importance, at least at that time?

A Yes, that is right.

Q Do you remember what were the opinions of Girke on that particular subject? If you do, will you please state them to the court?

A He didn't make any comments, any further comments.

Q Did Girke say something to you about a conspiracy?

A No.

Q Was anything discussed that was in the nature of a conspiracy?

A No, never.

Q Was anything said that that statement of Hallenbreich's sounded in conspiracy, to use a legal term, if you know what I mean by that?

A No.

REDMAN COUNSEL: I think that is all.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Gentes, you referred to an additional statement that Mr. Hallenbreich wished to make. Is that additional statement on the same document as that exhibit, and is it in evidence before the court as a part of that document you hold in your hand?

A It is part of this statement here, yes.

CAPTAIN VANCE: No further questions.

REDIRECT EXAMINATION

QUESTIONS BY REDMAN COUNSEL:

Q Was anything said in the discussion between Dirks and yourself relative to an existing or an alleged existing cooperation between the State, the Party and the Police?

A I don't remember.

Q I think I asked you the question before, that statement on Hallenbreich's statement is supposed to be his personal opinion? Did I ask you that question before?

A Yes.

Q And your answer was yes?

A His personal statement.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q The entire statement is Mr. Hallenbreich's personal opinion,

isn't it, Mr. Goetze?

A Yes, it is. It definitely is.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Nothing further.

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: I imagine we may excuse the witness permanently?

PROSECUTION: Yes, as far as the prosecution is concerned.

PRESIDENT: The witness may be excused permanently.

ERWIN GOES, an accused, voluntarily resumed the stand in his own behalf and continued to make the following unsworn statement through an interpreter:

PROSECUTION: May it please the court, let the record show that the accused Goes, No. 15, has resumed the stand.

DIRECT EXAMINATION (Continued)

QUESTIONS BY MAJOR SAXON:

Q Before the recess, Lieutenant Goes, you explained your reasons to the court for the necessity of obedience of this order. Was it known to you that had you not obeyed this order regarding disposition of fliers as given to you by General Streep, or passed on down by him, that you would have been executed yourself?

CAPTAIN VANCE: We object. That question is leading, may it please the court.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q After this flier was disposed of by turning him over to the armed forces in Idstein, what kind of a report did you then make to General Streep?

A I made a written report to General Streep to the effect that due to the interference of civilians, the execution of the order was impossible, and furthermore, I met Best at Under den Eichen, because

I had some business to attend to there. Some of our things were still left down there and I made a verbal report to him.

Q About when was this report made?

A The day after.

Q At the time you talked to Major Best, had he received your written report at that time?

A No, not yet.

Q When did you next see Major Best after the following day?

A The next day.

Q Did you see him each day after that?

A I will have to put the following in here by way of explanation.

Q Go ahead and explain.

A When we had been bombed out at Stefanstal, we took some of our things which we were able to save such as food, clothing, and similar objects, to Unter den Linden as we had been ordered to, and it was natural that occasionally I would need some of those things and I would always take as much as I would be able to carry along. And since this place Unter den Linden was on the direct road from my place to General Stroop's headquarters, it was nothing but natural that I would use this place to meet Major Best and discuss matters with him.

Q Let me ask you, Lieutenant Goes, did you meet Major Best there subsequent to March 15 and after General Stroop had received your report about the failure to shoot this flier?

A Yes.

Q Did you have a conversation with Major Best then at that time regarding Stroop's feeling about the failure to execute this flier?

A Yes.

Q Tell the court what message was conveyed to you from Stroop regarding that.

A Major Best told me that he had transmitted the report to Stroop, and that he had also made clear to him the reason why this flier had not

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been shot. Major Streep had been quite outraged at this report, and Best said that he told Best, "It is a bad symptom for these men if they appear to become weak. If they do, I consider it cause to talk a few serious words to them." Next time I was to appear there, I was to contact him. Best told me that in case General Streep did come out there, the best thing for me to do would be to see that Buhlmann stays out of his sight. In addition, he told me that this, of course, did not close the matter and that we could expect quite a few things, particularly in view of the fact that the situation was such that orders must be obeyed more strictly now than ever. He further pointed out to me that the failure to carry out this order could be considered as committee before the enemy.

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(OSS-Direct)

Q Did you understand then, Lt. Coss, that for failure to obey this order that both you and Buhlmann could be shot?

A Yes.

Q How far to the west of you were the Americans at that time?

A Twenty-five kilometers.

Q You had known personally, had you not, of the four or five officers who had been shot for failure to destroy the Remagen Bridge, isn't that right?

A I heard about the report. It was expressed by the radio and the Army communications, etc.

Q Was this last conference you had with Major West on or around the 16th or 17th of March?

A Yes.

Q With reference to time -- how long after that was it that you and all of them evacuated the area at the coast of the Americans?

A We left Hallrabenstein when the Americans landed air borne troops about one kilometer away from us.

Q What day was that?

A That was on the 27th.

Q Now, tell the court what happened on March 18th regarding the American fliers?

A About noon I and Richely were about to do some repair work on a motorcycle in the yard because my clutch was out.

Q Richely is one of the accused here charged with you?

A Yes. While we were working on this motorcycle two boys about seven or eight years came in very excited and told me, "Lieutenant, there's an American flier running around back there by the wood and he's trying to get away or maybe he's trying to hide in the woods."

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I didn't quite trust this but, nevertheless, I told Micholy to go out to that spot and if he found a parachutist or somebody down there to bring the man back in or capture him. There wasn't anybody else available at the time and I myself was not able to walk very well because in the first place I had the lower part of my leg all shot up and there was a pus formation on it so I could barely walk. Micholy went to the area together with the two boys, it was pointed out to him, and about forty-five minutes later he came back. An American flier was accompanying him. I again had this flier taken into the school building and I gave Buhlmann, who had been upstairs in the school building and came down, the order to search the flier. Micholy himself gave me a pistol loaded and uncocked and a knife about that size (indicating). He had already taken these weapons away from the flier as he captured him, and he reported to me what the manner was in which he had been able to capture the flier. I tried to ask the flier whether he had been coming from and what his mission had been. Since my knowledge of English is rather faulty I had difficulties trying to make myself understood. Still I was able to get that much across -- what his squadron had been and where he had been in Germany. The flier's answers were not only evasive but since he noticed that I spoke poor English he gave answers that did not have anything to do with the questions. Upon that I asked him about these matters that I wanted to find out in a strict tone of voice but I did not get any answer whatsoever.

Q You say the flier had a loaded automatic pistol, is that right?

A Yes.

Q He had a knife you stated that was about a foot or a foot and a half long?

A Not a foot to a foot and a half but a foot.

Q What else did you find on the person of this flier?

A Papers were then taken away from him.

Q Were those maps of this area in Germany?

A All Germany.

Q Did this flier tell you how long he had been in this area?

A Yes, he said he had been in the area for one or two or maybe even three days, I don't know.

Q Is that what he told you, Lt. Goss, one to three days?

A Yes.

Q Did he tell you where he had parachuted down?

A No.

Q Did he tell you what kind of a plane he had been in?

A No.

Q Did he tell you where the rest of his comrades were, if he had any?

A No.

Q About what time of the day was it that you finished interrogating him?

A Shortly after he had been brought in.

Q What time of the day was it?

A Between 3 and 4.

Q How long did you keep the flier there at the school?

A Until it got dark.

Q Then just tell the court what you next ordered done in regard to this flier.

A I transmitted to Michely the order to take the flier to Idstein and to shoot him on the way to Idstein.

Q At what time did you direct that order to be executed?

A I gave that order to Michely only a short time before he left with the flier.

(Goss-direct)

Q About what time of the day was that?

A Between 7 and 7:30, about.

Q How long was Michely gone?

A Between half an hour and an hour. It might have been forty-five minutes, I can't give you the exact time.

Q On his return what did Michely tell you?

A Michely told me that he had shot the flier, that he had carried out the order.

Q What did you direct Michely to do then?

A I said, "Michely, sit down and write out the report."

Q Was this report then written?

A Michely sat down next to a typewriter we had at our disposal, wrote the report and signed it and upon my instructions and over my

signature put down that I acknowledged seeing this order and was herewith transmitting it to General Stroop through Major Best.

Q Did you ask anyone's authority or receive any order directing your execution of this particular flier?

A I had the direct order of General Stroop which he had given me on the occasion of one meeting where he had particularly pointed out to me he had received this order directly from the Reichsfuehrer of the SS and Minister of the Interior and he was authorized unlimited powers in this area. He particularly pointed out to me that amongst these powers there was one clause very succinctly stating, "his orders are to be obeyed."

Q Lt. Goss, did you know and have in mind at that time the Hermann non-interference order?

A I knew of this order from hearsay but the order that was applicable to me was the order solely from General Stroop which was absolutely binding upon me.

Q Did you feel you had any other recourse than to obey this order of General Stroop and see this flier was executed?

A Since I had had the conversation with Major Rost after this first incident and since he had told me that the matter was certainly not closed but that we would certainly expect a court-martial, I was quite sure I could not permit myself to even attempt to circumvent this order without risking to be shot right away for disobeying an order.

Q While you were fighting with the Wehrmacht on the Western front and later on the Eastern front did you have occasion to have prisoners of war in your custody on previous occasions?

A I captured a whole number of prisoners of war both in France and in Russia and in accordance with my orders I turned these prisoners of war into battalion headquarters who in turn sent them further back to a prisoner of war camp.

Q Did you ever before in your life, outside of these two instances, order the shooting of any enemy prisoner of war who happened to be in your hands?

CAPTAIN VANCE: No objection on the ground it is immaterial.

PRESIDENT: Objection overruled.

THE WITNESS: No.

QUESTIONS BY MAJOR SAUER:

Q Have you always obeyed orders as a soldier and an officer strictly to the very best of your ability?

A As a soldier as well as an officer I always carried out any order that was given me by a superior officer in the manner in which it was given and in the manner I knew it was supposed to be carried out.

(Cross-direct)

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Q Were you satisfied in your own mind that the place of Wallrabenstein at the time these events happened was as a matter of fact the front lines?

A We were the immediate front line area. Wiesbaden was under artillery fire and we were constantly attacked by strafing planes and so forth.

Q How many strafing attacks occurred in that area daily? I am speaking of the last fifteen days you were in that area?

A We were awakened in the morning by bombs. Usually it would be this way -- that the Allied Forces would enter our area with about five or six or twenty bombers, low flying bombers, and would close down the Autobahn between Wiesbaden and Limburg by their constant attacks. At such occasions civilian objectives were sometimes also fired at and to my knowledge one man and woman were shot in Heuerbach. People living in the country were by them refusing to till the soil because there was a constant danger of being attacked from the air and even though it might occur a few times during the day these fliers would disappear, they would certainly reappear again and be rattling around our vicinity again.

Q Lt. Goss, did you have any way of knowing that this particular flier you captured on the 18th was an agent or flier by view of the fact he had been around for three days?

CAPTAIN VANCE: We object to that question as leading.

PRESIDENT: Objection sustained.

MAJOR SAXON: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Goss, when was it that General Stroop call you in and told you that all fliers were to be shot?

A I cannot give you any exact date but I think it was in February.

Q February of 1944?

A No, 1945.

Q You testified that on March 15th I believe is when you captured the first flier, is that right?

A Yes.

Q And that on March 16th Nichols captured the second flier?

A Yes.

Q Did you have any other fliers in your hands?

A No.

Q At the time you met Major Rost and he told you what General Stroop's desires were in regard to this first flier, quote as best you can exactly what Major Rost said to you.

A I didn't ask Major Rost for any desires of General Stroop but rather for orders as to what was to be done with the flier.

Q That's what I want to know. As best you remember what did Major Rost tell you?

A "This flier is to be shot."

Q Did he say anything else?

A Nothing that I remember right now.

Q Did he say who was to do the shooting?

A As I have already said, the two of us discussed whom I should give instructions to carry out this order of General Stroop.

Q So it was left up to you to pick the trigger man, is that correct?

A Yes, the trigger person was not named because probably General Stroop didn't know everybody's name.

Q So it was left to you to decide who the trigger man was going to be. That is correct, isn't it?

(Cross-cross)

A For that reason I discussed with Major Best whom we should instruct to carry out the order.

Q Then did you agree upon a trigger man?

A Yes, Buhlmann.

Q, Then did you go back to your office and give Buhlman the order to execute the flier?

A I gave Buhlmann the order to shoot the flier.

Q If you had not received this order from Major Best would you have given this order to Buhlmann?

A I would have had to give him this order on account of the fact that I had already had this previous order from General Stroop. The reason that I called back that time in spite of the already received order was because I didn't know whether this flier was not perhaps supposed to be interrogated prior to being shot. That would have been the usual procedure.

Q Will you listen to my question again and see if you can answer it? If you had not received some orders from Major Best on that occasion would you have ordered the flier shot?

MAJOR SAXON: If it please the court, that is a misstatement of the fact here. That order came from General Stroop.

CAPTAIN VANCE: I said "if".

MAJOR SAXON: Then it's purely a hypothetical question and has no bearing here.

PRESIDENT: Objection overruled.

THE WITNESS: I'd like to have the question repeated please.

(Whereupon the reporter read the last question.

MAJOR SAXON: That's the thing I'm complaining about. The question is "if you had not received orders from Major Best --" . It's the contention of the defense there were no orders given by Major Best

(Cross-cross)

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These are Stroop's orders at a designated place.

THE WITNESS: I had my direct instructions from General Stroop to the effect that every flier who happened to come into my hands was to be shot and I would have had to carry out this order.

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Q I understand that now. You already had the order but when you got this flier you tried to call Major Best on the telephone, is that correct?

A Yes.

Q You could not reach him so you made arrangements to meet him someplace that night, is that right?

A Not at night, but in the course of the afternoon.

Q In the afternoon, is that correct?

A Yes.

Q You did meet Major Best and talk to him, is that correct?

A I left a message to tell Major Best to find out what the instructions of General Stroop would be and then in the afternoon have the orders of Major Best transmitted to me by meeting him in this place.

MAJOR SAXON: Just a moment. That is not the exact translation, is it?

INTERPRETER ROSENSTOCK: It is, sir.

MAJOR SAXON: Is that correct?

INTERPRETER ROSENSTOCK: The mistake was apparently on his part.

QUESTIONS BY CAPTAIN VANCE:

Q Did you meet Major Best as you had arranged to do?

A Yes.

Q Did you have a conversation with Major Best?

A At Unter den Eichen, yes.

Q After your conversation with Major Best, you went back to Buhlmann and gave him the order to execute the flier, is that correct?

A Yes.

Q Now, my question is, had you not seen Major Best on that occasion, would you have ordered the execution anyhow?

A I certainly would have tried to contact General Stroop concerning this order first.

(Goss-Cross)

Q Goss, you do not want to answer that question, do you?

A Yes, I want to answer it. I freely admit that I transmitted this order to shoot and I wish to state here the fact that the reason I did try to find out was in order to see whether the flier was to be interrogated first or what was to happen to him, particularly in view of the fact that I myself would not have an opportunity since my knowledge of English is not sufficient to conduct an interrogation myself. And then the possibility arose that I would have to turn the flier over to some office in order to have such an interrogation conducted there.

Q You have already answered that. Do you remember my question that I asked you a few minutes ago?

A Well, I was asked whether I had given the order to shoot this man.

Q That is not it at all. I asked you if you had not met Major Best at that time would you have ordered that flier executed? Answer me, yes or no, and if you do not want to answer the question, tell me and I will withdraw the question.

MAJOR SAXON: I want to renew my objection to this. This witness has attempted to answer the Captain's question by testifying the reasons why he thought this contact should be made with General Stroop, but what he might have done is something I do not think this witness should be called upon to say "yes" or "no" to. He has given all the surrounding reasons for why he did what he did.

PRESIDENT: The objection is overruled.

THE WITNESS: I was obliged to carry out under all circumstances an order once I had received it.

QUESTIONS BY CAPTAIN VANCE:

Q Do you want to answer my question or don't you, yes or no?

MAJOR SAXON: If it please the court, because I sincerely do not believe that an accused in this man's position has to answer a hypothetical question, and because he is not charged here with such a supposition, and with the permission of the court, I would like to instruct this accused that he does not have to answer the question.

PRESIDENT: The objection is overruled. The witness will answer the question. The court is under the impression that he is trying to evade the question.

QUESTIONS BY CAPTAIN VANCE:

Q Do you remember the question?

A Yes.

Q Answer it yes or no, please, or if you do not want to answer it, tell me you do not want to and I will withdraw it.

A I would not have had the flier shot that evening.

Q All right. Now, Major Best --

MAJOR SAXON: Now, if the court please, I want to ask that that answer either be stricken out or made clear. There was no flier shot on this evening.

PRESIDENT: That question has been settled by the court. No further argument.

QUESTIONS BY CAPTAIN VANCE:

Q Now, Major Best told you that he had received the order delivered to you, from General Stroop, is that correct?

A Yes.

Q In your opinion, do you think that Major Best would have given you those orders had he not first received them from General Stroop?

A It was perfectly impossible for anybody like Major Best to do any such thing without having a direct order from General Stroop. All we were supposed to do was carry out the orders issued to us, particularly

in such an important matter which concerned the life of a human being. Particularly in such a case, none of us would have dared to make an independent decision.

Q Case, this particular soldier was not executed because of too many civilians, I believe you said?

A Yes. Buhlmann told me that the carrying out of this act was not possible because civilians kept interfering.

Q So, on this occasion the civilians protected the flier from the police, instead of the police protecting the flier from the civilians, is that correct?

A I would like to state here that we had nothing whatever to do with the police. We were an SS organization under the direct command of General Stroop, and had no authority of police or Security Police.

Q I will put it to you this way: that this particular flier was saved by the population from the army, is that correct?

A The population didn't protect any flier. It doesn't follow from the fact that a bunch of people came along for curiousity and kept walking along with the flier that you can talk about protection of the flier by the population. I should hardly think that in this area, where for instance in the neighboring village, all kinds of people had been shot by strafing bombs, that the opinion of the population would have been too favorable to the flier.

Q I believe you said you reported back to General Stroop that this particular flier was not executed?

A Yes, I made a written report to General Stroop through Major Best, in which I reported the non-execution of the order and gave reasons thereto.

(Goss-Cross)

Q I believe you said General Stroop wanted to have some strong words with whoever was responsible for that?

A Yes.

Q Was Buhlmann ever punished by General Stroop or anyone else?

A No.

Q Were you punished by General Stroop or anyone else?

A No.

Q March 18th is the date that you gave Michely the order to shoot this second American flier, is that right?

A Yes.

Q Had you not ordered Michely to take that American out and shoot him, then Michely would not have done so, would he?

A Yes.

Q Michely followed your orders in executing the flier, is that correct?

A Michely was obeying General Stroop's order transmitted by me, to shoot this flier.

Q If you had not given the order, he would not have shot the flier, is that correct?

A He would not have shot the flier.

Q If you had not received General Stroop's order which you got through Major Best, you would not have given the order, would you?

A Yes.

Q Major Best would not have given the order down to you unless he would have received it from General Stroop, would he?

A Yes.

Q If you had failed to receive the order from Major Best, the flier would be alive, would he not?

A I can't say, because somebody else would probably have shot him.

(Goss-Cross)

Q You could have saved this flier's life by refusing to give this order, could you not?

A If I had been in the position to risk being shot myself, yes.

Q Well, you placed yourself in that position once and nothing happened to you, did it?

A I gave this order to Buhlmann to shoot this flier due to the orders of General Stroop and in accordance with those orders, I made it his mission to carry it out. Buhlmann reported to me that due to the interference of the civilians the order could not be carried out. Thus, I considered that I had followed through the order all right and that he had a sufficiently good reason to tell General Stroop that it had been impossible for us to carry out the order. After talking to Major Best, however, I discovered that this wasn't so and that General Stroop wanted the matter cleared up by himself personally one more time and when General Stroop says, "I see occasion to say a few serious words to these men", then we know what this meant all right.

CAPTAIN VANCE: I believe that is all, if it please the court.

PRESIDENT: Are you through with the witness?

CAPTAIN VANCE: Yes.

PRESIDENT: Are you finished?

MAJOR SAXON: Not yet, no, sir.

PRESIDENT: Court will adjourn until 0900 hours tomorrow morning.

(Whereupon at 1645 hours the court adjourned until 0900 hours Friday, 14 February, 1947.)

* * *

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten .....

.....

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.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on .....194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

MILITARY GOVERNMENT COURT

(17)

CASE RECORD

Pages 1017 - 1089

Case No. Superior Orders

GENERAL MILITARY COURT

Place DACHAU, GERMANY

Date 14 FEBRUARY 1947

Prosecutor Lt. Col. Dwinell

Defense Counsel Lt. Col. Berman

Interpreters Rudolf M. Nathanson

Herbert B. Rosenstock

Reporters Patricia Stewart, Evelyn Cohen

John MacDonald, Paula Silverman

Sally Rose Hayett, Peter DiCurti

WITNESSES:

ERWIN GOSS

HEINRICH MATTHIAS MICHELY

GEORG BEST

HANS GUNTHER

FRIEDRICH SCHLUMS

ELSE HOECKER

ACCUSED: JURGEN STROOP, et al

RECORD OF TESTIMONY [illegible] Germany

in trial of 14 February 1947

THE UNITED STATES VERSUS JULIUS STREICHER, et al

BY

GENERAL MILITARY GOVERNMENT COURT

tried at

[illegible] by the court, let the record show

NUERNBERG, GERMANY RECONVENING 10 JANUARY 1947

the proceedings 14 FEBRUARY 1947 at Page 1017, 0900 exception of Dr. Kranz,

[illegible]

reporter are present. TESTIMONY [illegible] to be seen.

WITNESSES: The Direct Cross Redirect Recross direct

RUDIN GOSS 1017 1037 1038
1038 1076 1078
1076
[illegible] sworn as court

HEINRICH MATTHIAS WOERMLY 1039 1045
1060

GEORG BELZ 1062 1067 1073 [illegible] and testified
through an interpreter as follows:
1062

HANS GUNTHER 1063 DIRECT EXAMINATION

FRIEDRICH SCHNEIDER 1066 1067 1068

KLAS HOECHER 1068 Lieutenant Colonel, did you make application to General Kroop
to be transferred from this assignment in the German school to some
other assignment?

A Not with General Kroop.

Q To whom did you make such a request?

A During the visit of personnel, reference General Eastman,
I made application to Major General Keyes, an application to be
[illegible] to another assignment, explaining the circumstances
under which I had been used there.

Q Was this application of yours ever acted on?

(Cross - Redirect)

Dachau, Germany
14 February 1947

MORNING SESSION

(Whereupon the court reassembled at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court are present, all the members of the prosecution and defense are present with the exception of Mr. Trost, who is absent, all the accused are present, the court interpreter and reporter are present. There is a new reporter to be sworn.

PRESIDENT: The court has appointed Evelyn Cohen as court reporter. She will be sworn.

(Whereupon Evelyn Cohen, U.S. civilian was sworn as court reporter.)

KENJI GOKE, an accused voluntarily resumed the stand and testified through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q Lieutenant Goke, did you make application to General Strong to be transferred from this assignment in the German school to some other assignment?

A Not with General Strong.

Q To whom did you make such a request?

A During the visit of personnel, reference General Bruteman, I made application to Major General Ziebel, an application to be transferred to another assignment, considering the circumstances under which I had been used there.

Q Was this application of yours ever acted on?

A Yes, I was given the assurance that I would be used somewhere else or would be transferred to some other assignment, but this wasn't possible any more since there was no personnel available to continue this school because we were only very few trained men, and the danger under which Germany lived at that time was so great that everybody had to stick to the job to which he was assigned. During Christmas time when I had another opportunity to talk to Brigadier General Zielbd I asked him once more if it would be possible to get a transfer for me, but under the circumstances which I mentioned before I had to stay on the job.

Q Now, Lieutenant Goss, in the instructions to the Werewolf students did you ever instruct them or receive any orders to instruct them they were to shoot American fliers?

A Never, because we had our duties in an entirely different field.

Q You have been asked here by the prosecution why it was you failed to execute the order — Stroop's first order. Tell the court why not.

A These were the last eight days during which General Stroop was present at Wiesbaden. General Stroop had told Major Best that he did not consider this matter finished, but he would have some talk with us, so it was clear to us that in spite of the good reasons we could bring up, we had to expect a severe punishment for the way we had acted and what was meant by Stroop's words is that he would have a strict talk with us. We knew from the testimony which the prosecution witness Gunther has given here before the court, who is an experienced front line soldier and had been ordered by General Stroop to be present at an execution of an SS man in order to strengthen his morale.

Q Lieutenant Goss, what you believe saved you was the possible end of the war?

CAPTAIN VANCE: We object.

PRESIDENT: Objection sustained.

Q What in your opinion prevented General Stroop from carrying out the threat he made to Major Best?

A Only the fact that through the continuous retreat of the German army and events which changed from day to day, made it impossible for him to put us before a military tribunal.

MAJOR SAKON: Your witness.

CAPTAIN VANCE: Has the defense finished the examination?

MAJOR SAKON: Dr. Rau wants to examine him.

CROSS EXAMINATION

QUESTIONS BY DR. RAU:

Q Lieutenant Goss, if I remember exactly, you said during the war you were severely wounded. You received sixty splinters. Is that correct?

A Yes.

Q How many splinters have you got in your head?

A Even today I still have left about thirty splinters, two of which are still in my brain and sixteen still in my face.

Q In which part of the brain are these two splinters?

A One of the splinters is here and the other one here — both of them large as a pea.

DR. RAU: Let the record show the witness pointed to his left temple and the second time to the middle of his forehead.

A (cont'd) And these splinters were found through x-ray here in the prison hospital.

Q Do you know how deep in your brain these splinters are?

A They are so deep, it is impossible to operate on them and take them out.

Q If I remember right, you were wounded during the summer of 1941, is that right?

A Yes.

Q When were you discharged from the Wehrmacht?

A End of '42.

Q Do you know the diagnosis under which you were discharged?

A Yes, that I had to stay under permanent medical observation.

Q Were you discharged as unfit for military service?

A Yes.

Q How was the result of the medical examination when you were examined again to be drafted once more, if you know?

A Unfit for military service, conditionally.

Q At that time were any other soldiers previously discharged as unfit for military service examined?

CAPTAIN VANCE: We object.

DR. RAU: I would like to prove that it was not caused by a change in the personal condition of the accused, but general actions which took place at that time.

PRESIDENT: Objection overruled.

Q Were at the time other soldiers previously discharged as unfit for military service recalled for active service?

A Yes, the last men who were valuable to Germany were called at that time.

Q Now, I bring to your attention again February 1945. At that time you had a conference with General Stroop. Were you called to come to this conference or did you happen to be there?

A As far as I can remember, it happened on the occasion of a report I had to make to General Stroop.

Q Why did you discuss at this opportunity the question of parachuted enemy fliers?

A Because this was a question which was foremost in our minds every day on account of the daily air attacks in our area.

Q Do you know who touched this problem?

A I can't say any more today.

Q What was discussed in detail?

A On this occasion it was discussed that all parachuted enemy fliers who would fall in my hands would be shot.

Q Is that all, or was anything else said?

A After two and a half years, it is impossible for me to . . reconstruct a conversation I had with General Streep. I can remember only the most important items and that one was the most important item for me.

Q But the most important problem at this conference as far as you recall was the fact all fliers had to be shot?

A Yes.

Q Did you consider such a statement an order?

A General Streep wasn't used to making long speeches about his orders. He always gave his orders in clear short words because he knew that an order of his was always binding for his subordinates.

Q I think you misunderstood my question. I asked you whether you considered a statement like this made during a conference already as an order.

A The statement of Streep was made in the form of an order. It was clear to me this was an order and not just a statement which didn't mean a thing.

Q At any time was the so-called "non-interference" order brought to your attention?

A I have to mention in this connection that we as a unit of the Werewolf were an organization belonging to the Waffen SS and lived completely separate from all other units and for this reason had no contact at all with police orders or regulations. The only orders

in which we were interested were the orders which we received directly from General Stroop for us and our unit.

Q Does this mean that you did not hear about the "non-interference" order?

A Yes.

Q You said that General Stroop had appointed you the commander of the town of Wallrabenstein, is that correct?

A Yes.

Q Which units of the Wehrmacht or armed forces were under your command this way?

A The village itself had no military forces. It was only a transient point for troops. For this reason, all troops which came through the village, or which were quartered in the village for a night or so were under my charge.

Q That means, if I understand you correctly, also the troops of the army and air forces?

A These troops were not under my command for disciplinary acts, but they had to follow my orders in regard to security, billetting and other actions which I might have taken as far as the village was concerned.

Q At that time you were an SS officer, is that right?

A Yes.

Q Wasn't it the custom that the Wehrmacht and SS always had separate town commanders?

A It was customary in general that from the superior headquarters one man was ordered for a certain village or town to be the commander. Whether there was a difference between army, air forces and SS is unknown to me. And, I would like to mention that I got the order from the divisional commander of an army unit to put up anti-tank defenses in the village.

Q You had a subordinate, Buhlmann?

A Yes.

Q Do you know where he is now?

A As far as I know, he is in Dachau.

Q As a prisoner?

A Yes.

Q Where did Buhlmann get the flier which he brought to you? Did he capture him or take him from somebody else?

A The flier as I mentioned once before, had parachuted in the meadows, about one kilometer from the village. From our place we could see the crowd which came to the place where the flier had parachuted and come down to earth. In order to fulfill my duties as town commander, I had the flier brought and therefore gave the order to Buhlmann to pick up the flier.

Q When you sent Buhlmann to the battalion for special use, which order did you give Buhlmann in regard to the flier?

A I didn't send Buhlmann to this battalion.

Q Isn't it right that this flier was delivered to this battalion?

A Yes.

Q Who did deliver him?

A Two boys.

Q Did you get in contact with the commander of this battalion for special use, or any other officers?

DEFENSE COUNSEL: May we have a recess in place?

(PRESIDENT: The court will recess in place.

(Whereupon the court recessed in place.)

DR. HAUS: Will the reporter repeat the question.

(Whereupon the last question was read by the reporter.)

A No.

Q After the 18th of March 1945, how long were you still together with General Stroop?

[redacted], that right?

Q [redacted] to complied after the conference with General Streng.

A [redacted]

Q [redacted] since you had to check the files anyway] received from General

Streng because one would never know if this report would get lost

in the hands of the superiors of that the way the contents of it the

hands of some other office for until they were not applied to it.

Q Did you make a written statement on the 4th of June 1946?

A First I have to see the statement. (Witness examines statement.)

Yes.

MR. RAY: Let the record show that the witness was shown

Prosecution Exhibit 141.

Q Did you say in this statement that you would say the truth under

oath?

A Yes.

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MR 8

MR ?

A [illegible] of Hardy Samuel Crump, shot personally one to [illegible] flier in my [illegible] already when you [illegible] shot and when you delivered to another army

Q? Did he complain in any way to you on this occasion that the first flier had not been killed only the case of the second flier was

A Hardy he did not remember at all, but I reported to him the execution of the second flier that the incident with the first flier is true?

Q Didn't you report that flier was killed while trying to escape?

A No, I myself didn't call like that, [illegible] around

Q What did report Hardy had received specific instructions from Bor that [illegible] flier would fall in the hands of my unit this flier which you killed without report any specific instructions from

[illegible] I had received specific instructions from Bock which I had not received after the conference with General Stroop. Is organization is [illegible] Didn't you testify also that you had received instructions had been of a big kind from General Stroop too? This statement

A I had said already yesterday that I had received from General Stroop the basic order and the purpose of my inquiry through Major Bock to General Stroop was to find out whether the Chief should be moved [illegible] by proper personnel before he should be executed.

I [illegible] the discussion what we had before I made this statement I said that these orders came from General Stroop and only when I made this written statement I pointed out "and only by writ[illegible] statement"--and I said that this was the only channel [illegible] through which we could receive such an order [illegible] as we did [illegible] or to form an idea of such kind.

(Answer [illegible])

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Q Why didn't you mention this in this statement which was made truthfully under oath, that you had already another flier in your custody when you had not shot and when you delivered to another camp or unit? (from General Stroop)

A During this interrogation only the case of the second flier was discussed by the interrogator and interpreter. [redacted] case of this kind from [redacted]

Q Do you wish to say that the incident with the first flier is true?

A [redacted] received this report from General Stroop and there is nothing else. Q [redacted] I am reading to you now from Prosecution Exhibit 141, "Around the middle of March 1943 I had received specific instructions from [redacted] that, whenever an Allied flier would fall in the hands of my unit this flier has to be killed." That means you had specific instructions from [redacted] to that right? [illegible] I can state definitely that this matter

Q Isn't this [illegible] means that means

[illegible] a position to [illegible] of this character.

Q Why didn't you remember in June 1946 that you had received such an order from General Streep?

A I can't tell you that today anymore.

Q Isn't it a fact that you didn't have an order of this kind from General Streep otherwise you would have said so in your statement?

A I have received this order from General Streep and there is nothing else I can say about it. In addition I had this one special order which came to me through Major Hoet and which referred to this one particular [illegible]

Q I am reading to you now once more a sentence from your own statement, Prosecution Exhibit P-141. "I can state definitely that this murder committed by Hichely was a direct result of the orders which were passed on from Hoet through me and based on my knowledge of the SS organization of the Service Command 12. I am certain that this order mentioned above had been given by Streep to Hoet." Did you make this statement?

A Yes.

Q Why are you drawing a conclusion in this statement and are not referring directly to an order which you received, supposedly from General Streep?

A During the discussion which we had before I made this statement I said that these orders came from General Streep and only when I made this written statement--cross out "and only my written statement"--and I said that this was the only channel of command through which we could receive such an order because none of us was allowed to give or to issue an order of this kind.

(Continued)

1086

Q Isn't this statement again only in conclusion because that means that none of you are in a position to issue an order of this character.

A For us it was impossible to give an order on our own. I think this will be proven through witnesses.

REDIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Lieutenant does you realized back at that time and know that the shooting of this unarmed, surrendered prisoner-of-war amounted to a heinous crime, didn't you?

DEFENSE COUNSEL: I pray the court's judgement. I think the addition of these objectives make it an improper question even for cross examination. He can ask him if he thought it was an offense or crime or homicide but the objectives make it improper.

PRESIDENT: Objection is overruled.

THE WITNESS: No.

QUESTIONS BY CAPTAIN VANCE:

Q If you didn't think that a crime was being committed by shooting these prisoners, why is it that you did not want these 16 and 18 year old boys under your command to do the shooting?

A The shooting of a man isn't the same as when I go into a store and buy something there. An act like this would deeply impress the future life of any young boy. I consider it irresponsible to lead the conscious of a young man with an act like this, about the importance of which he does not know anything at this time.

Q Well what effect would this action have on a mature man, say a man of your age and Michely's age?

A Every war is tough and we who fought on the front and have fought with the enemy hundreds of times--for us it was only obedience to orders to act in this manner. We haven't done anything in this war but to fulfill our duty towards our people and our country and I don't think there was any

(Cross-recross)

soldier, no matter in which army of the world he was fighting and on which side he was fighting, who gladly lifted his rifle and shot his enemy. But, in my own behalf, I made the following unsworn statement through an interpreter: it is obvious that a grown up man can take a different position to these things and can understand the necessity of such action better than a young boy.

For us it was a necessity of war which forced the weapons in our hands. Nobody shot voluntarily.

CAPTAIN VANCE: Nothing further.

MAJOR SAWYER: Nothing further.

EXAMINATION BY THE COURT

QUESTIONS BY LIEUTENANT COLONEL WALKER:

Q Lieutenant, what was your service in the SS?

A Colonel, what are you referring to my rank?

Q No, your service. What dates did you serve in the SS?

A From 7th or 8th of October, 1944 until the end.

MAJOR SAWYER: May I ask another question, if it please the court?

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAWYER:

Q Was this the Waffen SS or the Allegmeine SS?

A The Waffen SS.

Q I believe that I have asked you this before but I want to make sure. Were you drafted into the Waffen SS on about the 8th of October?

A Yes.

MAJOR SAWYER: That is all.

PRESIDENT: No further questions by the court. Take your place in the dock.

(Whereupon the accused was excused and resumed his place in the dock.)

(Cross-court-redirect)

MAJOR SAMS: Heinrich Micholy.

HEINRICH MATHIAS MICHELY, an accused, voluntarily took the stand in his own behalf and made the following unsworn statement through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAMS:

Q State your name to the court.

A Heinrich Micholy.

Q What is your age?

A Thirty-three years.

Q What is your home address?

A Dudweiler in the Saar Basin.

Q You are one of the accused in this case?

A Yes.

Q Are you married or single?

A Married.

Q What does your family consist of?

A My wife and one child, a girl four years old.

Q When did you first see service in the German Army?

A In February, 1939 until May 1939.

Q When did you next see service in the German Army?

A In November, 1944.

Q What has been your lifetime occupation in civilian life?

A I was a teacher in public school.

Q When you were relieved from the service in 1939 what did you then do?

A I was working again in my civilian profession.

Q How long did you actively continue in that work?

A Up to September, 1944 interrupted through stays at the hospital.

Q Just tell the court what you mean by your stays in the hospital? When did that take place?

A In July, 1940 I had an accident on my motorcycle. For this reason I was in the hospital for approximately two years.

Q What did your injuries consist of?

A I had very grave head injuries. I lost my right eye and I had [illegible] a break, a very grave break, concussion and double fracture of my scull.

Q How long did that keep you in the hospital the first time?

A Until November, 1940, approximately [illegible] weeks.

Q You were in the hospital off and on from then until when?

A Until the end of 1942, had mainly to [illegible] used to and acquainted

Q [illegible] How what was your work after that? Were you teaching in school again after that?

A Then [illegible] you received this first four weeks [illegible]

Q [illegible] there?

A In various cities of the Saar Basin, [illegible] already, my

Q Those injuries you sustained kept you from going into the military service at that time? [illegible] to be discharged. I got a reply that I [illegible] Yes. [illegible] and therefore [illegible] by the Fuehrer it was [illegible]

Q What did you do in the summer of 1944? [illegible] served. For this reason

A In the summer of 1944 I was with the Hitler Youth in the West Wall for work on the fortifications. [illegible] for twenty minutes.

Q Tell the court the duties you had when you were there?

A I was a Technical Sergeant of the Hitler Youth and as such I was in charge of one group of boys and we supervised there the work which was carried out by those boys on trenches and anti-tank defenses.

Q How long did you continue that work?

A Until the beginning of November, 1944 when I was drafted into the Waffen SS.

Q Where were you first stationed after being drafted into the Waffen SS?

A In Tiefenthal at the Werwolf School.

(Michely-direct)

Q When you were first sent there after being drafted into the Waffen SS what was supposed to be your assignment?

A I was to be trained there.

Q That is you would receive instruction there yourself, is that right?

A Yes.

Q For how long a period did you receive instructions?

A The first course took approximately four weeks.

Q Tell the court what that instruction consisted of.

A The instructions consisted mainly in getting used to and acquainted with explosives and with demolition work and furthermore instructions in small arms.

Q After you received this first four weeks instruction what then became your work there?

A At the beginning of this course I had expressed, already, my opinion that in view of my physical condition I felt unfit for this kind of work and made an application to be discharged. I get a reply that I was a teacher by profession and therefore they had the intention to use me as a teacher and to have me work as a teacher in the school. For this reason I stayed there.

PRESIDENT: The court will recess for twenty minutes.

(Thereupon the court recessed at 1000 hours.)

(Whereupon the court reconvened at 1030 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Dr. Trost, who is absent sick, all of the accused, the reporter and interpreter, are present.

Let the record show that the accused Michely has resumed the stand.

HEINRICH MATTHIAS MICHELY, an accused, voluntarily resumed the stand in his own behalf and continued to make an unsworn statement through an interpreter as follows:

DIRECT EXAMINATION (continued)

QUESTIONS BY MAJOR BAXON:

Q What is the highest rank you held in the Waffen SS?

A Private.

Q After you took your training or orientation course, what were your duties then at the Werewolf school.

A I didn't have any real duties. I was merely waiting for me to be sent to another course where I was supposed to be trained as an instructor.

Q Who was your commanding officer there at the Werewolf school?

A SS First Lieutenant Goss.

Q How many other instructors were there beside you?

A Two more.

Q And who were they?

A Buhlmann and Breuer.

Q The Buhlmann you refer to is the man who testified in the prosecution's case, is he not?

A Yes.

Q Where is Hoenow? Do you know?

A No.

Q How many students did you have there in the school in the month of March, 1945?

A About 14.

Q Did you actually give instructions to these students in March?

A Yes.

Q Just tell the court what that consisted of.

A They were learning demolition and they were trained in infantry weapons.

Q Did you act as an instructor yourself at that time?

A During the whole time I was there I had a total of one hour of instruction that I held because Goss was not present. That was about soldierly behavior.

Q What were Lieutenant Goss' duties in this school of Wallrabenstein in addition to being a sort of superintendent of the school?

A He was also community commander, and that was indicated by a sign which was posted at the school--community commander.

Q He kept charge of order in the town of Wallrabenstein?

A Yes.

Q Did a part of your duties consist of assisting in maintaining order in that town?

A As a subordinate it was.

Q During your time there at the school did General Stroop visit the school?

A Yes, twice.

Q When he would visit the school, what was the purpose of the visit?

A I don't know.

Q Did he conduct any conferences with the students there--that is, give any instruction?

A I remember his addressing some words to the students, but I don't know whether you could call it a conference or a meeting.

Q Was it a sort of an instruction to them as to what their duties were to be?

A No. He didn't know that himself.

Q Were you who were instructors there under arms?

A Yes. We had all kinds of weapons there.

Q Coming to the 18th of March, 1945, will you just tell the court what happened regarding an American flyer, so far as you were concerned?

A Csas sent me out in order to capture, if possible, a stranger who was running around the area. I took a pistol along and went to the spot indicated, and after a search of about a half an hour I succeeded in capturing the flyer. He gave me his weapons--a pistol which was loaded and off safety, a long knife, and six spare magazines with seven rounds each.

Q Just a moment, Michely. How long did it take you to capture this flyer?

A About a half an hour.

Q Did you have to pursue him and finally overtake him to capture him?

A Yes.

Q How far ahead of you was he while you were pursuing him?

A At first about 100 meters. Then when he reached the woods he arparently stopped there. At any rate, I came closer to him, and in the woods I got as close as 5 meters to him.

Q Let me ask you: While you were pursuing him you were armed, were you not?

A Yes.

Q Did you have any instructions from Lieutenant Goss to shoot this man if you could not capture him?

A No. The only orders I had was to attempt to capture him.

Q Did you fire any shots at him?

A No. I didn't have an order to do that.

Q You could have shot him, could you not, had you had such an order?

A Of course.

Q When you did capture him did this stranger, as you refer to him, have a gun in his hand?

A Even while I was chasing him I could observe that he had a pistol in his hand.

Q Did you know while you were pursuing him of what nationality he was?

A No.

Q When you finally captured him, did you at that time learn his nationality?

A Yes.

Q How did you learn that?

A He told me.

Q You speak English, do you not, Michely?

A Yes.

Q After you captured him, took the knife and gun from him, what did you next do?

A I took him to our quarters and turned him over to Goss.

Q About what time of day was this?

A It might have been 2 p.m.

Q What was done with the flyer after you delivered him to Goss during the afternoon?

A I know that he was taken to the second building. I know that he was searched for weapons again there, or for more objects which he wasn't supposed to have. What else happened to him I don't know in detail, 'cause I wasn't present.

Q Were you present any time during that afternoon when Lieutenant Goss attempted to communicate with Wiesbaden?

A I couldn't be present, because Goss couldn't call from a school but had to go up to the Mayor's office.

Q Just tell the court, now, what next you had to do so far as this flyer was concerned.

A About evening Goss gave me the order to take the flyer to Idstein and shoot him on the way.

Q Before that, let me ask you further, did you take from this flyer other things besides the gun and the knife?

A Not at that time.

Q Was the rest of his equipment removed from him there at the headquarters?

A What was taken away from him was in the schoolroom on top of a cabinet.

Q Just tell the court what was taken away from him and put on the cabinet.

A His pistol was lying on that cabinet; his knife was; the spare magazines; two maps; a wallet containing several kinds of currency--German, American, and French currency; also, a lighter. That is all I remember.

Q Do you know how much money he had in these various kinds of currencies?

A Not exactly. I know he had both bills and coins.

Q Did this flyer tell you how long he had been in this area before you captured him?

A Yes. He said he had been in this area for as much as three days.

Q Did he tell you what he was doing around there?

A No.

Q Did he decline to tell you that?

A Yes.

Q You asked him, did you?

A Yes.

Q Did he have any clothing on him that appeared to be that of a flyer?

CAPTAIN VANCE: We object. He is leading the witness, if it please the court.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR SAXON:

Q Just tell the court how this flyer was dressed, that is, the type of clothes he had.

A He was wearing the American flyer's coveralls, including flying boots. - No headgear.

Q You have stated that Lieutenant Goss called you in. At about what time was that that evening?

A It was about the time it was getting dark. I don't remember the exact time of day.

Q And what did he state to you?

A He told me, "Michely, you are taking this man to Idstein, and on the way you will shoot him."

Q Did he tell you what with?

A He pointed out to me that I ought to take the American's pistol along, because we ourselves were short of ammunition.

Q Did you then follow out his order?

A Yes.

Q And after you had executed his order, what did you do?

A After the flyer was dead I took his identifying papers, his identifying bracelet away from him, and went back. I reported to Goss that I had carried out his order, and I turned the identifying objects over to him, including the bracelet. Later on, with the agreement of Goss, I took this bracelet on my person.

Q Did you make a report relative to the shooting of this flyer?

A Yes. That same evening I wrote a report on the typewriter.

Q What did you do with that report?

A This report was countersigned by Goss and the next day was sent to Wiesbaden by way of Idstein with a courier.

Q Prior to this time, and around the 15th of March, 1945, did you have occasion to be in Wiesbaden concerning a captured flyer captured by your unit?

A I was in Wiesbaden that day, but not on account of this flyer matter, but for another reason.

Q I wish you would just state to the court what conversation was had concerning captured fliers at this time when you were in Wiesbaden, and between whom.

A I had to take a report of first Lieutenant Goss to Major Best. On that occasion I told him that we had a captured flyer in Wallrabenstein. Upon that Best asked me why this man is still alive. That was all.

Q At that time did you have some conversation with General Stroop?

A No.

Q Was there then another time a day or two later that you had such a conversation?

A Not with General Stroop.

Q Michely, did you at any time have a conversation with General Stroop regarding the disposition of fliers who might be captured in your area?

A I never had any conversation alone with General Stroop. When General Stroop was talking to me it was an occasion on which he talked to all men.

(Michely - Direct)

Q Where was that?

A When we were sworn in.

Q Was that at Tiefenthal or in Wiesbaden?

A Tiefenthal.

Q Will you just state to the court what General Stroop told you men at the time you were sworn in as members of the Waffen SS?

A General Stroop described the general war situation to us. He swore us in and by shaking his hands he made us pledge allegiance. And at that occasion, he told us that there were difficult tasks ahead of us, that the decision for our country was coming, that "It goes without saying for me that every one of the men will do his duty to the very last, and anybody who will become soft or will go on other than straight path or will attempt to fail to obey our orders will disappear, and without a trace, too."

Q Was that the understanding that all of you who served in the Waffen SS in that area had, that that is the punishment that would happen to you if you failed to obey an order?

A Yes.

Q Did you know of punishment that had been meted out to members of the Waffen SS in that area who had failed to obey orders?

A I had knowledge of some sentences pronounced by the SS court and also there was the example of the bridge in Remagen.

Q What was that example that you knew about?

A These men who had failed to blast this Remagen bridge in time, through failure or disobedience to orders, had been shot promptly and summarily as was announced over the radio.

Q Did you know that they were German officers?

A Yes.

Q Did you have occasion to know of some 50 Volkssturm soldiers in the area of Mainz who had been sentenced to death about the first of March for failure to obey orders?

CAPTAIN VANCE: We object. He is leading the witness.

PRESIDENT: Objection sustained.

QUESTIONS BY MAJOR FAXON:

Q Tell of any other occasion you know of where persons had been sentenced to death for failure to obey orders there at that time in March.

A General Stroop gave the order to shoot 50 Volkssturm man for refusing an order in Mains-Heisenau. The only reason they did not have this sentence executed was because of the fast progress of the Americans.

Q About what was the date of this affair you refer to?

A I don't remember the exact date. It was immediately prior to the capture of Mains.

Q It was shortly before this incident on March 18, was it not?

A Yes.

Q Did you know on March 18 approximately how far the Americans were from your location?

A Yes. I had been at Wiesbaden a short time before that and at that time Wiesbaden was already under fire from the other side of the Rhine.

Q Approximately how many kilometers were the Americans from you on the 18th of March?

A Might have been 20 kilometers.

Q Were you receiving air bombing and strafing attacks around this time of March 18?

A Daily.

Q Did you consider yourself in the front line at that time?

A Yes.

Q Did you know what would happen to you had you failed to obey the order of Lt. Goss to execute this flier?

A I remember the words that General Stroop said on the occasion of our being sworn in, and I realised that I couldn't even count on

getting a child, was driven into a trap. Having that, I broke my right

knee. Q You understood them that if you failed to obey this order of

Mr. Cross that you would be summarily executed yourself, is that correct?

remained CAPTAIN VANCE: We object as leading, putting the words in

the mouth of the witness.

PRESIDENT: Objection sustained. In German?

QUESTIONS BY MAJOR SAXON:

Q What did you think would happen to you if you failed to obey

this order? A I had had this accident in France, I was sent to Germany

as a [illegible] would have been a matter of seconds that I would have been shot.

further Q Do you recall that day you evacuated Wallenbergsteig? A Yes.

A I was the last man to leave Wallenbergsteig, on March 27.

Q How far were the Americans from you then?

A A thousand meters. In jail — or, rather, you were removed to

jail. Q And how far did you go before you were captured? A I was

at that point 150 kilometers.

Q What time were you captured? A At that later on the chief

camp in the vicinity of Schlusselburg, Germ.

Q Where from you held as a prisoner of war?

A From Marseilles in southern France, in the punishment prisoner

camp No. 4[illegible] is the name of this stockade that wouldn't permit you

to go Q How long were you held there as a prisoner?

A Two months.

Q Then where were you moved to?

A I was then sent to a labor camp, an airport near Marseilles,

and I worked as a cook in the American kitchen. Q And on your leg?

Q And then winter of last year.

A Then the unit was transferred to the airport of Istres in

southern France. And there in Istres, I was used in the American Officers

Club as an English and French interpreter, and while on duty riding to the

supply point, I was driven into a tree. Doing that, I broke my right knee and was sent to the hospital, and the treatment of the leg was interrupted because I was sent to gaol. For that reason, the leg remained stiff and two weeks ago I was told that it would stay that way for the rest of my life.

Q Where were you told that? Here in Dachau?

A [illegible]

Q For that reason were you removed from this prison camp to gaol?

A When I had had this accident in February, I was sent to Germany on a hospital train and I had myself discharged ahead of time and took further treatment at home. I was home for ten days. I was arrested.

Q Then were you arrested for [illegible]

A On account of this matter?

Q And you have been in jail [illegible] any time, you were removed to jail there immediately and they were unable to treat you for this injury in that night?

A Yes. At first it was possible, but then later on the chief cops in Dachau No. 1 didn't permit it any more.

Q Where do you mean here? I see, "What is now the spot," and I

A Yes. I had two massages and light treatments here yet.

Q What is the name of this clergyman that wouldn't permit you to get further treatment? [illegible]

A [illegible]

Q. Is he still there?

A When I left Dachau No. 1, he was still there.

Q How long ago did he discontinue the treatment on your leg?

A Some time August of last year.

Q. I hand you Prosecution Exhibit 144-B and ask you to state if that represents a picture of you and two Americans who were interrogating you relative to this affair?

(MICHELY-Direct)

A That is my name [illegible] but I don't want

Q Did you know their names?

A I only know the name of one of them. [illegible] will caution you not to

Q What is the name that you do know?

A Zinn, Jack Zinn.

Q Of those two Americans can you point out which one is Zinn?

A The one on the left, on the far left.

MR. MICHELY: Let the record show that the accused pointed out the [illegible] as the third person in this picture, on the far left.

QUESTIONS BY MR. MICHELY: During your four or five months' career as a [illegible] now, was there one of these who was with you constantly on the [illegible] taking of these 20 pictures that are known as Exhibits 111-A to 111-J?

A Yes, [illegible] ever [illegible] anyone else at any time to show [illegible] when you went out to the place where the actual shooting occurred that you have heretofore testified to, just tell the court what happened between you and Zinn as to the correct place where the shooting occurred and the taking of the pictures.

A I pointed out to these Americans the point where I had shot this American flier. Mr. Zinn told me, "That is not the spot," and I insisted upon my statement. He insisted upon his statement. He wanted to take pictures, a reconstruction of the incident, and for that purpose he grabbed me here at my shirt collar and put me in the place where he wanted me in order to take his pictures. When I showed to him that I was annoyed, he said, "Why don't you escape and I will shoot you from behind like a dog and that will save us the expense of a trial." Upon that, he took the pictures where he wanted to take them. [illegible]

Q [illegible] which were taken on a number of days, where the actual shooting was, is that correct? [illegible] don't realize what the significance of [illegible]

CAPTAIN WINOKUR: No objects. He is leading his witness again. I [illegible] was [illegible] way, now I don't

don't mind this witness telling anything he wants to, but I don't want the Major to tell the witness.

PRESIDENT: Objection sustained. I will caution you not to lead the witness.

QUESTIONS BY MAJOR SAXON:

Q Was the picture finally taken where Kim wanted it or where the shooting actually occurred?

A The pictures were taken about 10 or 12 meters away from the place I had indicated.

Q Now, Michely, during your four or five months' service as a member of the Waffen SS, did you ever shoot any other Allied prisoner of war?

A I never shot any human being besides this flier.

Q Did you ever receive an order from anyone else at any time to shoot an Allied prisoner of war other than this one order you got from Lt. Gens?

A No.

MAJOR SAXON: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Michely, to get back one moment to these pictures in evidence, you signed a statement which was described on the back of each photograph in the office of the prosecutor, didn't you, shortly before the charges were served on you?

A Yes.

Q Did you tell the prosecutor or any member of the prosecution staff anything about Kim having the picture made at the wrong place, or make any complaint whatsoever about the pictures?

A No. At that time, I didn't realize what the significance of these pictures was at all. For instance, I also signed a statement on those pictures that the coffin was exhumed and thrown away, and I don't even know that.

Q You read what was on the back of the pictures before you signed it, didn't you?

A Yes.

Q The prosecution staff or anyone did not force you to sign it, did they?

A I wasn't forced to do it, but I wasn't told what the purpose of these pictures would be, either. The first impression I had was that these pictures would be used for propaganda purposes in America.

Q As a matter of fact, you were asked to read what was stated on the back of the picture and state whether that was the truth or not, weren't you?

A Yes.

Q And you signed it and said it was the truth?

A Yes.

Q Now, let's get down to the 18th of March, 1945, when Coss sent you out in the fields to capture the flier. You stated you saw the flier and pursued him and he had a pistol in his hand, is that right?

A Yes.

Q When you captured the flier, he had ammunition with him, that is right, isn't it?

A Yes.

Q Did the flier shoot at you while you were pursuing him?

A No.

Q Did the flier try to harm you in any manner while you had him?

A No.

Q Then you took him back to Lt. Coss, I believe?

A Yes.

Q And about nighttime, Lt. Coss gave you the order to take the flier to Idstein and on the way to kill him, is that right?

A Yes.

Q About what time of day did you capture this American flier and bring him into the schoolhouse?

A About 2 P.M.

Q I believe you said that the weapon and maps and various articles were taken from the flier and he was interrogated. How long did that take?

A I don't know how long it took at all, because I wasn't there until the end.

Q About what time did you leave with the flier to take him out to shoot him?

A About the time it got dark, might have been 7 o'clock.

Q So the flier was there at the schoolhouse for approximately five hours, is that correct?

A Yes.

Q Who guarded the flier to keep him from running away during those five hours?

A An old man, more than 50 years old, belonged to our unit.

Q Why did you decide to wait until nighttime to kill the flier?

A That wasn't up to me to decide.

Q Who made that decision to kill him in the nighttime?

A 1st Lt. Goss.

Q There was no reason why you couldn't have killed him between 2 o'clock and 7 o'clock at night, was there?

A I don't know.

Q Now, did you shoot and kill the flier with the American weapon as shown by these pictures which have been introduced in evidence?

A No, not with the weapon that is shown in the picture.

Q I don't mean that weapon; with an American pistol that looks like the one shown in the picture?

A Yes.

Q Did you bury the flier or make any arrangements to have him buried after you killed him?

A I personally did not. Mr. Goss made the arrangements. He had a coffin made from the local carpenter and notified the local mayor and he was buried the next day.

Q How many times did you shoot him?

A I remember approximately that in the beginning and at first I fired about three shots at his back. Then he fell down across the road, and since it started getting dark and I couldn't observe the effect of my shots any more, but still thought I could hear him moan, I fired two more shots in the head.

Q And you were standing right over his body firing down, as shown in this picture which has been introduced in evidence, is that correct?

A About, I don't remember exactly.

Q And after firing those shots at him from the back and two into his head, you were satisfied the flier was dead, is that right?

A Yes.

Q And after you were satisfied that the flier was dead, you removed his identification bracelet from his arm, is that correct?

A And his tags which he had around his neck.

Q And on those tags and on that bracelet was the name Jimmie H. Heatwole, that is right, isn't it?

A Yes.

Q Was Goss waiting at the schoolhouse for you to come back and report that you had carried out his order to execute the flier?

A I don't know whether he had been waiting for me. All I know is he was there when I came back.

Q And you told him you had killed the flier and where the dead body was?

A Yes.

Q When you reported to Goss, what did he say to you?

Ta 158-pm-87-2/11-10

A 11, I don't remember any reply of him. That is right, he told me to write this report.

Q The report was made to whom?

A To General Stroop through Major Best.

Q What did you put down in that report?

A I put down in this report the whole occurrence, how I captured the flier. I also wrote that I had received the order from Gose to take him to Lidstein, that he attempted to escape on the way, and that I shot him while he was trying to escape.

Q Who told you to falsify the report to the effect that the flier was shot while attempting to escape?

A Gose let it. Gose.

Q Do you know if he had received any instructions as to how these reports should be made?

A No.

Q I believe you said that after you came back you brought the identification tags and the bracelet, and that Gose decided you could have the flier's bracelet, is that right?

A Yes.

Q Did Gose give it to you?

A I asked him about it. He said I could have it and I took it off the cabinet.

Q From then on you wore Jimmie Haithman's bracelet, is that correct?

A Yes.

Q You testified in answer to Major Tenon's question that on an occasion you went to see Major Best in Wiesbaden, and you had reported that you had a flier in custody in your organization and that he asked why he had not been killed. When did you make that visit to Major Best?

A As far as — to my knowledge, on the 15th of March.

End ta 15t
pls fols

Q Well, now, was the conversation in regards to the flier
[illegible] with that? Well, in the first place,
that Buhlmann had taken away and not executed or was that some other
[illegible] life and probably also [illegible] life,
flier?
[illegible]

A That was the flier who Buhlmann took out later on.
[illegible] would have saved the flier's life, your own [illegible] by

Q How many fliers do you know of that you or your organization
taking that flier to the American authorities, wouldn't you
had in custody at Wallrabenstein?
[illegible] any way of getting him back to the American lines.

A Two.
[illegible] know that the war was at its end on that day, practically

Q I believe you testified that on the 18th of March the American
at an end, didn't you?
Army was about twenty kilometers from your headquarters, is that right?
[illegible] as the first General [illegible] was out in our place

A Yes.
at Wallrabenstein. At that time the Americans had crossed the Rhein

Q At the time you shot this American flier you were in fear for
your [illegible] and honor and he said he wanted all weapons, including
your own life if you had failed to carry out the order, is that what you
[illegible] and he would proceed in [illegible] the Americans back and
say?
[illegible] would it mean without saying what we, as well as he, would join the

A Yes.
fighting front if there was no other way. At that time I had no way

Q Michely, you didn't want to die, did you?
[illegible] of recognizing what the end would be.

A No.
[illegible] Michely, you heard Buhlmann testify before this court in

Q You didn't want to be executed without a trial, did you?
the [illegible] case, didn't you?

A I didn't want to risk my life in any case.
A Yes.

Q How do you think Jimmie Heathman felt on that day, the American
[illegible] that is the same Buhlmann who refused to execute a flier two
flier?
[illegible] days before you executed this one, wasn't it?

A He probably didn't want to lose his life anymore than I did.
A That is the same Buhlmann but as far as I know he didn't refuse

Q Why didn't you turn that man loose where he could get back to
to carry out his orders.
the American army if they were only twenty kilometers away?
[illegible] Will the flier where it, what [illegible] him to?

MAJOR MAXON: If it please the court, I am objecting to that
Yes.
as it is improper cross examination. He is asking for a supposition
[illegible] Buhlmann testified from the witness stand.
of some kind that has no bearing on the case.
[illegible] be questions by the court. The witness will have

PRESIDENT: Objection overruled.
[illegible] please of the court.

THE WITNESS: May I have the question again?
[illegible] witness is instructed to repeat his place in the book.)

(Whereupon the reporter read the last question.)

Michely-cross

(Michely-cross) (CS)

THE WITNESS: Agreeing with that I would, in the first place, have risked my life and probably also Goss' life.

QUESTIONS BY CAPTAIN VANCE:

Q You could have saved the flier's life, your own and Goss' by taking that flier to the American authorities, couldn't you?

A I didn't have any way of getting him back to the American lines.

Q You know that the war was at the end on that day, practically at an end, didn't you?

A No. As late as the 31st General Stroop was out in our place at Hallrubenstein. At that time the Americans had crossed the Rhein near Frankfurt and Hanau and he said he wanted all weapons, including heavy weapons and he would succeed in throwing the Americans back and he said it went without saying that we, as well as he, would join the fighting front if there was no other way. At that time I had no way at all of recognizing what the end would be.

Q Micholy, you heard Buhlmann testify before this court in the prosecution's case, didn't you?

A Yes.

Q That is the same Buhlmann who refused to execute a flier two or three days before you executed this one, wasn't it?

A That is the same Buhlmann but as far as I know he didn't refuse to carry out any orders.

Q You know he didn't kill the flier when Lt. Goss ordered him to?

A Yes.

MAJOR SAXON: Nothing further from the defense.

PRESIDENT: No questions by the court. The witness will take his place in the dock.

(Thereupon the witness was excused and resumed his place in the dock.)

(Micholy-cross)

MAJOR BAKER: Major B[illegible]

GEORG PREU, an accused, voluntarily took the stand in his own behalf and made the following unsworn statement through an interpreter as follows:

[illegible] DIRECT EXAMINATION

QUESTIONS BY MAJOR BAKER:

Q State your name.

A [illegible], Georg.

Q What is your age?

A 39 years.

Q What is your home address?

A Wiesbaden.

Q Are you married or single?

A Married.

Q What does your family consist of?

A My wife and three children.

Q You are an accused in this case?

A Yes.

Q Presently confined in Dachau?

A Yes.

Q What was your occupation in civilian life?

A The profession which I studied to become was an engineer.

Q When did you first join the armed forces of Germany?

A I had gone through several reserve maneuvers before the war and during the war, in 1943, I was detailed to the Waffen SS.

Q Where were you stationed in 1943 with the Waffen SS?

A I was sent to the SS combat command in Africa.

Q How long did you serve there?

(Best-direct)

A Until the evacuation of Tunis in the first days of May.

Q Then where did you serve next?

A Then we stayed in Italy for a short while and, effective the 15th of June, I was sent to Corsica.

Q Then?

A At the end of the evacuation of Corsica in September 1943 I was detailed to the Higher SS and Police Leader in France.

Q How long did you serve in France?

A I remained on the staff of the Higher SS and Police Leader of France until the end of November 1944.

Q What rank did you hold at that time in the SS.

A SS Sturmbannfuehrer, Major.

Q When were you detailed to Wehrkreis No. 12?

A Toward the end of November 1944 I was called to Berlin by radio but I couldn't follow through these orders right away but arrived a few days later so that I couldn't perform the job which I was supposed to take at first and toward the beginning of December, I think it was the 5th, I received my assignment to the Higher SS and Police Leader, Rhein-Westmark.

Q Who transferred you there, Major Best?

A General Fruetzmann.

Q What was General Fruetzmann's function in the German Reich?

A General Fruetzmann was the commanding officer of the undertaking "Wehrwolf" for the whole Reich area.

Q What was your assignment in Wehrkreis XII?

A According to the orders which I received in Berlin I was supposed to the the commanding officer of the undertaking Wehrwolf in Wehrkreis XII,

(Best-direct)

and I received instructions from General Kruetzmann in accordance with that, when I reported to Generaloberst Speer. I first told him I was reporting as commanding officer of the undertaking, Sonderstab Ia and secondly what my instructions from Berlin were, the war of the enemy [illegible]. Let me ask you this question. Did you know General Stroop before this assignment, that never included any of these orders that he had given me before for about fifteen minutes perhaps, in the month of October to transmit a message from General Obert, the Higher SS and Police Leader of France.

Q You had never served under General Stroop and were not otherwise acquainted with him, is that correct? Just was concerned?

A Nothing at all. In the first few days when I reported to General Stroop, did you receive any instructions, orientation or training in the Sonderstab activities before you were assigned to Wehrkreis XIII. Leader A. I had been trained as a pioneer professionally and also as a soldier and that is probably the reason I got this job as chief of the Sonderstab in Wehrkreis XIII that is [illegible] in my command will originate from it. When you say "pioneer" do you mean engineer, is that the same? Answer: Well, I don't mean engineer as machine engineer, but as engineer in the army sense, concerning demolitions [illegible] staff in charge of Sonderstab. Did you get some orientation from General Kruetzmann or his staff before you went to Wehrkreis XIII received [illegible] -- to supervise Sonderstabs under General [illegible] command as a staff officer?

Q Will you just tell the court what instructions you had that you were to carry out your mission by in Wehrkreis XIII, what was your mission? [illegible] General Kruetzmann explained the mission of the Sonderstab to me to the effect that the Sonderstab was to support the fighting troops at the front [illegible] orders and that was [illegible] General Stroop himself. In the

(Last-Direct)

(Continued)

by having these men put to work behind the enemy's lines and demolish the supply lines thereby causing trouble. The main job was the interference with enemy supply. In addition to that there was the general instruction that any attempt at the life of any member of the enemy armed forces was prohibited in principle.

Q Your instructions then never included any of these orders that have been testified to here such as non-interference or the order to kill enemy fliers?

A No, nothing.

Q When you came to Wehrkreis XXI what did you find was already in operation so far as the Wehrwolf project was concerned?

A Nothing at all. In the first few days when I reported to General Stroop and informed him of the instructions I had received from Berlin he replied as follows: "There is only one Higher SS and Police leader in Westmark and his name is Jurgen Stroop and that is me." I have been assigned and confirmed to my position by the Fuehrer and Reichsfuehrer respectively and anything that is happening in my command will originate from me. I have already set up a Wehrwolf and I reserve the right to command it personally for myself and now that you're here you might as well take over the position of a staff officer on my staff in charge of Wehrwolf matters."

Q That is the position you received there then -- to supervise Wehrwolf activities under General Stroop's command as a staff officer?

A Yes.

Q Did you have any authority to give any commands of any kind even relative to the operations of the Wehrwolf?

A No, that was prohibited on principle. There was only one man who could give orders and that man was General Stroop himself. In the

(Best-direct)

beginning things worked out this way -- that I would still get orders directly from Berlin addressed to my address. General Stroop stopped this by sending a teletype to Berlin saying "I request that all correspondence concerning Wehrwolf activities in Corps Command XII be sent to the Higher SS and Police Leader, General Jurgen Stroop."

Q Then such orders as thereafter came from General Fruetzmann or instructions from General Fruetzmann, came through General Stroop's headquarters to you?

A Yes.

Q Did this create an unhappy situation so far as you were concerned? Were you dissatisfied?

A Yes, very dissatisfied and I attempted to be recalled or transferred to some position outside of Wehrkreis XII right away. For that reason I went up to Berlin one more time in January 1945. I said what I had to expand I was promised a prompt change. At the beginning of March a representative of General Fruetzmann came to Wiesbaden. He convinced himself of the correctness of my statements on the spot and shortly thereafter General Fruetzmann himself came to Wiesbaden but that unfortunately was too late because two or three days later General Stroop's office was removed away from Wiesbaden, that is, evacuated.

Q That last visit from General Fruetzmann was just before the end of the war, wasn't it?

A Yes, that was about the 8th of March, the 10th or 20th of March.

Q You had a Wehrwolf school at Hallrabenstein, is that correct, Major?

A Yes, toward the end of the war. At first it was in Tiefenthal.

Q Did you have any other Wehrwolf schools in Wehrkreis XII?

A No.

Q The Wehrwolf, as a matter of fact, never got into training or

(best-direct)

or operation in Wehrkreis XII?

A Unfortunately we had no communication, that is I didn't, with the men in action so I don't know what did happen. I had instructions from General Fruetmann to live together with a man at the front constantly in order to remain informed as to what was going on. General Stroop made this impossible and he said, "You will stay with me and if it is necessary for you to go on you will be going with me." Thus, I was able to leave Wiesbaden only once together with General Stroop going to Koblenz, Trier and Saarbrucken. We met a lot of people who didn't interest me a bit and I didn't see a thing about anything that concerned me in the enterprise Wehrwolf.

Q Take the one school you had in Wehrkreis XII, in Wallrabenstein, were you allowed by General Stroop to spend any time at this school?

A No, I had asked to be permitted to live in the school when it was located in Tiefenthal but he disapproved. After the large scale air attack on Wiesbaden the office of General Stroop was also damaged. Upon that he permitted me to move to Tiefenthal for a short while. I moved to Tiefenthal on the afternoon of the 12th of February and on the next day at noon on the 13th of February, the school was completely destroyed by bombs so that I was forced to move back to Wiesbaden.

Q That is the only time you ever spent at the school from the time of its organization and from the time you got down there?

A Yes.

Q Did you have any command functions at all under General Stroop?

A Yes.

Q Did you have any authority over the patrolling or policing and maintaining of order in the City of Wallrabenstein?

A No.

(Post-direct)

Ta 189 30

Q Do you know of your own knowledge whether or not General Stroop gave that authority to Lt. Goss directly?

A May I ask you what authority you are talking about?

Q I am talking about the authority of policing and maintaining order in the City of Wallrabenstein.

A No, this matter was unknown to me. I found out about this only here from Lt. Goss.

Q Was it not also a fact that General Stroop maintained direct liaison with Lt. Goss and without considering you at all?

A It happened frequently that he contacted Lt. Goss directly.

Q It developed that you were nothing more than a figurehead as far as the Kohrwolf was concerned at Wehrkreis XII?

CAPTAIN VANCE: No object.

PRESIDENT: Objection sustained.

(Whereupon at 1500 hours the [illegible] until 1530 hours.)

QUESTIONS BY MAJOR SAYON:

Q Previous to March 15th had you ever received any instructions from General Stroop as to what disposition should be made of the captured Allied fliers? I mean previous to March 15, 1945?

A No.

Q Had General Stroop even so much as talked to you about his own views on that subject?

A I know of one order only that came out on the 15th or 16th of February 1945 which read as follows: There were four cases of death after an attack on Liefenthal on members of another school and they were to be buried. I went over by order of General Stroop in order to take part in the burial. When I arrived with my car at the entrance to the town of Martinsthal the Mayor of the town was standing there and stepped me and asked me, "Mr. Best, how are your wounded comrades doing?"

(Best-direct)

fm 180 30
pla/9

(Recess taken from 1400 hours.)

I asked him, "What comrades are you talking about?" He said that one four or five hundred meters away was wounded by a parachuted flier. I informed him I didn't know anything about this incident having come from Wiesbaden. I had the spot pointed out to me and drove over there with my car. There a comrade of ours, an SS Major was lying who had a shot in his lower jaw and about three or four meters away from there the body of an American flier was lying. A doctor was standing with that group, also a few policemen and a few Air Corps soldiers. I asked at once what had happened here and the following was told to me.

In the little town of Wiesbaden on the Rhein --

PRESIDENT: Will this be a good place to take a recess?

MAJOR SAXON: Yes, sir.

PRESIDENT: Court will recess until 1430 this afternoon.

(Whereupon at 1300 hours the court recessed until 1430 hours.)

end to 180
erb fols

AFTERNOON SESSION

(Whereupon court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PRESIDENT: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Frost, who is absent sick, all of the accused, the interpreter and reporter are present.

[illegible], an accused, voluntarily took the stand in his own behalf and continued to make an unsworn statement through an interpreter as follows:

DIRECT EXAMINATION (Continued)

QUESTIONS BY MAJOR SACKS:

Q Major Knot, will you continue where you left off at the recess?

A During this inquiry I was told the following: In the neighborhood of Eltville, an American plane had been shot down. One of the fliers parachuted, cut off his parachute after he landed on the ground and tried to escape to the forest which was located in the neighborhood. People had observed him parachuting. A group of anti-aircraft artillery which was located in the neighborhood sent immediately [illegible] who told [illegible] which was located in the neighborhood sent immediately some men out to catch this flier. Furthermore, members of the Wehrmacht and of the police were present to participate in the capture of the flier. Shortly before reaching the forest, the flier was surrounded, an SS major approached him up to approximately six meters when the flier who was trying to escape suddenly turned around, threw himself to the ground and with a 12 millimeter Colt, shot at the SS major. The shot entered the lower jaw and the SS major fell to the ground. Then the flier jumped on the SS major, who was lying on the ground, took the major's pistol out of his hands, used the major's body as cover, and continued shooting. Then the soldier started shooting at the flier and one or two

(Next Sheet)

of these shots hit him fatally. When I arrived, the air force detachment had already taken all the papers, the number of the flier, et cetera, and had left to make a report to their unit commander. I took care of the transport of the wounded SS major to the hospital on the Michberg. The physician on duty refused to accept the wounded man because he himself couldn't do anything and he transferred the wounded man to a specialist in Wiesbaden. Upon arrival at the hospital in Wiesbaden, the wounded man died.

Q About what date was this, Major Best?

A I can give you the exact date. That was on the 15th of February 1945.

Q That is the only instance you know of matters that affected fliers at any time before the 15th of March, is that correct?

A Yes, but the reason why I reported on this incident is a question which I was asked this forenoon, whether I had received orders of any kind from General Streep in regard to parachuted fliers, and I might add that when I returned from this burial I reported to General Streep, who told me then that he feels it necessary to issue an order that greatest care has to be used when taking parachuted fliers into custody, that every man who participated should have his loaded pistol unsecured in his hands and his last word was, "Who shoots first has the advantage."

Q All right. Now, Major, getting back then to the 15th of March 1945, did you receive a message from Lieutenant Goss?

A Yes.

Q In what manner did you receive that message?

A From an employee of my office. I was informed that somebody had called over the phone in the name of Lieutenant Goss that he, Lieutenant Goss, had a flier in Wallrabenstein, and that he was requesting orders from General Streep what had to be done with the flier.

Q About what time of day did this message reach you?

A That might have been around four o'clock in the afternoon.

Q What did you do as soon as you received this message?

A I passed this message of Lieutenant Goss on to General Stroop.

Q In what manner, in what form did you do that?

A Through personal report.

Q Your office was in the same headquarters as General Stroop's, is that correct?

A Yes.

Q What did General Stroop say to you?

A General Stroop was thinking for a moment and then he said, "the flier has to be shot."

Q What did he direct that you do?

A From the manner in which this order was given it was obvious that this was the order which I had to pass on to Lieutenant Goss.

Q What did you do next insofar as this order is concerned?

A Lieutenant Goss had told me during the telephone call that during the late afternoon he would come to the place Under the Eichen, where he could get the order from me.

Q Did you go to that place later in the afternoon?

A Yes.

Q About what time did you go down?

A That might have been around six, six-thirty.

Q Did you see Lieutenant Goss there?

A Yes.

Q Did you give him General Stroop's order?

A Yes.

Q Now, when did you next see Lieutenant Goss?

Q What conversation was had between you and Lieutenant Goss at that time so far as pertains to this flier?

A Lieutenant Goss reported to me that it had not been possible to carry out the order. On my question why, he told me that through the interference by civilians it had been impossible to carry out the order.

Q What did you do next then in regard to making your report to General Stroop of the failure of Lieutenant Goss to carry out this order?

A I personally informed General Stroop of this report.

Q What did he say to you?

A He was a little bit upset and told me in nearly the same words, "This is a bad sign for the reliability of the men if they start to get soft. It is necessary for me to have a serious talk with them.During the next meeting you have to bring this to my attention."

Q Subsequent to this conversation, that is, after this conversation with General Stroop, when did you next see Lieutenant Goss?

A That was again one day later, that means on the 17th.

Q Did you see Lieutenant Goss again on that date at this same place?

A Yes.

Q Did you convey to him General Stroop's reaction to the failure of the execution of this order?

A Yes.

Q Major Best, always when you conferred with Lieutenant Goss, it was not down at Wallrabenstein, but Under the Oaks, is that right?

A Always Under the Oaks.

Q You have heard the testimony here relative to the shooting of the American flier, Jimmie Heathman on the 16th of March, 1945?

A Yes.

Q Did you know anything about that shooting or have anything to do with it before the actual shooting?

A No.

Q Did you ever at any time while you were in Wehrkreis 12 under General Stroop, give to Lieutenant Goss or anyone else an order by you to shoot a parachuted flier or prisoner of war of any kind?

A I have only conveyed one order to Lieutenant Goss, which I had received from General Stroop.

Q That is not the question. Did you ever personally give an order of this type?

A No.

Q Major Goss, how many, if any, of these accused who are in the box here did you know prior to the end of the war?

A I knew the accused Fuehr, Number 4.

Q Just tell what your acquaintance was with him.

A Fuehr and I are fellow countrymen from Mainz and we know each other for approximately twenty years.

Q Did you know him at all during the war? That is, I mean, were you associated with him in the same unit?

A No.

Q Are there any of the other accused that you know?

A Yes, Colonel Schimm, number 3.

Q What is the extent of your acquaintance with him?

A I was introduced to him during an official meeting in 1938 for a very short time.

Q Did you know him at any time during the war?

A No, for the first time I saw him again at the prison in Wiesbaden.

Q That was after the war?

A After the war, yes, in June 1946.

Q Now, you know General Stroop. Is your acquaintance with him any more than what you have testified to here?

A No.

Q Are there any of the other accused that you know at any time before the end of the war?

A Yes, 1st Lieutenant Guse and the soldier Micholy.

Q That knowledge is as you have testified here already, is that correct?

A Yes.

Q Did you know any of the others?

2nd tk
BC follows

A No.

[illegible]
ED I

Q Major Best, referring you to Charge I and the particulars in this indictment against yourself and the others, did you conspire with any of these accused to either individually or collectively or as a principal or accessory, to do any of the things referred to in Charge I?

CAPTAIN VANCE: We object. It calls for a legal conclusion of the witness and further it invades the province of the court to decide a question which is before the court.

PRESIDENT: Objection overruled.

A No, in no way.

Q I want to ask you, Major Best, in regard to Charge 9, whether or not you conspired with Jurgen Stroop, Hans Trumler, Otto Sonann, Erwin Goss and Heinrich Matthias Michely, on or about 18 March 1945, at or near Hillrabenstein, Germany to wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Jimmie R Heathman, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich?

CAPTAIN VANCE: The same objection, if it please the court.

PRESIDENT: Objection overruled.

A No.

Q Did you participate in any way in the killing of Jimmie Heathman?

A No. May I add something else which I had forgotten before?

MAJOR MASON: No, I'll ask you questions, Major Best, unless you want to correct that last statement.

WITNESS MAJOR BEST: No, not the last one.

Q All right, Major Best, what did you forget?

A I forgot to mention that I got acquainted with Colonel Trumler while stationed at Wiesbaden before the end of the war.

Q What was the extent of your acquaintance?

A I got acquainted with Colonel Trumbo when he came to General Stroop's office one day a conference was over between General Stroop, the Q Were you at that conference? were working out ion.

A Yes. I was in the ante room, the number of persons in the room? Did you introduce yourself to him?

A I can't say this any more today, I think it was the adjutant introduced me. the largest during the time you were there?

Q That was the extent of your acquaintance? taken the first course of additional information had been received. There might be MAJOR SAUER. Do any other defense counsel have questions? That is while the school was transferred there were twelve to fifteen men left.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN SAUER: was reported that you were the liaison officer between Colonel Trumbo and General Stroop or the commanding officer of the Werewolf on the 15th of December 1944, is that correct?

A Yes. Did you remain in that capacity when General Stroop moved his And did you continue in that position until the time General Stroop moved his headquarters from Wiesbaden?

A Yes. The liaison duties would come in to Wiesbaden to the What changes were made in or General Stroop?

A I wasn't the commanding officer of the unit Werewolf any more, but General Stroop devoted me to a position of staff officer of the Werewolf. Did you ever see this happen?

Q Well, were there other staff officers of the Werewolf there could test to me.

A Yes. I'll say, Yes, I believe you said you received a telephone call from Colonel Trumbo. Was you were the representative of the Werewolf organization in General Stroop's headquarters? one call.

A What kind of message did you receive?

A I was informed by an employee of the office of headquarters that a telephone call had come in from Lieutenant Lowe, since I was

Q What were you there for then?

A I was only the liaison officer between General Stroop,

the Werewolf school and the men who were working outside.

Q What was the size — the strength, the number of persons in the

school?

A That varied.

Q What was the largest during the time you were there?

A There was a second course for men who had taken the first

course because additional information had been received. There

might be sixty or seventy and running like thirty to forty. In

the end when the school was transferred there were twelve to fifteen

men left.

Q And Lieutenant Goss was there and you were the liaison officer

between Lieutenant Goss and General Stroop?

A Yes.

Q And did you remain in that capacity when General Stroop moved

his headquarters away from Wiesbaden?

A Yes.

Q Each time Lieutenant Goss would come in to Wiesbaden to the

headquarters, would he talk to you or General Stroop?

A Normally he would come to me, but it so happened General

Stroop would see him on the stairs and take him to his office right away.

Q Did you ever see that happen?

A Whenever I was in the building, afterwards Lieutenant Goss would

come to me.

Q March 15, 1945, I believe you said you received a telephone call

from Lieutenant Goss?

A I didn't receive a telephone call.

Q What kind of message did you receive?

A I was informed by an employee of the office of headquarters

that a telephone call had come in from Lieutenant Goss, since I was not

(Testimony of Goss)

present in the office in the forenoon.

Q Well, did you get a message about what he wanted to get in touch with you?

A Yes.

Q What was that?

A First, Lieutenant Goss informed me that he had captured a flier at Hallrabenstein, and he requested orders what to do with him. He wanted to get this order at the offices under the oaks in the late afternoon.

Q Was there anything else in that message?

A No.

Q Did you go to see General Streep that same day?

A Yes.

Q Lieutenant Goss asked you what to do; he hadn't said anything about what General Streep wanted done, that is right, isn't it?

A First Lieutenant Goss knew that I couldn't give him any orders. He was to pick up the order there, the intersection under the oaks.

Q Let's not talk about what you know — he didn't tell you to go to General Streep for him, did he?

A No, I repeated the exact words of his message.

Q Then on that same day you went to see General Streep and I believe you told him that Lieutenant Goss had a flier?

A Yes.

Q Why did you go to see General Streep?

A Because I couldn't give my orders to first Lieutenant Goss what he should do with the flier.

Q Did you know what kind of orders General Streep was going to give you when you asked him about it?

A A No.

Q I believe you said General Streep said the flier should be shot, is that right?

(Blot = Streep)

A Yes.

Q General Stroop didn't tell you who to have shoot the flier?

A No.

Q Best, you remember telling exactly what the General did say?

A He said the flier has to be, it is possible he said one or two expressions, either the flier has to be killed or done away with."

Q Did he say anything else that you remember?

A No.

Q Then he left it up to you to work out the details to get the flier shot, is that right?

A Yes.

Q Now, I believe he already made a date at a certain time to meet Goss under the oaks to tell him what should be done with the flier, is that correct?

A First Lieutenant Goss had informed us in his message that he would pick up the order during the afternoon under the oaks.

Q Did you meet him in the afternoon under the oaks?

A Yes.

Q Was there anyone there except you two?

A No.

Q As best you can remember, tell the court what you told Lieutenant Goss.

A I told him the exact wording of General Stroop's order, then we discussed who of the men should be ordered to carry out the order.

Q Now when you say "we" you mean yourself and Goss?

A Yes.

Q What did you and Goss decide should be done?

A We agreed on Buhlmann.

Q How long were you with Lieutenant Goss during this conference?

A Approximately ten minutes.

Q When is the next time you heard anything in reference to this flier?

A One day later on the 17th of March.

Q What did you hear about the flier?

A First Lieutenant Goss reported that the execution of this order had not been possible.

Q Why did he report that to you?

A Because I was liaison officer to General Stroop.

Q What did you say to Goss at that time?

A My first expression was, "Then I have to tell the old guy."

Q And what else did you say to him?

A Then I asked him why the order had not been executed.

Q What else was said by you or Goss?

A Then First Lieutenant Goss gave me the reasons why it was not possible to carry out the order.

Q Did he tell you the civilian population would not permit it?

A No.

Q What did he say?

A He said that through the loss of time and interference by civilians it had not been possible to carry out the order. With interference by civilians he wasn't referring to the fact that civilians did not want to let the flier be killed, but that he as a soldier wanted to avoid giving civilians a show how that soldier was shot.

Q In other words, he did not want to commit murder with a lot of witnesses?

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Overruled.

A The reasoning was different and for this purpose I cannot answer this question directly.

Q Well, tell me any way you want to why the order was not executed because of the population.

A First Lieutenant Goss felt and acted like a soldier but the civilian population was interested in the shooting of the flier.

Q Well, how does a German soldier execute a man -- take him off in the darkness and shoot him?

DEFENSE COUNSEL: I pray the court's judgment. I think it is vastly improper even for cross examination.

PRESIDENT: Sustained.

Q Major Best, had General Stroop not given you the order that this flier was to be shot, then no such order would have been issued, is that correct?

A No, that is not correct.

Q What is correct?

A Then he would have given the order directly to Lieutenant Goss, in reply to his inquiry.

Q But on this occasion he did give you the order?

A Yes, because I informed him of the inquiry.

Q Now, that night under the oaks when you saw Lieutenant Goss, had you said, "Goss, General Stroop wants this man turned over to the Wehrmacht," then no such order would have been given, would it?

DEFENSE COUNSEL: I pray the court's judgement. The objection is based on the grounds it is a hypothetical question.

PRESIDENT: Objection overruled.

A I had no reason to lie, because as a soldier I am working as much under oath as a witness before the court.

Q Did you consider this order of General Stroop's to be a legal order?

A Yes.

Q There was no question in your mind?

A No.

Q You had no hesitation whatsoever in taking General Streep's message down to Lieutenant Gess to get the fliers shot?

A No.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q Major Best, I hand you Prosecution Exhibit 142 and ask you to look at it and state what it is after you have perused it.

A This is my statement which I made in the jail at Wiesbaden 19 June 1946.

Q Is that statement substantially correct?

A Yes.

Q What date did you make that statement?

A On the 19th of June 1946.

Q Major Best, is this the only statement you ever made regarding this case?

A No, I made a second one here in Dachau on the 5th of December 1946.

Q Did anyone read you a copy of that statement?

A No.

Q Who did you give that statement to?

A The interrogating officer of the CIC or War Crimes Group, Augsburg, took the statement along.

Q Was it regarding this matter?

A Yes, it was a little more in detail because it was in question and answer form.

Q Major Best, is the statement you made on the 19th of June 1946 and the one you made on the 5th of December 1946 the same as you testified here today?

MAJOR SARONI: That is all.

PRESIDENT: Any questions by the court. No questions by the court, the witness is excused.

(Whereupon the accused was excused and resumed his seat in the dock.)

[illegible]: If it please the court, I would like to recall Lieutenant Goos to the stand.

PRESIDENT: That is satisfactory.

ERWIN GOOS, an accused, recalled by the defense, voluntarily took the stand in his own behalf and made the following testimony through an interpreter:

[illegible] DIRECT EXAMINATION

QUESTIONS BY [illegible]:

Q Lieutenant Goos were you acquainted, before the end of the war, with any of the other accused here besides General Stroop, Micholy and Major Rauff?

A Yes.

Q Which one?

A I know Dr. Trumpler.

Q How state the nature of your acquaintance with Dr. Trumpler.

A During a visit at General Stroop's Headquarters I met Dr. Trumpler in the anteroom. I can't remember anymore whether I myself introduced myself to Dr. Trumpler or whether his adjutant Captain Kaleske introduced me to him.

Q Is that the extent of your acquaintance with Dr. Trumpler?

A That is all.

Q Do you know any of the other accused?

A No.

Q Lieutenant Goos, referring you to charge one and the particulars thereunder: Did you conspire with any or all of these other named accused either as principle or as an accessory, as leader, organizer, instigator or an accomplice, and did you formerly participate in any common plan, design or intent to commit any violations of the laws of war, or take even a consenting part therein with any of these other accused?

CAPTAIN VANCE: We object on the ground that the question calls for a conclusion of law that invades the province of the court.

(Cross-direct)

pld-1mg2
pld-1mg-6

PRESIDENT: Objection overruled.

THE WITNESS: No.

QUESTIONS BY MAJOR HARVEY:

Q Did you ever belong to any of the SS organizations outside of the joining of the Waffen SS on the 5th of October, 1944?

A No.

Q Did you ever participate in any of the crimes that have been charged generally to the SS organization generally?

A No.

MAJOR HARVEY: Your witness.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Lieutenant does give me a definition of a legal conspiracy?

DEFENSE COUNSEL: I pray the court's judgement.

CAPTAIN VANCE: He has testified as to these things. He says he is not involved in them. I want to know which ones. I want to know if he knows what he is talking about.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q What is a conspiracy?

DEFENSE COUNSEL: I pray the court's judgement. A man may deny that he is guilty of something, even if he doesn't understand the nature of what he is charged with. All he is saying is "T'aint so". He is not trying to define what he is denying. He says it isn't so. I object to all these legal questions.

CAPTAIN VANCE: That is the reason we objected to it because we realize he doesn't know what it is.

DEFENSE COUNSEL: He is denying his guilt from the witness chair.

PRESIDENT: Objection sustained.

(Recess)

[illegible]
pld-1f2-8

[illegible]

Q Do you know what a vacuum design [illegible]?

[illegible] DEFENSE COUNSEL: I pray the court's judgment.

[illegible] PRESIDENT: We will take a recess in place. [illegible]

(Thereupon the court recessed in place.) [illegible] the major cases in the

(Thereupon the court reconvened.) [illegible]

[illegible] PRESIDENT: The court will come to order. [illegible] said, the

[illegible] CAPTAIN VANDE: I withdraw the last question. I have nothing

[illegible].

[illegible] MAJOR SHEA: I have one more question, if it please the court.

REDIRECT EXAMINATION

[illegible] BY MAJOR SHEA:

Q [illegible] Yesterday, Lieutenant Dana, you were asked this question and made the following answer. "He did walk in Jap food and talked to him, is that

[illegible] that the interpreter of General Strong would be out there in the afternoon [illegible] Major Hunt transmitted to me by meeting him in this place."

[illegible] I object on the ground that it is repetitious. This had been gone over by the witness, on [illegible] by the defense and also by the prosecution.

[illegible] I want it read to him.

PRESIDENT: Objection sustained.

MAJOR SAMS: Well, sir, I haven't asked the question yet. I am just asking him if he was asked that question and if he made this answer, and then I will ask him the question, sir. I want to state to the court that this was an order that crept in yesterday afternoon and the interpreter mentioned it to me. He didn't mean that and that is why I say--

PRESIDENT: If it was an error go ahead with the question. The ruling of the court is changed.

(Cross-resumed)

QUESTIONS BY MAJOR SAND:

Q Lieutenant Goss is that the answer you intended to give?

A No.

Q Will you state the answer as you intended to give it?

A I intended to say that during the meeting with Major Dost in the afternoon I expected to get from him the orders which General Streep had given in regard to the further action about the flyer. Correctly said, the exact orders of General Streep in regard to the further action about the flyer which I had captured.

MAJOR SAND: Your witness.

REDIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Lieutenant Goss, that made you expect to receive any orders from General Streep? You heard Major Dost say that your message was to him and General Streep's name wasn't mentioned in it, isn't that?

A Major Dost, as he has testified before, was the staff officer, the liaison officer between the Werwolf School, General Streep and the men who were on the job outside. It is a matter of course that I would never go around my immediate superior, in this case Major Dost, and would always request my orders through channels.

Q On every occasion when you wanted to send something to headquarters you did go through Major Dost, is that correct?

A Whenever I wanted something I sent this through Major Dost, of course.

CAPTAIN VANCE: That is all.

MAJOR SAND: Nothing further.

PRESIDENT: Any questions by the court?

EXAMINATION BY THE COURT

QUESTIONS BY COLONEL M. MERTENS:

Q When was this meeting with Major Dost, on the 17th or 18th of March?

A I don't know, Colonel, which conference you are referring to now.

Q Did you have a meeting with him on both the 17th and 18th?

A No, on the 17th.

Q On the 17th?

A Yes.

Q The order you got on the 17th, did you include that to mean the flyer that was killed on the 18th?

A In principle I had two orders. For one thing I had the direct order from General Smoop, "All flyers who fall into my hands to have shot." I had a second special order which was referring to the first case in which I had inquired specifically what should be done with the flyer because I was of the opinion that this flyer first had to be interrogated. Based on my inquiry to General Streep, Major Best transmitted to me under the oaks General Streep's order to shoot this man. But this first flyer has not been shot due to the interference by civilians and this has been reported to General Streep by Major Best. The reply respectively, whatever General Streep said to Major Best about this incident Major Best passed on to me on Saturday and this may be informed me that we had to expect an investigation on account of the disobedience of General Streeps orders.

Although my excuse had very good reasons, nevertheless an investigation was supposed to be started against me.

Q Heathman was shot on the 18th, wasn't he?

A Yes.

Q Did you get an order on the 18th from Major Best to have Heathman shot or done away with?

A No.

Q You didn't communicate with Major Adut in any way between two o'clock in the afternoon and the time the man was shot?

A No.

(One recess)

PRESIDENT: No further question. Take your seat in the dock.

(Thereupon the accused was excused and resumed his place in the dock.)

MAJOR SAEDN: Micholy.

PRESIDENT: Have you any idea how long this witness will take?

DEFENSE COUNSEL: I think he will take three or four minutes. It will be the same type of question that was asked of Gad.

LAY MEMBER: Are you going to put it in the same form again?

HEINRICH MATHIAS MICHOLY, an accused, recalled by the defense, voluntarily took the stand in his own behalf and made the following answers statement through an interpreter:

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAEDN:

Q Did you know any of the accused here before the end of the war other than Stroop, Best and Gene?

A No.

Q You have read over charge one and the particulars thereunder?

A Yes.

Q Did you get together, plan, conspire with any of these other accused to commit any kind of a war crime whatsoever?

CAPTAIN VANCE: We object on the grounds previously stated.

PRESIDENT: Objection overruled.

THE WITNESS: No.

QUESTIONS BY MAJOR SAEDN:

Q I understand that you didn't belong to the SS until November, 1944, is that correct?

A That is right.

Q Did you ever commit any of the crimes that have commonly been charged to any of the named organizations in charge number two?

CAPTAIN VANCE: I object on the same grounds stated previously.

PRESIDENT: Objection overruled.

(Micholy-direct)

THE WITNESS: No.

MAJOR SAX M: Your witness.

CAPTAIN VANCE: No questions.

PRESIDENT: No questions by the court. Take your place in the dock.

(Thereupon the accused was excused and resumed his place in the dock.)

PRESIDENT: The court will recess for thirty minutes.

(Thereupon the court recessed at 1455 hours.)

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(Thereupon the court reconvened at 1535 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Mr. Frost, who is absent sick, all of the accused, the reporter and interpreter, are present.

Let the record show that the accused Best has resumed the witness stand.

MAJOR SAXON: If it please the court, Dr. Rau desires to examine Best in behalf of General Stroop.

GEORG BEST, an accused, voluntarily resumed the stand in his own behalf and continued to make an unsworn statement through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q Mr. Best, when did this SS Major that was shot at by an American flyer die?

A February 15, 1945. On the day he was wounded.

Q Was there any other relationship between you and this other SS Major besides a regular comradely one?

A No.

Q Is it correct that your father died in the course of an air raid attack?

A Yes.

Q When was that?

A On the 27th of November, 1944.

DR. RAU: Thank you.

PRESIDENT: Has the prosecution any questions?

PROSECUTION: May it please the court, the prosecution moves to strike the answers to the questions that have just been propounded by Dr. Kuh, and we make this motion if it is the position of the defense that they thereby were seeking to prove reprisal by way of revenge. If that is what they sought to prove, then we move to strike the answers to the questions that were propounded.

DEFENSE COUNSEL: I am not sure just why Dr. Kuh did ask the questions, but I do not think we are called upon to state just why the evidence is offered. We are offering it for such value as the court may give to it and for such reasons we may deem best on argument at the end of the case we make for it.

PRESIDENT: The motion to strike is overruled.

CAPTAIN VANCE: No questions by the prosecution.

MAJOR SAXON: Nothing further by the defense.

PRESIDENT: No questions by the court. The witness will take his place in the dock.

(Whereupon the accused resumed his seat in the dock.)

HANS GUNTHER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your name.

A Hans Gunther.

Q Where do you presently reside?

A I am an internee here in camp.

Q You have previously testified in this case in behalf of the prosecution, have you not?

A Yes.

Q What was your position in Wehrkreis No. 12 in the Spring of 1945, up until the end of the war?

A Ia Officer--operations officer--with the Higher SS and Police Officer.

Q Were you acquainted at that time with Major Best, one of the accused here?

A Yes.

Q Do you know whether or not Major Best made application to transfer out from under the command of General Stroop during that Spring?

A Yes, I was in the beginning of March, 1945, Colonel Hansen called Q Was that transfer being worked upon from several sources during that Spring time? was in action in the vicinity

[illegible] the transfer was worked on by Colonel Schluss."

[illegible] Colonel Wiesen told me that [illegible] when [illegible] possibly be carried out, and that he had appointed [illegible] officers to investigate the facts in the case. The next morning, Colonel Wiesen informed me that that night before the conversation had taken place between himself, Colonel Wiesen, and the higher SS and police leader, General Krueger, and that in the course of that conversation General Krueger had [illegible] Colonel Wiesen [illegible] had carried out [illegible]

Q Mr. Gunther, do you or do you not know what disposition was made by General Stroop regarding some 50 Volkssturm near Mainz who had refused to obey an order of General Stroop's?

DEFENSE COUNSEL: My objection, may it please the court.

PRESIDENT: The objection is overruled.

QUESTIONS BY MAJOR SAXON:

A I do remember.

Q What disposition was ordered regarding those 50 Volkssturm by General Stroop?

A One night in the beginning of March, 1945, Colonel Niemann called me up and he informed me that he had a telephone order from General Stroop that 50 Volkssturm men who were in action in the vicinity of Mainz were to be shot promptly for mutiny and cowardice before the enemy. Colonel Niemann told me that that was an insane order which couldn't possibly be carried out, and that he had appointed some officers to investigate the facts in the case. The next morning, Colonel Niemann informed me that that night before the conversation had taken place between himself, Colonel Niemann, and the higher SS and police leader, General Stroop, and that in the course of that conversation General Stroop had asked Colonel Niemann why that order hadn't been carried out yet. In that

same day, Colonel Niemann also told me that investigations had shown that these Volkssturm men had had neither service records nor any papers, no uniform or insignia, nor any weapons of any sort, and that for that reason they had refused to meet the enemy under those conditions. Upon that, General Stroop told Colonel Niemann that he apparently had been misinformed by the gauleiter.

MAJOR SAXON: Your witness.

CAPTAIN VANCE: No cross-examination.

PRESIDENT: No questions by the court.

DR. WACKER: Might I ask one question?

DIRECT EXAMINATION (Continued)

QUESTIONS BY DR. WACKER:

Q When you said that he had been misinformed, who did you mean by "he"? Did you mean General Stroop, or did you mean this Colonel Niemann?

A General Stroop wanted to justify his giving his order by saying that he had been misinformed by the gauleiter.

PRESIDENT: The witness is excused.

(Whereupon the witness is excused and withdrew.)

FRIEDRICH SCHLUME, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your name.

A Friedrich Schlume.

Q You have testified heretofore in this case on behalf of the prosecution, have you not?

A Yes.

Q You are acquainted with the accused Major Rost?

A Yes.

Q Just what was your position in General Stroop's command in the spring of 1945?

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A I was chief of staff of the Allgemeine SS and chief of the personal office.

Q Do you know whether or not Major Best had made application, on some different occasions throughout the spring of 1945 to be transferred from out from under the command of General Stroop?

A Many times Best stated to me personally that he would like to get away from this headquarters.

Q Was he dissatisfied and unhappy in the role that he played in General Stroop's command?

A (The answer was physically stricken from the record by order of the President.)

MAJOR GOLDFARB: I ask that be stricken from the record as not being responsive to the question.

PRESIDENT: Motion sustained.

QUESTION BY MAJOR SAXON:

Q Just state, Colonel Schluss, whether or not Major Best himself was unhappy and dissatisfied with the duties he performed in General Stroop's command.

A Yes. He never felt at home in this staff.

Q Did General Stroop give Major Best any authority or any command function of any kind?

A Best was the personal technical advisor in matters concerning W. He didn't have any power of command as such.

MAJOR SAXON: Your witness.

CROSS EXAMINATION

QUESTION BY CAPTAIN MAGEE:

Q Why was Major Best unhappy in General Stroop's command?

A One time about Christmas he had a very severe personal difference with General Stroop.

Q Any other reason why he was unhappy?

QUESTIONS BY MAJOR MARKEY: There besides General Stroop and Lt. Gorsi

Q Do you know whether or not Lt. Goss made application for transfer from [redacted] Lt. Gorsi efforts to transfer from [redacted] out [redacted] voluntarily told [redacted] that he was treated very poorly by Stroop and that he would like to get back to the regular army.

[redacted] your witness.

CAPTAIN WEBER: Nothing further, may it please the court.

PRESIDENT: No questions by the court: the witness is excused.

(Whereupon the witness was excused and withdrew.)

[redacted], called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your name.

A Elso Koschun.

Q You have previously testified here in behalf of the prosecution, have you not?

(REMAINDER-Direct)

A Yes.

Q What was your position in Wehrkreis XII in the spring of 1945?

A I was secretary to Major General Streep.

Q Do you recall whether or not sometime in the spring of 1945 you happened to be in General Streep's office at a conference between he and Lt. Gees?

A Yes.

Q Can you place approximately when that was?

A It was in the beginning of 1945.

Q Will you just tell the court what the substance of the conversation between General Streep and Lt. Gees was that you overheard there?

A General Streep said to Lt. Gees, "You know what the treatment of parachuted fliers is supposed to be. That also is one of the tasks of the Werwolf."

Q Was anyone else there besides General Streep and Lt. Gees?

A No.

Q Do you happen to know about Lt. Gees' efforts to transfer from out from under the command of General Streep?

A No.

MAJOR SAXON: Your witness.

CAPTAIN WAECK: No cross examination.

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

PRESIDENT: Court will recess until Monday morning at 9 o'clock.

(Whereupon the court recessed at 1650 hours.)

Court

(18)

MILITARY GOVERNMENT COURT

CASE RECORD

Pages 1090 - 1169

Case No. Superior Orders

GENERAL MILITARY COURT

Place DACHAU, GERMANY

Date 17 FEBRUARY 1947

Prosecutor Lt. Col. Dwinell

Defense Counsel Lt. Col. Berman

Interpreters Rudolf M. Nathanson
Herbert B. Rosenstock

Reporters S/Sgt William F. Jones,
Patricia Stewart, Evelyn Cohen,
Paula Silverman, Sally Rose Hayett,
Peter L. DiCurti

WITNESSES:

WILHELM HOEHLER

JOSEF KRAMER

ALFRED RICHARD ERNST

ARTHUR FUEHR

ACCUSED: JURGEN STROOP, et al

RECORD OF TESTIMONY

in trial of

THE UNITED STATES Versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

17 FEBRUARY 1947 Pages 1090 - 1169

TESTIMONY

	Direct	Cross	Redirect	Recross	Court
WILHELM HOEHLER	1092	1114 1130	1130 1141		
JOSEF KRAMER	1132	1134	1135		
ALFRED RICHARD ERNST	1137	1139			
ARTHUR FUHRER	1141				

EXHIBITS

No.	Description	Marked	Received in Evidence
D-3	Statement of Burgomeister of Dudweiler	1090	1091
D-3-A	English translation of D-3	1090	1091
D-4	Statement of Pauline Scherer	1090	1091
D-4-A	English translation of D-4	1090	1091
D-5	Statement of Therese Schichtel	1090	1091
D-5-A	English translation of D-5	1090	1091
D-6	Statement of Heinrich Holzer	1090	1091
D-6-A	English translation of D-6	1090	1091
D-7	Statement of M. Weber	1090	1091
D-7-A	English translation of D-7	1090	1091
D-8	Statement of Liell Shulrat	1090	1091
D-8-A	English translation of D-8	1090	1091
D-9	Statement of Christian Peoples Party of the Saar	1090	1091
D-9-A	English translation of D-9	1090	1091

EXHIBITS (Continued)

No.	Description	Marked	Received in Evidence
D-10	Statement of Ernst Simon	1090	1091
D-10-A	English translation of D-10	1090	1091
D-11	Statement of Ludwig Brueckner	1090	1091
D-11-A	English translation of D-11	1090	1091
D-12	Statement of Peter Schmidt	1090	1091
D-12-A	English translation of D-12	1090	1091
D-13	Statement of Otto Gillenberg	1090	1091
D-13-A	English translation of D-13	1090	1091
D-14	Statement of Widow Anna Michely	1090	1091
D-14-A	English translation of D-14	1090	1091

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the court, let the record show that all members of the court; all the members of the prosecution; all the members of the defense, except Dr. Treat, who is absent sick; all of the accused; and the reporter and interpreter are present. There is a new reporter to be sworn.

PRESIDENT: The Court has appointed Sergeant William Jones as court reporter. He will be sworn.

(Whereupon Staff Sergeant William F. Jones, U. S. Army, was sworn as court reporter.)

PRESIDENT: Let the record show that Colonel Robertson has advised the President of the Court that he has read all the testimony which transpired in Court on Thursday, February 13th, on which day he was properly absent from court.

MAJOR SAXON: May it please the court, as the only additional evidence that will be offered on Charge IX, the defense now desires to present evidence in the form of certificates in behalf of the accused Michely. It has been stipulated between the defense and prosecution that were these persons here they would testify as their certificates indicate.

PROSECUTION: It has been so stipulated.

MAJOR SAXON: These certificates, for the purpose of identification, have been marked, the German starting with Defense Exhibit Number 3 and the English 3-A through Defense Exhibit 14 and 14-A.

(The documents referred to were marked Defense Exhibits Nos. 3 and 3-A through 14 and 14-A for identification.)

MAJOR SAXON: At this time the defense would like to offer them in evidence in block as Defense Exhibits 3 to 14 and the English thereof 3-A to 14-A. The defense would like to read the English to the court and we waive the reading of the German.

CAPTAIN VANCE: No objection by the prosecution.

PRESIDENT: The stipulation is acceptable to the Court. Defense Exhibits Number 3 to 14-A will be received in evidence and be attached to and made a part of the record.

(The documents heretofore marked Defense Exhibit Nos. 3 and 3-A to 14 and 14-A were received in evidence as Defense Exhibits Nos. 3 and 3-A to 14- and 14-A inclusive, are attached hereto and made a part of the record.)

PRESIDENT: Proceed.

(Whereupon the defense read Defense Exhibits 3-A to 14-A inclusive, the English translations of Defense Exhibits 3 to 14, inclusive.)

MAJOR SAXON: May it please the court, that concludes the evidence on Charge Number IX, with the exception of the right that is reserved to introduce evidence of any witnesses that we have not as yet been able to procure. Some have not shown up and we have not been able to find out why they are not here.

DEFENSE COUNSEL: May it please the court, the defense will now go into evidence with regard to Charges IV and V. The evidence will be presented together. I would like to make a very brief statement with regard to these charges.

The accused in Charge IV are Hoehler and Fuehr and in Charge V, Fuehr alone appears. The evidence will bring into the picture a man by the name of Fraundt who is not an accused. With regard to Charge IV, on the day in question, Luckard, who was the superior of Hoehler and Fuehr got an order from Trummler to "Send two men to my office." Hoehler and Fuehr reported and received certain instructions that will come out in the evidence later on. That day at about eight o'clock or so, Fraundt came back to the headquarters and said "Hoehler you come along", which Hoehler refused to do. Then Fraundt said "You must come along and tell him what the plan

is." Hoehler again refused, whereupon Luckard gave him a direct order. Hoehler went along. He sat in the back seat of the car and outside of his presence at the scene and his failure to intervene and prevent it, was all of his participation. The evidence will indicate that the firing was done by Fraundt in Charge IV. In Charge V, Hoehler is not present. The background is the same so far as orders are concerned except that they were transmitted through Breder. The participants in Charge V were Fuehr and Fraundt.

The defense will call as its first witness the defendant Hoehler.

WILHELM HOEHLER, an accused, voluntarily took the stand in his own behalf and made the following unsworn statement through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Your full name is what?

A Wilhelm Hoehler.

Q And you are an accused in this case?

A Yes.

Q What is your marital status?

A Married.

Q And have you children?

A One boy.

Q Your wife and children are living where?

A Crapberg on the Lahn.

Q What was your civilian occupation?

A I was a criminal officer in the criminal police at Wiesbaden.

Q Was that your professional life in the criminal police at Wiesbaden?

A Yes.

Q When did you first enter the Criminal Police of Germany?

A The first of January, 1938.

Q How old were you at that time?

A Twenty eight.

Q What was your civilian occupation before that?

A I was an order police.

Q And when did you become a member of the order police?

A On the fourth of April 1929.

Q How old were you then?

A Eighteen.

Q Now in the year 1944 with what organizations were you connected?

A I was a member of the criminal police but I was on detached duty with the secret state police at Wiesbaden.

Q During the time that you were on detached duty with the Gestapo, where did you receive your pay?

A I was paid through the criminal police and I was promoted through them.

Q Now at any time was anything done or said about your transfer from the criminal police to the state police?

A Yes.

Q And what happened to that?

A I was requested on several occasions to ask voluntarily for a transfer to the secret state police.

Q What did you do about it?

A I refused to do so because I was not interested in these duties.

Q In addition to being paid by the criminal police and in being promoted by the criminal police, from what organization was your pass and identification issued?

A I had identification papers from the criminal police, a number from the criminal police and also my pistol was from the criminal police.

Q This detail from the criminal police to the Gestapo, do you know how that took place?

A Shortly after the beginning of the war, around October, 1939, I was put on duty from the criminal police at Kassel to the Gestapo at Kassel, together with five other comrades and one criminal commissar.

Q Was that done as the result of any action by you that you know of?

A No.

Q Which of the accused did you know before the end of the war?

A Somann, Trummler and Fuehr.

Q What was the extent of your acquaintance with Somann?

A I saw Somann three or four times because his headquarters was next to ours.

Q Did you ever talk to him?

A No.

Q Did he ever talk to you?

A No.

Q Did you ever have any business of any kind together?

A No.

Q How well do you know Trummler?

A I saw Trummler only once when I reported to him after this particular incident.

Q Outside of that one report, did you ever have any other contact with him?

A I have only seenhim.

Q You have never talked to him otherwise?

A No.

Q Were you ever present at any meetings in Trummler's office?

A No.

Q Were you ever present at any meetings in Somann's office?

A No.

Q How well do you know Fuehr?

A Fuehr was a driver in our office and I got acquainted with him while I was attached with the office.

Q You have read Charge [illegible] have you not, Mr. Roehler?

A Yes.

Q You know what the contents of that charge is?

A Yes.

Q Are you guilty of any of the things that Charge I states that you did?

CAPTAIN VANCE: We object. That calls for a legal conclusion and invades the province of this court.

PRESIDENT: The objection is overruled.

THE WITNESS: No.

QUESTIONS BY DEFENSE COUNSEL:

Q Coming down to Charge II, do you know that that charges you with being a member of criminal organizations, do you not?

A Yes.

Q Do you know what the names of those criminal organizations are?

A Yes.

Q Name one of them.

A Secret State Police.

Q Were you a member of the Secret State Police?

A No.

Q What is the next one?

A The SS.

Q Were you a member of the SS?

A No.

Q What is the next one?

A The SD.

Q Were you a member of the SD at any time?

A No.

Q What is the next one?

A Leadership Corps.

Q Were you ever a member of the Leadership Corps?

A No.

Q Were you at any time ever a member of these four organizations whose names you have mentioned?

A No.

Q And your contact with the Gestapo was just the fact that you were sent there to work and not through membership, is that right?

A Yes.

Q What did your work consist of?

A I worked on violations of contracts.

Q Violations of contracts by whom?

A By East laborers, Russian laborers.

Q What do you mean by that?

A When we received a report that these men refused to work or had left their working place without permission, I had to take action.

Q What action?

A There were various possibilities.

Q Well, tell them.

A Oral warning, imprisonment up to three days, or a transfer to a camp for labor education.

Q Who did all of that. Did you do it?

A I could only make the application or request. I couldn't make the application. I could only make the proposal for the application.

Q Your work consisted, did it not, of investigations of alleged offenses by European laborers brought into Germany for work, is that it?

A Yes.

Q And when you received word of some violation by these people, your job was to investigate and make a report, is that it?

A Yes.

Q And the same thing was true if you heard a complaint that the German employers were abusing the employees, is that true?

A Yes.

Q What authority did you have outside of making investigations and reports?

A None.

Q Who were your immediate superiors?

A At the end Criminal Councilor Luckard.

Q When did Luckard become your superior?

A In the Fall of 1944.

Q When in the Fall?

A It might have been late Summer too.

Q Well was he your superior on October 19, 1944?

A Yes.

Q Who else?

A The next one was Government Councilor Breder at Frankfurt, Main.

Q Who was he?

A He was in charge of the Gestapo at Frankfurt, Main.

Q Who was your next immediate superior?

A Next to Luckard there was also my immediate superior the Criminal Councilor Kramer at the Headquarters of the Criminal Police at Wiesbaden.

Q Kramer was your superior in the Criminal Police?

A Yes.

Q And Luckard and Breder were your superiors while you were working with the Gestapo?

A Yes.

Q Who was the man by the name of Reichhardt

A He was an official of the Gestapo Headquarters at Wiesbaden.

Q Who was Breder's superior?

A Trumpler.

Q Is the name Breder?

A Yes, Breder.

Q So far as you know, who was Fuehr's superior?

A Criminal Councilor Lueknard.

Q And on top of Lueknard, whom?

A Breder.

Q On top of Breder whom?

A Trumpler.

Q Now coming down to October 19, 1944, where were you on that date?

A On that day I worked overtime and after office hours I was still present at Headquarters.

Q Was that the day you had some connection with an American flyer?

A Yes.

Q What was your first knowledge of contact with him?

A At approximately 1930 in the evening I was just at the permanent offices, that is, the office which is occupied all the time, next to the entrance, when the Criminal Chief Assistant Fraundt appeared.

Q Let's stop there -- was that the office where you normally did your work?

A No.

Q What were you doing there?

A I don't know exactly anymore today.

Q What were you doing in headquarters at that time of night?

A I had so much work to do that I couldn't take care of this during regular office hours.

Q Were you actually engaged in something at that time?

A At our permanent office room there was a certain book in which certain names had to be entered and for this reason it was necessary for us to go to this office frequently.

Q It was about 1930 when you say Fraundt appeared, is that correct?

A Yes.

Q Take up the story of what happened from that point and tell it slowly so I can interrupt once in a while.

A Yes. Fraundt said approximately the following: "Wilhelm, get ready, we have to bring an American flier to Oberursel."

Q Did you know where Oberursel was?

A Yes, near Frankfurt.

Q Did you know what it was?

A Yes, it was a prisoner of war camp.

Q After he said that to you, what next?

A I didn't like this at all because I wanted to keep on my work, so I told him, "That is none of our business. That has to be taken care of by the Wehrmacht." Well, he realized I didn't want to go along. He

took me on my arm and took me out of the room to the hall in front of it. When we were out of hearing by the official who was on duty at the permanent office room he told me the following: "We have to shoot the flier. Trummler has ordered that a third man should go along." Since I didn't like this at all, to be present at the execution of a human being and realising furthermore that there was no direct order for my person and that it was up to Fraundt to pick up a third man, I refused to go along with him. Even when he told me that nobody else but me was left in the house I stuck to my refusal because I thought there was only a pretense on his part to induce me to go along.

Q Had you had any talk with Trummler that day?

A No.

Q Was Luckard about this flier?

A No.

Q Or with anybody else?

A No.

Q This talk with Fraundt was the first you heard, is that correct?

A Yes.

Q You told Fraundt you wouldn't go, what then?

A Fraundt then left, he returned to the permanent office room soon after I arrived there

Q What did you do between the time you returned and the time you went back to the office?

A Presumably I continued on my work which I had started before.

Q Yes?

A As soon as I entered the room again Luckard came running down the stairs and already from far away in an irritated voice he called to me, "You are going along." Since this was now a direct order for my person I got ready to go along. Then Fraundt and I left headquarters together.

Q Where did you pick up Fraundt. You said a while ago that Fraundt left.

A It seems Fraundt went upstairs and informed Luckard.

Q Yes? Now, up to that point had anything been said to you more than what Fraundt told you -- that the flier was to be shot?

A No.

Q What time of night was it when you left the office with Fraundt?

A It must have been 8:00 o'clock because the official on duty at the permanent office room is relieved always at 20 o'clock and the old man from the daytime was still on duty at that time.

Q Up to that point did you know where the American flier was?

A No.

Q When did you first find out that there was an American flier anywhere within your neighborhood?

A When I leftwith Fraundt he told me, "We go over to Trummler to pick up the flier there."

Q What happened?

A We walked over then to Trummler's headquarters. On the way over Fraundt told me how the matter should be handled. According to this the car should stop on the way to Frankfurt and under the pretense of some motor trouble the flier should be induced to leave the car. Then, outside the car he should be shot.

Q Was anything said up to that time as to who was to do the shooting?

A He said only "we" but before that he said, "You have just to go along. We will take care of everything else."

Q Was anything said before you left the police station as to what your participation was to be?

A Only that I had to go along because he said, "You just have to go along, we will take care of everything else."

Q Then on the way over to pick up the flier you were told what the plan was?

A Yes, I assumed the way it was told to him by Trummler.

Q I want you to testify only to what you know. Why didn't you refuse to go along?

A Because that was a direct order.

Q What did you do then?

A We then entered Trummler's headquarters and there we found the American sitting in one room on a chair. He was handed over to us and then we left headquarters with him.

Q What happened after you left headquarters?

A Since it was clear right from the beginning that I did not have to participate in the execution I entered the car first and took my seat on the left back seat. Then the American entered and took the seat on my right.

Q In other words, you and the American were in the back seat?

A Yes. Fraundt, as the leader of the detail, took the seat next to the driver, in front.

Q Who drove?

A Fuehr.

Q What happened?

A Then we drove in the direction of Frankfurt. On the way civilians brought to our attention that there was an air raid alarm and a short while later the car stopped. The lights were turned off, Fuehr left the car and started to work on the car on the left side, with a flashlight.

Q What did you actually see him do?

A He lifted the motor cover, that is all I could see.

Q What was the next thing?

A Then he came back to the left door and said something to Fraundt.

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Q What did he say?

A I don't know that.

Q What happened then?

A Then Fraundt left the car, too.

Q From what side?

A On the right side of the car.

Q What did Fuehr do?

A Fuehr went back to the cover of the motor.

Q Did you actually see him go there?

A Yes.

Q Now, Fuehr was back to the left side of the motor and Fraund was out of the car on the righthand side. What next?

A Then both of them returned, Fuehr to the left door of the car, Fraundt to the right door of the car. Fraund asked the flier to leave the car. The flier went up immediately.

Q Wait a minute. How did he ask him to leave the car?

A "Get out, get out."

Q With words and motions, is that what you mean to say?

A Yes, he couldn't speak English. And then the flier left the car through the right door of the car. As soon as he left the door of the car several shots were fired.

Q At the time the shots were fired, where were you?

A I was on my seat inside the car.

Q Where were you when you started this ride, in which part of the rear seat were you when you started on this ride?

A The left.

Q Where were you when the flier got out of the car?

A Left.

Q Where were you sitting when the shots were fired?

A On the left, in the back.

Q You stated there was a blackout at the time the car stopped?

A Yes, it was very dark.

Q Do you know whether or not that blackout was in effect at the time the shots were fired?

A Yes, our lights were turned out and otherwise there was no other light.

Q Now, at the time the shots were fired, you were still seated in the same place that you were when you started out?

A Yes.

Q Was this a four door car?

A No, two doors. It was a two door car. On the left side you could not leave the car from the back side because the front seat couldn't be moved far enough against the wheel.

Q Fraundt left the car from the right door, that is true, isn't it?

A Yes.

Q The flier left the car through the same door that Fraundt left, is that what you said?

A Yes.

Q How long was it after the flier left through that right front door that you heard the shots?

A Immediately. He just left the car and as soon as he was outside.

Q Do you know what kind of a pistol Fraundt had?

A Walther PPK.

Q Was that an automatic or single action pistol?

A Automatic.

Q Did you see who fired the shots?

A No, first of all it was dark outside.

Q I didn't ask you why. I just ask you to answer my question.

A No.

A No.

Q Where was Fraundt the last time you saw him?

A On the right door of the car, when he looked into the car and asked the flier to get out.

Q How far would he have been from the car at that time?

A He bent his whole upper body into the car.

Q In order for the flier to get out did Fraundt have to pull his head out of the car?

A Yes.

Q Do you know whether Fraundt stayed there or moved between the time he stuck his head in and the time the shots were fired?

CAPTAIN VANCE: We are going to object to that question. He said "from the time he shot the flier" and this witness has not testified he knew who shot the flier."

DEFENSE COUNSEL: I will reframe the question.

QUESTIONS BY DEFENSE COUNSEL:

Q Do you know whether Fraundt moved between the time you said he put his head into the car and the time you heard the shots fired?

A I don't know. I didn't see what happened outside.

Q Where was the last time you saw Fuehr?

A On the left door of the car.

Q You said at one time Fuehr had a flashlight on. Did he still have the flashlight on the last time you saw him?

A When he looked into the car he didn't have the flashlight anymore. He might have had it, I don't know.

Q Could you see anything by the flash of the pistol shots?

A The moment the flier left the car and I knew now it would happen very soon I looked in the other direction.

Q So that actually you didn't see who fired the shots, whether it was Fraundt or Fuehr or both, did you?

A No.

Q But you did hear several shots. Now, how much of an interval of time elapsed between the shots you did hear?

A I don't know this anymore today.

Q Could you tell from the sound of the fire whether the firing came from more than one gun, more than one pistol, or were several successive shots from the same pistol fired?

A According to the sound I don't know. As far as I know, the sound is the same from all pistols.

Q In one of your statements you said that Fuehr did the shooting as well as Fraundt. What is the basis of that statement you made?

A Next morning Fraundt dictated to me a report. In this report he said that he as well as Fuehr had done the shooting.

Q And was it on the strength of what Fraundttold you to put in the report that you made the statement that Fuehr as well as Fraundt did the shooting?

A In my own statement I said I didn't see it but that it was my assumption based on these facts.

Q You have only mentioned one fact so far and that was the report that Fraundt dictated. What are the facts?

A Before that Fraundt had said "You only have to go along, we take care of everything else."

Q So upon these two facts you base your statement that Fuehr as well as Fraundt did the shooting, is that correct?

A Yes, and then several shots had been fired and I couldn't determine whether they came out of one or two pistols.

Q Do you know what kind of pistol Fuehr had?

A He had the same duty pistol as all of us.

Q Were they all these automatics?

A Yes.

Q The shots were fired. What happened then?

A Because the flier was lying right on the side of the road Fraundt and Fuehr took the flier over to a ditch.

Q You saw the flier on the ground, did you not, before he was picked up?

A Yes.

Q Describe his position on the ground.

A Lying there, stretched out. His feet were right next to the door of the car. The door was still open.

Q If you were to draw a line from the right front wheel to the right rear wheel, an imaginary line, how far would the flier's feet have been from that imaginary line as the car stood at the time of the shooting?

A Perhaps one meter.

Q The body of the flier was removed and placed in a ditch you say?

A Yes, on a little hill.

Q Was any effort made by anyone to ascertain whether the man was dead?

A He was dead. There was no sign that he was still alive.

Q After his body was brought to the side of the road, what then?

A Then, in accordance with our orders we rode to the Rural Policeman who was in charge of that area.

Q You say "in accordance with our orders". What orders?

A Fraundt had told me that Trummler had given this order.

Q What order?

A That we should ride to the Rural Policeman, should inform him of this incident, so that he could take care of the burial of this flier.

Q You heard the witnesses testify about the car coming up and talking to the Gendarme and how the arrangements were made to bury the flier. Remember that?

A Yes.

Q Was that about the way it happened?

A Yes, only with one difference.

Q What was the difference?

A That not Fuehr, as the witnesses have stated, went into the house to the Rural Policeman, but I did.

(Hoehler-direct)

end Ta 166
srh fole

President - the Court will recess for 30 minutes

(whereupon the court recessed at 1000 hours.)

A (Whereupon court reconvened at 1035 hours.)

Q PRESIDENT: Court will come to order. Which of that door?

A PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Trumpf, and who is absent sick, all the accused, the reporter and interpreter are present. The end of the last were approximately at the level of the

WILHELM HOECHLER, an accused, volunterily resumed the stand in his own behalf and continued to make an unsworn statement through an interpreter as follows: whether or not that door on the right-hand side had a

PROSECUTION: May it please the court, let the record show that the accused Hoechler has resumed the witness stand.

Q You last were DIRECT EXAMINATION (Continued) testifying on the

QUESTIONS BY DEFENSE COUNSEL: that the door on the right-hand side was

Q From the time you entered the car in front of Traumlee's the headquarters until the time the shots were fired, did you at any time leave that automobile? ible for Hueber to have fired without going

A No. around the car, either to the front or around the rear of the

Q During the time all these events took place as you have described them, did you at any time fire your weapon? around the it

A For No. ...ulation.

Q Now, you stated before the recess that the flier was lying flat, with his feet about one meter from the car. Can you tell the court what kind of angle was made by his body in the car, -- was it a right angle, an obtuse angle, or what kind of an angle? flier from

A A right angle.

Q Now, in order for Fraundt and the flier to get out of the car, the right front door had to be opened. Can you tell the court whether or not that door remained open or was shut after the flier had left the car and before the shots were fired?

(Hoehler-Direct)

A The door remained open.

Q Can you tell the Court the approximate width of that door?

A 80 centimeters to one meter.

Q What was the approximate position of the flier's feet with respect to the extreme outer edge of the door after it was opened and stayed open?

A The end of the feet were approximately at the level of the edge of the open door.

Q Do you know whether or not that door on the righthand side had a pane of glass in it?

A Yes.

Q The last you saw of Fuehr was when he was standing on the lefthand side. Having in mind that the door on the righthand side was open and remained open during the shooting, and having in mind the position of the flier's feet as you described them, in your opinion, would it have been possible for Fuehr to have fired without going around the front of the car, either to the right or around the rear of the car and then come around to the left?

CAPTAIN VANCE: We object to that on the ground that it calls for a conclusion.

DEFENSE COUNSEL: It does. I admit that. I am just asking for an opinion. He was there and he is describing the circumstances.

PRESIDENT: Objection overruled.

THE WITNESS: In my opinion, Fuehr couldn't have fired from there.

QUESTIONS BY DEFENSE COUNSEL:

Q From where?

A From the left side, -- and in my opinion, time was also too

short for him to run around the car.

Q All right. You have testified that later on that evening it was you and Fraundt who went to the gendarmerie to arrange for the burials. What was the next thing you had to do with this case?

A Well, do you want me to explain what happened next when we went to the gendarmerie office?

Q No. You testified that what these witnesses said was approximately what happened. What was the next thing you had to do?

A The next morning Fraundt came up to me and said Colonel Trumpler wanted a report in the case.

Q What did you do about that?

A He told me that I as a senior man present was supposed to write the report.

Q Did you?

A Well, there was a little argument and in order to finish the matter, I wrote it and he told me what I was supposed to write.

Q Having written it, who signed it?

A At first I showed it to Fraundt and then I went to Luckard and turned the report over there.

Q What happened to the report there?

A Luckard countersigned it and gave me the instructions to take the report to Colonel Trumpler's office.

Q Did you go there?

A Yes.

Q What did you do with the report?

A I handed the report to Colonel Trumpler in his office.

Q Now, you have testified, Hoehler, that you went along on this ride in this car, knowing what the result would be but that actually you did just what you said you did. You also said that you had a weapon, that Fuehr and Fraundt had a weapon. Why did you not use your gun to prevent the man's being shot?

A Freundt had this order from Colonel Trummler which he had to carry out under any condition and he would have been forced to and he probably would have shot me had I wanted to do anything against the order.", is that correct?

A DEFENSE COUNSEL: You may inquire.

Q CAPTAIN VINCE: Before I start, I would like to ask if there is any other defense counsel who wants to examine this witness. If so, I believe he can save time by letting him finish that.

Q DEFENSE COUNSEL: Thank you. Dr. Aschner would like to ask a few questions, apparently, is that right?

EXAMINATION BY DR. ASCHNER:

Q Mr. Koehler, did you at any time find out about orders according to which enemy fliers were to be shot?

A No.

Q Didn't any official conferences take place in your office?

A Yes, they did.

Q What in general was announced in the course of such official conferences? The main question is [illegible]

A Well, orders and instructions were discussed.

Q At any time was any order concerning the treatment of enemy fliers discussed? Give years.

A When did you have to do so because a member of the German QUESTIONS BY DEFENSE COUNSEL: for instructions, a [illegible]

Q When, for the first time in your life, did you hear about orders with respect to enemy fliers such as have been discussed in this case? You could also work for three and because I wonder, could you [illegible]? A One day after my arrest by the official who interrogated me.

A DEFENSE COUNSEL: Nothing further here.

You may take CROSS EXAMINATION were with the Gestapo

CROSS EXAMINATION BY CAPTAIN EAMON: ...ion of contacts with the Gestapo.

Q Mr. Koehler, I believe you had been with the police department of Germany since 1929, is that correct?

A Yes. I must so tell the court that you made a contract with...

Q At that time you were about 18 years old, so your entire business profession has been with the police department?

A I used to study to become a baker before that.

Q Since you were 18, you have done nothing else except work for the police department, is that right?

A Yes, [illegible] I am well informed as to the work of the labor office.

Q In 1938 you became a criminal official with the criminal police, is that correct?

A Yes, it was your main duty to see that there formed...

Q When did you commence to work with the Gestapo?

A In October 1939. Also that they were transfer recently.

Q Were you continuously with the Gestapo from 1939 up until the end of the war sometime in 1945?

A Yes. were about reprisals as to what action was to be...

Q About how many years was that?

A Four or five years. ...ted the punishment?

Q What did you have to do to become a member of the Gestapo?

A Make an application for membership, a petition. ...suggest

Q You could also work for them, could you not?

A I beg your pardon? ...have with the Gestapo other than...

Q You could also work for them and become a member, could you not?

A No. ...a political job, was it?

(Koehler-Cross)

...you followed the [illegible] duty until ...end of the war...

Q You were asked what your duties were with the Gestapo and you said you handled violation of contracts with the Russians. Is that what you said?

A Yes.

Q You do not mean to tell the court that you made a contract with these laborers who were imported into Germany, do you?

A Yes, the contract was made at the labor office.

Q It was kind of a one-sided contract, was it not?

DEFENSE COUNSEL: I object.

PRESIDENT: Objection overruled.

THE WITNESS: I am not informed as to the work of the labor office.

QUESTIONS BY CAPTAIN VANCE:

Q Anyhow, it was your main duty to see that these forced laborers kept working, was it not?

A Not only that, but also that they were treated decently.

Q When they failed to work, you suggested the punishment they were to receive, is that right?

A There were exact regulations as to what action was to be taken.

Q Did you not say you suggested the punishment?

A According to the regulation, if the leader himself did not make a remark on the files as to what was to be done, I would suggest what was to be done.

Q What other duties did you have with the Gestapo other than handling the foreign labor?

A No others.

Q That was a full-time job, was it?

A Yes.

Q And you followed that job from 1939 until the end of the war?

Ex 167-ars-Fob 17-7

A Yes.

Q You were asked a question, who was your immediate superior and you said a man named Luckard. To what organization did Luckard belong?

A The Secret State Police.

Q Is that the Gestapo?

A Yes.

Q To what organization did Broder, who was Luckard's superior, belong?

A Secret State Police.

Q Was that the Gestapo?

A Yes.

Q These two men were your immediate superiors in 1944 when you were in Wiesbaden, is that correct?

A Yes, and on top of that, Kramer.

Q Koehler, do you remember that while you were in Wiesbaden in confinement, being given some paper and asked to write your story telling about this incident for which you are being tried?

A Yes.

Q Do you remember who gave you that pencil and paper?

A Yes.

Q Who was it?

A Mr. Feil.

Q Did you write a statement in regard to this case?

A Yes.

Q I hand you a document which has been introduced as Prosecution Exhibit Number 20 and ask you to look at this document and tell the court if that is the statement you wrote?

A Yes.

Q Does that document contain the truth?

A Yes.

Q On the 19th of October, 1944 I believe you were working at night and Fraundt came to see you and told you you had to go over to Oberursel with him, is that correct?

A Yes.

Q I believe that you were busy working at that time and expressed a desire that you did not want to go to Oberursel, is that correct?

A Yes.

Q Then did Fraundt take you alone, where you could not be overheard, and then tell you they were going to shoot the flier? Is that correct?

A Yes.

Q Now, is that the first time that you had heard about a captured flier being in Wiesbaden?

A Yes.

Q How long have you known Arthur Fuehr?

A Since 1941.

Q After your conversation that you had with Fraundt, did you go to Dr. Trummler's office?

A Yes.

Q Did you talk to Dr. Trummler?

A No.

Q Did you talk to Dr. Trummler's adjutant?

A No.

Q Did you talk to anyone about --

A I didn't talk to anybody at all.

Q I meant to ask you, did you talk to anyone about the killing of the flier, with the exception of Fraundt?

A No.

Q When is the first time that you saw Fuehr on this night in question?

A When the two of us left the building together and Fuehr was standing outside next to his car.

Q Who was present when you took the flier into the automobile?

A Fuehr, Fraundt and myself.

Q And the flier?

A Yes.

Q You and the flier rode in the back and Fraundt and Fuehr in the front seat?

A Yes.

Q Of the three of you, who was the highest ranking man?

follows A I was.

Q What was Fuehr's position?

A He was an employee.

Q And who was Freundt?

A He was a criminal chief assistant.

Q And what was your title?

A Criminal secretary.

Q Now, during the ride, did you continue to ride in the back seat and guard the American prisoner?

A Yes.

Q All three of you had your pistols?

A We were obliged to carry a pistol at all times.

Q Now, when did you discuss that you were going to let the car break down on the way and that was when the flier was going to be killed?

A On the way from our office to Colonel Trumpler's office.

Q Who did the talking?

A Freundt.

Q What did he say as far as you can remember?

A He said the car would stop on the way and that an accident would be simulated and then the flier would be caused to leave the car because allegedly we would have to take tubes out of the car, and he would be shot.

Q Did he say where this would occur?

A On the way.

Q What did Fuehr say?

A He didn't say anything.

Q What did you say?

A I didn't say anything either.

Q At the time you picked the American up to take him on his last ride, you didn't know who would do the shooting, did you?

A All I knew is what Fraundt had told me, we would be doing it, that is all I know.

Q How many people were present when he said, "We would be doing it"?

A He himself talking to me.

Q Where was Fuehr?

A Only when I came out I saw he was standing outside by the car.

Q Did this discussion take place in the presence of the American, or before you picked him up?

A It happened at the time when Fraundt took me out of the CQ's office and informed me of the whole matter.

Q Now, from whom did you obtain custody of the American flier?

A We walked into a room and there he was, sitting on a chair.

Q In whose office?

A In the office of Colonel Trumpler.

Q Did you see Colonel Trumpler at that time?

A No.

Q Did you know him at that time?

A Yes.

Q Now, when you got out to a place you heard being testified about as the "Wandersmann," was that where the car stopped?

A Yes.

Q Who got out of the car first?

A Fuehr.

Q How long did he stay outside?

A Two or three minutes.

Q Did he ever get back inside the car until the shooting was over?

A He only leaned into the door.

Q I believe you said when he first got out, you saw him raise the hood, is that right?

A Yes.

Q Were the lights burning on the car at that time or shut off?

A At the instant the car stopped, the lights were out.

Q Now, while Fuehr was outside with the hood of the car raised, where were the other three occupants?

A Inside the car.

Q And about how long did the three occupants remain in the car until the next person got out?

A Until Fuehr came back and said something to Fraundt.

Q What did he say?

A I can't say now, I don't know.

Q About how much time elapsed between the time Fuehr got out of the car and came back and said something to Fraundt?

A About three minutes, I can't say exactly.

Q Now, who was the second person to get out of the automobile.

A Fraundt.

Q Now Fuehr when he came to speak to Fraundt was on the same side as Fraundt, was he not?

A No, on the left side of the car.

Q All right, after this conversation, Fraundt got out?

A Yes.

Q Who was the next to get out?

A Then when the two came back, Fraundt on the right and Fuehr on the left, they bid the flier to get out.

Q Did he get out?

A Yes.

Q Was this a two door automobile?

A One on each side.

Q And did the flier have to crawl over the front seat to get out?

(Meehlam - Cross)

A The seats could be tipped over.

Q Who was the fourth man to get out of the car?

A After the flier had been shot, I got out.

Q You say you didn't get out of the car until after the shooting was over, is that right?

A Yes.

Q What is your best judgment as to how many pistol shots were fired?

A I can't say any more today, might have been two or three.

Q And how many pistols were fired?

A I didn't see it.

Q I know you didn't see it — you heard it.

A Well, since Fraundt had said, "We would be shooting," and he and Fuehr were out there and the next day in this report it said he had done the shooting, I assume there was shooting.

Q What else do you believe?

A Nothing else.

Q Now, in your statement you said, "The short sequence of the third shot gave me the impression two pistols had been fired and that is the reason I believe Fuehr had also fired." Was that one of the reasons that made you believe there were two pistols shot?

A That might be. I can't say any more today for sure. It might have been one and in my opinion it was one, too.

Q Why did you put in here there were two?

A Well, on account of these reasons, that was my opinion at that time, and that is why I put it in.

Q If that was your opinion, why are you changing it here today?

A Well, if I picture the whole thing in my mind and I remember, the last time I saw Fuehr was beside the car, I can't believe he fired.

Q At the time you wrote the statement, you were under the impression you were telling the truth?

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A Yes.

Q Now, you knew exactly when you left Wiesbaden in this automobile that this American was going to be murdered?

DEFENSE COUNSEL: I object only to the characterization of the witness.

PRESIDENT: Objection overruled.

A That he was shot.

Q That he was shot or did you know he was going to be shot?

A Yes.

Q And you were the highest ranking man in that car?

A Yes.

Q And you were sitting in the back seat during that trip?

A Yes.

Q What did you do, if anything, to protect the flier from being shot?

A I was in no position to do anything.

Q And you did not do anything?

A No, the only thing I could have done was shoot my two comrades and let the flier get away.

Q You knew he was going to be shot, because you turned your head the other way?

A Yes.

Q Now, what is the first time you got out of the automobile?

A After the shots had been fired and after I heard the flier had fallen to the ground.

Q Why did you get out then?

A Well, it was dark out there and the two of them wanted to get the flier away, so I used my flashlight.

Q You assisted in getting the flier to the ditch?

A Well, he was carried.

Q And another reason, that you wanted to see if he was dead?

A No.

Q You examined him to see if he was dead, didn't you?

A I examined him and didn't see any sign of life any more.

Q Well, your lawyer asked you, and you said yes, he was dead.

A Well, he didn't seem to show any signs of life.

Q Did you feel his pulse?

A I don't know any more.

Q How many holes did you see?

A I wasn't able to determine, didn't look for it either.

Q Now, did you hear the statement read into the record as Prosecution Exhibit 65, statement by Arthur Fuchs?

A Yes.

Q (Reading) "During the middle of October 1944 the officers Wilhelm Moehler, Richard Fraundt and I were told to report to the commanding officer of the Security Police Rhein Westmark and when we got there received an order from Trummler." Do you deny you went to Trummler's office on that occasion?

A I don't deny that. That is not a fact.

Q You say you do or don't deny it?

A The only thing I can deny is when something did happen and I am not saying the truth about it.

Q All I want to ask you is did you go to talk to Dr. Trummler or did you not go there and talk to him?

A I did not go there and did not talk to him.

Q Reading further, the same exhibit, "I drove the car on the Reichstrasse from Wiesbaden in the direction of Frankfurt. About a distance of twelve kilometers from Wiesbaden I stopped the car on the above mentioned road. The point of stopping was the Wunderermann, a restaurant on that road. Both officials, Wilhelm Moehler and Richard Fraundt got out of the

car with the flier." Do you still deny you got out of the automobile with the flier?

A I am not denying anything that is true because I did not get out; you can't call it a denial because it isn't, so you can only call it a denial because it wasn't true.

Q I don't understand your answer.

A I did not get out.

Q So Fischer did not tell the truth about going to Dr. Trummler's?

A DEFENSE COUNSEL: I pray the court. This concerns the character of a witness and it is for the court to decide.

CAPTAIN VANCE: I withdraw the question.

Q Now, after the shooting, did you go with Freundt and Fischer to Mr. Eismann's house to tell him to make arrangements for the burial of this body?

A Yes.

Q How many times were you at Mr. Eismann's house?

A Once.

Q I believe Mr. Eismann was not at home, but you talked to his wife?

A Freundt was talking to his wife.

Q Now, when you found him on the road somewhere out of Wallau did the discussion take place -- strike that question. After you left Eismann's house, did you later see Eismann?

A Yes.

Q And you told Eismann he would have to make arrangements to have the body buried, is that correct?

A Freundt did that.

Q What did you say?

A I don't know whether I talked to Eismann on that occasion when I met him. There was some strong strafing and we went down and took cover under the bridge over the autobahn.

Q Did you make the report on the same day?

A Yes.

Q And you made the report and signed it?

A Yes.

Q And the reason you made it was you were the highest ranking man on this ride?

A I wouldn't have had to write the report.

Q Well, you wrote it because you wanted to write it?

A No, because I didn't want to keep arguing with Fraundt. Fraundt apparently wanted to put the work on somebody else.

Q Fraundt had a great influence on you?

A Fraundt didn't have influence on me.

Q Then you made the report because you thought it was easier than to argue?

A Yes, there were only a few things, I didn't want to argue.

Q What did you put in the report?

A I wrote that on the way to Oberursel the flier stated he wanted to relieve himself. The car was stopped, Fraundt got out of the car then Fuehr, then the flier got out of the car and he had barely gotten out of the car and started running away. Fraundt at first shot after him and upon that he collapsed to the ground dead, after a few paces.

Q Now, why did you falsify that report?

A Fraundt told me that was the way the report was to be made according to orders of Colonel Trumpler.

Q When did he tell you this?

A That morning he came to me.

Q What do you understand was the purpose of falsifying this report?

A It wasn't up to me to deliberate about that matter. After all, it was an order of the Colonel.

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Q. I am not asking you that, I am asking what you think was the purpose of falsifying this report?

A I don't know, as far as your way of thinking goes every crime, Q. It was to cover up a crime? What do you mean to call the court?

A I don't know. Order from a Colonel of the SS and therefore I [illegible] of the op[illegible]

Q You know that you and Fraundt and Fuehr murdered this man and you didn't want to put it in the report, that's correct, isn't it? Yes or no, Fraundt and Fuehr and Frauendt. You felt that no wrong deed was committed in fact what you say? Wanting is not the point here.

CAPTAIN VANCE: If it please the court, I am going to ask the witness to answer my questions. Right now we do this deed;

DEFENSE COUNSEL: I think he has answered it, and furthermore, I think this type of questioning has exceeded beyond the point of cross examination. Were you told to keep this matter a secret by [illegible]?

PRESIDENT: Repeat the question.

(Whereupon reporter read last question.

A No.

Q Are you telling the court you and Fraundt and Fuehr did not [illegible] commit a crime that night?

DEFENSE COUNSEL: I pray the court's objection.

PRESIDENT: Objection overruled.

A In my opinion it was not a crime. [illegible]

Q Hoehler, you were scared and shaking on that ride that night, weren't you? [illegible]

A Because that was not just a walk through the woods, because if a man is killed that is not such a simple matter, is it?

CROSS EXAMINATION, continued

QUESTIONS BY CAPTAIN VANCE:

Q No, I am asking you. As far as your way of thinking goes everything was all right on that night, is that what you mean to tell the court?

A There was an order from A Colonel of the SS and therefore I was of the opinion that that was a legal order.

Q I am not talking about the Colonel, I am talking about you and Fuehr and Praundt. You felt that no wrong deed was committed is that what you say?

A Yes.

Q Why did you pick the night time to do this deed?

A Well I don't know that. I only found out a short time before that that that was supposed to be done.

Q Why were you told to keep this matter a secret and not discuss it?

A I don't know.

Q Well, that is a fact is it not?

A Yes.

Q You, Praundt and Fuehr had a discussion which decided that neither of you were to say anything about this killing, is that right?

A No.

Q Who told you to keep it secret?

A Praundt told me there is no need of anybody else knowing about this.

Q You didn't tell anybody about this did you?

A No.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Herr Hoehler, do you know the difference between a presumption and personal knowledge of a fact?

A Yes.

Q Did you know the difference at the time you wrote those statements that the prosecution has put into evidence?

A Yes.

Q Now in that statement that you made--or maybe it was more than one--you put in the exact things upon which you really only had a presumption?

CAPTAIN VANCE: We object. He is leading the witness. He is putting words into the mouth of the witness.

DEFENSE COUNSEL: Wait a minute. I don't mean to. I will rephrase the question.

Q Were these statements you made based entirely upon matters which came within your personal observation or were some based on presumption?

A Assumption.

Q On this particular occasion, you held the highest rank of the three, what authority did you have over Fraundt?

A None.

Q Did you and Fraundt do the same work, normally, in your office?

A Yes.

Q What kind of work did Fraundt do?

A Fraundt had a different type of work, files.

Q During the normal course of events--your work day in and day out--did you have any authority to give orders to Fraundt?

A No. In the police it was like this: That all police officials

below the rank of Kommissar, regardless of what their particular rank was, had the same authority. By that I mean that none of them had any right to tell anybody else anything.

Q When Fraundt first spoke to you about going along did he, at that time, tell you how many people were going along?

A No.

Q When did you first find out that Fuehr was also going along?

A When I came out there and saw Fuehr standing next to the car.

DEFENSE COUNSEL: Nothing more.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q I may have misunderstood you but I want to get this. Did you say all police officials had equal powers regardless of rank?

A In practice it worked out as follows:---

Q I don't care about the word "practice". I am asking you if I understood your question and answer?

A I would have to give an explanation to that.

Q I don't want an explanation. Colonel Berman asked you a question to that effect and you answered it "yes". I want to know if I understood you correctly or not?

A I omitted an explanation in answer to that question.

Q Did you answer that regardless of rank they had equal powers?

A Yes.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Dr. Aheimer would like to ask this witness a question.

REDIRECT EXAMINATION

QUESTIONS BY DR. AHEIMER:

Q Will you please explain this matter which you have just been asked

about by the prosecutor?

A As I have said before, primarily everybody had the same authority but in such cases when some official would get a job assigned to him and some other man would be assigned to him to help him do the job then the man who got the original assignment would have authority over the others, regardless of what their ranks might have been.

Q By that do you mean to say that this was the way it worked out throughout the police or only in your office?

A In the Security Police.

Q One final question. Why did you not refuse the order of the criminal counselor Lechner to come along?

A Lechner would have been compelled to notify Colonel Trummler about this and I would then have to account for the fact and Colonel Trummler would have had me shot for disobedience of orders.

Q Were you at any time informed that the consequence of refusing an order would be?

A Yes, the maximum punishment.

Q What do you mean by that?

A That without any further trouble the man concerned would be shot in the case of an order being refused.

Q You have mentioned a while ago that in the Security Police every official below the rank of Kommissar had the same authority. How do you know that that was the case throughout the Security Police?

A Well I know it from my experience with the police. For instance, that a chief secretary could give me an order if he was the chief of some office or if he was assigned to some particular job and I was assigned to him.

Q So that is a conclusion you drew from the type of work you were doing?

(Koehler-redirect)

A Yes.

Q What was the name of the office in Wiesbaden to which you were detailed from the Criminal Police?

A State Police Branch Office.

Q Was that an independent office or was it not?

A It was not independent.

Q Well, where was the nearest independent office?

A In Frankfurt Am Main.

DR. AHRENS: That is all.

DEFENSE COUNSEL: Nothing further.

PRESIDENT: No questions by the court, the witness will take his place in the dock.

(Thereupon the accused was excused and resumed his place in the dock.)

DEFENSE COUNSEL: Josef Kramer please.

JOSEF KRAMER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name?

A Josef Kramer.

Q What is your present status?

A I am in custody.

Q Do you know a man by the name of Wilhelm Hoehler?

A Yes.

Q If he is in this courtroom will you point him out to the court?

A Number 5 (Indicating).

DEFENSE COUNSEL: Let the record show that he identifies the accused number five as Hoehler.

Q During the years 1944 and 1945 what was your occupation?

A I was in charge of the Criminal Department in Wiesbaden.

Q What does the Criminal Department mean, is that a part of the CRIPO?

A The CRIPO.

Q When did you first take charge of the CRIPO in Wiesbaden?

A On 15 July, 1934.

Q How long did you last there?

A Until August 28, 1945.

Q When did you first know Hoehler?

A Hoehler? That must have been towards the beginning of the war--1940 or so.

Q Do you know what Hoehler's occupation was?

A Yes, he was a criminal secretary.

Q Criminal secretary of what?

A Of the Criminal Police.

Q Do you know whether or not Hoehler, at any time, was detailed from the criminal police to another organization?

A Yes.

Q When and to what organization was that?

A That was shortly after we got a man from Kassel. He was then detailed to the State Police in Wiesbaden by order of the Criminal Police main office in Frankfurt.

Q Did the fact that Hoehler was detailed to the Gestapo effect his membership in the CRIPO?

A He was merely detailed there to aid them. We kept carrying him in the CRIPO and paid him and he had his identification papers from us.

Q By whom were his promotions controlled, the CRIPO or the Gestapo?

A The criminal police. The criminal police promoted him.

(Kramer-direct)

Q To your knowledge, to what organization was Koehler carried as belonging from the time you first met in 1940 until the time you last saw him in 1944?

A The Criminal Police was carrying him.

Q Do you know whether or not Koehler was at any time a member of the SS?

A He was not.

Q How do you know?

A I know that because for one thing I was in charge of his personal records and he didn't have any uniform nor any identification.

Q Up to what time were you in charge of his personnel records?

A Until the end.

Q Up until the end of the war you say that Koehler was carried always as a member of the CRIPO?

A Yes.

Q Could a man be a member of the CRIPO and the Gestapo at the same time?

A He was a member of the CRIPO, but he was detailed, he was merely detailed.

DEFENSE COUNSEL: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Why was Koehler put on duty with the Gestapo?

A Because they undoubtedly needed men.

Q How long did he stay there?

A He was there until the end.

Q How many years?

A If he left in 1940--yes, he got there in 1940--until the end of the war.

(Kramer-cross)

Q Why was he kept there so long?

A I don't know that. The reason he was detailed was because of an order from the Chief SHAEF Office in Frankfurt, yes.

Q Was it customary to keep a man on detail for an indefinite period of time with another organization?

A That happened occasionally.

Q When did Koehler get this promotion?

A That came through at least one or two years after he had already been detailed to the Gestapo.

Q Was that shortly after the 19th of October, 1944?

A That might be so.

Q Do you know why he was promoted?

A For one reason because it was his time to be promoted. It wasn't out of order. His time for promotion happened to come up.

Q Did a man get a promotion for a certain length of time in grade or was he promoted for the good work he was doing?

A Well of course he had to do work that was useful and if you had been an assistant for so and so long and you wanted to prove somebodies position in general you make him a secretary, and that is what was done to him.

Q How did you know what type of work he was doing over at the Gestapo, whether he was doing a good job or a poor job or no job at all.

A Well we could tell from his personal files what kind of work he was doing--in my opinion of course. The Gestapo was asked about this deal too, but I don't know I have to assume that much.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Do you know whether or not Koehler was at any time invited to join the Gestapo?

(Examination cont)

A Well I don't know, but I think it must have been upon orders for him to be detailed to the Gestapo. He wasn't there because he liked it. I know that from experience.

QUESTIONS BY DR. AHRENS:

Q Mr. Kramer, did you, at any time talk to Koehler about whether he wanted to be taken over by the Gestapo or not?

A Yes. That must have been about 1943. I think I was coming back from the cemetery and met him on some street of the town. He was together with his kid. I don't know why I asked this or what I asked him. "Did you want to become unfaithful/ete me?" "Don't you like my place anymore?"

Q What did Koehler say upon that?

A He had rather stay with his old outfit with the Criminal Police. That he liked to combat crime. That he would rather be there. That is the gist of it.

Q So there must have been some cause according to which he might have been transferred to the Gestapo?

A I can't say anymore what the occasion for the question was. It has been too long.

Q He was not transferred to the Gestapo?

A No.

Q You were talking about Koehler's promotion to the rank of criminal secretary. Do you still remember at what time that took place?

A I don't remember the exact time anymore. It has been too long.

Q Do you remember the year?

A It might have been 1943 or maybe up to the middle of 1944.

Q You have been asked by the prosecutor whether it might not have been immediately after the 19th of October, 1944. Now that you have just stated it was during 1943 or up to the middle of 1944, do you consider that possible?

(Kramer-redirect)

A I can't say that so exactly because I don't remember the time so well.

Q What was the usual time for German civilian servants to be promoted? I mean what particular dates of the year would it be?

A There were several days. One of them for instance, at the birthday on April 20.

Q You meant Hitler's birthday?

A Yes. But then it also happened that somebody was promoted at such dates as the first of June.

DEFENSE COUNSEL: Nothing more.

PRESIDENT: No questions by the court. The witness is excused.

(Thereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: Bring in Alfred Richard Ernst.

ALFRED RICHARD ERNST, called as a witness by the defense, being first duly sworn, took the stand and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name?

A Ernst.

Q Your full name I said.

A Richard.

Q Your name is Ernst, Alfred Richard, right name?

A Yes.

Q What is your present status?

A I am an internee here in camp.

Q Do you know Wilhelm Koehler?

A Yes.

Q If he is in this courtroom will you please point him out?

A Number five (Indicating).

DEFENSE COUNSEL: Let the record show that the witness identified Koehler as number five.

Q During the year 1944 and 1945 what was your occupation?

A Criminal Police official.

Q Where?

A At the state Police Branch office which was in Wiesbaden.

Q When did you first occupy that position?

A In 1942.

Q How long did you stay there?

A Until the end. Until the dissolution.

Q When did you first meet Koehler?

A 1941.

Q Where was that?

A In the office.

Q Which office.

A At the State Police Branch Office, Wiesbaden.

Q Can you tell the court to what organization Koehler belonged at the time you first met him?

A He came from the Wiesbaden criminal police.

Q To your knowledge was Koehler ever a member of the Gestapo?

A No.

Q How do you know?

A Because he was carrying identification papers from the Criminal Police and also his badge.

Q So far as you know, did he have any papers from the Gestapo?

A He didn't.

Q From time to time were you present at meetings in your office in Wiesbaden?

A Yes.

Q Was Koehler with you there from time to time?

A Yes.

Q At any time was there ever any discussion held at any meeting which you attended at which treatment of allied flyers was discussed?

A No, never.

Q In your headquarters would a man have a right to give orders to another man just because he held a little higher rank and for no other reason?

A I don't get it, what do you mean?

Q Do you know Arthur Fuehr?

A Yes.

Q Did you have a higher rank than Fuehr or did he have a higher rank than you?

A No, I did.

Q Did you have a right to give Fuehr orders just because your rank

was higher than his rank?

A No.

DEFENSE COUNSEL: Your witness.

QUESTIONS BY DR. AMEREN:

Q Did you know that Koehler was a member of the SS?

A Koehler was not a member of the SS.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Were you working for the Gestapo in Wiesbaden?

A Yes.

Q Did you belong to the Gestapo?

A Yes.

Q Who did Koehler work for in Wiesbaden?

A At the State Police.

Q Is that the Gestapo?

A Gestapo.

(Ernst-cross)

Q Was he there all the time that you were working for the Gestapo?

A After 1941 he was.

Q Was the Gestapo an agent of the SD?

A No.

Q Who did the Gestapo belong to?

A To the State Police Office, Frankfurt. Wiesbaden was the branch office.

Q Was that Major Breder the chief over at Frankfurt?

A Yes.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Nothing further here, sir.

PRESIDENT: No questions by the court, witness is excused.

(Whereupon the witness was excused and withdrew.)

PRESIDENT: The court will recess until 1330.

(Whereupon at 1205 hours the court recessed.)

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent sick; all of the accused; the reporter and interpreter are present.

DEFENSE COUNSEL: The defense would like to recall Hoehler for one question, with the court's permission.

PRESIDENT: Permission granted.

WILHELM HOEHLER, an accused, voluntarily resumed the stand in his own behalf and continued to make the following unsworn statement through an interpreter:

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What was the date of your promotion from assistant criminal secretary to secretary?

A 20th of April, 1943.

DEFENSE COUNSEL: You may question.

CAPTAIN VANCE: No questions.

DEFENSE COUNSEL: Questions by the court?

PRESIDENT: No questions by the court. The witness will take his place in the dock.

(Whereupon the witness resumed his seat in the dock.)

DEFENSE COUNSEL: The defense now calls Arthur Fuehr.

ARTHUR FUEHR, an accused, voluntarily took the stand in his own behalf and made the following unsworn statement through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Your full name is Arthur Fuehr?

A Arthur Fuehr.

Q You are an accused in this case?

A Yes.

Q What is your marital status?

A Married, two children, six and eight years.

Q Where do your wife and two children now live?

A They have no permanent residence. At this time, she is in Kleinludera near Fulda. She is a refugee.

Q What was your civilian occupation?

A Driver and car mechanic.

Q When did you first become affiliated with the police system of Germany?

A In April, 1937.

Q And what police organization did you then join?

A The STAPO, Wiesbaden.

Q How long did you stay with the STAPO in Wiesbaden?

A Until the end of the war.

Q What were your duties with the Gestapo in Wiesbaden?

A I myself made repairs on the vehicles; I drove out to interrogations with the officials, and I had to keep the heating system and the garden in shape.

Q In the headquarters at Wiesbaden, there were people who did the janitor work and cleaning up around the headquarters in Wiesbaden, were there not?

A Yes. Quite often I had prisoners of the police jail who helped me at my work.

Q When you first joined the police, what rank did you have?

A I was an SS Sergeant.

Q Were you a sergeant from the very beginning?

A No, I only got that after my training.

(FUHRER-Direct)O

Q How long were you a sergeant?

A I was a sergeant until 1934, until 1937. I was an unter officer, sergeant, for that period of time.

Q What rank did you hold in 1944?

A I was an SS master sergeant in 1944.

Q Was that the rank you held till the end of the war?

A Yes.

Q Outside of the Gestapo, did you belong to any other organizations?

A No.

Q Have you read the text of Charge I, in which you are named as an accused?

A Yes.

Q Are you guilty or any of the charges or accusations made under Charge I?

CAPTAIN VANCE: We object on the same ground as has been previously stated.

PRESIDENT: Objection overruled.

QUESTIONS BY DEFENSE COUNSEL:

A No.

Q How many of the accused in this case did you know prior to the end of the war?

A Five accused.

Q Who are they?

A Best.

Q Name the others.

A Koehler, Trumpler, Sommer and Stroop.

Q When did you first meet Best?

A I have known Best for 25 or 26 years, since 1925 or 1926. The last time I saw him was in 1935. That was in a transport from Wiesbaden to Dachau.

DR. WACKER: I have to object to a translation. I think it was misunderstood.

DEFENSE COUNSEL: What would you say the translation should be?

DR. WACKER: The witness said, "I saw him the last time in 1935 and then again on the transport," and not that it was translated here, "That was in a transport."

DEFENSE COUNSEL: I will straighten that out now.

QUESTIONS BY DEFENSE COUNSEL:

Q When did you last see Best before the end of the war?

A Before the end of the war? In 1935.

Q And after 1935, when did you next see him?

A On a trip from the Wiesbaden jail to over here, Dachau.

Q During those years, did you have any correspondence with him of any kind?

A No.

Q How long have you known Hoehler?

A I have known Hoehler since 1941. He was in our office.

Q Did you ever sit down to any meetings with Hoehler in which the treatment of Allied air personnel was discussed?

A No.

Q How long have you known Trumpler?

A I have known Trumpler since the time Colonel Somann left and when he was sent to the Wiesbaden office.

Q How long have you known Somann?

A I have known Somann since 1943.

Q How well did you know him?

A I had to take a teletype over to his place one evening, late in the evening.

Q Did you ever sit down to any meetings with Somann?

A. At one time, I asked him for some advice. There was a report against me around.

Q. Were you ever present at any conference that Sassen was present at in which the treatment of Allied fliers was discussed?

A No.

Q How long have you known Strong?

A I saw Strong once driving past me on Hilhalmstrasse.

Q. Was that your only contact with Strong?

A. Yes.

Q. Who were your superiors?

A. Colonial Counciler Lochard, Government Counciler Kroder, and Colonel Trumpler.

Q. Was Koehler your superior in the sense that he could give you orders?

[illegible] VARES: We object. He is leading the witness.

[illegible] COUNSEL: I ask the court's judgment. I am defining the sense in which he is supposed to be superior.

[illegible]: Objection overruled.

QUESTIONS BY [illegible] COUNSEL:

A. Yes.

Q. Who held a higher rank, you or Koehler?

A. Koehler.

Q. Coming down to the date of on or about October 19th, 1944, do you remember that date?

A Yes.

Q. It was on that date that you had spoken, or some business involving an American flier, is that true?

A Yes.

Q. What was the first thing that came to your attention, or what was

(FURTHER direct)

the first thing that happened in this episode as far as you are concerned?

A That was shortly after lunch. Fremmit came up to my apartment and said, "Put on your clothes. We will have to see Colonel Trumbler right away."

Q Where was your apartment?

A I had an official apartment right next to the office.

Q Did Fremmit at that time tell you how he was informed, or how he knew that Trumbler wanted to see the two of you?

A No.

Q After having received this message from Fremmit, you dressed, and what then happened?

A I dressed, put on my belt, and went to Colonel Trumbler together with Fremmit.

Q Did you see him?

A Yes.

Q There?

A In his office.

Q About what time of day?

A It was between 1 and 2 o'clock.

Q Who else was in the office besides Fremmit, yourself and Trumbler?

A The secretary was sitting in the anteroom to Colonel Trumbler's office.

Q Who was sitting in Colonel Trumbler's office?

A In the office, Trumbler was by himself.

Q Did you there have some talk, you, Fremmit and Trumbler?

A No. We walked in, snapped to, and reported.

Q What happened after that?

A Upon that, we received the following order.

Q From whom?

A From Trumbler.

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Q What was the order?

A As follows: "There is a parachuted flier in my office, and he will be shot on the way in the direction of Frankfurt tonight. Then he will be taken to the rural policeman in charge and he is to see to it that the man is buried."

Q Just stop there. Was the flier that you are talking about in Trummler's office at that time?

A No.

Q Was anything said as to where you would find the flier?

A No.

Q To whom was Trummler's order directed?

A To me and Fraundt.

Q In that order -- did that order tell you when you were to execute this mission?

A Yes.

Q When did he order it?

A After dark.

Q Was anything said about where it was to be executed?

A On the way to Frankfurt.

Q What happened after you got the order?

A We about-faced and walked out.

Q What was the next thing you did?

A I kept on doing my work.

Q And what was that?

A In the car, in the yard.

Q What happened to Fraundt, do you know?

A Fraundt went back to the office, too.

Q Do you know where Fraundt's office was?

A Nextdoor to Trummler's office, the next house.

(FUHUR-Direct)

Q Do you know whether or not that was the same building that Koehler worked in?

A Yes.

Q Who was Freundt's superior officer?

A Criminal Counciler Lenhard.

Q Lenhard was the superior to Freundt, Koehler and yourself, is that right?

A Yes.

Q Did you ever find out how it happened that you and Freundt were sent to Trumpler's office?

A No.

Q What was the next thing?

A I kept on doing my work, and in the evening about 7 or 8 o'clock Freundt tells me I will drive up a car to Colonel Trumpler.

Q Something was said about a plan as to how this thing was going to be done. Was that plan ever discussed with you?

A No.

Q Coming down to the evening, you were told by Freundt to have your car where, did you say?

A To the office, in front of Colonel Trumpler. I was supposed to drive it up there.

Q What is the next thing that happened, so far as you know?

A Koehler and Freundt then came out of Colonel Trumpler's office with the files.

Q You heard Koehler testify to some talk he had with Freundt about going along with you and with Freundt. Did you know anything about that?

A I didn't hear it.

Q All right, then the two men brought out the prisoner. What happened next?

(Further direct)

A Hoehler and the flier sat down in the back seat, Fraundt next to me. An air raid alarm was on. I dimmed my lights and started off in the direction of Frankfurt.

Q In your own words, tell the court just what happened.

A On the way, Fraundt whispered in my ear softly, "At the Wandersmann, stop. I will nudge you and that will be the sign."

Q Did he tell you what the nudge would be a sign of?

A He didn't say.

Q Go ahead and tell the story in your own words.

A When we were at the Wandersmann, I turned my car off, turned the motor off. I got out and did some work on the motor.

Q At that time, had you been nudged?

A Yes.

Q Go ahead.

A I went back one time and said, "How about getting me my flashlight out of the glove compartment?" He gave me the flashlight. I went out front to the motor and shortly thereafter several shots fell.

Q What were you doing on the motor?

A Well, I simulated that the car had broken down.

Q Why did you do that?

A In order not to make the facts plain to the flier.

Q How did you know what was going to happen?

A Well, I heard that at Colonel Trumbler's.

Q Did you see who did the shooting?

A I did not.

Q Did you see who got out of the car?

A Fraundt left the car with the flier.

Q Did you see whether or not Hoehler left the car?

A Hoehler remained sitting in the car.

(Fuehrer-Direct)

Q How many shots?

A Might have been two or three shots.

Q What kind of a weapon did you have?

A I had a Walther PPK, caliber 7,65.

Q What kind did Freundt have?

A He had the same pistol.

Q And Hoehler?

A The same one, too. Everybody in the office, everybody in the police, had the same type pistol.

Q What did you do after you heard the shots?

A I went around the car from the left side, around the left, saw the flier lying on the ground.

Q What happened after that?

A Freundt said, "Give me a hand. We will carry it away from the road a little bit." Upon that, Hoehler helped us with the flashlight.

Q And what happened after you put the body of the flier on the side of the road?

A I turned my car around and then Freundt said, "Now, we will go and see this rural policeman, this gendarme.

Q Who drove the car in the search for the gendarme?

A We drove to the house of the gendarme.

Q Who was driving?

A I was driving. Nobody else was driving to Wiesbaden except me. Freundt and Hoehler then went into the house of the gendarme.

Q Did you make a report of any kind to anybody about what happened that night?

A I didn't make a report, only this evening when we reported back in.

Q To whom did you report then?

A I drove Hoehler home and Fraundt and I went to Colonel Trummler's office and we reported back there according to our orders, "Mission accomplished.

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Q Was that the same day?

A That was the same day.

Q Who went back to make the report, just you and Frenzit you say?

A Frenzit and I on the same evening went to Colonel Trumbler and reported back.

Q Was Koehler with you and Frenzit at any time when you made a report to Colonel Trumbler about this case or when you received orders about this case?

A No.

Q Now, Herr Fuchs, let's go down to December of that same year. Sometime during that month you had occasion to have something to do with another American flyer, did you not?

A Yes.

Q Tell the Court the whole story about that from the beginning to the end, in your own words.

A I was changing a tire in the garage. It was about noon, shortly after twelve. Frenzit came over to me and said "We'll have to go see Trumbler." I said to Frenzit "Look here, I have to wash my hands and put my coat on." I went up to my kitchen and washed my hands and put on my coat and pistol belt.

Q Go ahead.

A We went over to Trumbler's office. Trumbler was coming up from the cellar, together with Captain Freder and he gave us the following order.

Q Just a moment. Who was Freder?

A That was Colonel Trumbler's adjutant.

Q Go ahead.

(Fuchs - Direct)

A We went up to Trumler and Freder in a military manner and upon that received the following order.

Q From whom?

A From Trumler. He said the following "There is a flyer in the office and on the way in the direction of Frankfurt he will be shot tonight and he will be turned over to the gendarmerie just like the other time and they will take care of the burial."

Q Continue Herr Fuchr.

A We about faced and then I went back to work. In the evening when it was dark, it might have been between eight or nine o'clock, -- no there is something else before this. When I got through with the car I did some work in the office. I repaired the blackout curtains and I also passed through the room the flyer was sitting in. The following people were present in that room, Miss Fine, Brentano, Captain Freder and nobody else. The flyer was sitting next to a radiator in a chair. Then Freder gave me the order to take the flyer down to the cellar. I went ahead of the flyer because we were using the rear staircase. I came down to the cellar to the cell, opened it up, lighted a cigarette for myself and gave one to the flyer too. Then I opened the window and I motioned him to close the window when he got through with the cigarette. I closed the door and went up to Freder and reported that I had taken the flyer down. Then I continued with my work. In the evening, about eight or nine o'clock, Fraundt came over to me at that time and told me to drive up to the rear entrance. Fraundt came out with the flyer and took his place in the car and then we drove in the direction of Frankfurt.

Q In this case where did Fraundt sit in the car?

A In the rear.

Q How many doors did that car have?

A Two.

Q In order to get out from the car, a person sitting in the back would have to do what or go through what door?

A He could get out at the right side only because the seat where the driver is sitting, you couldn't tip the back of the seat over because the steering wheel would be in the way.

Q With a man sitting behind the driver's seat and another man sitting in the front seat next to the driver, could anyone sitting in the back seat escape without knocking out one or both men sitting in front?

A Well, it was a two-door limousine and we had a regulation to the effect that somebody, some official, was always supposed to sit behind the driver.

Q What happened after that?

A Then Freundt and the flyer came up from the cellar and we drove in the direction of Frankfurt and I stopped at almost the same place as the last time. We all got out of the car, including the flyer. After the flyer was outside of the car, about a meter and a half away from it, I walked around to the front of the car and fired one shot. Freundt also fired.

Q At the time when you were firing was the door of the car open or closed?

A The door was closed.

Q What happened after that?

A The flyer was lying on the ground. Freundt made sure that the flyer was dead. The flyer was lying like this (indicating) and Freundt said "He is still alive" and fired another shot.

Q How many shots were fired all together?

A About four.

Q How many did you fire?

A I fired one.

Q What happened after that?

A Then we went to the gendarmerie.

Q And did the arrangements for the burial happen just as you testified in court?

A Yes.

Q Now you say that you had occasion to go to Somsen to get some advice. What was that about?

A Yes, there was one shipment of American flyers which were to be sent from the Rhine jail to the Wiesbaden jail. They had come from France in civilian clothes. We had a truck belonging to somebody privately because we didn't have an official truck in our office. I had to watch behind the truck and guard them so nobody would escape. We then drove from Rhine to Wiesbaden. The officials went into the court jail of Wiesbaden and I stayed behind with the prisoners. I talked to the flyers. One of them spoke some German. I asked him whether he was married and he said that he was and that he had two children. Then a plane passed by, a Messerschmidt, and he said that these were the ones that shot them down in France. I distributed one pack of cigarettes. Then one official came out and had the prisoners come in. As I went to the jail the director of the jail came up to me and asked me, "What is your name?". I said, "I don't have to give you my name. I don't even know you and if you want to do something about me, then go to my office and report me." Then the

(Fuehr - Direct)

flyers were sent to their cells and we drove to our office. About one hour later Criminal Commissar Knabe had me called up to his office. That was in the summer of 1944. He reprimanded me and said he would have to report the matter to Frankfurt. I then left the office and met Colonel Semann's driver.

Q Just a moment. What was he going to report to Frankfurt?

A What I did. The way I behaved toward prisoners of war. I talked to Colonel Semann's driver and he told me "Why don't you go see the boss. You can talk to him." I went to Colonel Semann and told him about the incident and Colonel Semann said "Don't worry about it, go get back to work and I'll fix it up." I didn't hear anything more about it.

Q Were you ever present at any meeting at which orders were discussed or read which had to do with the treatment of Allied flyers?

A No, never.

Q When did you first hear that there existed such orders?

A I never heard about it.

Q How do you believe or feel that what you did in connection with either of these two shootings was right?

A Well, I received the order and being an SS man ----

Q Please ask him to answer.

CAPTAIN VANCE: May it please the court, we believe that the question is being answered.

PROSECUTION: I asked if he thought he was doing right or wrong. He said "Yes" and started off on something. I want to make my examination as I have it lined up in my mind.

CAPTAIN VANCE: We think the answer should be translated. I can't speak German and I want to know what the witness said.

PRESIDENT: The reporter will read the answer.

(Whereupon the answer was read by the reporter as follows:

Answer: Well, I received the order and being an SS man ---)

QUESTIONS BY DEFENSE COUNSEL:

Q Go ahead and tell the court why you thought it was right.

A If I, as an SS man, receive an order from a Colonel then I have to assume that the order is right and for us in the SS the supreme duty for anybody in his life was obedience and everybody who receives an order has to carry it out.

Q Now prior to the first episode in October, 1944, have you had occasion to transport allied air flyers before that time?

A Yes, I took several flyers to Oberursel and also picked some up out in the country.

Q Prior to this date of October 19, 1944, what happened to every allied airman so far as you know with whom you had contact.

CAPTAIN VANCE: I don't object to going into that but I just want to say that if he opens up the field I want to put him on notice that we will introduce evidence as to what happened before these cases.

DEFENSE COUNSEL: I said as far as he knows.

CAPTAIN VANCE: I ask for a recess in place.

PRESIDENT: The court will recess in place.

(Thereupon the court recessed in place.)

PRESIDENT: Court will come to order.

DEFENSE COUNSEL: I will strike the question.

QUESTIONS BY DEFENSE COUNSEL:

Q Having in mind the answer you gave to the question to which

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DEFENSE COUNSEL: I will strike the question.

QUESTIONS BY DEFENSE COUNSEL:

Q Having in mind the answer you gave to the question to which

no objection was taken that you had picked some flyers up in the country and had helped transport some to Oberursel and now coming down to this particular case in which you received this order, did the fact that such an order was given to you suggest to your mind a cause for the order. Please answer that yes or no.

A Well if Colonel Trumpler gives me an order to shoot a flyer I have to carry it out.

Q Did you think that there was a reason why you were given the order to shoot this man and such an order had not been given to you before. Please answer yes or no.

A I can't pass judgment on that.

Q Is there anything else you would like to say to the Court as to how you feel about what you did in both of these two cases?

A I did nothing but my duty as an SS man and any order given to me by my superiors or by a Colonel I have to carry out. In peacetime disobeying an order would carry expulsion from the SS and a severe long term in a concentration camp. In wartime the only punishment possible in case of refusing an order was death.

DEFENSE COUNSEL: Dr. Wacker would like to ask a question.

QUESTIONS BY DR. WACKER:

Q Did you think that Colonel Trumpler intended to commit a crime on this flyer when he gave you this order?

A No.

Q How come you didn't think of that?

A On account of the severe attacks -- the strafing attacks where the flyers were shooting at the women and children and where the life of eighty children were lost in a kindergarten in Rudesheim. For that reason I thought that when I received this

is a good enough reason.

PROSECUTION: I move to strike the testimony just offered by the witness elicited by the German defense counsel, the last few questions of this witness. Will the court please rule on my motion. Will the court allow me to be heard on this subject at this time?

PRESIDENT: Granted.

PROSECUTION: I have asked the question of the defense what is the purpose of this testimony. The reason I asked that was because if the defense is offering justifiable reprisal, I would like to argue that point. If not, then my objection will be on other grounds. I have asked the court to have the defense define their purpose. If it is justifiable reprisal for the action of the accused to shoot unarmed prisoners of war, then I would like to be heard on that point at this time.

order from Colonel Prumler it was all right. My two children spent every night of two years in the cellar and during these two years they barely saw daylight because they were so afraid of the flyers.

MR. MAHER: No further questions.

PROSECUTION: The prosecution moves to strike out the testimony offered by the witness as elicited by the German defense counsel. I believe that counsel is offering that line of testimony to show justifiable reprisal on the part of the accused. I would like to have counsel make that statement to this court.

DEFENSE COUNSEL: The defense does not feel that it is obliged to indicate at this time the purpose for which this testimony is offered. However, we would say that we offer it for several reasons. First, in extenuation. I don't mean to convey in any manner or means that that is the only reason, but submit that it

DEFENSE COUNSEL: I don't feel, may it please the Court, that we should be compelled to disclose at this time the legal basis which we have in mind to offer as a legal defense to the actions in this case. I don't think we should be compelled to disclose now, prior to the completion of our case, our purpose. However, the prosecution and ourselves, with the court, are here for just one purpose in mind and that is to bring out the truth or what has been done in these cases, so justice might be meted out where justice has been called for. If the court feels that that statement which I have just made and upon which the defense stands, calls for the defense to now state its legal purpose with respect to this case, I will do so, although I am not fully prepared to do it because I am going to have to do it extemporaneously, when I had in mind to do it in writing at the very end of the testimony. So, may it please the court, let me have your decision. If it is my duty to state it now, I will do so, subject to my right to amplify it later on as we go along.

PRESIDENT: Court will be closed.

(Thereupon the court was closed at 1425.)

(Whereupon the court was opened at 1625 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the prosecution; all the members of the defense, except Dr. Thost who is absent sick; all the accused; the reporter and interpreter are present.

PRESIDENT: The court will not require the defense counsel to state the purpose for which it has offered the testimony now being offered, any further than already stated as that it is offered in extenuation as one reason. Before passing on the motion of the prosecution to strike, the court will hear argument on the question of the admissibility of evidence offered in support of the theory of justifiable reprisal as a defense, if the prosecution so continues. I would

PROSECUTION: The prosecution has nothing to add. In support of the motion to strike the evidence to which I previously made objection, the prosecution states that this line of testimony is immaterial, irrelevant and incompetent. If the defense particularly desires to offer that evidence as general or individual reprisal, either as a defense or by way of extenuating circumstances or in mitigation, it is particularly objectionable and the evidence should, therefore, not be received by this court.

The question is not new. It was taken up before the Nuernberg Tribunal. The question came up in this manner, and I would like to quote to the court an excerpt from the record before that Military Tribunal from pages 5931 and 5932 of the transcript of the evidence taken in that case.

"THE PRESIDENT: The Tribunal does not propose to hear an unlimited number of defendant's counsel, but I observe that Dr. Exner is there, and they are prepared to hear one other counsel; if counsel wish, Dr. Exner open the subject.

DR. EXNER (Counsel for defendant Jodl): May it please the Tribunal, indeed, we are all interested in that question of reprisals, and I would like to say a few words. Having taught 10

years of international law at the University, I believe that I understand something about it. Reprisals are among the most disputed terms of international law. One can say that only on one point is there absolute certainty. That is the point which Justice Jackson has mentioned as the first one. Reprisals against prisoners of war are not permitted. Everything else is matter for dispute and not at all accepted in international law. It is not correct that it would be the practice among all states, and therefore international law, that a protest is a prerequisite for taking reprisals. Neither is it correct that there has been a so-called sensible connection. It was asserted that there must be a connection in time and a relationship of proportion ought to be between the violation and the reprisals, and there are experts on international law, who assert it and say that there should be a demand, but existing international law, in the sense that an agreement has been made to that effect or that it would be a law, say that is not the case.

It will have to be said therefore, on the basis of violations of international law by the other side, we can never take reprisals against prisoners of war. However, every other form of reprisals is admissible. I just wanted to state this in general terms, and perhaps I still could say that it has been asserted that at this time we should not speak about the reason for mitigation. I would like to remind the Court that we are only permitted to make one address, and if in this speech which takes place before the decision has been reached about the question of guilt, we are not permitted to speak about mitigation, then we would not have any opportunity to speak about it at all."

Now, the record, we feel, is this --

"THE PRESIDENT: The Tribunal will adjourn now (a recess was taken.)"

The court reconvened. The President made this statement:

"THE PRESIDENT: The Tribunal rules that the evidence is admissible on the question of reprisals and the weight that should be given this, or similar evidence, will be reserved for future consideration."

There is no question that individual reprisals are forbidden.

The Rules of Land Warfare on Page 17 say that very definitely:

"In power of enemy power; treated with humanity; reprisals prohibited -- Prisoners of war are in the power of the enemy power, but not of the individuals or bodies of troops who capture them.

They must at all times be treated with humanity and protected, particularly against acts of violence, insults, and public curiosity.

Measures of reprisal against them are prohibited."

And they make reference to the Geneva Convention.

Now, there is no question at all in this case that all of the people who we allege to have been killed by the accused were unarmed prisoners of war and that it all occurred in the front line area. Now, the court must keep in mind in this argument that the accused apparently are offering as a defense evidence of justifiable reprisals by the accused or by the German people, or by the German army against the methods of warfare of the Allied Nations, which, I suppose they are calling reprisals. So it appears, therefore, that this evidence is in support of what might be termed counter reprisals. Now, if the acts of the American army and the Air Force in the warfare here in Europe were reprisals, then I am sure the court realizes without special proof being offered on the subject, that the American Air Force and the American Army followed the Rules of Land Warfare laid down in Field Manual 27-10, which was given to them many months ago as a guide for that purpose.

On pages 89 and 90 the rules are laid down for the American Army -- the definition of reprisals, when and how employed, and who may commit them. If the American Army committed acts of justifiable reprisal, we call the court's attention to the definition:

> "Reprisals are acts of retaliation resorted to by one belligerent against the enemy individuals or property for illegal acts of warfare committed by the other belligerent, for the purpose of enforcing future compliance with the recognized rules of civilized warfare.
>
> Reprisals are never adopted merely for revenge" --

and I am still quoting from the Field Manual --

> "but only as an unavoidable last resort to induce the enemy to desist from illegitimate practices."

The Field Manual goes on to say:

> "Illegal acts of warfare justifying reprisals may be committed by a government, by its military commanders, or by a community or individuals thereof, when it is impossible to apprehend, try, and punish.

> The offending forces or populations generally may lawfully be subjected to appropriate reprisals.
>
> The acts resorted to by way of reprisal need not conform to those complained of by the injured party, but should not be excessive or exceed the degree of violence committed by the enemy. Villages or houses, etc., may be burned for acts of hostility committed from them, where the guilty individuals cannot be identified, tried, and punished."

Many years ago authorities on international law took up this problem. Wheaton, who is recognized by all as an authority on the subject, in Seventh English Edition, page 213, makes this remark:

> "The fundamental principle of war law, then, authorises us to use against an enemy such a degree of violence, and such only, as may be necessary to secure the object of hostilities. The same general rule, which determines how far it is lawful to destroy the persons of enemies, will serve as a guide in judging how far it is lawful to ravage or lay waste their country."

Wheaton points out that the German position is this, and refers to one of their manuals on the subject:

> "The German Manual expresses the rule in a positive and in a negative form: No damage must be done, not even the most trivial, which is not necessitated by military reasons."

On the other hand, in the same Manual, they say:

> "Every damage, even the very greatest, is justifiable, if war demands it or if it is a consequence of the proper prosecution of war."

He makes this observation:

> "The whole international code is founded upon reciprocity."

Speaking of aerial warfare, he makes the following observations on page 353 of that work, with particular reference to World War I:

> "Bombing of hospitals occurred frequently in World War I, and Dr. Spaight's efforts to explain away the German action in these matters on various hypotheses is not convincing in view of the deliberate opinion of the extremely well-qualified and fair-minded experts whom he reports. What is true, doubtless, is that systematic bombing was not practiced by the Germans. Nor is it easy to sympathise with his defence of German bombing of a Palestine hospital in May 1917, alleged

> to be a reprisal for British shelling of a Mosque which was used to store powder. Reprisals of that character are too obviously invented to have any value. The Austrian air attacks on Italian artistic buildings are morally far more defensible, and it is curious that they appear to elicit more reprobation than the inhumanity of destruction of the defenceless and their nurses. The German attacks in the war of 1939 onwards were without excuse."

Now I end the quotation from Dr. Cheston.

I'd like to remind this court that history records that in 1943 the Allied powers issued explicit warnings to Germany to cease violations of international law that had occurred at the outbreak of World War II, particularly in Poland and the bombings of the City of London. Germany did not desist but increased her efforts to disregard the laws of war. I do not have before me State Department documents of the United States of America nor the documents of the Foreign Office of the British government or other Foreign Offices of the other Allied powers, but it is without question that they would reveal the efforts of the Allied powers, particularly the personal efforts of the President of the United States and the Premier of Great Britain to persuade the Axis powers to desist from the unusual type of total war that they had launched and continued to pursue. The evidence is certainly available to show that the Axis powers were instructed and warned that after it became apparent that the Axis powers, particularly Germany, were determined to complete the total war in utter disregard of all the rules of warfare and in violation of decent standards of humanity, that the inevitable result would be reprisals by the Allied powers.

More to the point, history will record, and we, who are still living with the memory of the war green and fresh in our minds, know, that it was not necessarily a reprisal that caused the Allied nations to resort to the bombing of large cities and other objectives of that nature but that because those places contained within their very walls military objectives, that was the only way to put a stop to it all.

Because of the absence of a vivid memory on the part of the defense, the prosecution, on behalf of the Government of the United States, asks this court to take thought of all that happened in the past years preceding and since the beginning of World War I, that culminated in what the defense now says, in effect, is the unjustifiable attitude on the part of the Government of the United States of America.

The offer of this defense, either by way of a defense or extenuating circumstances or in mitigation is shocking to me, at least, and I therefore ask the court to bear with me for a few minutes more.

It is perhaps not inappropriate to remark at this point that neither the Government of the United States of America nor the American people are on trial before this court, nor are any of the Allied powers.

I have a few more remarks:-- Since the Nuernberg Judgment is before this court, the court having taken judicial notice thereof, it might not also be inappropriate to point out the evidence in that case was a clear and concise indictment of all that Germany did from the time, at least, when the concept of Nazism was born.

Planning and preparation are essential to the making of war, particularly aggressive war. In the opinion of the Nuernberg Tribunal, aggressive war is a crime under international law. According to the indictment, aggressive action was planned by Germany and carried out against Austria and Czechoslovakia in 1936 and 1938, followed by the planning and waging of war against Poland, Denmark, Norway, Belgium, Netherlands, Yugoslavia, Greece, France, England, Russia and then persuading Japan to do the same thing against us.

The Fuehrer said, and I read from page 1684-3 of the Judgment:

> "Everybody shall have to make a point of it that we were determined from the beginning to fight the Western Powers. Struggle for life or death . . . destruction of Poland in the foreground. The aim is elimination of living forces, not the arrival at a certain line. Even if war should break out in the West, the destruction of Poland shall be the primary objective. I shall give a propagandist cause for starting the war -- never mind whether it be plausible

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[illegible] nation, the terrorism of the seven years, into unbelievable

wars [illegible]. The victor shall not be asked later on whether

we told the truth or not. In starting and making a war,

[illegible] the Right is not supreme, but Victory. [illegible] 16757

of the world not like to remind the court that Hitler could not make

aggression possible by himself. He had to have the cooperation of statesmen,

military leaders, diplomats and business men. Had they resigned

in their posts by a dictator does not absolve them from responsibility

for their acts. These are clear words which express our understanding at

the time they were assigned to these terms and after hearing all the

evidence. Remember as we study the judgment where all of these things are

discussed "To initiate a war of aggression, therefore, is not only

an international crime; it is the supreme international

crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole."

(Nuremberg Judgment 16070) Into the war, over five million human

beings [illegible]. If the court will again look at the Nuremberg judgment which will

give to the court for its convenience, particularly pages 16019 and

16068, some of these shocking things will be recalled.

Germany went a step further and withdrew from the International

Disarmament Conference and the League of Nations and openly violated the

Rhineland Pact. (See pages 16016 and 16069 of the Nuremberg Judgment) the court also read pages 16015 to 16016 of the Nuremberg Judgment.

The twenty-one remaining leaders of the remaining leaders of the Nazi

state were indicted at Nuremberg on four counts. The first was the common

plan or conspiracy which in fact includes the other three charges of

criminality. The common plan or conspiracy count states that these men

[illegible] what it today as raw material, as [illegible]. That is now

[illegible] prisoners died in [illegible] and hundreds of thousands of unknown

planned consciously for a period of years to wage aggressive war and to

employ -- in the event of such war -- every criminal means they could

devise in violation of international treaties and agreements and national

law, to insure victory. [illegible] digging and [illegible] only insofar as the

[illegible] our purpose is finished. (See pages 16000

and 16011 of the Judgment.)

Their common plan began in the beer halls of Munich and proceeded

through the Nazi seizure of power in Germany through the Roehm Purge and the

blood bath (see page 16011 of the Judgment) with which we are familiar,

continued with secret rearming and the deformation of the life of the

German nation, the perversion of the German people, into undeclared wars whose full and monstrous horror has been exposed for the first time in the unsifted documents of that trial. (Please see page 16797 of the Judgment) The common plan was stopped forcibly by your A[illegible] Forces; otherwise you and I and the American defense counsels would all be living according to that common plan today. (See page 16825 of the Judgment)

The Germans organized their crimes as if they were running a vast industry, nothing was forgotten. (Will the court please read pages 16825 to 16827 of the Nuremberg Judgment where all of these things are admirably described.)

Sauckel, one of the Nuremberg defendants, admitted that under his supervision, preceding our entry into the war, over five million human beings were deported into forced labor. (See page 17068 of the Judgment)

About the destruction of Norway; will the court please read page 17027 of the Nuremberg Judgment.

[illegible] the court read what Frank had to say on page 17000 of the Judgment and what Streicher said on pages 17009-17010 and what Doenitz and Raeder said about the U-Boat problem, pages 17028 to 17034. And will the court also read pages 16918 to 16924 of the Nuremberg Judgment?

On the subject of Russian prisoners of war, Himmler said in 1943:

> "At the time we did not value the mass of humanity as we value it today as raw material, as labor. What is now deplorable by reason of the loss of labor is that the prisoners died in tens and hundreds of thousands of exhaustion and hunger."

And Himmler further said:

> "Whether 10,000 Russian females fall from exhaustion while digging an antitank ditch interests me only insofar as the antitank ditch for Germany is finished." (See pages 16900 and 16911 of the Judgment.)

And so it goes on and on, the disgusting record of brutality and murder. Frank, one of the defendants at the Nuernberg trial, said in 1941: "As a matter of principle we shall have pity only for the German people and for no one else in the world."

The crimes against humanity proven at the Nuernberg trial were the extermination of whole peoples and races or the attempted extermination of whole peoples and races.

They killed one-third of the population of Poland and two-thirds of all the Jews of Europe. They tried systematically to murder the intelligentsia in occupied countries because these men would carry on the tradition of their people and keep alive their love of freedom.

They organized death as a mass industry: Auschwitz, Belsen, Treblinka, Mauthausen, Sachsenhausen, Flossenburg, Neuengarme, Gusin, Natzweiler, Lublin, Buchenwald, Dachau, in which over four million people were murdered. (See Judgment, page 16991) Will the court also read page 16886 of the Judgment?

Frank said on page 16899 of the Judgment:

> "If I wished to order that one should hang up posters about every seven Poles shot, there would not be enough forests in Poland with which to make the paper for these posters."

These are but reminders of what preceded air warfare in which we, the American Government, by our army and Air Force, played a forceful part.

Nevertheless, and this I say in conclusion, these accused now come in here and in my opinion mock this court of the American Government by offering for our consideration a defense, whether it be absolute or in mitigation, that they were justified, as late as 1944 and 1945, in murdering unarmed prisoners of war.

PRESIDENT: Court will recess until tomorrow morning.

(Whereupon at 1706 hours the court recessed until 0900, 18 February 1947.)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

1177

CASE RECORD. Pages 1170 - 1235

(19)

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 18 FEBRUARY 194 7

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt.Col. Berman
Rudolf M. Nathanson

Interpreter Herbert B. Rosenstock

Reporter Patricia Stewart, Evelyn Cohen, Sally Rose Hayett, John McDonald, Paula Silverman, Peter DiCurti

~~Members of Court~~

WITNESSES:

ARTHUR FUEHR
MICHAEL KLEIN
ADOLF KAHN
JULIUS LOWENTHAL
CLAIRE GUTTMAN
KARL MANNES
KARL FRANZ STATTMAN

Accused JURGEN STROOP, et al

Address Sex Age

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term
  - Beginning 194
- Fine
  - Amount
  - To be paid before 194 or in case of default of payment to serve a *further term of imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JOSEPH STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

1st FEBRUARY 1947 Pages 1170 - 1283

TESTIMONY

	Direct	Cross	Redirect	Recross
ARTHUR FURER	~~1182~~	~~1183~~	1198	
CLAIRE GUTTMAN	1201	1205		
KARL MEES	1206	1212	1215	
MICHAEL KLEIN	1213	1215		
ADOLF KAHN	1216	1217		
JULIUS LOWENTHAL	1217	1218	1219	
KARL FRANZ STATTMANN	1228			

EXHIBITS

No.	Description	Marked	Received
D-15	Book, Winthrop's Military Law & Precedents - 2nd Edition - Volumes 1 and 2	1221	Not received
D-16	Extract from D-15	1221	Not received
D-17	Extract from D-15	1221	Not received

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2-18-47;JCMcD;1

Camp Dachau, Germany

18 February 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Dr. Trost, who is absent sick, all of the accused, the reporter and interpreter, are present.

DEFENSE COUNSEL: May it please the court, I would like to reply briefly, I hope, to the argument advanced by the prosecution at the end of yesterday's session. Before I go into that I would like to be sure that I understand, or rather that the defense understands, the question which is before the court.

Yesterday two motions were made, one that the defense be ordered to state the ground upon which certain evidence was offered. That motion was ruled upon by the court, as we understand it, to the effect that the defense would not be obliged to go beyond the statement which I, for the defense, made to the court, that that evidence was offered, among other grounds, for the purpose of mitigation. And then a motion was made to strike that evidence out on the ground that it was not admissible, either by way of defense or by way of mitigation. That is the motion now before the court, and that is the subject to which I now desire to address myself.

We listened yesterday with a great deal of interest to the argument of the prosecution, and I say with all due respect, may it please the court, that after it was finished, and even after a great deal of thinking about it last night, I still fail to see or understand the relevancy or pertinency of most of it to the question at hand.

We representing the accused have never intended to raise any question involving the war guilt of certain leaders of the German people or of certain organizations or groups. That is not an issue in this case. That issue was decided by the consciences of free peoples a long time ago. That conscientious conviction was cast into legal terminology by the Nuernberg decision. It is not a question at all, and most of it was adduced, as we understood it, to proving that the German people and the German leadership had been guilty of war crimes.

The second purpose of the address, as we understood it, was to repel in advance an anticipated attack by the defense on the President of the United States or upon the leadership of the American Army or upon the strategy and tactics of the Air Corps. If that was its reason, the defense states that it was unnecessary to advance the argument for that purpose. We have never entertained an intent to attack in any way the leadership of the President of the United States or the Allied Forces or the tactics or strategy of the Air Corps. We do not have to. However, it is almost a self-evident matter that despite the leadership of the German Army and the criminality of some of its leaders, there were men in the German Army who fought a chivalrous war, according to the rules of warfare.

Without attacking in any way the leadership or the tactics or strategy of the American or Allied Forces, it is no reflection at all to say that all the men who took to the air or fought on the ground were not Sir Galahads, and that some of them did violate the laws of war. That is all our position requires us to take, and that is the furthest our position does take.

Despite the Nuernberg decision and the conscience of the world, may it please the court, that certain individuals and certain organizations were guilty of the most horrible crimes the world has ever seen--despite that fact, certain leaders of the German people were found not guilty at Nuernberg and certain organizations were found not guilty at Nuernberg, which axiomatically leads to the conclusion that everybody in Germany was not proven to be a war criminal, and, consequently, are entitled to the presumption of innocence of war crimes.

Despite that finding, the Nuernberg decision, as the prosecution says, admitted evidence of what was called reprisal, by way of mitigation, and that should seem to be binding upon this court if we offer it by way of mitigation. Furthermore, cases which have been tried since Nuernberg have settled one additional proposition, and that is the fact that despite the guilt of the leadership of some people in the German Army, that guilt did not deprive other members of the army of the defense of reprisals. The latest case is the case of General von Mackensen and one of his friends, who were tried in Italy, not for ordering and executing reprisals, but only for ordering and executing excessive reprisals.

Unless I am mistaken, General Kesselring is now being put to trial, not because he ordered reprisals but because he ordered excessive reprisals. I do not know whether it was 10 to 1 or 100 to 1, but the defense of reprisal was not taken away from him even in the charge, because the charge is excessive reprisals.

So there is authority for the defense to put in evidence of this kind in mitigation and evidence of this kind by way of reprisals.

May it please the court, this evidence is being offered. We are going to meet the situation raised and uncover our complete case to the court, not as we will prove it but as we hope to prove it, provided the evidence we have and the evidence we are trying to produce enables us to meet those two propositions.

I submit, may it please the court, that whereas the defense could not compel the prosecution at the beginning of its case to elect the theory upon which it put the accused to trial, but could put in all the evidence it had on two or three or a half a dozen theories of guilt, and then leave it to the court to decide what the evidence proved and what the evidence failed to substantiate, we have the same right to do the same thing--to put before the court all evidence by way of mitigation, by way of showing the intent in the minds of these people, what they thought--what they reasonably thought about the propriety of what they did.

When this court comes to judge these men it is going to judge them upon what they did in the light of what they thought they had a right to do as reasonable men. If this

court should believe that any one of these men reasonably believed that what he did was right, I venture to assert now to this court that not a single member of this court would vote for a verdict or a finding of guilty of murder, if you believe that he reasonably thought he was right in doing what he did.

We have a right to produce any evidence which tends to establish before this court the reasonableness of what these people did, not in our minds, but in their minds. Whereas they might be found guilty of things which you and I would not do, yet if we believe that they reasonably did what they thought was right, you would have to find them not guilty.

May it please the court, the evidence we have to offer we offer for a still further ground, one by way of mitigation, one by way of legitimate reprisals, one by way of showing what these people reasonably thought, and the fourth is an absolute defense on the theory that this was not reprisal at all but legitimate warfare.

The court must bear in mind from the evidence which has gone in that at this time Himmler was in command, not only of the police on both sides of the chart, but in command of the internal defense of Germany and the reserve army of Germany, and that reserve army consisted of all the German people--the lame, the blind, the halt, the one-eyed, the man with shrapnel in his brain, the police, and the civilians. They were all part of the internal defense of Germany.

The court will also bear in mind that there are times and conditions and circumstances wherein it is perfectly

legal for civilian populations to engage in warfare--offensive warfare, defensive warfare, passive defense, and active defense. There are such times, and this, we contend, was one of those times, when what was left to Germany was mobilized for its last stand. The circumstances which bear that out are the well known war situation, for one, and there is one other aspect to it too.

We want to produce evidence--a substantial amount of evidence--there has to be a substantial amount of evidence to be worth the effort it is taking--to show that there was warfare conducted by certain elements of the Air Force which did not play the game according to the rules laid down for them by their superiors,--let us make thatplain,--and who did engage in this business of strafing civilians in the open fields and non-military targets, and leaving a people subjected to that sort of thing in this situation: They could not counterattack, they could not reach them, they could not fire on them, they could not surrender to them, they had nothing they could do except to trust to God and luck to get away from this sort of thing.

And so they did carry out the only type of warfare or defense which was available to them under the circumstances, and that was to handle those representatives of that illegal sort of thing who came into their hands. That, we contend, is not reprisals, it is not murder, but it is warfare, the only kind left to them unless they were to submit without any reaction whatsoever.

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There was some talk by the prosecution of individual reprisals and that no individual has a right to execute a reprisal by himself. There is no doubt that this whole business was organized by those men in control of the German people and that it covered the entire length and breadth of what remained under the control of those in control of the German people. They laid down the rule and passed it down. The only thing that happened was that the reprisals that were ordered by the government, or what to them was the government, were carried out by one or two or three individuals instead of by squads and by companies and battalions and regiments. That is the only difference, and it makes no difference.

May it please the court, there is one other thing that I would like to address myself to, and that is with respect to the question of mitigation. How far can we go in offering evidence of mitigation? Shall Fuchs, for instance, be limited to testifying as to what his family went through, or can he testify, in addition to that, what he saw with his own eyes as to what other families went through, known to him and strangers to him? Or can he go farther than that? Can he rely on what might be termed propaganda--the stuff that Goebbels hashed out out of the devil's code? We submit, may it please the court, that he can. He could come in and say, or anybody else involved could come in and say, "I read that stuff. I heard it on the radio. I heard talk of it in the streets. I believed it."

Do the things that motivate men have to be real? Do the things which affect men's reason have to be real? There are more people in insane institutions today driven there by fancied things, figments of their own imagination, but which are

powerful enough to disease them and result in their incarceration in institutions for the insane.

This business here is not a strange thing to us--the pressure these people worked under. We had a first-class imitation in Louisiana under Huey Long. If they as reasonable people believed the guff that was handed out to them, they are no different from some of our own people, who believe the guff they read in some political newspapers. I venture to assert that every member of the court has felt as I have dozens of times in my life when listening to political arguments of some of my friends and the things they will tell you as truth. You would swear before God that it was the purest hokum. They believed it. And so, to save your own sanity, you stopped arguing with them. The same thing might well be true here. Did they believe it or didn't they believe it? Was it a reasonable thing for them to believe or wasn't it? If it was it should come in for two reasons: one on the question of the reasonableness of their belief and the rightness of what they did, and the propriety and justification for what they did, and also on the question of mitigation.

We could argue on all kinds of questions, but I think I have presumed enough now on the time and patience of the court. When does a man become a prisoner of war? What good would it do to argue that? The question of reprisals and counter-reprisals and still counter-reprisals--what is the good of that?

It is a simple situation which we argue before this court, and that is our right to produce this evidence

for the benefit of these accused, without the slightest desire to attack or reflect upon the leadership of the nation to which we belong, or at least to which the American counsel belong. We can do that by attacking the actions of individuals. That is all we propose to do. We propose to show what actually took place, for purposes of mitigation, for such defense as reprisal may offer to this court after it has heard the testimony, on the question of the reasonableness of their belief as to what they did, and on this theory of warfare, the validity of which I do not know.

It is something which has come to our minds, and we are going to present it to the court for whatever the court sees fit to do with it when the case is over.

All we are asking is a chance to produce what evidence we can for the court to consider in the light of whatever value the court may give to it, both as matters of fact and as questions of law.

PROSECUTION: When the prosecution resisted the offer of proof made by the defense, leading to the affirmative defense of reprisal, either directly as an affirmative defense or in extenuation, we resisted for the reasons which we stated yesterday, but it appears now that the defense is beginning to go far afield. Mitigation, completely as a proof, has its place in these trials at a later time, especially when the theory is involved that what they did is because they reasonably thought it was correct. That is strictly a matter of mitigation to be considered by this court only after the facts in the case have been weighed and the judgment rendered.

The court will recall that I pointed out yesterday that at the Nuernberg trial, Dr. Exner proposed his theories on reprisal and the court concluded to consider it at a later time in mitigation. Now, it is quite apparent from reading the judgment, that they disregarded that theory and gave it little or no weight whatever. That is apparent from the reading of the judgment as a whole and from the fact that the twelve principal military leaders were sentenced to death.

Now, it appears from the remarks of the defense that the issue has narrowed down to this: -- that they desire to show individual violations of the laws of war by certain individual members of the American Army Air Force. To say the least, it is a novel principle of law when an accused is charged with a crime by a state or government, for that accused to come in and offer as a defense the individual wrongs of the agents of that government that brings them to trial. Assuming that those people, those agents of our government, committed offenses -- assuming that for the purposes of this argument, then I will narrow it further down to one issue -- two wrongs never made a right.

One final remark in answer to the defense, which is a matter that was discussed yesterday in my argument, and I would like to remind the court

that this case, if it has any justifiable theory of reprisal as a defense, must come down to the question which the facts show to be a question of individual reprisal, and the law is clear, very clear on that subject. Individual reprisal against prisoners of war -- each of the nine men in this case throughout the ten charges, -- each of the nine American soldiers who were killed, -- each and every one of those nine men were unarmed prisoners of war, and that is clear. We have proven in each one of those charges that they were killed by the efforts of one or two or three men who took reprisal against prisoners of war in violation of the law, which has been stated before by our field manual, and which was stated by the Nuernberg judgment. Mr. Piney gave his opinion, which the court immediately accepted, -- that that law was unquestionably sound and correct and binding on all of us.

Nothing further from the prosecution.

DEFENSE COUNSEL: May it please the court, there is little that I would like to add because I think the court has all the assistance it wants in deciding this issue.

The prosecution makes the statement that we are going far afield. As a matter of fact, we have not even gone to bat yet. One witness slips out a statement about his children being in a dugout and we are asked to explain whether his testimony is in mitigation or justifiable reprisal. We ourselves do not know. We do not know yet what we are going to be able to show us. Now, if the court please, if this evidence is admissible for any reason at all, it has to be received, and then when the case is over, I can get up and state that that evidence which is received has such-and-such an effect and such-and-such a result. If the court decides it is a lot of "hoah-tuah" and that it is a lot of hokum, the court does not have to justifiably explain its decision. I can argue that you have to receive it as a complete defense, but when you come to decide and decide that it is nonsense, and it has to go that

way, it does not mean we cannot offer it for some other reason. If it is illegitimate for one reason, we can argue that it is legitimate for another reason.

The only reason we are putting in this evidence by way of stipulation is because we were told we could not put it in after the findings; we had to put it in before the findings. It is only sensible that we are going to produce such evidence when the case is on trial and not put in evidence in stipulation in bulk and have the court sort it out in its mind. We are proceeding in an orderly fashion.

The court, in considering the motion, will naturally, of course, make a ruling. That ruling will either permit us to go ahead and offer other evidence or will limit our right to offer evidence of a particular kind. So, I request that the court consider the remarks I made this morning as to the type of evidence we expect to offer and the purposes for which it is offered, so that if the court comes in and instructs us, the record already contains the offer of proof and the purposes for which the offer of proof was made, that when this record goes up, the reviewing authorities will have a complete story in front of them.

MR. HART: Court will be closed.

(Thereupon at 0955 hours the court was closed.)

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(Whereupon the court opened at 1140 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent duty; all of the accused; the reporter and interpreter are present.

PRESIDENT: The court will admit evidence of the character sought to be introduced by the defense and will consider it as being offered in mitigation or as required by the accused, providing it is not irrelevant, immaterial or otherwise incompetent. The weight that should be given this or similar evidence will be reserved for future consideration. The court already has common knowledge of the propaganda that was disseminated generally by the German Government and further evidence of this nature is deemed unnecessary. Motion of the prosecution to strike is denied.

DEFENSE COUNSEL: May it please the court, while the court was in recess, personnel of the prosecution and defense were furnished additions and changes to the manual for the trial of cases before courts such as this. One of the changes deals with the administration of oaths, and it says that the accused may elect to make either a sworn or unsworn statement. These changes are dated 1 February 1949. Acting on this change, we will now ask permission to administer an oath to Fusso.

PRESIDENT: Permission is granted.

ARTHUR FUSSO, an accused, voluntarily resumed the stand in his own behalf, being first duly sworn, and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Do you have in mind the evidence you have already given to this court as a witness, the questions that were asked you and the

answers that were given? Do you have all of that in mind?

A Yes.

Q Was the testimony you have and the answers you gave to these your questions directed to you the truth?

A Yes.

DEFENSE COUNSEL: Your witness.

CROSS EXAMINATION

CROSS EXAMINATION:

Q Fuehr, when did you first join the SS?

A 1932.

Q And when did you become a member of the Gestapo?

A 1937.

Q Did you remain a member of both of those organizations until the end of the war?

A Yes.

Q Yesterday, you were asked by Colonel Herman if you had ever heard of any of the orders that were issued or any of the discussions that were had about the treatment of Allied fliers, and you answered "No," is that correct?

A Yes.

Q Did you ever read a German publication called "Das Reich"?

A No.

Q You have never seen a copy of that newspaper?

A No.

Q Did you ever read any of Dr. Goebbels' articles that were printed in other German newspapers?

A No.

Q Did you own a radio back before the end of the war?

A I listened to the radio, but I didn't hear this from Goebbels.

Q Did you hear it from any other source than Dr. Goebbels?

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A No.

Q Do you have very much enjoyment to have during the proceedings of this trial about the going on in Germany back in 1944 and 1945, have you?

A [illegible]

Q You have testified about the automobile that was used to take this flight out where he was shot in Czechoslovakia [illegible] another Pilot. Was the same automobile used on both occasions?

A Yes, [illegible]

Q What was the make of that automobile?

A BMW, [illegible]

Q What model was it?

A Model 1939.

Q I hand you a document which has been introduced in evidence as Prosecution Exhibit 64 and ask you to examine this document and tell the court what it is. [illegible]

A I wrote this, [illegible]

Q When? [illegible]

A On the 4th of February, 1946. [illegible]

Q Is that declaration made by you in your own handwriting? Does that speak the truth? [illegible]

A Yes, it [illegible]

Q Now, I hand you another document that has been introduced in Prosecution Exhibit 65 and ask you to examine this document and tell the court what it is. [illegible]

A This, too, is a statement by me, but I didn't write it.

Q Who wrote that? [illegible]

A I only signed it.

Q Can you read it? [illegible]

A Of course.

Q Did you read it before you signed it?

A Yes, I read it, but very quickly.

Q Do you want to read it now before I ask you some questions about it?

A Yes.

CAPTAIN VANCE: May it please the court, let the record indicate that the accused Fosler has spent the last four minutes reading the exhibit.

QUESTIONS BY CAPTAIN VANCE:

Q At the time this statement, Prosecution Exhibit 65, was written and signed by you, were you sworn at that time to speak the truth?

A But I told my interrogating officer, Mr. Tell, that I have to make corrections, this was not entirely correct, but Mr. Tell told me I should do this in front of the court, it wouldn't be so important right now. It was sufficient for him when I admitted that I had shot in the second case.

Q Now, will you answer the question? When you signed this statement, did you swear to it, and did you swear to it before Major John P. Hagner?

A I like to say the following to the court: I was on the flight for five months with my family, and in these five months, I had lived like a dog and my nerves were completely gone to pieces. Then my wife was taken into custody and the children were all on their own. I reported myself to the Military Police at Frankfurt. Then I heard that my wife was taken into custody. Then in Frankfurt, at Bonameshaus, I came into custody, in the prisoners of the Americans. Three days later, I was called at 1:30 during the night and was brought to Wiesbaden.

CAPTAIN VANCE: May it please the court, I move to strike that answer. It is not in response to my question. I asked this witness a simple question, if he swore to this statement, which can be answered yes or no, and I move that it be physically stricken from the record.

DEFENSE COUNSEL: I agree it is not responsive, but he would be

making the same statement afterwards in explanation. We might as well let it stay in the record now.

PRESIDENT: Motion to strike is denied.

CAPTAIN VANCE: Wait a minute, I am asking the questions. I am objecting to him sitting here and talking at length during my cross examination. I think the court should instruct him.

DEFENSE COUNSEL: My only answer is this: He is half way down the line on this statement, which we admit is not quite responsive. We might just as well let him finish.

PRESIDENT: This evidence should be brought out in the proper manner, and he will answer the questions of the prosecution.

QUESTION BY CAPTAIN VANCE:

Q Now, will you answer the question, whether or not you swore to the truthfulness of this statement?

A Yes.

Q What was that happened at 1:30 at night that you were talking about?

A When I was taken from Frankfurt to Wiesbaden.

Q This statement was not taken at 1:30 at night, was it?

A No.

Q Do you remember my being present with Mr. Till and Luke Rogers at the time you were questioned in the Wiesbaden jail?

A Yes.

Q Now, does this statement contain the truth, yes or no?

A No.

PRESIDENT: Court will recess until 1:30.

(Whereupon the court recessed at 1200 hours.)

End ta 175
pls fols

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pls/1

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: If it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense except Dr. Trost who is absent sick; all the accused; the reporter and interpreter are present.

DEFENSE COUNSEL: Let the record indicate that the accused, Fuehr, resumes the stand and I ask that he be reminded he is still under oath.

ARTHUR FUEHR, an accused, resumed the stand, and being reminded he was still under oath, testified further through an interpreter as follows:

CROSS EXAMINATION (continued)

QUESTIONS BY CAPTAIN VANCE:

Q Fuehr, I hand you Prosecution Exhibit 65 again, which you have described as being your statement and I call your attention to certain corrections throughout the statement. The initials "AF" appear by these corrections. Tell the court what that "AF" is.

A "AF" that's my name.

Q Are those your initials?

A "AF", yes.

Q I notice that appears two times on the first sheet, two times on the second sheet, four times on the next sheet, three or four times on the next sheet. Are these your initials on all of these sheets?

A Initials?

Q Yes, your initials. Are these your initials contained on these various sheets?

A Yes.

Q You read this statement before these corrections were made and initialed by you?

A Yes, but I'd like to say something about that.

Q You can say later. Now, if you will just answer my questions, please --

A Yes.

Q Fuehr, after this statement was written down in the Wiesbaden jail by Mr. Kurt Teil who writes the German language, you signed and swore to the statement and then told myself, Major Rogers and Mr. Tiel you would like to make another statement, is that correct?

A I had told that only to Tiel.

Q All right. After you told that to Tiel you were then furnished with paper and pencil and left alone and you wrote this second statement in your own handwriting which was made by you on the same date, is that correct?

A No.

Q Did you make it on some other date?

A Before that I made the first one first. He wanted to get away fast and he said, "Write it down quickly."

Q You wrote the one you wrote before the second one was written, is that right?

A Yes.

Q Did he leave or stay there and take the second statement?

A He left during the first statement and a few days later I made the other one.

Q Look at both of these statements and see if they weren't made on the same day?

A I made this one (indicating) in the office and this one (indicating) down in the cell and I put this date down because I had to put the same date down, too. Because I thought that is the date

(Fuehr-cross)

of the first statement I had made.

Q Now wait a minute. If the one you made you wrote first, how did you pick out the date to write on the second one?

A The date? I didn't invent one.

Q Well, you put this date on here in your own handwriting, didn't you?

A On the first one.

Q So if you wanted to use the same date -- the other one had already been made, had it not?

A Not, it wasn't written.

Q Now, this statement that you gave -- were you forced with any threats, pressure or was anything done to you to cause you to make this statement?

A No, there was no pressure, nor was there any force.

Q I want to get down to October 19, 1944. Did Hoehler go with you to Trummler's office on that day when Trummler gave you the order in reference to shooting this flier?

A No.

Q You know in this statement you stated that he did go with you, is that right?

A Yes, I wrote that in the statement.

Q Why did you say that?

A I explained that before. My nerves were completely shot and I was glad that it was over.

Q Fuehr, were you confused at the time you made that statement or were you deliberately lying about it?

A I was confused. The first thing I had to do was to get straight in my mind the position I was in there. In the first place my family was in the streets without any quarters.

Q At that time you had not been confronted with the accused, Koehler, had you?

A No.

Q And at that time you were telling the investigator the story, weren't you, as to what happened?

A Yes, briefly.

Q Who did go with you on that day to see Dr. Trumpler?

A Freundt.

Q Why were you and Freundt selected to go and see Dr. Trumpler?

A I don't know that.

Q Who sent you to see Dr. Trumpler?

A Freundt came up in my apartment and called for me. It was shortly after noon.

Q So the only reason you went to Dr. Trumpler's office was because Freundt wanted you to do so, wasn't it?

A Freundt told me that we had to see Colonel Trumpler right away.

Q What else did he say?

A He didn't say anything else. I just put on my clothes and went along.

Q When you got to Dr. Trumpler's office, who was there?

A In the anteroom his secretary was sitting and we went into the office of Dr. Trumpler.

Q As best you can remember, Fuehr, tell us exactly what Dr. Trumpler told you and Koehler.

DEFENSE COUNSEL: I pray the court's judgment. I object to that question.

CAPTAIN VANCE: What is wrong with it? Oh, yes, you are right. I'd like to correct it. Make it "Freundt".

(Fuehr-green)

THE WITNESS: We reported to Colonel Trumpler in the military manner. We received the following order: "In my office building there is an American flier. On his way in the direction of Frankfurt and Oberursel he will be shot tonight and he will be turned over to the nearest gendarme who will see to it that he is buried."

QUESTIONS BY CAPTAIN WARCH:

Q Did he say anything else?

A No. We did an about face and went out.

Q Whom did he say was to shoot the flier?

A We received this order together.

Q Did he say who was to shoot the flier?

A No, he didn't say that.

Q Didhe say that Koehler was supposed to go on this trip?

A No.

Q After it got dark did you receive the order from Freundt to bring the car around to Dr. Trumpler's office?

A Not behind the office, in front of the office. Freundt told me, "Take your car and drive it up in front of Colonel Trumpler's office."

Q Did you have to do what Freundt told you?

A Well, of course. We had had the order to drive up there that night.

Q I am talking about when Freundt was there. Dr. Trumpler wasn't around at that time, was he?

A Well, of course he told me, "Drive your car up there", so I had to drive it up there.

Q Did Freundt give you an order and did you have to obey his order?

(Fuehr-cross)

A No.

Q But you did obey it?

A Well, driving the car up -- every official who ever left said, "Drive a car up."

Q On that date, when is the first time you saw Koehler?

A As he came out of Colonel Trummler's office with the flier.

Q The first time that you know he had anything to do with this killing job, Koehler had the flier in his possession, is that right?

A No, no. He received this order at noon.

Q Let's back up again. When is the first time you saw Koehler on that day?

A In the evening when I took the car out of the garage and drove it up to the front of Colonel Trummler's office.

Q Did Koehler have the American flier with him at that time?

A No.

Q Was Koehler alone or was he with anyone?

A When I went over to Colonel Trummler's office?

Q At the first time you saw Koehler on that date is what we are talking about.

A At that time Fraundt and Koehler went up to Colonel Trummler's office.

Q How did they get from where they worked to Colonel Trummler's office? Did they walk or did they go with you in the car?

A Our office is the house next to Colonel Trummler's office. It was the house of the Gestapo, and I took the car out of the garage and around the gate and that is where Colonel Trummler's office was.

Q Were Koehler and Fraundt going into Colonel Trummler's office when you first saw them or were they coming out of Colonel Trummler's office?

(Fuehr-cross)

A They walked ahead and I drove my car behind them without them. They were walking and I was driving.

Q Did the two of them go into Colonel Trummler's headquarters?

A Yes.

Q You don't know what took place while they were in Colonel Trummler's office, do you?

A No, a very short time afterward, that was a few moments only, they came back out and had the flier with them.

Q Was Hoehler wearing a pistol at that time?

A I didn't see it.

Q Was Fraundt wearing a pistol at that time?

A He was wearing a uniform with a pistol holster, yes.

Q Tell me again what happened when you stopped the car at Wandersmann.

A This Wandersmann is about twelve kilometers outside of Wiesbaden and on the way Fraund told me, "When I nudge you, that will be the sign for you to stop." I stopped the car, took the ignition key out and got out. I went up to the hood of the car and opened up the hood and tinkered around the motor. I went back one more time and told Fraundt to get my flashlight out of the glove compartment and then I did some more work on the motor. A few seconds later several shots were fired. I went around the car and saw the flier lying on the ground dead.

Q Who fired the shots?

A Well, I didn't.

Q Who did?

A Hoehler had been sitting in the car, he remained sitting in the car. He was sitting in the back of the car as I went back there. He was still sitting back there behind my seat.

(Fuehr-cross)

Q You say that Koehler did not get out of the car, is that what you mean?

A No, Koehler did not get out.

Q Now I want to read you a paragraph of your statement on Prosecution Exhibit 65A and want you to listen to it:

"I drove the car on the Reichsstrasse from Wiesbaden in the direction of Frankfurt on Main. About a distance of twelve kilometers from Wiesbaden I stopped the car on the above mentioned road. The point of stopping was the Wanderermuseum. Both officials, Wilhelm Koehler and Richard Fraundt got out of the car with the flier. I turned the car around. Suddenly I heard shooting. I could not observe whether several shots were fired because the motor of my car had been running. I also did not ask about it. Besides, at the same time there was an air raid alarm and bomber formations were flying above us. The aviator lay dead on the ground two or three meters distance from the edge of the road."

Q Do you remember saying that in this statement?

A Yes.

Q Why did you tell that story?

A Well, it had been a year and a half.

Q Well, it's been longer than that nowsince your telling this story. Today it has been two and a half years.

A Yes, and I did calm down some in this period, too, and I had a chance to remember the matter as it really did happen.

Q Do you think your memory is better today than it was a year ago, is that correct?

A Yes, my nerves were pretty well down at that time. In the first place, the constant air attacks and then with my family on the move.

Q At the time you made this statement you hadn't had an opportunity to confer with Koehler, had you?

A No.

(Fuehr-cross)

Q And of course since this trial has begun you have had plenty of opportunity to talk to him about this?

A Not so much.

Q Well, have you discussed it?

A Yes, of course, but not about this matter. At the time this was read here in court I didn't even know what I had written anymore.

Q [illegible] the time of the [illegible] flyer?

A [illegible] Colonel Trumbler's office, and the way the orders read, there was one way you could look at it; if we didn't we'd be punished.

Q Did Mr. Trumbler tell you anything about expecting to receive another [illegible] flyer, were you not?

Q Who did Mr. Trumbler tell you about keeping this matter highly secret? You knew that they had another flyer in custody, did you not?

A All he said was there will be no talking about this. I went up there [illegible] why he didn't want any talking about it?

A It was the same thing as to that original business was not different, was it?

Q Certainly not that kind of business, that is right isn't it?

A [illegible] to our superiors, I believe that is what you took [illegible] down into the cellar, is that right?

Q Now it will be [illegible] December, 1944. I believe you said that you were working on [illegible] and you got a message sometime in December, that Mr. Trumbler, is that right?

A Yes. I did give it to him.

Q [illegible] to go see Mr. Trumbler on this occasion?

A Trumbler came over to my garage and said, "Come on let's go.", and I went over to my place and washed up a little bit and I went over to see Colonel Trumbler.

Q Did you know what you were going to see Colonel Trumbler about?

A No. [illegible] from the front.

Q Why did you say on direct examination, "I washed up, put on my coat and pistol and went to see Mr. Trumbler." You said that, didn't you?

A Yes. Into the body of the American pilot?

A Yes, I saw his uniform and I held my pistol at the height of his [illegible] we always had to report to our superiors in the military manner.

(Fuehr-Cross) You are not saying that you shot this American flyer are you?

(Fuehr-Cross)

Q Did you always have to report with a pistol on you?

A Always. In fact even when we [illegible] on the way we were checked to see if we had our pistols on us and if we didn't we'd be punished.

Q At the time you went to Mr. Brundige you were expecting to receive another order to kill another flyer, were you not?

A No.

Q You knew that they had another flyer in custody, did you not?

A I didn't know that either. I only knew that when I went up there he was sitting there.

Q You knew that would have happened to all flyers that were there in the office, didn't you?

A No, I didn't know that.

Q After you reported up there I believe that that afternoon you took the flyer down into the cellar, is that right?

A Yes, that is right.

Q You were very kind to this flyer and I believe you said you gave him a cigarette?

A Yes, I did give it to him.

Q You knew right then that later that day you were going to kill him, didn't you?

A Yes, I knew that.

Q And did kill him?

A I fired one shot from the front.

Q Into the body of the American pilot?

A It was dark.

Q You could see him couldn't you?

A Yes, I saw his outlines and I held my pistol at the height of his chest.

Q You are not denying that you shot this American flyer are you?

(Further cross)

A I had the order to do it.

Q You are not denying that you did do it?

A Fraundt fired too.

Q Both of you fired bullets into his body, that is correct is it not?

A Yes, that is right.

Q Did he die?

A Died? He was lying on the ground dead.

Q Fuchr, you have testified about your poor children having to sleep in air raid shelters for a period of two years as a result of bombing, is that correct?

A Yes. My biggest daughter, in fact, didn't even go up to daylight at all. She was even eating down there.

Q Have you ever heard of the old men women and children that were bombed and strafed by the Germans in Coventry, England?

A No, I didn't hear about that.

Q That is news to you know, isn't it?

A Yes, that is news.

Q You are surprised to hear that that was done, aren't you?

A Well, surprised.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q You started to make an explanation before dinner in answer to some question you were asked and were stopped. Did you want to tell the court what that explanation was? I think it had to do with the circumstances under which you made that statement.

A Well I was asked before that whether I had been reading the Voelkischer Beobachter das Reich. I thought we were talking about this article of Dr. Goebbels. I did not read it.

(Fuehrer-redirect)

Q I want you to answer the question.

A Could you please repeat the question?

Q You started to explain to the court the circumstances under which you made that statement in Wiesbaden. Do you remember that?

A Yes.

Q You had gotten down to the point when they took you to Wiesbaden at half past one in the morning.

A Yes.

Q From that point on finish the circumstances.

A Yes. At one thirty I was picked up at the Bruchsheim jail of the Americans and that same evening was taken to an American jail in Wiesbaden. The next morning I was picked up and taken to the CIC and from there Mr. Teil picked me up and took me to the jail at Albrecht Strasse. My wife was

sitting there too. What I wanted to get done was to see if my wife got back to the children and Mr. Teil took care of that. A few days later I was taken out and was questioned about this matter concerning the flyers and I said what happened without ever denying it as far as I was able to remember.

Q When you were asked about your initials on that exhibit you wanted to make an explanation about the initials. What was that explanation?

A Yes. I forgot to put my name down there some place and Mr. Teil, in the little interrogation room, told me to put my name down there too, and there wasn't any room there anymore so I put "A. F." down there.

Q You mean that you put the initials "A. F." on the bottom of the sheet instead of your name?

A No, that is not it.

Q Well what was it?

A Why I put my name down?

Q You were asked a question about the appearance of your initials on that sheet of paper. I am showing you Prosecutions Exhibit Number 65

(Funkr-redirect)

A Yes, that is my name here, "A. F.".

Q You said you wanted to explain your initials to the court?

A Yes.

Q Do you still want to explain that?

A Yes.

Q Go ahead and do it.

A These letters "A. F." are supposed to mean Arthur Fouhr and I forgot to put this in there so I abreviated it "A. F.".

Q In other words wherever you intended to put your name and left it out you substituted your initials, is that what you say?

A Yes.

Q When you first saw Hoehler with the flyer was anyone else with the two of them at the time?

A Hoehler and Fraundt.

MR. [illegible]: Nothing further.

RECROSS EXAMINATION:

Q Mr. Fuehr, Captain Vance has accused you here of having made statements about the acts of Mr. Hoehler which are not in agreement with the statements introduced in evidence. What I would like to ask you is, did Hoehler occasion you here to change your statement?

A No.

Q Then what is the reason that your statements now are different from the ones you made in your original statement?

A Because I now am in a position to get a clear picture, that is not now, but I was in that position after four or five weeks in Wiesbaden and I said to myself that wasn't right.

Q So what you are trying to say by that is that what you said today is the truth?

A Yes.

(Further recess)

CAPTAIN VANCE: Nothing further by the prosecution.

DEFENSE COUNSEL: Anything by the court?

PRESIDENT: No questions by the court. The witness will take his place in the dock.

(Thereupon the accused was excused and resumed his seat in the dock.)

PRESIDENT: The court will recess in place.

(Thereupon the court recessed in place.)

(Thereupon the court reconvened.)

PRESIDENT: The court will come to order.

DEFENSE COUNSEL: Will you call in Mrs. Gutman.

CLAIRE GUTMAN, called as a witness by the defense, being first duly sworn, took the stand and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name, please?

A Claire Gutman.

Q Are you married?

A Yes.

Q Where do you live now?

A In Wiesbaden.

Q You live there with your family?

A I was in the concentration camp with my family and my husband and my son did not come back.

CAPTAIN VANCE: I was going to object because she didn't answer the question. It looks to me as though the answer is not responsive. You asked the question--

DEFENSE COUNSEL: I asked herself she was living with her family and she said she was a survivor of a concentration camp.

Q Do you know the accused Arthur Fuchs?

A Yes.

Q Will you please point him out to the court?

A Number four. (Indicating)

DEFENSE COUNSEL: Let the record show that the witness properly identified the accused Arthur Fuehr.

Q Where did you meet Fuehr?

A At the Secret State Police--Gestapo--Wiesbaden.

Q Can you tell the court when it was that you first met him?

A That was probably in 1939.

Q How long did you know him?

A Until the time I was taken in the camp.

Q When was that?

A In 1942 we were sent to the kaserne in Frankfurt to Wiesbaden and in 1943 we were taken to camp.

Q Why were you sent into camp?

A Because I and my family are Jewish.

Q Did you have any particular reason that brought you to Gestapo Headquarters at Wiesbaden?

A Yes.

Q What was that?

A My husband had been an attorney by profession and the Chief of the Jewish Community.

Q What were you doing personally in the Gestapo Headquarters?

A For a while the state police in Wiesbaden did not permit the Jews to come there individually and my husband had to appear for the various members of the community, as their representative.

Q Do you mean by that that whenever he had occasion to go there you kept him company?

A No. It happened that, professionally, he was unable to appear there at the proper moment and on that occasion I just happened to be sent there.

Q Did you do any work around headquarters of the Gestapo?

A No. I don't understand the question. Are we talking about Fuehr?

Q Did you meet other people, Jews as well as non-Jews, at the headquarters of the Gestapo at Wiesbaden?

A [illegible] place of my [illegible] stand as a representative

CAPTAIN VANCE: I object to the question as being immaterial, irrelevant and incompetent. If we are going to bring out testimony about the Jewish---

DEFENSE COUNSEL: I am just laying the foundation to ask her what the opinion was of people like herself of Fuehr as a group, for character testimony.

CAPTAIN VANCE: I have no objection if you ask her what her opinion was of him, how did he treat you? What did you tell me in my office as the may be or

PRESIDENT: Objection overruled.

QUESTION BY DEFENSE COUNSEL: and toward me over as his superior officer.

Q Did you, from time to time, meet other people at the Gestapo Headquarters in Wiesbaden who also knew Fuehr?

A Yes, [illegible] ever receive [illegible] that you did not receive as the bar

Q What was Fuehr's reputation among persons like yourself and these others whom you met in the Gestapo Headquarters in Wiesbaden?

CAPTAIN VANCE: I object to that question. I object to this woman testifying what his reputation was among these other people. As to her own opinion I have no objection whatsoever.

DEFENSE COUNSEL: I am saying what his reputation was among this group. [illegible] particular [illegible] with you did not receive

CAPTAIN VANCE: That is the very reason of my objection. [illegible]

PRESIDENT: Objection sustained.

(Cuttman-direct) [illegible]

(Cuttman-direct)

QUESTIONS BY DEFENSE COUNSEL:

Q What is your opinion about Fuehr, and upon what do you base your opinion?

A I don't understand the question. Are you talking about Fuehr?

Q Yes. [illegible] did you know Arthur Fuehr in the year 1944 and the year [illegible] when I went to the headquarters in place of my husband as a representative of the members of the Jewish Community I found Fuehr there in a what you might call subordinate position as a doorman.

Q What is your opinion about Fuehr based on your personal experiences with him?

A I don't know anything disadvantageous about Fuehr and I didn't hear from any third parties that he ever treated Jewish persons in a manner which is common to Gestapo members.

Q But did he treat you? What did you tell me in my office was the way he treated you?

A He opened the door and turned me over to his superior officer.

Q Were you ever ill treated by him in any way?

A No.

Q Did you ever receive courtesies at his hands that you did not receive at the hands of other Gestapo members?

CAPTAIN VANCE: I object. He is leading his witness.

DEFENSE COUNSEL: I am trying to get the answer. I agree I am leading.

CAPTAIN VANCE: Nothing further.

PRESIDENT: Objection overruled.

Any questions?

MR. WITNESS: [illegible] questions by the court, the witness is excused.

Q Were there any particular things which he did which you did not receive from other members of the Gestapo that you can tell the court about?

[illegible], called as a witness by the defense, being first duly sworn, took the stand and testified through an interpreter as follows:

Q Did he know who you were?

A Yes. DIRECT EXAMINATION

[redacted] Your witness.

What is your [redacted]

[redacted] CROSS EXAMINATION

Q Mrs. Dettmann did you know Arthur Fuchs in the year 1944 and the year 1945? Wiesbaden.

A No, [redacted] I wasn't at Wiesbaden.

Q Do you know anything about his reputation during that period of time? If he is in the courtroom will you please point him out?

A Number four. (Indicating.)

Q I didn't understand from your questions propounded by the defense counsel just what your answer is to Fuchs's reputation. Is it good or bad?

A [redacted] don't know anything of disadvantage.

Q Whether it is good or bad?

A [redacted] I don't know anything at all between 1943 and 1945. A At the Gestapo. At the [redacted] in Paulinenstrasse.

Q If I were to tell you that Arthur Fuchs took an American Prisoner-of-war on a dark night out to the side of the road and fired a pistol into his body and killed him, would you consider one of such character and characteristics to work there.

Q DEFENSE COUNSEL: I pray the court's judgment.

A PRESIDENT: Objection [redacted] I was sent to work at the [redacted] Nothing further.

Q DEFENSE COUNSEL: Did the court question at this Gestapo headquarters? PRESIDENT: No questions by the court, the witness is excused.

(Thereupon the witness was excused and withdrew.)

Q DEFENSE COUNSEL: Herr Hammer [redacted] work in Gestapo Headquarters room [redacted] ROOM, called as a witness by the defense, being first duly sworn, took the stand and testified through an interpreter as follows:

(Recess.)
(Continued.)

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name, please?

A Karl Ramhuber.

Q Where do you live?

A Wiesbaden.

Q Do you know Arthur Fuehr?

A Yes.

Q If he is in the courtroom will you please point him out?

A Number four. (Indicating)

DEFENSE COUNSEL: Let the record indicate that the witness identified Fuehr as Number four.

Q How long have you known Fuehr?

A Since 1942.

Q Where did you meet him?

A At the Gestapo. At the STAPO in Paulinenstrasse.

Q In Wiesbaden?

A Yes.

Q Were you there in the headquarters of the Gestapo very often?

A I had to work there.

Q Why?

A Because I am a Jew. By the Nuremberg Legislation? I had to work at the cemetery and also at the STAPO.

Q Were there other Jews there, like yourself, working at this Gestapo headquarters?

A Yes.

Q Did you, in the course of your work in Gestapo Headquarters come in contact with Fuehr?

(Witness directed)

A I had to walk [illegible] about.

Q Do you know whether the others who worked there in some way also [illegible] to talk or have something to do with Fuehr?

A Will all of them who worked there? He talked to them [illegible]

Q That was Fuehr's reputation among the people who like yourself worked in Gestapo Headquarters, sometimes gave [illegible]

CAPTAIN VANCE: I object on the grounds already stated.

The proper way to prove a character witness is to ask the witness if he knows the character. If he says he does ask him if it is good or bad.

DEFENSE COUNSEL: All right.

PRESIDENT: Objection sustained. [illegible] the witness.

QUESTIONS BY DEFENSE COUNSEL: [illegible]

Q Do you know what Fuehr's character was?

A No.

Q Do you know what his character was among the people who like yourself---

CAPTAIN VANCE: We object on the ground that he did not know what the others thought his character was.

DEFENSE COUNSEL: I agree that that is what he said. I submit that I have a right to ask him what his character was among the group that met him.

CAPTAIN VANCE: We object to the group. He can't speak for other people.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q What was your personal opinion of Fuehr and upon what was that opinion based?

CAPTAIN VANCE: That is irrelevant. What his opinion is about Fuehr is irrelevant. He has asked him about his character and the man has testified that he knows nothing about his character.

QUESTIONS BY DEFENSE COUNSEL:

Q What is your personal opinion about Fuehr based upon your experience with him?

A When I worked there he sometimes gave me a sandwich and he sometimes gave me a cup of coffee.

Q What else was your experience with him?

A Nothing else.

Q Were you ever mistreated by him?

CAPTAIN VANCE: We object, he is leading the witness.

PRESIDENT: Objection overruled.

THE WITNESS: No.

DEFENSE COUNSEL: I would like to ask a question and would like to have the court rule on it before it is answered.

QUESTIONS BY DEFENSE COUNSEL:

Q Was the treatment you received from him better or worse than the treatment you received from others at the same place during the same period of time?

CAPTAIN VANCE: We object to it.

DEFENSE COUNSEL: I ask the court's judgment.

PRESIDENT: Objection overruled.

THE WITNESS: I can't say.

DEFENSE COUNSEL: Nothing further.

QUESTIONS BY DR. WACKER:

Q How often would you meet Fuehr?

A Almost daily.

Q During what period of time was that?

A I went there at 6:30 in the morning and worked at the furnace and I cleaned up the yard, and when I got through with this I could leave because I had a job, too, besides this.

Q And beginning from what year until what time did this take place?

A From '42 up to the end of '44.

Q Were there some more people employed there in the same manner as you were?

A Yes.

Q Did you talk to them about Fuehr?

A Well, I didn't talk much about Fuehr; nothing in particular.

Q Did anything of disadvantage ever reach your ears from somebody else?

CAPTAIN VANCE: We object, if it please the court. If the court would like to hear something on these types of witnesses, it would bear me out. I would like to read the court something about what a character witness can testify to and cannot testify to.

PRESIDENT: Proceed and read that.

CAPTAIN VANCE: Reading Paragraph 170 on page 299 of Underhill's Criminal Evidence, Fourth Edition. The title is "Mode of Proof--Competency of witnesses":

> "Character, i.e., the general reputation which the accused possesses and enjoys among his acquaintances may be shown by the testimony of such persons only. The witness is not competent unless it is first shown that he knows such reputation, which must be that which is current in the neighborhood where both he and the accused reside. If witness does not know where accused lived, he is incompetent. The witness can not give an opinion which is merely the result of observing the disposition and conduct of the defendant. What is required of him is his knowledge of the existing general reputation which he has obtained by hearing the comments of others on the accused while he lived among those who knew him, and not his own exclusive personal knowledge. The qualification of character witnesses is largely within the discretion of the trial court.
>
> "Evidence of the good actions of the accused is inadmissible to prove his good reputation." * * *

PRESIDENT: Have it translated.

DEFENSE COUNSEL: I will dispense with the translation of it. They say they understood it.

DR. WACKER: I would like to say something further about it, however. These statements here are about criminal cases, which differ in some respects from a case of this type. I ask the court not to lose sight of the fact that this accused is charged with being a member of a criminal organization, and for that reason evidence of this type seems to be

of different value to me. The evidence admitted here is of a somewhat different nature, and I therefore think that these rules should be evaluated somewhat differently also.

DEFENSE COUNSEL: May I add just one brief word: As the German counsel has said, this sort of evidence is by way of mitigation. But here is the point: You have these people of the Jewish faith, whose opportunities to know what a man's reputation was in his own community were practically non-existent for years before this time. And so, in an attempt to build up a community within which he might have an opinion, I started to ask these questions about these other people working there and asked what their opinion was of his reputation among them, thinking to substitute them as a small community particularly sensitive to their reception, in lieu of a man's normal community, with which, of course, they could know nothing.

PRESIDENT: This is a matter in which the court has considerable discretion, and the court will permit the question to be answered. The objection is overruled.

QUESTIONS BY DR. WACKER:

Q Do you know anything about the air-raid shelter construction?

A Yes.

Q Who was constructing this air-raid shelter?

A Those were foreigners together with Germans.

Q What did Fuehr have to do with this air-raid shelter construction?

A I don't know what Mr. Fuehr had to do with this air-raid shelter construction.

Q Did he come in contact with the foreigners who worked there?

A Well, as far as I was along I guess he did come in contact with them all right, but I don't know of him doing anything.

Q Can you say anything about how Fuehr treated these prisoners?

A As a matter of fact, I was able to watch him give several of them a piece of bread.

Q Anything else?

A I don't know anything else.

Q Did you see whether he treated those prisoners well or badly?

A I am sure I couldn't say he treated them badly while I was around.

DR. MACKER: Nothing further.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You do not know very much about Arthur Fuehr's reputation at all, do you?

A I wouldn't know anything else.

Q I say you don't know anything much about it, do you?

A No, I don't.

Q You do not know what his reputation is for truth and veracity, do you?

A Well, I guess he was friendly to us, all right, who were working there and didn't do anything to us.

Q I did not ask you about his being friendly. I asked you if you knew anything about his reputation as to truth and veracity.

Q Did he come in contact with the foreigners who worked there?

A Well, as far as I was along I guess he did come in contact with them all right, but I don't know of him doing anything.

Q Can you say anything about how Fuehr treated these prisoners?

A As a matter of fact, I was able to watch him give several of them a piece of bread.

Q Anything else?

A I don't know anything else.

Q Did you see whether he treated those prisoners well or badly?

A I am sure I couldn't say he treated them badly while I was around.

DR. WACKER: Nothing further.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You do not know very much about Arthur Fuehr's reputation at all, do you?

A I wouldn't know anything else.

Q I say you don't know anything much about it, do you?

A No, I don't.

Q You do not know what his reputation is for truth and veracity, do you?

A Well, I guess he was friendly to us, all right, who were working there and didn't do anything to us.

Q I did not ask you about his being friendly. I asked you if you knew anything about his reputation as to truth and veracity.

A I don't know anything about it.

Q And you do not know anything about his reputation as to whether he was a quiet sort of man or a hostile sort of a man, do you?

A Well, as far as I know he was always calm, because I never heard him holler at anybody.

Q All you know about Buehr is that he never did you any harm; that is right, is it not?

A No.

Q You do not know whether he harmed other people or not, do you?

A I don't know.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DR. WACKER:

Q Do you know what the general treatment was that Gestapo men accorded to persons persecuted because of their race?

MR. RACHAEL: I object to that question.

PRESIDENT: Objection sustained.

DR. WACKER: No further questions.

PRESIDENT: No questions by the court. The witness is excused.

(Thereupon the witness was excused and withdrew.)

MICHAEL KLEIN, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q What is your full name?

A Michael Klein.

Q Where do you live?

A Wiesbaden, Scharnhorststrasse 28.

Q Do you know the defendant Arthur Fuehr?

A Yes, I know him.

Q Do you see him in the courtroom? If so, point him out to the court.

A Here. Number 4 (indicating).

MR. RACHLIN: Let the record show that the witness identifies the accused Arthur Fuehr, wearing placard No. 4.

Q When did you first know Arthur Fuehr?

A About 1942.

Q What was the occasion on which you happened to meet Arthur Fuehr?

A We had to do some forced labor there at the Gestapo building Saturday afternoon and Sunday after our work.

Q What was Arthur Fuehr doing there?

A He was a supervisor there where we worked.

Q About how many people worked there at those times?

A Well, there were up to five, six, or seven of us.

Q What kind of work did you do and why did you have to do it?

A Well, as a Jew I had to work there.

Q About how long did you work there? What period of time?

A Oh, several years. Worked there several years.

Q What is your opinion concerning the character of Arthur Fuehr? Is it good or bad?

A Michael Klein.

Q Where do you live?

A Wiesbaden, Scharnhorststrasse 28.

Q Do you know the defendant Arthur Fuehr?

A Yes, I know him.

Q Do you see him in the courtroom? If so, point him out to the court.

A Here. Number 4 (indicating).

MR. RACHLIS: Let the record show that the witness identifies the accused Arthur Fuehr, wearing placard No. 4.

Q When did you first know Arthur Fuehr?

A About 1942.

Q What was the occasion on which you happened to meet Arthur Fuehr?

A We had to do some forced labor there at the Gestapo building Saturday afternoon and Sunday after our work.

Q What was Arthur Fuehr doing there?

A He was a supervisor there where we worked.

Q About how many people worked there at those times?

A Well, there were up to five, six, or seven of us.

Q What kind of work did you do and why did you have to do it?

A Well, as a Jew I had to work there.

Q About how long did you work there? What period of time?

A Oh, several years. Worked there several years.

Q What is your opinion concerning the character of Arthur Fuehr? Is it good or bad?

A Well, my personal opinion of him was not a bad one; because he always treated us well when we worked there.

MR. RACHAEL: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Klein, about all you know about Arthur Fuehr and all that you can say for him is that he never mistreated you; is that correct?

A I can't say anything else about him.

Q You cannot say anything else good for him or anything else bad for him, can you?

A No, I don't know anything else that happened.

Q How many times did you work under Fuehr?

A I don't know how long. I was there every Sunday.

Q Were you working for him in 1944?

A Yes, in 1944 we still did.

Q Were you working for him in 1945?

A We did, too.

CAPTAIN VANCE: Nothing further.

MR. RACHAEL: Any questions by any member of the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MR. RACHAEL: The defense calls Adalf Kahn as its next witness.

ADOLF KAHN, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q What is your full name?

A Adolf Kahn.

Q Where do you live?

A Wiesbaden.

Q Do you know Arthur Fuehr?

A Yes.

Q If he is in the courtroom, will you point him out?

A Over there (indicating). Number 4.

MR. RACHAEL: Let the record show that the witness identifies the defendant Arthur Fuehr, wearing placard No. 4.

Q How long have you known Arthur Fuehr?

A Since about 1942.

Q What was the occasion when you met Arthur Fuehr?

A I had to work at the Gestapo.

Q What kind of work did you do at the Gestapo and why did you do it?

A I had to do occasional work coming up occasionally.

Q What kind of work?

A We had to dig up the garden, carry coal, move around, and so forth.

Q Who was your supervisor there?

A Well, we didn't really have a supervisor. Mr. Fuehr, I guess.

Q What was the character of Arthur Fuehr, if you know, good or bad?

A He was always decent to me.

MR. RACHAEL: Your witness, [illegible]

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE: [illegible]

Q. Can you answer the question asked you--whether that man's character is good or bad?

A Well, he was decent to me, and I can't say anything else. [illegible]

Q You do not know anything about his character, do you?

A No, I don't know any more about it.

CAPTAIN VANCE: Nothing further.

MR. RACHAEL: Any questions by any member of the court?

PRESIDENT: No questions by the court. The witness is excused. [illegible]

(Thereupon the witness was excused and withdrew.)

MR. RACHAEL: The next witness is Julius Lowenthal.

JULIUS LOWENTHAL, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL: [illegible]

Q What is your full name?

A Julius Lowenthal. [illegible]

Q Where do you live? [illegible]

A Wiesbaden, Scheirstein.

Q Do you know Arthur Fuehr?

A Yes. [illegible]

Q If he is in the courtroom, will you point him out?

A Number 4 (indicating). [illegible]

MR. RACHAEL: Indicating the defendant Arthur Fuehr, wearing placard No. 4.

Q How long have you known Arthur Fuehr?

A Since September 1942.

Q What was the occasion on which you first came to know him?

A Because I had to work at the Gestapo.

Q What kind of work did you do and why did you do it?

A We had to work there Saturday noon and on Sunday, and we had to haul coal and dig up the garden--cultivate the garden.

Q Who was your supervisor?

A Mr. Fuehr.

Q About how many persons worked with you there?

A Sometimes there were five or even six.

Q How did Arthur Fuehr treat you?

A He treated me well.

Q How did Arthur Fuehr treat or handle the other persons working there?

A Good, too.

Q What is your opinion as to the character of Arthur Fuehr? Is it good or bad?

A He treated us well--the ones who were working there.

MR. MACHAN: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Was there any reason why Fuehr should not treat you well while you worked there?

A No. As long as we did our work it was all right.

Q Did you always do your work like he wanted it done?

A Yes.

Q And you were afraid that if you did not do it that he would slug you, were you not?

A Well, what do you want me to say to that?

Q I want you to answer it.

A That is hard to say--whether he would do something or not.

Q Well, you thought he would, did you not?

A Well, if we hadn't worked.

Q When he told you to work you worked and worked hard, did you not?

A He did what we were told.

Q And as long as you did what you were told Fuehr never did mistreat you; is that correct?

A No, never.

Q You do not know whether he mistreated other people or not, do you?

A No.

Q All you are talking about is your personal experience with him?

A Yes.

Q And you do not know whether all over Wiesbaden his character is good or bad, do you?

A I don't know. He treated everybody well who was working.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DR. WACKER:

Q Did this work detail of Fuehr's also get tobacco?

A Yes.

(Whereupon court reconvened at 1330 hours.)

DR. RACHAEL: Nothing further.

MR. RACHAEL: Any questions by any member of the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MR. RACHAEL: At this time, if the court please, the defense will proceed to Charges 6 and 10, without waiving its right to return to Charges 4 and 5, if in the future evidence is found which may materially bear on the issues in the case on those charges.

PRESIDENT: Court will recess until 1530.

(Whereupon at 1500 hours, the court recessed until 1530 hours.)

(Thereupon Court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Lieutenant Colonel Berman and Major Saxon, who are absent on business of the accused, and Dr. Trost, who is absent sick, all of the accused, the reporter and interpreter are present.

MR. RATNER: Will you mark these Defense Exhibits D-15, D-16 and D-17 for identification, please?

(Thereupon the documents referred to were marked Defense Exhibits D-15, D-16 and D-17 for identification.)

MR. MICHAEL: If the court please, the defense will now start the introduction of evidence in support of the defense of Charges VI and I, which will be tried together.

The defense would like to offer into evidence as Defense Exhibit 15, a book entitled "Winthrop's Military Law and Precedents, 2nd Edition, Volumes I and II, Reprint, 1920," which has been marked Defense Exhibit 15 for identification, with leave to withdraw this book at the close of the case. The purpose of the book is not to offer the entire book into evidence, but two extracts from it.

PROSECUTION: The prosecution states that this is an unusual precedent. Winthrop's treatise on Military Law is a text book that has been used in the army and by lawyers for many years. It is always before this court. It is not a proper matter to be offered into evidence.

LAW MEMBER: It has been my impression that the law of this case will be determined by this court and that law of any other jurisdiction outside the jurisdiction of this court is a question of fact, and about Charges VI and I.

as a question of fact, the defense offers this book into evidence, the court to take into consideration as a fact the precedents as established by various jurisdictions so that in its deliberation will determine the law based on these facts.

PROSECUTION: I cannot subscribe to that. If it is a question of fact or foreign law, then somebody must come to court and prove it. It is a matter of law that the court can take notice of. It is always available to the court and should not be received as evidence.

PRESIDENT: The objection is sustained.

MR. BACHAUS: If the court please, in order to refresh the recollection of the court of the substance which the defense originally attempted to introduce into evidence, the defense would like to read to the court those two points which we believe are vital as the law on these two charges.

PROSECUTION: May I ask the defense counsel, is that the extract from Winthrop, a copy of which was given to me a few minutes ago?

MR. BACHAUS: That is right.

PROSECUTION: I object to the defense arguing the question of superior orders. The time for that argument will be at the end of his case.

MR. BACHAUS: If the court please, as a foundation for the introduction into evidence of the testimony of the defense in charges VI and X, the defense asks the permission to read to the court two extracts from Winthrop, which is believed pertaining to the evidence in the case. We are not attempting to introduce it into evidence. We just want to refresh the recollection of the court as to what Winthrop says about Charges VI and X.

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PROSECUTION: May it please the court, the prosecution has no objection to the court having these extracts before it. I do object to evidence on the law of superior orders at this time. There is a footnote: 'The inferior is plea, whether a defense in one or more [illegible] obedience to the commands of the latter.' Hareourt, 25-2.

MR. MCHAEL: If the court please, I do not intend to argue. I am just reading to the court, to refresh the court's recollection. This rule the officer first reads in the conclusion which to observe it. It is the British system all military authority and discipline. The objection is overruled. Petitioners are granted [illegible] to read such extracts of [illegible] as represents the President, as the Commander-in-Chief and executive power of the Nation, and the [illegible] If the court please, this extract is taken from

Winthrop's Military Law and Precedents, Second Edition, Volumes 1 and 2, Reprint in 1920, at page 972. It is entitled "Disobedience of Lawful Command by Subordinate." The Constitution has submitted the [illegible] of his superior officers, (thereby) vested and controlled in every thing by the supreme commander, from whom, by a number of communicating [illegible] to evidence in gradation. The importance of this [illegible] is rather merely to find that this is [illegible] the specific and capital offense of disobedience of orders. 'Obedience to all orders is the very principle of [illegible] officer or soldier is chiefly [illegible]' To which may be added from Clode, There is a footnote: 'orders of subordinates must be consistent with [illegible] and, in case of conflict, they must be obeyed [illegible] 'Obedience to command is the point of military virtue, in relation to which all others are secondary and subordinate; it is, for the soldier, the first and last virtue of a soldier.' Hareourt, 16. 'The first, second, and third point in a soldier is obedience.' Sutherne. Command, 1 Term, 168. 'The first duty of a soldier is to obey, and without this there can be neither discipline nor efficiency in an army.' McCall v. McDowell, Deady, 214. 'To [illegible] efficiency an army must be, to a certain extent, a despotism. Each officer [illegible] is invested with an arbitrary power over those beneath him, and the soldier who enlists in the army [illegible] in some particular [illegible] voluntarily surrenders his personal liberty during the term of his enlistment, and consents to be governed beyond [illegible] will of his superior officers. He ceases to become answerable to the military courts, to be disciplined for offenses inimical to the [illegible] to relinquish his rights of action by flight, and to receive punishment without [illegible] civilian, deserts out of all proportion to the magnitude of the offense.' U.S. v. Clarke, Fed. Cas. 14,813; (Opinion of Judge Woods.) And see Trumbull v. Bennett, 2 Mich. 322. 'Another obligation must be met in connection with this; neither personal authority, nor political favoritism, nor personal safety, nor pecuniary advantages from other services fill the duties of this [illegible] like analogy according to the theory of military obedience. It consists in that one duty of obeying the command of the officer set over him.' Clode, 2 M.F., 37. 'And this records of Secretary of War [illegible] Judge Advocate General, Army Dept., 1880, performance.' (In Ex parte Johnson, 1 Fed. 736)

"—the fundamental rule, in peace and in war, for all inferiors through all the grades from the general of the army to the newest recruit. [illegible] peculiar [illegible]

There is a footnote:

1223

[illegible]

1223

Yee Bench, 88, (note 47) 653. But where a discretion is taken to be

There is a footnote:

"... military subordinate is compelled to make obedience a matter of personal responsibility entailing a complete performance ..." (Yee v. Johnson, 1 Yee, 364)

"... nothing short of a physical impossibility excusing a complete performance ..." (Yee v. Johnson, 1 Yee, 364)

While a certain discretion in the execution of an order may sometimes be permitted to officers high in rank or command, or officers charged with expert or peculiarly responsible duties —

There is a footnote:

Yee Bench, 88, (note 47) 653. But where a discretion is taken to be

There is a footnote:

"The inferior in place, whether standing one or more behind those below his superior, is bound to show implicit obedience to the commands of the latter." Barnett, 13-14.

This rule the officer finds rooted in the conditions which he accepts, and the soldier, in his oath of allegiance, swears to observe (4). As in the British system all military authority and discipline are derived from the power — the Sovereign — (Clode, Ed., 167) he in our very superior, in giving a lawful command, acts for and represents the President, as Commander-in-chief and Executive power of the Nation, and the source from which his operational and authority proceed. —

There is a footnote:

The following extract from Aquai, (p. 83) is equally applicable to our military system: "The Constitution has committed the action of the Army to the direction and controlled to everything by the supreme commander, from whom, by a number of gradations branches, is a multitude of subordinate officers, all acting in subordination and united in the same design, the whole body being moved to the will of the individual, who is the head to the military body which animates, and directs all the energies of the whole mass. Every officer is entitled implicitly to the obedience of those who are placed under him (Ibid.Ed.) —All orders of subordinates must be executed with the utmost promptitude, and with as much precision as the nature of circumstances will admit. The whole authority, and responsibility of command rests with the superior officer, and his subordinates are only to obey his orders, and not to question the propriety of them. The habit of implicit obedience is the first duty of a soldier, and the characteristic of a good one." (Ibid.Ed.)

There is a footnote:

Under the disciplinary system of a Armed Military order, and under the liberty of the citizen which is imposed upon the interior of the military, the obligation to obey is not to be fulfilled without hesitation, with alacrity, and to the full —

There is a footnote:

Of military subordinate is compelled to make obedience a matter of personal responsibility entailing a complete performance ..." (Yee v. Johnson, 1 Yee, 364)

"... nothing short of a physical impossibility excusing a complete performance ..." (Yee v. Johnson, 1 Yee, 364)

While a certain discretion in the execution of an order may sometimes be permitted to officers high in rank or command, or officers charged with expert or peculiarly responsible duties —

There is a footnote:

Yee Bench, 88, (note 47) 653. But where a discretion is taken to be

depart materially from the terms of an order, the officer makes himself amenable to charges, in case the result does not justify his action. Thus, of Lord Nelson's proceedings at Copenhagen, in not complying with his superior's signal to return and not engage the enemy, which resulted in a victory, Hough observes that, 'if he had failed, he would have been brought to trial by court-martial.'

"-- the inferior cannot, as a general rule, be permitted to raise a question as to the propriety, expediency, or feasibility of a command given him, or to vary in any degree from its terms." --

There is a footnote:

'If it were open to a soldier to be the judge of the propriety of the orders given him, there would at once be an end of all military discipline.' Harcourt, 14. 'In military affairs it would be intolerable. Clode, M.L., 75. 'A subordinate officer must not judge of the danger, propriety, expediency, or consequence of the order he receives.' Sutton v. Johnstone, 1 Term, 546. 'While subordinates are pausing to consider whether they ought to obey, or are scrupulously weighing the evidence of the facts upon which the commander-in-chief exercises the right to demand their services, the hostile enterprise may be accomplished without the means of resistance.' Martin v. Mott, 12 Wheaton 30. Soldiers should obey 'without cavil or inquiry;' they 'have no right to inquire of their superior officer as to the object of a detail upon which they are ordered by him.' Riggs v. State, 3 Cold, 90. And see McCall v. McDowell, Deady, 244-5; Fineman v. Wilkes, 12 Howard, 103; Trammell v. Bassett, 21 Ark., 199; 2 Opins. At. Gen., 715.

"-- Even where the order is arbitrary or unwise, and its effect must be injurious to the subordinate, he should first obey, postponing till after compliance his complaint and application for redress."

There is a footnote:

'Soldiers may complain of the command of a superior, but they are bound in the first instance to obey.' Samuel, 265. 'The orderly and proper course in all cases is to obey orders and afterwards, if any hardship or oppression is practised, appeal to superior authority for redress.' G.O. 10, Army of the Potomac, 1862. And see Harcourt, 16; Morrison, 82; G.C.M.O. 26, 87, Dept. of the East, 1871. Where indeed there is ample time for the purpose -- the time being peace, and the order not calling for present action but relating to something to be done in the future -- the subordinate, if he apprehends that its execution will seriously impair his rights or privileges, may, at his own risk, respectfully remonstrate, setting forth his grounds."

The second extract is from Winthrop's Military Law and Precedents, Second Edition, Volumes 1 and 2, Reprint of 1920 at page 575. Such is entitled

"Lawful Command." (Reading:)

"The word 'lawful' is indeed surplusage, and would have been implied from the word 'command' alone, but, being used, it goes to point the conclusion affirmed by all the authorities that a command not lawful may be disobeyed --"

There is a footnote citing several authorities.

"-- no matter from what source it proceeds. But to justify an inferior in disobeying an order as illegal, the case must be an extreme one and the illegality not doubtful." --

There are some cases cited there.

"--The order must be clearly repugnant to some specific statute, to the law or usage of the military service, or to the general law of the land."

There is a footnote:

The following orders have been held to be not 'lawful' in the sense of the Articles: -- An order given by a company commander to a soldier to have his washing done by a particular laundress. G.C.M.O. 57, Dept. of the East, 1871. An order requiring a soldier to assist in building a private stable for an officer; an order requiring a soldier to act as an officer's servant. An order forbidding a soldier to contract marriage. An order requiring a post band to play in a neighboring town for the pleasure of the citizens. An order directing a soldier to go within Mexican territory, to make the arrest of a deserter from our army. An order in contravention of par. [illegible] 1, A.W., giving to a prisoner in the guard house awaiting trial. 'A superior officer has no right to take advantage of his military rank, to give a command which does not relate to military duty or usages, or which has for its sole object the attainment of some private end. Such a command is not such a lawful command as will make disobedience to it criminal.' Manual 17. In an early case in our service, that of Colonel Thomas Butler, (New Orleans, 1804,) the officer refused to obey, as illegal, an order to crop his hair. He was tried and sentenced to be reprimanded; and, on again disobeying, was rearrested. Some seventy-five persons, civil and military, headed by Major General Jackson, addressed to Congress a formal protest against his treatment, and asked that he be relieved from 'persecution.' This appears to have been the end of the matter. M. S. P., Mil. Af., vol. 1, p. 173-4. For late cases of orders of which the legality was disputed, but which were held legal under the circumstances -- see G.C.M.O. 31, Dept. of Dakota, 1887; No. 8, Dept. of [illegible], 1888; No. 47, Id. 1889.

Interesting naval cases involving the legality of orders given to offices are published in G.O. 140, Navy Dept., 1869 (Asst. Surgeon Green's case,) and No. 182, Id., 1873.

The code of Gustavus Adolphus makes punishable, as a specific military offence, the giving of an unlawful command. See his Arts. 27 and 46, and compare his Art. 45, in Appendix.

"The unlawfulness of the command must then be a fact and, in view of the general presumption of law in favor of the authority of military orders emanating from official superiors, the onus of establishing this fact will, in all cases -- except where the order is establishing this fact will, in all cases -- except where the order is palpably illegal upon its face -- devolve upon the defense, and clear and convincing evidence will be required to rebut the presumption. The legality of the order may depend upon the period, whether one of peace or war, (or other emergency,) in which it is issued. An order which would be unlawful in peace or in the absence of any public exigency, may be perfectly lawful or may be justified by the usages of civilized warfare. Thus an order for the seizure of citizens' property for the subsistence or transportation of the troops, the construction of defenses, etc., or for the destruction to facilitate the operations with of the army in the field, or to prevent its falling into the hands of the enemy, would be not only authorized, but to disobey it would be a grave military crime. But, in general, in time of peace an order similarly in disregard of private right would be repugnant to the first principles of law, and to fail to obey it would constitute no violation of the present Article."

"But while a military inferior may be justified in not obeying an order as being unlawful, he will always assume to do so on his own personal responsibility and at his own risk. Even where there may exist in fact ample warrant for his act, he will, in justifying, commonly be at a very considerable disadvantage in the presumption of law being against him, while, in favor of the legality of the order as an executive mandate, and the facts of the case and reasons for the action are being often unknown in part at least to himself and in the possession only of the superior. In the great majority of cases therefore it is found both safer and wiser for the inferior, instead of resisting an apparently arbitrary authority, to accept the alternative of obeying even to his own detriment, thus also placing himself in the most favorable position for obtaining redress in the future. On the other hand, should injury to a third person, or damage to the United States, result from the execution of an order by a subordinate, the plea that he acted simply in obedience to the mandate of his proper superior will be favored at military law, and a court-martial will almost immediately justify and protect an inferior who has been exposed to prosecution by reason of his unquestioning fidelity to duty, holding the superior alone responsible."

[illegible] to be sworn.

[illegible] on behalf, being first duly sworn, testified through the interpreter as follows:

[illegible]

[illegible] state your full name to the court.

[illegible]

[illegible]

MR. RACHAEL: The defense will call as its next witness the defendant Stattmann.

PROSECUTION: May it please the court, may we have a recess in place? I have a matter to take up with the law member.

PRESIDENT: The court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: The court will adjourn to chambers in order to confer with Colonel Rosenfeld.

(Whereupon the court was closed at 1610 hours.)

(Whereupon the court was opened at 1630 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show all the members of the court, the prosecution and the defense with the exception of Colonel Berman, Major Simon and Dr. Trost, all the accused, the interpreter and reporter are present.

MR. RACHAEL: The defense will call as its next witness the accused Stattmann.

PRESIDENT: Will you stand please?

(Whereupon the accused Stattmann did as directed.)

PRESIDENT: Do you desire to be sworn or do you desire to make an unsworn statement?

ACCUSED STATTMANN: I desire to be sworn.

KARL FRANZ STATTMANN, an accused, called as a witness in his own behalf, being first duly sworn testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. AMELUNG:

Q Mr. Stattmann, please state your full name to the court.

A My name is Franz Karl Stattmann.

Q Are you an accused in this case?

A Yes, I am.

Q How old are you?

A Thirty-five.

Q Are you married?

A I am.

Q Since when?

A Since 1939.

Q Have you children, if so which?

A I have one girl about six years old now.

Q Where does your family reside?

A My family live in Blomberg Lippe.

Q What is your status at the present time?

A I am a civilian internee in Dachau.

Q What is your profession?

A Towards the end I was a criminal police official.

Q Have you been a criminal official since the beginning?

A No, at first I had the profession of dental technician and practiced this profession until 1933.

Q And when did you come to the police?

A After Austria returned to the Reich, I turned to the police.

Q When was that?

A That was in the first of April 1938.

Q What outfit in the police did you join at that time and what were you?

A I was inducted into the border police.

Q Did you stay with the border police?

A No, at the end of the war I was a member of the secret state police.

Q Give the court a brief description of your career in the police.

A After Austria returned to the Reich, the Reich Fuehrer made a speech to the Vienna police.

Q When you say Fuehrer, who do you mean?

A The Reich Fuehrer Heinrich Himmler. He described to the former Austrian police what their actions in the SS would be and challenged the SS men present to volunteer for the German police.

Q Were you an SS man and if so, when?

A Yes, I had belonged to the SS since 18 September 1937, belonged to the Seventh SS Regiment, Vienna. A few days later I had some business at the SS district "Danube". There I saw a list. That listed men who wanted to join the police, with permission to register. I registered and a few days later received an induction order to report to the border police school Pretz Schotelby. After a short period of training at Prets Schotelby I was used in the frontier service until 1943, thereby serving in several headquarters.

Q Did this organization in any way belong to the SD or Gestapo?

A Yes, the frontier police was the secret state police at the frontiers.

Q With that, were you a member of the secret state police?

A No, that is not right. It is true, for instance, the frontier police was subject to the secret state police, but until the war it was prohibited for members of the secret state police to join the frontier police.

Q When you came to the frontier police, did you have to sign statements forcing you to do certain things?

A Yes. At the time I was inducted into the German police, I was a member of the Allgemeine SS. In view of my service with the police, I would no longer carry out my duties with the Allgemeine SS

and therefore had to have myself furloughed, therefore, for all practical purposes, I left the Allgemeine SS on the 12th of April 1938 and had to request my admission into the SD, and since a large amount of papers were required for this, my admission into the security service of the SS did not take place until February 1940.

Q Did you have to sign up for anything else after you joined the SD?

A At the time we were dismissed from the school and sent to our actual posts of duty, we had to sign the so-called SD requirement statement.

Q Can you quote this SD statement either verbatim or substantially?

A I can only do it in substance.

Q Do it please.

A In this SD statement all members of the SD pledged to submit to any punishment of their superior officers without trial, if they disobeyed orders from superior officers.

Q Could you be assigned to the SD without signing this statement?

A I cannot answer this question. All I can say is that me ming this group I was in, everybody had to sign the statement when we joined the frontier service, or rather, signed it.

Q Did you stay with the frontier service until the end of the war?

A No. In 1942 I was supposed to be sent for further training at the criminal police for four months for state police and security service. In September 1943 I was sent to criminal police, Darmstadt. In March 1944, I was sent to the state police office in Darmstadt and that is where I stayed and wasn't sent anywhere else. This program was interrupted and I was therefore returned to the frontier police.

Q What was the exact name of the state police office in Darmstadt? Who was the chief of the state police at that time?

A At the time I was sent to the state police office, the last chief of this office left and his representative was the SS Major Hellenbroich.

Q When you say Sturmbannführer Hellenbroich, you mean the accused Number 20 in this case?

A Yes, that is the one I mean.

Q Later on, was this position of the chief of state police filled and if so by whom and when?

A To the best of my knowledge SS Major Cirke was appointed to this job of chief of state police office in July of 1944.

Q Do you mean the accused Number 19 when you say Cirke?

A Yes, that is the one I mean.

Q Who was your immediate superior?

A The immediate superior was the chief of the department in every case. Above him was Major Hellenbroich and over him the chief of the office, Major Cirke.

Q Under what department chief and what department were you working?

A During my training, I was sent from one department to another. I was employed merely in order to gain information and I think work under everybody who was there.

Q Did you at any time in particular in 1945 belong to any military organization?

A Yes. The secret state police was a military organization at that time.

Q Were you officially informed of this and if so in what form and manner?

A In the fall of 1943, in the course of an official formation of the frontier police in Luxembourg, we were told the following by somebody, the frontier police chief SS Captain Walter Runker or SS Lieutenant Colonel Hartmann, who at that time was the chief of the action detail of the security detail in Luxembourg, one of these men told us in the

course of this meeting that the whole security police had been reported to the International Red Cross, Geneva as an organization subject to high command and of a military nature. Also, the uniform and weapons carried by this organization were reported at that time. We had to take off our military insignia which the security police used to use only when employed in foreign countries and we put the German insignia on the uniforms.

PRESIDENT: Court will adjourn to 0900.

(Whereupon the court adjourned until 0900 hours, 19 February 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden. By Order
Im Auftrage von

.....

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....

(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

Court

(20)

MILITARY GOVERNMENT COURT

CASE RECORD.

Pages 1234 - 1321

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 19 February 1947

Members of Court:

WITNESSES:
KARL FRANZ STATTMAN
MICHAEL RAAF

Prosecutor Lt Col Dwinell

Defence Counsel Lt Col Berman

Interpreter Rudolf M Nathanson
Herbert B Rosenstock

Reporter Patricia Stewart, Sgt William F Jones, John McDonald, Peter L DiCurti, Sally Rose Hayett, Evelyn Cohen

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW.

Action of Reviewing Authority .....

.....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of Camp Dachau, Germany

THE UNITED STATES versus JURGEN STROOP, et al

convened by [redacted]

(Thereupon [redacted] entered the room.)

PRESIDENT: The court will come to order.

DACHAU, GERMANY, [redacted] Now it pleases the court, [redacted] BEGINNING 10 JANUARY 1947

[redacted] all 10 JANUARY 1947 [redacted] Pages 1254 to 1321 inclusive, who is [redacted] authority; all the members of the court, [redacted] defense, except [redacted] the accused, who is absent sick; all of the accused; the reporter and the interpreter are present.

TESTIMONY

	Direct	Cross	Redirect	Recross	Court
KARL FRANZ STATTMAN	1254	1258	1288	1291	
MICHAEL RAAF	1292	1313	1320		

MR. MACHAUS: If the court please, at the close of the session [redacted] and was being examined by defense counsel. He will resume the stand.

PRESIDENT: Resume the stand. You are reminded you are still under oath.

KARL FRANZ STATTMAN, a witness, voluntarily resumed the stand in his own behalf, and being reminded that he was still under oath, testified further through an interpreter as follows:

FURTHER EXAMINATION

CONTINUED BY DR. ARNDTS:

[redacted]: May I ask that Sievel be excused so that he might be talked to by one of his lawyers? He is not involved in this.

PRESIDENT: Permission granted.

(Whereupon the accused Sievel was excused and withdrew.)

PRESIDENT: May it please the court, let the record show that I was in error at the beginning of this session when I said that all of the accused were present. I note that the accused Goss, No. 15, and the accused Seebler, No. 5, are absent also.

DEFENSE COUNSEL: Yes, as the record tells us.

Pa 151-ps-80-2/19-1

Pa 151-ps-80-2/19-1

PROSECUTION: Let the record show that Camp Ansbach, Germany has left the courtroom with the permission of the court on 19 February 1947 to defense counsel. MORNING SESSION

QUESTION: (The Eighth Trial resumed at 0900 hours.)

Q PRESIDENT: Court will come to order. Yesterday's session, you testified that the PROSECUTION, May it please the court, let the record show that all the members of the court, except Colonel Pierce, who is temporarily absent, having been temporarily excused by the appointing authority, all the members of the prosecution, all the members of the defense, except Major Schuyler, who is absent on business of the court and the record, show it should also show all of the accused the reporter is and the interpreters are present in our offices. Later on, when I was ordered to MR. MORRIS, Of the court please, at the close of the session yesterday, this defendant Hartmann was on the witness stand and was being examined by defense counsel. He will resume the stand.

Q PRESIDENT: Because the witness was reminded you are still under testimony in the German Wehrmacht?

A MAX THEIN HARTMANN, an accused, voluntarily resumed the stand in his own behalf, and being reminded that he was still under oath, testified further through an interpreter as follows:

Q Were any official trips, did you receive any special MORRIS EXAMINATION any kind?

QUESTION BY DR. MORRIS: transfer to the German Wehrmacht, we were subject to all the MORRIS EXAMINATION May I ask that Michel be excused, that he might be advised to by one of his lawyers. He is not involved in this. We had to MORRIS furlough granted Hartmann. During our furloughs, we h

(Thereupon the accused Michel was excused and withdrew.)

PROSECUTION: May it please the court, let the record show that I was in error at the beginning of this session when I said that all of the accused were present. I note that the accused Lang, No. 15, and the accused Buehler, No. 5, are absent sick. As far as I am recollect, on this of 19 MORRIS EXAMINATION. Then, on the ground talks up... of 1943,

PROSECUTION: Let the record show that the accused Kiehel has left the courtroom with the permission of the court to confer with defense counsel.

QUESTIONS BY DR. ARNDTS:

Q Mr. Gerstein, at the end of yesterday's session, you testified that the German Security Police had been supported to Geneva as a part of the German Military Service. Did you finish your testimony in this respect yesterday?

A No, that was not finished yet. The following has to be added: During this official roll call, this official meeting, we were requested to turn in our Army identification papers, as it is usual when a unit is transferred in Germany to turn into our offices. Later on, when I was ordered to the training course which I had mentioned before, through the State Police Headquarters in Darmstadt, I received my number, my Army pass, and pay book, and furthermore, I was paid through them.

Q Do you refer to the same identification number and pay book as formerly was customary in the German Wehrmacht?

A Yes, I am referring to that.

Q Starting from this time, when you had to make any official trips, did you receive any special official papers of any kind?

A Yes. With the transfer to the German Wehrmacht, we were subject to all the rules and regulations applicable to the German Wehrmacht. On the railroads, we travelled with German Wehrmacht tickets. On our trips, we had to use the billets of the German Wehrmacht. During our furloughs, we had to report to the local post commander, etc.

Q Please tell the court once more, as far as you can recollect, when this transfer to the German Wehrmacht took place.

A From the fact that the German Security Police had become a part of the German Wehrmacht, I was informed, as far as I can recollect, on this official meeting which I think took place in the fall of 1943.

Ta 181-ps-80-2/22-3

Q And since when did you receive your identification number, pay book and Wehrmacht papers?

A This pay book I received only later, because I had left my home offices. I can remember that during August of 1944 there was talk about at the Gestapo Headquarters at Darmstadt that I should receive my number and pay book. They were there already, but before they had a chance to hand these papers out to me, through an air raid the Gestapo Headquarters was bombed out and with it all these papers. For this reason, I received the pay book only on the 1st of December, 1944.

Q And your number, your serial number?

A The serial number, I can't say that exactly any more, might have been before or later.

Q But on the 25th of February, 1945, you were already in the possession of these military papers?

A Yes, I had them.

Q What was your last rank in the Gestapo or in the SS respectively?

A I was criminal assistant and SS technical sergeant in the service of the Reichsführer SS.

Q Since when did you have your rank with the SS?

A I can't say that exactly any more. It was already for seven weeks.

Q In the, I believe, asked all SS men to request front-line service.

A That could have been before that.

THE COURT: Let the record show that Q. You mentioned yesterday that you came to Darmstadt only for instructions and training, and that you went there through several departments. Do you know the reason why this training was interrupted and you were put on duty at Darmstadt?

A No. When my four months' service with the Gestapo Darmstadt were over, I reported to the SS Major Hahlenbroich, and he told me I had to stay with Gestapo Headquarters, Darmstadt. There was no leader at that time. I can't give you any information why I had to stay with the

Gestapo Headquarters, Darmstadt. I please asked this question from Kaimer SS Major Hellenbreich. My transfer to the mountain troops of the SS.

Q Then you stayed with this headquarters without any further incidents?

A Yes, because I was still on temporary duty with the Gestapo Headquarters, and I was transferred to them only on the 1st of February, 1945. [illegible] was in August, 1944.

Q Did you make the attempt in any way or at any time to get a transfer from there? A. I was called to my unit commander, SS Major Berger, who A Yes. During the war, I made four applications requesting to. front-line service. anything in reply to these

Q Can you give the approximate date of these requests? to make an [illegible] The first request I made in Trier. It was after the beginning of the war. The second request I made in June or July, at the beginning of the eastern campaign. [illegible] were called again. I remained it Q Which year? Honor as a [illegible] to stay away from the front line.

A It was in 1941.

Q The third request? [illegible]

A The third request I made when the Reichsfuehrer SS Heinrich Himmler took the command over the replacement army. At that time, the Reichsfuehrer SS publicly asked all SS men to request front-line service.

MR. CAPTAIN VANCE: May it please the court, let the record show that the accused Goth, No. 15, and the accused Koehler, No. 5, have resumed their seats in the dock.

QUESTIONS BY DR. AHRENDS: [illegible] Darmstadt be kept away?

Q Please continue. [illegible] was burned out at the night from [illegible]

A The fourth and last request I made in fall, 1944. It must have been shortly after the air attack on Darmstadt, which took place at the beginning of September, 1944. The reason for this application again was the request that all men with special training should ask for front-line

Gestapo Headquarters, Darmstadt. I please asked this question from Sturmbann SS Major Hellenbreich. My transfer to the Mountain troops of the SS.

Q Then you stayed with this headquarters without any further incidents?

A Yes, because I was still on temporary duty with the Gestapo Headquarters, and I was transferred to them only on the 1st of February, 1945. [illegible] was in answer, I did.

Q Did you make the attempt in any way or at any time to get a transfer from there? [illegible]

A Yes. During the war, I made four applications requesting to front-line services. [illegible]

Q Can you give the approximate date of these requests? [illegible]

A The first request I made in Trier. It was after the beginning of the war. The second request I made in June or July, at the beginning of the eastern campaign. [illegible] Which year? [illegible]

A It was in 1941.

Q The third request? [illegible]

A The third request I made when the Reichsfuehrer SS Heinrich Himmler took the command over the replacement army. At that time, the Reichsfuehrer SS publicly asked all SS men to request front-line service.

CAPTAIN VANCE: May it please the court, let the record show that the accused Goetz, No. 15, and the accused Koehler, No. 5, have resumed their seats in the dock.

QUESTIONS BY DR. AHRENDS: [illegible]

Q Please continue. [illegible]

A The fourth and last request I made in fall, 1944. It must have been shortly after the air attack on Darmstadt, which took place at the beginning of September, 1944. The reason for this application again was the request that all men with special training should ask for front-line

service. Since through the conditions at my home I was a good mountaineer and skier, I requested my transfer to the mountain troops of the SS.

Q I am referring again to the third request. When did this one take place?

A The third request?

Q Which month and year?

A The third request, as far as I can remember, was in summer, 1944.

Q Which reply did you get to your third request?

A At that time, I was called to my unit commander, SS Major Gierger, who told me that every soldier has to stick to the job he is assigned to.

Q Did you say anything in reply to that?

A I asked him once more whether it wouldn't be possible to make an exception, since I was young and healthy, and at that time already older men were inducted, family fathers, etc., and as testimony in this trial has proven already, men badly wounded were called again. I considered it incompatible with my honor as a German to stay away from the front line.

Q What was the reply?

A I can't say that exactly any more. I was in my office at that time, but I was told that it was rejected in very strong words.

Q But approximately, please?

A It was rejected in very strong words.

Q What happened to the fourth request?

A The fourth request, I was just called to the administration and in short words I was told that it was impossible to be transferred to front-line service.

Q When was your headquarters at Darmstadt bombed out?

A The headquarters at Darmstadt was bombed out at the night from September 11th to 12th, 1944, when the City of Darmstadt, through a heavy air raid attack, was nearly completely destroyed.

Q What happened then to the headquarters?

A The headquarters Darmstadt was transferred to Bensheim on the

Bergstrasse.

Q And you, too, moved to Bensheim?

A With the Gestapo Headquarters, also all members of the Gestapo Headquarters were transferred to Bensheim, with the exception of a few men who continued a separate office at Darmstadt.

Q Do you still recall the 15th of February, 1945?

A No, I can't recall the 15th of February, 1945. It was a day like any other day, but the fact that a few days later -- it must have been between the 22nd and the 25th of February -- a terror flier from the rural police of the County Worms was brought into the Gestapo Headquarters.

Q When on this day and how did you get knowledge of this on this day?

A With the transfer of the Security Police to the German Reichswehr, we had to work over there together with the members of the Wehrmacht. Then, on this day, the day the terror flier was brought to headquarters, I came from breakfast, it must have been around 8:30 in the morning, the low-flying flier was already present in my office.

Q Who else was present in your room?

A Of course, I can't say who was present in my office at that time, but I assume that the SS 2nd Lt. Dengler and the female typist Bendinger, who was his secretary, were present; but it is possible also that only the guard post of the permanent guard was present, and that Dengler came with me from breakfast.

Q Please tell us what happened with this flier, or in regard to this flier, after you arrived at your office.

A After breakfast was over, all men who were present there returned to their offices, and when they heard that a terror flier was in the house, very soon some of them came to my offices, so that then several persons were present there.

Q Continue, please.

A A short while later, SS Major Hellenbroich arrived. I assume

in the meantime he received a report from the guard that this flier had been delivered. Anyway, he entered the room and sent everybody who had no business in this room away. [illegible] sends through the air

Q Who stayed in the room? (D.) Then I [illegible]

A As far as I can recall, there was the flier, SS Major Hellenbroich, SS 2nd Lt. Dengler, his secretary, and I.

Q Did SS Major Hellenbroich interrogate the flier in any way, or what did he do? [illegible] low-flying flier [illegible] terror flier had

A Yes. SS Major Hellenbroich at that time tried to make an [illegible] interrogation of the flier, but it didn't become a real interrogation, because for an interrogation, as far as I understand it, belong questions and answers. Furthermore, Hellenbroich didn't speak English perfectly. For this reason, later on the SS 1st Sergeant Freudenberger was called, who, too, knew the English language only halfway.

Q You said before it was not a real interrogation because there were no questions and answers. Didn't SS Major Hellenbroich propound certain questions? [illegible] in a position to know what they did there.

A Yes. Hellenbroich asked the flier for his name, rank and serial number, and his unit. The terror flier answered the question for his name and his rank. He kept silent to the question about his unit. Since we assumed he didn't understand the English of Freudenberger and Hellenbroich, we tried to explain to him through motions what we wanted to know from him. I can recall that, for instance, I made the following motion to him: I went with my hands through the air and made a sound like (demonstrating). Then I let my fist drop and made a sound (demonstrating.)

Q What did you want to say by that?

A I wanted to ask him in this way whether he was a member of a bomber crew.

Q What did the flier answer in reply, if anything at all?

A He laughed and denied with his hand.

Ta 183-sp-80-2/19-8

Q Did you make any other attempt to make yourself understood through motions or signs?

A Yes. Then I continued to show with my hands through the air and make a sound like (demonstrating.) Then I tried to imitate the sound of a machine gun (demonstrating) and told him "civilians."

Q What did he do in reply to that?

A He laughed and didn't either say yes or no to this question.

Q You said before that a low-flying flier or a terror flier had been brought in. How did you come to the conclusion this was a low-flying flier or a terror flier?

A When the rural police delivered this flier to headquarters, they made a report also that this terror flier had been interrogated by the rural police already. During the interrogation of the rural police, the flier had admitted ——

CAPTAIN VANCE: May it please the court, I am going to object to this testimony now unless it is first shown that this man was over at the rural police. He isn't in a position to know what they did there.

MR. RACHAEL: If the court please, the witness is testifying to a report made, an official report made by the gendarme upon the capture of the flier.

CAPTAIN VANCE: If he is, he has failed to tell this court that that is what he was doing. He has not testified about an official report. He said when he got to work from breakfast, the flier was there; he walked in the room; that they started interrogating him. He hasn't said anything about seeing an official report at all.

MR. RACHAEL: The witness has stated that the gendarme made a report and that in the report they said the following, and the witness is testifying what was in that report.

PRESIDENT: The objection is overruled, but I want to caution the German defense counsel that it seems that we are not getting anywhere with

Ta 181-ps-80-2/19-9

this questioning so far. What are you trying to prove?

DR. [illegible] May it please the court, the purpose of this question is to bring out that this flier had not been shot down when he made air attacks in connection with the report, but that the utterance about the written report from the rural police at Worms to which our Gestapo Headquarters at Mainz in that this flier had [illegible] civilian population. [illegible] this is important for the question that had happened later on to this flier; later in the day, we had also [illegible] the same question that you put to the point as briefly as possible, at least to the man in charge of the detail.

QUESTIONS BY DR. [illegible]: In charge of the detail of the rural police [illegible] was the part of the report of the rural police at Worms that this flier had strafed the civilian [illegible] what furthermore that [illegible] The flier had been shot by the rural police at Worms and had admitted this. This was part of the report; it ought not to be the [illegible] I am referring to the report of the rural police at Worms.

[illegible] May it please the court, I am going to make my objection. They have never proved that this man saw the report or even that he talked to these rural police. Until they do that, how is the court going to permit him to tell what this report is about?

DR. [illegible]: I would like to explain that in the German language, when we speak about a report, we are always referring to a written report in cases of this character, and it is obvious from the replies which were given so far that the witness saw this report, but I will ask him further whether he saw this report himself and read it.

PRESIDENT: Objection overruled. Go ahead and ask him.

[illegible] The answers were being read and I could [illegible] and I couldn't help [illegible] understand German and

End ta 181
wfj fols

Q Did you yourself see this written report of the rural police eh Wenne and did you read it? Pardon me, he was sitting. On account of this [illegible] I myself had the report in my hands and read it. Furthermore I can remember that it was said in this report that the terror flyer when taken into custody had used his pistol. Since the rural policemen who had brought the flyer to headquarters were still present, since their train back left later in the day, we had also the possibility to talk to the rural policemen and Hellenbreich in my presence, spoke at least to the man in charge of the detail. [illegible] rural Q And did the man in charge of the detail of the rural police confirm what was said in the written report? [illegible] otation at that time auxiliary Yes, he not only confirmed it but added furthermore that besides the fact that this flyer who had been shot down was a terror flyer, he had not delivered this flyer to the Wehrmacht but to the Gestapo headquarters.

Q What happened after Hellenbreich had interrogated the flyer and had read the written report, if he read it at all? I passed with it [illegible] Please, I can't say exactly whether he was present in the room during the entire interrogation. Due to the difficulties in understanding each other, this interrogation took as far as I can to recall at least three-quarters of an hour. [illegible] called Hellenbreich or Girse. [illegible] Q What do you recall next when you got in any contact with the flyer? [illegible] understood German and for this reason he didn't want to make it. I know that after this, three-quarters of an hour Hellenbreich left the room and the flyer stayed in the room standing. He was standing close to a desk on which several papers were lying and looked into these papers. SS Second Lieutenant Dengler and I couldn't help but get the impression that the terror flyer understood German and

was reading in these papers. Pardon me, he was sitting. On account of this Dengler asked him to get up and turn his face to the wall in German language. Then the flyer got up, turned around with his face to the wall.

Q Was any harm done to the flyer while he was in this room?

A No, the flyer was not touched.

Q Was anything taken away from him?

A His personal belongings had been taken away already by the rural police during their interrogation and they were brought over to us in an envelope. Since at the rural police station at that time auxiliary policemen were used and we had bad experiences with these men, the flyer was searched by us once more.

Q Was anything found on him?

A No.

Q After Hellenbreich had left, what happened then?

A In my estimation an hour and a half or an hour passed without anything happened. Since the flyer was still standing there, Dengler got up and told me that he would inquire what should be done and left the room. Later on he told me that he went to the opposite room of the CQ and that from there he had called Hellenbreich or Girke. I think it was Hellenbreich. The reason for that he said he thought that the flyer understood German and for this reason he didn't want to make the call in his presence.

Q What happened then?

A Anyway Second Lieutenant Dengler returned five or ten minutes later and ordered me to report to SS Major Hellenbreich.

Q Did you do that?

Take 182 - SO 2/19 - wfj 3
Take 182 - SO 2/19 - wfj 4

A Yes, I did that. The order was carried out.

Q What happened there? A I myself was a witness of the

events. SS Major Hollenbreich told me that SS Major Girke had given us

the order to shoot the flyer who had been bombed daily by low flying planes

and captured. Did he say anything who should take over the execution?

A No, I asked him how this should be done, that I had never

myself Q What did he say in reply? A We were working in the field; that

they Q He said to me that we have to ask the SS Major Girke. SS to

Major Hollenbreich and I went to SS Major Girke and SS Major Girke

ordered that the flyer should be shot in the forest in the neighbor-

hood of Bottrop. Then Raaf and I left the headquarters. We walked up

the dr Q Did he say who should do it? A.

A I hadn't finished that. He furthermore ordered me to take

along the SS 1st Sgt. Raaf as an older official. The order was given

also for Raaf and I had to transmit this order to him, which I did and that he

was Q A Did you do that? A Afterwards and that only in January he

had gone. I then went to Raaf into his office and I told him in the

presence of four or five comrades who were present there the order

which SS Major Girke had given. (Lasted at 1:30 hours.)

Q What happened then?

A I asked the SS 1st Sgt. Raaf to come over into my office.

I myself returned to the office where the flyer was kept, took my

belt. In the meantime Raaf came. We asked the terror flyer to come

along with us and left with him the headquarters.

Q After you had received this order from SS Major Girke,

did you express in any way that you would not follow the order or that

you would follow the order, that you would obey the order?

A No, it was not usual in the German Army when a man who

(Stattman - Direct)

received an order liked to carry out this order or didn't like it.

1245

(Proceedings in court reconvened at 1050 hours.)

PRESIDENT: The court will come to order.

Q Did you consider the order justified or not?

MR SCHMIDT: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Major Eaton are in court and the entire neighborhood had been bombed daily by low flying planes and based on my own observations that these low flying flyers had strafed civilian populations, children and women, that I had seen myself and had strafed farmers who were working in the field; that they had shot the people running away and that they always returned to them, I considered this order justified. [illegible], continue.

Q How did you carry out this order?

A 1st Lt. Raaf and I left the headquarters. We walked in the direction of the village of Schoenberg. Please continue with your story.

Q I forgot to ask you before. Did you have any knowledge of the nationality of the flyer when the village of Schoenberg we took a path in the [illegible] Yes. The flyer had a paper with him which indicated that he was a member of the American airforce and that only in January he had been promoted to Captain. [illegible] PRESIDENT: Court will recess for twenty minutes. [illegible]

(Whereupon the court was closed at 1000 hours.)

A The flyer collapsed and still moved. Then the 1st Sergeant Raaf stepped over to the flyer fired a mercy shot at the flyer.

Q After the court was in session, what happened to the body?

A We, the whole [illegible] of the flyer to the side from the roads and covered it with twigs. A return to headquarters was reported to Lt Major Hallenbruch. He ordered it to be buried with full military honors.

A That's correct.

(Continued)

(Stattman - Direct)

(Whereupon the court reconvened at 1020 hours.)

PRESIDENT: The court will come to order. [illegible]

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Major Seton who is absent on business of the defense and Dr. Trost who is absent sick; all of the accused with the exception of Eichel, who is out conferring with his defense counsel, the court reporter and interpreter are present. [illegible]

KARL FRANZ STATTMAN, an accused, being duly reminded that he was still under oath, resumed the stand and testified as follows:

DIRECT EXAMINATION, continued

QUESTIONS BY DR. AHRENS:

Q Mr. Stattman, before the recess you testified that you and Raaf left headquarters at Bensheim with the flyers. Please continue with your story.

A After we had left headquarters at Bensheim we walked in the direction of Schoenberg. Before we reached the village of Schoenberg we took a path in the direction of the forest and inside the forest we took another path in the direction of back to Bensheim. On this forest path in the direction of Bensheim on the last third of the road I shot at the flyer who was walking in front of me one shot out of my duty pistol, the German Army pistol '08.

Q Was this shot fatal?

A The flyer collapsed and still moved. Then the SS First Sergeant Raaf stepped over to him and fired a mercy shot at the flyer.

Q Did the corpse stay on the spot, or what happened to the body?

A No. We carried the body of the flyer to the side into the woods and covered it with twigs. We returned to headquarters and reported to SS Major Hellenbroich. He ordered us to report back also to SS Major Girke.

Q This happened?

(Stattman-direct)

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A That was some [illegible] had driven in the

Q Did you also make a written report in regard to this execution?

A Yes. It was usual that a report was made in regard to all major incidents. At that time I made a written report which said that the American flyer, as far as I can recall Captain Ray Herman, had been shot in accordance with orders on such and such date at such and such hour. This report I attached to the report which was made by the rural police attached to which was another list which contained all the personal belongings which had been taken away from the flyer. [illegible]

Q What happened with this file, then? [illegible]

A This report was passed through and finally came through SS Major Hellenbreich and was then filed. [illegible]

Q Can you tell the court anything about your feelings when you executed the flyer? [illegible] told me I would report to SS Major Hellenbreich in the [illegible] I felt sorry for the flyer. I went to the guardroom and reported there.

Q Now we have to take up the second case of 24 March, 1945. Did anything unusual happen on this day?

A Yes. On this day Gestapo Headquarters, Bensheim was ready for the retreat. American forces, at that time, had already crossed the Rhine. They had reached the village of Haenlein approximately six kilometers from Bensheim and were advancing from Darmstadt on the Reichs autobahn in the direction of Mannheim. Were present SS Major Hellenbreich and an American flyer and in the evening hours at Bensheim you could hear the noise made by the chains of the moving tanks. [illegible]

Q That was the reason why headquarters got ready to retreat? [illegible]

A Yes. [illegible] flyer who was standing there had to be [illegible]

Q Did anything unusual happen in regard to American flyers on this day? [illegible] SS Major Hellenbreich asked [illegible] (Stattmann Street) [illegible] SS Major Hirsch ordered that the [illegible]

A Yes. Shortly before with SS Major Seiler I had driven in the direction of Koenigsin in order to find out the position of the enemy. We got in touch with the enemy for a short time, returned then and SS Major Seiler reported this to SS Major Hellenbroich or Girke. I don't recall anymore to exactly whom of these two. On occasion I should be careful about Q At what time of the day was this? shot. I gave the flyer

A In my estimation we must have returned at approximately eight or eight-thirty first one shot at the flyer. The flyer collapsed dead.

Q In the morning or evening? then went from there back?

A In the evening. I went to the room where most of my comrades stayed and we discussed the position of the enemy. For a few minutes--five or ten minutes--might have passed when in the hall my name was called. I left the room and one of the men outside there--one of the group who was lately standing around there told me I should report to SS Major Hellenbroich in the guardroom. He had asked for me. I went to the guardroom and reported there to SS Major Hellenbroich.

Q Since at that time a special air landing alarm had been given, since American troops had landed in the neighborhood of Cressgoran, the guardroom was blacked out at that time. Only a little table light was burning which was covered too. But it was dead.

Q Continue with your story. The name of this flyer?

A In this room were present SS Major Hellenbroich and an American flyer and in the back there were a few more people standing. I couldn't recognize them, but I think they were comrades of mine. Special case to my attention. After I had reported to Hellenbroich, Hellenbroich told me that SS Major Girke had ordered that this flyer who was standing there had to be shot. I asked where this should be done. At this moment SS Major Girke entered the room for a moment and SS Major Hellenbroich asked SS Major Girke where this should be done. SS Major Girke ordered that the

(Statement cont.) on this table. SS Major Hellenbroich had a little silver

(Statement cont.)

execution should take place in the backyard of headquarters since there was no more time left. I went back in our waiting room, picked up my official pistol and went to the guardroom where Hellenbreich and the flyer were present. Now I don't know anymore whether SS Major Hellenbreich told me on the first occasion or only at the second occasion I should be careful since the flyer had been told that he would be shot. I gave the flyer a sign that he should come out with me, went with him to the garden and in the garden I fired one shot at the flyer. The flyer collapsed dead.

Q Did you fire the shot from the front or from the back?

A When we had reached the end of the garden we came in the shadow of a house and close to the house there was a low fence. The moment we reached the shade the flyer tried to escape on the side. He only could make one step since I was carrying my pistol in my hand so I fired immediately at him. Did Hellenbreich say anything in reply?

Q This shot was fired from the back?

A You know what happened to the body of the flyer?

Q Can you say where you hit the flyer? A few more minutes and then SS F'A. S. pointed at his head and reported that he too had shot a flyer. Then it was

Q Did you make certain after the flyer fell that he was dead and so forth?

A Yes, I made certain that he was dead.

Q Do you know anything about the name of this flyer? (Pistol showing the person, the name is not known to me. Person with a picture with the name Willy Fox. What kind of clothes was the flyer wearing?

A At that time it was dark in the room. Nothing special came to my attention and for this reason I can't give any description of the clothes the flyer was wearing. The only thing which might be worth mentioning was, that he was wearing a jacket with a zipper. (picture to the corpse of the flyer

Q Did the flyer carry anything with him?

A Yes. The first time when I entered the room several belongings of the flyer were lying on the table. SS Major Hellenbreich had a little silver

(Statement continued) 1250

pld-183-8

chain in his hand--his aerial mentor.

Q The second time when I covered the room there things were not on the table anymore and I assume he put them in his pocket?

Q When you took the flyer to the ground was he carrying a pocket for his pistol or anything else of that kind?

A No, the flyer was not carrying any pocket for his pistol and this would have been impossible since during the combat all arms and other military equipment would have been taken away from him.

Q Did you see anything of a scabbard on the flyer?

A No, he didn't wear any scabbard.

Q What happened with the flyer after you had shot him?

A I returned and reported to Hillenkoetter that his orders had been carried out.

Q Hillenkoetter only carrying a flyer?

A No.

Q Do you know what happened to the body of the flyer?

A Yes. I stayed in the quarters for a few more minutes and then Staff Sergeant Hair came in and reported that he too had shot a flyer. Then Major Hillenkoetter ordered Hair to bury these flyers or have prepared by himself. I don't recall anymore exactly today.

Q I show you now a photograph bearing Prosecution Exhibit P-81 showing the personal belongings of a person with a picture with [illegible] Willy Pechmann. Was this the flyer you shot?

A No, that is not the flyer I shot. As far as I can recall the flyer I shot had a beard like [illegible]. I saw carefully because I didn't step up to the table at all.

Q Furthermore I show you now Prosecution Exhibit P-77 and ask you now whether the corpse lying in front of the picture is the corpse of the flyer you shot?

[illegible] examined [illegible] account of the bandage. After the [illegible] CAPTAIN VANCE, no object on the ground that this witness cannot possibly know who this man in this photograph is because the photograph he is showing him has the face the other way.

DR. ALEXIM: I will withdraw that question and ask another.

Q I ask you if you have any indication that the corpse of the man lying in front of this picture is the body of the flyer you shot?

A I can't say neither yes nor no to this question, but based on the fact that this corpse is wearing a belt with a pistol pocket, it is impossible that this is the flyer I shot.

Q Furthermore I show you the Prosecution Exhibit P-79 and I ask you whether you have any indication that the man lying in front of this picture is the body of the flyer you have shot?

A The body of this flyer or better this man here in front is carrying a belt with ammunition pockets and some kind of a bag and scabbard. Based on this fact it is impossible that this is the man I shot because the flyer I shot did not carry these things.

(Thereupon the court recessed.)

Q So you want to say that he neither wore such a belt nor a pocket for ammunition nor a scabbard nor this kind of bag?

A Yes, that is what I wanted to say.

Q I show you now a few additional Prosecution Exhibits, P-96 and P-97 and P-98, identification papers for William Ferguson and I ask you whether the flyer who had been shot by you was carrying such identification papers or not?

A I can't know that, I didn't see any papers on him.

Q You said before that several belongings of the flyer were lying on the table when you entered the room. Did you look carefully at those belongings or not?

A No, I didn't look at them carefully because I didn't step up to the table at all.

Q You had said this forenoon that your headquarters had been transferred from Darmstadt to Bamberg on account of the bombings. After the bombing of your headquarters did the members of your office have anything

(Stattmann-direct)

Q You said before that your own experiences in
to do with the burying of corpses and finding of the corpses in the woods?
Darmstadt convinced you that the order to shoot the flyer,
A Yes, at that time, on the initiative of SS Major Girke several
which was given by SS Major Girke, was justified and correct.
auxiliary measures were put into effect and some members of headquarters
What did you have to do with the picking up of the corpses
were put on so-called "corpse finding details". These details had the duty
A Darmstadt:
to pick up the bodies which were lying on the streets and to take care of
CAPTAIN VANCE: If it please the court, we object.
their burial. At that time we picked up, as far as I can recall, six thousand
The court just two minutes ago ruled on this same question.
bodies during a period of four weeks.
It is repetitious.
CAPTAIN VANCE: We object to this line of questions on the ground
MR. MACHAN: If the court please, there is nothing
that it is immaterial, has no bearing on this case whatsoever and we move
in the record now to indicate the ruling of the court, and we
that it be stricken from the record.
respectfully submit that defense counsel at this time is en-
PRESIDENT: Motion to strike is sustained.
titled, if the opinion of the court is the same as previously,
We will take a recess in place.
to lay a foundation for an offer of proof.
(Thereupon the court recessed.)
PRESIDENT: Objection overruled.
(Thereupon the court reconvened.)
DR. AHRENS: Please read the question once more.
PRESIDENT: The court will come to order.
(Thereupon the last question was read by the reporter.)
PROSECUTION: If it please the court, let the record show that
THE WITNESS: I was a detail and had the job of pick-
during the recess the accused Michel wearing placard number six resumed his
ing up the corpses in the streets and in the basements. This
seat in the dock and also that Dr. Mulzer has returned.
job always lasted only for a few days and was then interrupted
again, but altogether this job took over four weeks. It was
impossible to work permanently on this detail, since through
the sweet smell of the corpses--since they were burned--through
the fact that they were already molding, every man on the de-
tail was suffering so much that it was impossible to eat
normally and so on.
CAPTAIN VANCE: If it please the court, the answer
is not responsive to the question. The answer is not material
to the issues before this court, and we move that this answer
be stricken physically from the record.

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8-10-47; JMMcD; 1
8-13-47; JMMcD; 1

Q You said before that your own experiences in Darmstadt convinced you that the order to shoot the flyer, which was given by an Major Dirke, was justified and correct. What did you have to do with the picking up of the corpses at Darmstadt?

Major Dirke. The purpose of these questions was to lay a foundation for the personal knowledge of the actions of the accused in connection with the

CAPTAIN VANCE: If it please the court, we object. The court just two minutes ago ruled on this same question. It is repetitious.

MR. BACHARI: If the court please, there is nothing in the record now to indicate the ruling of the court, and we respectfully submit that defense counsel at this time is entitled, if the opinion of the court is the same as previously, to lay a foundation for an offer of proof.

PRESIDENT: Objection overruled.

Q

MR. AREINER: Please read the question once more.

(Whereupon the last question was read by the reporter.)

THE WITNESS: I was a detail and had the job of picking up the corpses in the streets and in the basements. This job always lasted only for a few days and was then interrupted again, but altogether this job took over four weeks. It was impossible to work permanently on this detail, since through the sweet smell of the corpses--since they were burned--through the fact that they were already molding, every man on the detail was suffering so much that it was impossible to eat normally and so on.

CAPTAIN VANCE: If it please the court, the answer is not responsive to the question. The answer is not material to the issues before this court, and we move that this answer be excluded physically from the record.

(Stattman - Direct) I do not want to make any further argument.

DR. AHRIMER: I would like to say the following, may it please the court: The accused has testified before that his experiences at Darmstadt were of great importance for his belief in the righteousness of the order which he received from SS Major Girke. The purpose of these questions was to lay a foundation for the personal experiences and the actions of the accused in Darmstadt; and if this, as the accused said to himself, was determining for his belief in the legality and justifiableness of this order, it is important not only for the question of guilt but also for the question of sentence.

PRESIDENT: The motion to strike is denied.

QUESTIONS BY DR. AHRIMER:

Q Did you read carefully the charge sheet which was served to you?

A The charge sheet was read to me by the prosecution, and I read it too, myself.

Q Then you know that in Charge No. 1 you are accused of having participated in a conspiracy, as it is called by the prosecution?

A Yes. It is known to me.

Q In your convictions and opinions did you participate in such a conspiracy?

CAPTAIN VANCE: We object on the ground the question calls for a legal conclusion and it invades the province of this court. By the question itself he asked him for an opinion, which cannot be received. Not even if he were an expert on military law could he answer it, which he has not been qualified to do.

DR. AHRIMER: I do not want to make any further argument.

PRESIDENT: The objection is overruled.

DR. AHEIMER: Please read the question once more.

(Whereupon the last question was read by the reporter as follows: "Q Did you in your convictions and opinions did you participate in such a conspiracy?")

A No.

THE WITNESS: No. No way whatsoever have I participated in a conspiracy.

Q That means your entire activity connected with these orders to these orders?

QUESTIONS BY DR. AHEIMER:

A As far as I can remember, at least as far as my person is concerned, these orders were given only for the treatment of fliers--orders as they were presented to the court in the prosecution's case?

Q One more question to Charge No. 13: Did you hear when the statement of Kaminski was read by the prosecution?

A Yes, I did.

Q In which way did these orders come to your knowledge?

A During my service with the order police I was in charge of an independent front police office, and I had to participate on several official meetings of the guard leaders of these posts. In these meetings these orders were partly brought to our attention. Later on while I was attached to Gestapo Headquarters Darmstadt I was assigned to SS 2nd Lieutenant Dorrler, who was in charge of the department. Whenever SS 2nd Lieutenant Dorrler was absent on official trips it was my duty to participate on official meetings of the various department heads, since you might say I was his first assistant, since a department consisted only of two men. And during these occasions, if I understand rightly, other orders were brought to your attention to that right?

A Yes, as far as I can recall at least one or two orders were made known to us at that time, but it is also possible that I got knowledge of some of these orders through

the fact that the orders had to be filed in Dangler's department.

Q Based on these orders of a general nature, did you at any time undertake any steps?

A No.

Q That means your entire activity consisted in listening to these orders?

A As far as I can remember, at least as far as my person is concerned, these orders were given only for our information.

Q One more question to Charge No. 10: Did you hear when the statement of Kaminski was read by the prosecution?

A Yes, I did.

Q Do you recall that Kaminski said in this statement that the fliers were brought by members of the Wehrmacht or the SS, and that a major of the Wehrmacht had requested that these fliers should be shot?

A Yes, I remember that. I was told later on--that means after the fliers had been shot--that this flyer had been delivered to our headquarters by members of the air force. When I reported back to SS Major Hellenbroich and stayed in the guardroom for a few more minutes, I remembered also the report which was made at the time the flyers were delivered to headquarters. As far as I can recall the report was written by an anti-aircraft unit in the area of Hoppenheim, but it is also possible that only the flyer had been shot down at Hoppenheim. Anyway, he was taken prisoner through an anti-aircraft unit, was for two or three days already in custody of this unit, and had been interrogated by the official Wehrmacht investigator in charge.

Take 184 - 30
2-19-47;JCMcD;5

Q Did you find this later on in the written report?

Q What happened to the American that you did kill in

A Yes, this was said in the written report. Other the back yard? Was he buried?

things were said there, too--that the second flyer had been

A After I made certain that the flyer was dead, we taken prisoner, too, two or three days later, that means the

sun left there on the ground. When I had reported back to the same day he was transferred to us.

Major Hollenbeck and stayed in the guardroom for a few more

MR. AHLEMEYER: One question by Dr. Buerger.

minutes, at last Sergeant Haas entered the room and reported

QUESTIONS BY DR. BUERGER:

that he too had shot a flyer, and I think now that at last

Q I bring to your attention Charge No. 6. What kind Sergeant Kaaf said that it wouldn't be right to leave the

of weapon was Kaaf carrying when you went with him and the corpses of these two fliers lying in the garden, alone in

flyer?

area of an occupation through the American troops, which had

A Kaaf was carrying a duty pistol, Walther PPK. That to follow any minute, the neighboring civilians could be en-

means police pistol, 7.65.

dangered. I think then that in reply as last Sergeant Kaaf,

Q Are you absolutely certain of that?

together with four or five other men, got the order to bury

A Yes. I know definitely.

these two fliers. I myself did not participate on this burial.

MR. RACHAEL: You may examine.

Q The order to bury them where?

CROSS EXAMINATION

A In the garden of Gestapo headquarters. Hermstadt at

QUESTIONS BY CAPTAIN VANCE:

Bensheim.

Q Stattman, Dr. Ahlemeyer showed you certain pictures

Your testimony is that there [illegible]

that have been introduced in evidence as the bodies that

that were dug up in the back yard of the Gestapo building in

were buried up in the back yard of the Gestapo building in

Bensheim. You say that that is not the body of the person

buried in the back yard. Is that correct?

that you killed; is that correct?

Mr. Rachael: Just a minute.

A Yes, this is correct. It can't be the body.

A I didn't say--

Q How many American bodies did you bury in the back

Mr. Rachael: I object to the answer be stricken

yard of the Gestapo at Bensheim?

out. I object to the question on the ground that it is pre-

A I didn't bury any corpses. judicial, so the

Q How many were buried by the Gestapo in the back yard

Does no evidence [illegible] there have been

of the Gestapo headquarters in Bensheim?

any murders [illegible] the prosecution to understand

A That is unknown to me.

(Stattman - Cross)

to sign t. What happened to the American that you did kill in the back yard? Was he buried? than two I respectfully submit that A. After I made certain that the flyer was dead, he was left there on the ground. Then I had reported back to SS Major Hallenbrich and stayed in the guardroom for a few more minutes. SS 1st Sergeant Raaf entered the room and reported that he too had shot a flyer, and I think now that SS 1st Sergeant Raaf said that it wouldn't be right to leave the corpses of these two fliers lying in the garden, since in case of an occupation through the American troops, which had to follow any minute, the neighboring civilians would be endangered. I think then that in reply SS 1st Sergeant Raaf together with four or five other men got the order to bury these two fliers. I myself did not participate on this burial. this Q: The order to bury them there?

A In the garden of Gestapo headquarters, Darmstadt at Eberhein. that garden, and at no time does he say he was ordered. Your testimony is that these two American bodies that were dug up in the back yard of the Gestapo building were surplus and in excess of the man that you killed and was buried in the back yard. Is that correct? was in that area, I don't k MR. RACHAEL: Just a minute. killed these two men, A. I didn't say them.

MR. RACHAEL: I ask that the answer be stricken out. I object to the question on the ground that it is prejudicial to the substantial rights of the accused. There has been no evidence yet, none whatsoever, that there have been any surplus bodies around here. The prosecution has endeavored

(Stattman - Cross)

to show two, and the defense has testified to two, and until the prosecution can show more than two I respectfully submit that the question injuriously affects the substantial rights of the accused to a fair and impartial trial.

You said when you were called into the guardroom it was dark and the curtains were down and you could not see the flyer; isn't that right?

CAPTAIN VANCE: If it please the court, the defense brought this situation up. The prosecution showed by the witness Kaminski that two people were killed; that they were buried in the back yard; that the Gestapo moved out on that night of the 24th; that he goes around and sees two fresh graves; that the Americans arrive two days later; he shows them two fresh graves, and these are the two bodies that were exhumed from the ground. Now, if this witness comes in and says that is not the man that he killed, then it is nothing but common sense that there must have been more. The defense brought this before the court. We didn't.

MR. RACHAEL: If the court please, Kaminski was not present in that garden, and at no time does he say he was present in that garden between the time when the fliers were buried and the time--I don't know where the bodies of the fliers are--these two bodies were pointed out. The Gestapo had moved out of that area and someone else was in that area, I don't know who. And I don't know who killed these two men, and I don't know who buried them.

PRESIDENT: Objection overruled.

THE WITNESS: I can say only that the flyer I had shot was not wearing a munitions belt, etc., and all the other things he was wearing.

Q . You said when you were called into the guardroom that it was dark and the curtains were down and you could not see the flyer; isn't that right?

Q Now, you said when you were called into the guard room, that it was dark and the curtains were down and you could not see the flier, is that right?

A Oh, yes, I could see him. It wasn't that dark.

Q Didn't Mr. Heimer ask you to describe what the flier was wearing and you said it was so dark you could only recognize one object, which was his zippered jacket?

A No, I said that I could recall that he had a jacket with a zipper on. I didn't notice anything else on this flier.

Q Are you German or Austrian?

A I am a German national.

Q I believe in 1938 you voluntarily joined the police force, is that right?

A Yes, I did.

Q You testified that that was when Austria was returned to the Reich. What do you mean by that?

A Until 1938 I lived in Austria and with the return of the Ostmark to Germany, I received again the German nationality. Through the fact that I became a German Reich government official theoretically and practically, I acquired German citizenship for a second time so that today I am a German national.

Q All right. I believe you testified that you registered and voluntarily went with the police and were sent off to school, is that correct?

A Yes.

Q I believe you joined the SS in 1937. Was that Waffen SS or the Allgemeine SS?

A That was the Allgemeine SS.

Q You have heard aloud please in answer to my question, tell what

the purpose of the Allgemeine SS was. I want you to tell the court what your idea is of the purpose, duties and function of the Allgemeine SS.

A The Allgemeine SS, according to the words of the Reich Fuehrer SS Heinrich Himmler, was an order of men of German blood and conscious of their German nationality. They were kept to serve the personal protection of the leader and the fuehrer and the other leaders. They were subject to certain laws, they had duties. That is the most important part.

Q What duties?

A In the Allgemeine SS in voluntary discipline, they had to follow the orders of their superior officers, they had to do certain duties, for instance, during political meetings of the Nazi Party, they had to protect the speaker. They had, so far as possible, to be active as propagandists as far as they could do this in accordance with their mental faculties.

Q So you entirely disagree with Colonel Lasch on his version of the Allgemeine SS, is that right?

A It was so, that every unit commander imposed his will to his unit. If the unit commander was a man with military interests and manner, then his unit was good and well organized in discipline and military manners. If he wasn't, then the entire unit under his command was just a club.

Q The Allgemeine SS was a setup for certain civilians to join, who were members of the Nazi Party. That is correct, is it not?

A It wasn't absolutely necessary that they were members of the Nazi Party.

Q What I mean is, the Waffen SS was part of the military, that is correct, is it not?

(Steckman-direct)

A The Waffen SS was organized only during the war from the volunteer so-called troops at the immediate disposal; that was the Leib Regiment Adolf Hitler and the so-called Deutschland units which had charge of the concentration camps before. In addition to the Leib Regiment Adolf Hitler, there were other units like the Regiments Germany, Deutschland, and so forth. These regiments at that time had the main troops for emergency use.

Q Let us see if you can answer my question a little shorter, if you can. I just want to save time. The Waffen SS was part of the military -- members of the Waffen SS were soldiers. That is correct, is it not?

A Yes, men could be drafted into the Waffen SS.

Q Allgemeine SS was made up of civilians who belonged to the Nazi Party. That is correct, is it not?

A No, it consisted only of National Socialists. It wasn't necessary that these men were registered as members of the National Socialistic Labor Party.

Q It was a civilian organization though? It had nothing to do with the military?

A Yes, I remember.

Q Now, I believe you testified that when you decided to get into the SD you had to sign a statement that you would obey orders of your superior, to join, is that correct?

A No, I didn't sign this statement when I entered the SD, but I signed this statement when I was put on duty.

Q You did sign such a statement?

A Yes.

Q Did you agree to obey criminal orders or illegal orders, or both?

A There was no mention of criminal orders which I have to obey.

Q Were you forced to sign this paper or did you sign it
A I stayed in the service of the Secret Police until the
voluntarily?
armistice.
A No, I wasn't forced, I did it voluntarily.
Q Now, from your testimony, are you trying to tell this court
that in the year 1945 you were a member of the German Wehrmacht?
A Yes, I had an SS pay book.
A In 1945 I was a member of the Secret State Police, the
Q I am not talking about the SS. I am talking about the
Gestapo, which was a part of the German Wehrmacht.
Wehrmacht.
Q You have testified and told this court that Geneva was
A The SS was a part of the German Wehrmacht. The Wehrmacht
notified that you were taken into the Wehrmacht. You do not know
was the name for all of them. Under the name Wehrmacht you had the
anything about that yourself, do you?
army, air force, navy and the Waffen SS.
A I was only informed of this official meeting in the fall
Q I thought you were a member of the Allgemeine SS. Did you
of 1945, that now the Security Police had been registered with the Red
also belong to the Waffen SS?
Cross at Geneva as part of Germany's armed forces.
A I was a member in the Allgemeine SS until I entered the
Q That is as far as you know about it, is it not?
service of the German police. When I entered the service of the police
A Yes, that's all.
I was transferred into the service of the German Security Police. With
Q Do you remember that you were given a questionnaire to fill
this statement my membership in the Allgemeine SS ceased. Through the
out and to state in there what organizations you belonged to and that
fact that the Security Police was made a part of the Wehrmacht, we were
you signed?
members of the Wehrmacht and as members of the Security Police, we were
A Yes, I remember.
carrying an SS pay book.
Q Did you ever enter that you belonged to the Wehrmacht or any
Q Do you recall on March 24th, 1945 or a few days prior to that,
part of the military regime of Germany?
when Major Girke issued new identification papers to every member at
A Yes, I filled this out.
Bensheim to show that they were members of the Wehrmacht?
Q But did you put on there that you belonged to the Wehrmacht,
A Yes, I remember that.
Luftwaffe or any other part of the German machine?
If you were already members of the Wehrmacht, why was Major
A Yes, I said that I am a member of the Security Police.
Girke fixing papers out for you then, with the Americans right on your
Q When did you first report to the Gestapo in Darmstadt?
toes.
A I think it was on the 28th of March, 1944.
A First of all, it isn't correct that all members of the head-
Q Did you remain with the Gestapo from that date until the 24th
quarters Bensheim received new SS books. Through information agents
of March, 1945?

(Stattmann-Gross)
(Stattmann-Gross)

A I stayed in the Service of the Secret Police until the armistice.

Q Now, did you tell the court that you were issued an identification card by the German Wehrmacht?

A Yes, I had an SS pay book.

Q I'm not talking about the SS. I am talking about the Wehrmacht.

A The SS was a part of the German Wehrmacht. The Wehrmacht was the name for all of them. Under the name Wehrmacht you had the army, air force, navy and the Waffen SS.

Q I thought you were a member of the Allgemeine SS. Did you also belong to the Waffen SS?

A I was a member in the Allgemeine SS until I entered the service of the German police. When I entered the service of the police I was transferred into the service of the German Security Police. With this moment my membership in the Allgemeine SS ceased. Through the fact that the Security Police was made a part of the Wehrmacht, we were members of the Wehrmacht and as members of the Security Police, we were carrying an SS pay book.

Q Do you recall on March 21th, 1945 or a few days prior to that, when Major Girke issued new identification papers to every member at Bensheim to show that they were members of the Wehrmacht?

A Yes, I remember that. [illegible] were entitled to [illegible]

Q If you were already members of the Wehrmacht, why was Major Girke fixing papers out for you then, with the Americans right on your toes?

A First of all, it isn't correct that all members of the headquarters Bensheim received new pay books. Through information agents [illegible]

(Stattman-Cross)

which came from the occupied zone, that means from the neighborhood of Aachen, we were informed that the American Front Line troops were shooting on the spot every single member of the German Security Police who fell in their hands. They would recognize them easily because they were carrying pay books which said they were members of the Secret State Police. At that time an order came from Berlin that all members of the Security Police who were in the front near the area in close contact with the enemy, should receive pay books, in which it wasn't said that they were members of the Secret State Police, but that they were members of the SS Replacement and Training Battalion Kemita. Since at that time we had an order -- as far as I can recall, there were seven or eight members of the headquarters Benshein -- since we had an order to go to Mannheim, which at that time was already occupied or was expected to be occupied at any minute, to go there for information. These men who had to go on this detail received pay books which were promptly issued with the name and birth date. I remember, for instance, in my pay book, the only change was that it wasn't said that I was a Criminal policeman, but that I was a dentist's technician, which was according to the fact, because I learned dentistry. These pay books were issued for this one purpose only, in case this undertaking did not succeed and the men would be taken prisoners, that they then would be protected as prisoners of war.

Q Well, you knew that all members of the German Wehrmacht were entitled to be treated as prisoners of war, did you not?

A I thought so, but based on the reports of our agents, I knew it wasn't so.

Q At that time you knew that Geneva had already been notified

that you and other members of the Gestapo were part of the Army?

A Yes, I knew that but I knew furthermore that the American troops, when they took members of the Gestapo as prisoners, they didn't care about it and shot them on the spot.

Q How do you know that?

A Through these agent reports.

CAPTAIN VANCE: If it please the court, this would be a convenient time to recess.

PRESIDENT: Court will recess until 1330 hours.

(Whereupon at 1220 hours the court recessed until 1330 hours.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show all members of the court are present, the prosecution and defense, with the exception of Major Sanon, absent on business of the defense and Dr. Trost, absent sick, the reporter and interpreter are present.

CAPTAIN VANCE: Would the reporter please read the last two questions asked of the witness Stattmann before the noon recess, and the answers?

(Whereupon the reporter read the last two questions asked of the witness Stattmann before the noon recess, and the answers, as follows):

"Q At that time you knew that Geneva had already been notified that you and other members of the Gestapo were part of the Army?

"A Yes, I know that but I know furthermore that the American troops when they took members of the Gestapo, they wouldn't care about it and shot them on the spot.

"Q How do you know that?

"A Through these agent reports."

KARL FRANZ STATTMANN, an accused being duly reminded that he was still under oath, resumed the stand and testified further through an interpreter as follows:

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE (cont'd)

Q Now, if the Americans were shooting all the Gestapo agents on the spot, how do you account for the fact that you, Hellenbroich, Girke, Raaf and many other Gestapo agents are still alive here in Camp Dachau?

A These men, to my knowledge were taken into a war crimes group only at a much later date, many of them were arrested at a much later date and many of them were captured together with other units of the Army.

Q Now, I believe you testified that you made several attempts to get transferred away from the Gestapo, is that correct?

A No, that's not exactly right. All I tried was to be sent to the front for the duration of the war; after the end of the war I would be sent back again.

Q You were perfectly happy, all you wanted was to be a front line soldier during the war?

A My profession was that of a criminal police official, and I was employed by the state police.

Q Did you want to get out of the Gestapo, or stay in it?

A No, I didn't want to get out of the Gestapo.

Q Well, yesterday didn't you tell the court that you talked to Major Girke that you wanted to get out and go to the front, and Major Girke would not permit that?

A That's right, I did want to get to the front for the duration of the war, but after all, being a police official was my profession.

Q Didn't Major Girke tell you you would have an opportunity to kill more men with the police than you would at the front?

A No. No such talk ever took place in the Gestapo offices.

Q Did he tell you you could render your government more and better service than you could with the Wehrmacht?

A No, he didn't say that either.

Q What was his reason for not letting you go?

A He told me that I as a soldier did not have the privilege of selecting a spot where I wanted to be used.

Q Now, do you as a soldier remember the date September 12, 1944?

A Yes. There was an attack on Darmstadt.

Q Do you remember anything unusual happening on that date?

A Anything that happened on that day was extraordinary because it was outside of usual daily routine.

Q What unusual happened outside of routine?

A The people were running around the streets with their hair singed; people running around with phosphorous injuries, everything was burning and everything destroyed.

Q I asked you if anything unusual happened at Gestapo headquarters, and if so, tell it.

A Yes. The state police was also completely bombed out, and people kept coming into the air raid shelter of the state police who were bandaged, and would get first aid.

Q Did anything else unusual take place at Gestapo headquarters that day?

A I wouldn't remember.

Q Now we will get down to sometime in February. I believe you said you could not recall the date of the 15th?

A Yes, that is correct.

Q At that time you had moved from Darmstadt to Bensheim, is that correct?

A No, we had moved from Darmstadt to Bensheim on the 12th of September 1944.

Q Well, I am talking about February 1945.

A That time I was in Bensheim.

Q On this particular morning when you got to work from breakfast, there was an American flier in headquarters?

A Yes, he was.

Q Who got there first that morning, you or the American flier?

A I can't say with certainty any more.

Q Who else was there besides the American flier?

A Well, there are two possibilities, either the Second Lieutenant Dengler was there, or else the guard was there.

Q Who else was there?

A I don't remember anybody else being there when I got there. The typist might have come in a little bit later.

Q Is that all you remember?

A Yes, I remember what I testified to this morning on direct.

Q Who else was there?

A Well, later on Major Hellenbreich came and several comrades who were sent out of the room by Major Hellenbreich. Later on Master Sergeant Freudenberger came in and then the interpreter.

Q Can you remember talking to anybody else that morning about these fliers?

A I didn't talk to anybody about these fliers, at least I don't remember.

Q This morning you told the court you talked to some people about a strafing at Worms. You don't remember that either?

A No, that was the truth. These people I talked to them after an air raid alarm had been called. They were in the guard room and I talked to them after it was over. There might have been a chance one or two of them were in the room.

Q You just can't remember on cross examination what you do on direct.

A Yes, I remember quite well.

Q You couldn't remember a moment ago.

A All I can say is what I already said on direct examination.

Q Now, I believe you said Hellenbreich tried to interrogate the flier, is that correct?

A Yes, that is right.

Q Hellenbreich speaks good English?

A He doesn't speak English very well.

And shortly after that time it was decided this flier would be killed, is that right?

Q Do you speak English?

A Very little. My it was right after, because I think it was at least an hour

Q How do you know he doesn't speak English very well, if I was you don't?

A Because he asked by his English translator in German while in order to make himself understood.

Q I believe you said Hallenbreich tried to make the flier say his name, rank and organization, is that correct?

A He asked him about those things.

Q And he wouldn't tell you his name, isn't that yes or no.

A No, as far as I know he didn't say that.

Q Now, you as a soldier, do you know what information is required to be given when a soldier is captured?

A Yes, I know that.

Q What?

A Rank and his nationality.

Q But Hallenbreich asked him questions in addition to those questions, didn't he?

A He asked him about his unit and that question the flier refused to answer, which impressed me as a soldier.

Q And Hallenbreich got mad about that, didn't he? I believe you said Hallenbreich left the room?

A No.

Q And I believe you question him some, didn't you?

A Yes, I talked to him also too and as I explained this morning on direct examination, tried to make myself understood by motions.

Q And what did he say?

A He shrugged his shoulders and upon my last question, he all laughed.

Q And you became furious, didn't you?

A I had no reason to become furious.

Tu 186 2/19
AC 7

Tu 186 2/19
MS 6

Q And shortly after that time it was decided this flier would be killed, is that right? mean "kept"?

A Q You couldn't say it was right after, because I think it was at least an hour or an hour and a half until the order came down and I was supposed to report to Major Hellenbroich.

Q How many statements do you remember making in regard to this incident for which you are on trial? to Major Hellenbroich.

A There was one single interrogation conducted and later I made a supplement to that, I said.

Q On any of these investigations, did you ever tell the investigator this flier had strafed people in Hemm -- you can answer that yes or no. was given These interrogations were done in question and answer form, and since I wasn't asked about this, I didn't have anything to say about it either. He didn't say anything else after that, but I asked him if he could Q When did you think up this story to tell the court?

A This story is not invented; this story is a pure and bare truth.

Q But you never told the American investigator about it, did you? told it to him until today, don't think right? conversation about that?

A I did too. It was obvious. During my captivity I was asked many times why I was in custody and I told about it, but the war crimes group only talked to me one single time about this flier.

Q After this interrogation of the flier concluded, I believe you said Hellenbroich left the room? conversation; a conversation is something in which all two, he said, express an opinion.

Q Did you know where he went? other, you, Hellenbroich and Gloss.

A No, I don't anymore. Major Girke now he thought the execution of the flier Then later Dengler told you to report to Hellenbroich? supposed to notify him, and that I think was about an hour or an hour and a half later, vicinity of the Dahlheim woods, and that was all the talk there was.

Q Now, who kept the flier during this period of an hour or an hour and a half?

A What do you mean "kept"?
A Yes, I did an about face and walked off.

Q Who guarded him?
Q Did you then go to see Raaf?

A Second Lieutenant Dengler was still present when I left the
A I then went down and saw Raaf and informed him of Major

office.
Hirke's order.

Q Did you report to Hellenbroich on Dengler's instructions?
Q Why did Major Hirke want Raaf to go along?

A Dengler told me to report to Major Hellenbroich.
A Well, in our place it was unusual for prisoners to be known

Q My question was: Did you report to Major Hellenbroich?
alone in a transport by only one man. And, since this was a case of

A Yes, I reported.
execution, it was at least to be obvious our prisoners had to come along or at

Q When you reported, what did he tell you?
any rate, a second person.

A In substance he told me the following: Sergeant Major Hirke
Q Were you afraid one armed Gestapo agent could not handle one

has given the order this flier in your office is to be shot.
American prisoner?

Q What else did he say, if anything?
A No, that's not correct.

A He didn't say anything else after that, but I asked him if he
Q Was it because he wanted two of you to shoot the flier, is

couldn't give me more detailed instructions on the matter.
that correct?

Q Did he give them?
A No, two men were supposed to come along and two of them did

A No, he told me, "We will have to ask Major Hirke about that."
come along, and that was not according to the wishes of the flier, nor

Q Did you, Hellenbroich and Hirke have a conversation about that?
did we care.

A No, there was no conversation.
Q On all executions, I think you said you went in pairs?

Q After you asked for more instructions, what did you do?
A I did not say that.

A Major Hellenbroich went up to Major Hirke.
Q About what time of day or night did you start on the death

Q Isn't that what I asked you just a moment ago?
march with this American soldier?

A No, that wasn't a conversation; a conversation is something in
A Master Sergeant Raaf, the flier and myself left the office

which all participants express an opinion.
about 10:00 in the morning.

Q Tell me if you all talked together, you, Hellenbroich and Hirke.
Q About how far did you walk with him until you killed him?

A Hellenbroich asked Major Hirke how he thought the execution of
A About three meters to Hemmenberg and it might have been three

the flier should take place, and Major Hirke gave the order I was supposed
more kilometers up to Grastringen and down the mountain road.

to notify Master Sergeant Raaf and we were supposed to shoot the flier

in the vicinity of the Benshein woods, and that was all the talk there was.

Q And after Hirke told you this, was that all?

Ta 186 2/19
EC 8

Ta 187-pm-50-2/13-1

Q Why did you go to the trouble to walk about six kilometers
A Yes, I did an about face and walked off.
with this man?
Q Did you then go to see Raaf?
A Well, we went three kilometers in one direction, and turned
A I then went down and saw Raaf and informed him of Major
around and took a slightly longer road through the woods back.
Girke's order.
Q That is what I am asking you, why did you want to go out in
Q Why did Major Girke want Raaf to go along?
the woods to kill this flier?
A Well, in our place it was unusual for prisoners to be taken
A Well, this order that I had been given was hard to carry out,
along in a transport by only one man. And, since this was cause of
and for that reason I hesitated in killing this flier until I couldn't do
execution, it was at least to me obvious one witness had to come along or at
anything else or else I would have landed back in Bensheim with the flier
any rate, a second person.
again.
Q Were you afraid one armed Gestapo agent could not handle one
Q I believe you stated on direct that you thought you were
American prisoner?
perfectly justified in killing this flier, didn't you?
A No, that's not correct.
A I considered the order legal, and I didn't say anything else.
Q Was it because he wanted two of you to shoot the flier, is
Q Why didn't you kill him there at the Gestapo headquarters? Why
that correct?
go hide in the woods, that is what I want to know?
A No, two men were appointed to come along and two of them did
A Because Major Girke had issued the order that the flier was
come along, and that was not according to the wishes of the flier, nor
to be killed in the woods, and inconspicuously so.
did we care.
Q Stattmann, don't you know that you didn't want to murder that
Q On all executions, I think you said you went in pairs?
American with good citizens that lived in Bensheim looking on?
A I did not say that.
A That is right. I did not want to kill this flier in the presence
Q About what time of day or night did you start on the death
of civilians. After all, I was also a police official, and I as a police
march with this American soldier?
official cannot get myself in the position of carrying out an execution and
A Master Sergeant Raaf, the flier and myself left the office
thereby causing a show for civilians.
about 10:30 in the morning.
Q You wanted to keep this matter highly secret, didn't you?
Q About how far did you walk with him until you killed him?
A No, that is not right. The matter was not kept secret, in fact.
A About three meters to Schoenberg and it might have been three
Who shot this flier first?
more kilometers up to Grubenweise and down the mountain road.
I was the one who fired the first shot at the flier.

(Continued)
(Stattmann - Cross)

Ta 187-ps-50-2/19-1

Ta 187-ps-50-2/19-2

Q Why did you go to the trouble to walk about six kilometers
A One single time.

with this man?
Q Did you shoot him in the back or in the front?

A Well, we went three kilometers in one direction, and turned
A I shot him in his head, from the back.

around and took a slightly longer road through the woods back.
Q I believe you said that Graf wanted to get a shot at him, so

Q That is what I am asking you, why did you want to go out in
when he shot him, is that right?

the woods to kill this flier?
A Graf stepped over to the flier in order to make sure that he was

A Well, this order that I had been given was hard to carry out,
dead, and since the flier wasn't dead, he fired a mercy shot at the flier.

and for that reason I hesitated in killing this flier until I couldn't do
A mercy shot?

anything else or else I would have landed back in Bensheim with the flier
Yes, a mercy shot.

again.
How many times did he shoot him?

Q I believe you stated on direct that you thought you were
A One single time.

perfectly justified in killing this flier, didn't you?
Q In what part of the body did he shoot him?

A I considered the order legal, and I didn't say anything else.
A In the head. In fact, I think in the temples, but I don't know

Q Why didn't you kill him there at the Gestapo headquarters? Why
for sure.

go hide in the woods, that is what I want to know?
Did you then take the body and drag it off into the woods and

A Because Major Girke had issued the order that the flier was
hide it under some brush?

to be killed in the woods, and inconspicuously so.
A We took the body and didn't drag it anywhere, but carried it

Q Stattmann, don't you know that you didn't want to murder that
into the woods and covered it up with brush.

American with good citizens that lived in Bensheim looking on?
Q Why did you hide it under the brush?

A That is right. I did not want to kill this flier in the presence
A After all, it was a path through the woods, and it might have

of civilians. After all, I was also a police official, and I as a police
been possible that some civilians might have discovered the body had it

official cannot put myself in the position of carrying out an execution and
been left lying there, and would have done something, anything, to it.

thereby making a show for civilians.
Q And you didn't want the civilian population to know that the

Q You wanted to keep this matter highly secret, didn't you?
Gestapo was killing people, did you?

A No, that is not right. The matter was not kept secret, in fact.
A I don't know whether the population did any thinking about the

Q Who shot this flier first?
matter or not, but it is a fact that as walked through the town in front

A I was the man who fired the first shot at the flier.
of flight and that later on the body was also carried through the streets

Q Was that man whom you shot Ray F. Herman?
of the town.

A Yes, that was the flier, Captain Ray Herman.
Did you take anything from this dead body?

Q How many times did you shoot him?
A No, that was strictly prohibited.

A One single time.

Q Did you shoot him in the back or in the front?

A I shot in his head, from the back.

Q I believe you said that Knaf wanted to get a shot at him, so then he shot him, is that right?

A Knaf stepped over to the flier in order to make sure that he was dead, and since the flier wasn't dead, he fired a mercy shot at the flier.

Q A mercy shot?

A Yes, a mercy shot.

Q How many times did he shoot him?

A One single time.

Q In what part of the body did he shoot him?

A In the head. In fact, I think in the temples, but I don't know for sure.

Q Did you then take the body and drag it off into the woods and hide it under some brush?

A We took the body and didn't drag it anywhere, but carried it into the woods and covered it up with brush.

Q Why did you hide it under the brush?

A After all, it was a path through the woods, and it might have been possible that some civilians might have discovered the body had it been left lying there, and would have done something, anything, to it.

Q And you didn't want the civilian population to know that the Gestapo was killing people, did you?

A I don't know whether the population did any thinking about the matter or not, but it is a fact that we walked through the town in broad daylight and that later on the body was also carried through the streets of the town.

Q Did you take anything from this dead body?

A No, that was strictly prohibited.

(STEITZER-Cross)

Q You are sure about this?

A I am perfectly sure of that.

Q Now, then, I believe you returned back to Hellenbreich and said, "We have killed the man," is that right?

A Yes, that is right.

Q And Hellenbreich told you to go tell Girke that you had carried out the order, is that right?

A Yes, he did tell us that, but in my opinion, that was superfluous, because it would have been common practice to report back to the unit commander anyway.

Q All right. Then you made a written report on the killing, is that right?

A Yes, that is correct.

Q Dr. Aheimer asked you a question this morning. I will repeat it. You had testified that you made a written report, and he asked you this question, "Was that your regular procedure on these incidents," and you answered "Yes." What did you mean by your regular procedure on these incidents?

A In the case of any counter-activity which we would take part in in our capacity as members of the Security Police, it was necessary to make a written report. By that, I mean that a report was taken down every time anybody was arrested or a search of a house was made, or in case of any executive acts in conformance with police duty.

Q But what did you mean by the answer, "on these incidents?"

A These incidents? I hardly think that I could have said that.

Q You just don't think you said that, is that right?

A No, that is impossible, because these incidents just didn't take place. That was the first flier that I ever got in my office and which I had to shoot on orders.

Q That was the first one?

A That was the first one.

Q Now, I believe you told Dr. Aheimer that you felt very sorry for this flier, is that right?

A I did feel sorry for him, as I do for every man who has to die.

Q Why did you sympathise with him?

A The flier made a good impression. He looked well. He impressed me because he didn't answer this question about his unit. And in addition to that, on our way from the office to the woods, we did some talking, as far as that was possible.

Q Did you tell him you were going to kill him?

A No.

Q Did you give him an opportunity to make a prayer to his Maker before he died?

A No, I did not.

Q Did this flier, at any time you had him in custody, do you any harm or try to do you any harm?

A No, he did not.

Q Now, we will get down to the 24th of March. I believe Gestapo Headquarters was all packed up and ready to retreat, is that correct?

A Yes, that is correct.

Q And the Americans were knocking on the back door, weren't they, at that time?

A Yes, that is right.

Q You knew then, and felt then that the war was just about to come to a close, didn't you?

A No.

Q You thought Germany was still going to win the war at that time?

A Yes, I was convinced of it, all the more since on the 21st or 22nd of March, 1945, Major Girke had come back from a meeting, a formation,

with Colonel Trumbler, and made all the men fall out in the yard of the
office and explained to all the men that in the near future the war would
now take a decisive turn and that the war would be finished in Germany's
favor in the near future due to the use of new weapons.

Q When did the war end?

A The Armistice was signed on the 8th of May, 1945.

Q So about five weeks after this incident, you received a great
shock, didn't you?

A Yes, that is right.

Q Now, on the 24th of March, about what time of day or night did
you first talk to Hellenbroich about having to kill another flier?

A I didn't talk to Hellenbroich; I merely received an order from
him. That might have been between 8 or 9 P. M.

Q He talked to you then?

A He gave me an order.

Q What was his order, as best you can remember?

A I don't remember it verbatim. He told me in substance that this
flier that was standing in front of him was to be shot by order of Major
Girke.

Q How many fliers did you have on that day in custody?

A On that day, I only saw one flier, and that was a flier whom I shot.

Q You said Hellenbroich gave you an order. Did Girke talk to you
at any time on that day?

A No, Girke didn't talk to me personally. All he did was appear
in the doorway to the guardroom for a very short period of time while I
was in there, and when Major Hellenbroich asked him where this flier was
to be shot, he said that there wasn't any time left and for the flier to
be executed out in the yard.

Q Where was the flier when this conversation was taking place?

A He was present in that room.

Q Did he hear the conversation that you, Girke and Hellenbroich had about executing him?

A He heard it.

Q After Girke said to do it in the back yard, what did you do?

A I went back in the waiting room, picked up my pistol, returned, motioned the flier to walk ahead of me, walked into the garden with him, and killed him by means of a shot in the head.

Q Were you alone, or was anyone else present at that time?

A That evening, I was alone.

Q Do you understand this chart that was used while we were presenting this case, which is in evidence as Prosecution Exhibit 70?

A Yes, it is clear to me.

Q Step up here and show the court where you killed this man and where you left the body. Point out on the exhibit the spot where you shot this flier.

(Whereupon the witness left the stand.)

A I went along this path through the garden, and when we reached about this point here (indicating), the flier tried to get across this stone wall over here (indicating). However, he only took one step, because I had my pistol in my hand already, so he only took one step away from the road when I fired. The flier then fell down in the garden in a diagonal direction, and this is where he remained lying (indicating).

Q Is that where you left the body?

A Yes, that is where I left the body.

CAPTAIN VANCE: For the record, let the record indicate that the accused pointed to a spot located in the right bottom corner of the triangle in which the words "cultivated field" are written, and that is a cultivated field which appears right beneath the letters "A" and "B" on the map.

(Whereupon the witness resumed the stand.)

QUESTIONS BY CAPTAIN VANCE:

Q That wall you are talking about is six feet high, isn't it?

A No, it couldn't be.

Q How close were you to the flier when youshot him?

A Two or three paces, perhaps.

Q I believe you said he took one step before you fired on him, is that right?

A Yes, that is right.

Q He didn't have a chance to get away, did he?

A No, and I didn't claim I shot him while he was trying to escape.

Q Do you remember how many times you shot him?

A I fired one single shot at him.

Q Did that one single shot kill him?

A This shot was fatal.

Q The last time you saw that body is when you left it lying on the ground where you shot him, is that right?

A Yes, that is the way it was.

Q And the only thing you know about the burial is that Raaf told you he had buried him out in the back yard, is that correct?

A Yes, that is right.

Q Did you go around to take a look at the grave?

A No, I didn't.

Q So you don't know where the grave was located?

A I didn't know that.

Q Was this man an officer or an enlisted man, if you know?

A I can't say, because he didn't wear any insignia.

Q Did you remove anything off the body of this American after you killed him?

A No, nothing was taken away.

Q You are sure of that?

A Absolutely sure.

Q Do you remember on direct examination answering a question like this, "I removed his silver chain which had his name on it and took it back to Halbergmoos headquarters and out of [illegible], didn't it?

A A That is not right; I never said that.

Q Q After you killed this American, did you go back and report it to anyone that you talk to Rast about him having killed a soldier?

A A Yes, I went back in the guardroom and reported the execution of the order to Major Hellenbrandt [illegible].

Q Q Did you make a written report on this man you had killed?

A A No, that was not possible any more, because I left right after that, together with my [illegible], or five minutes later.

Q Q About what time of night did you kill this man?

A A It might have been about 9 o'clock, but I can't say with certainty.

Q Do you know why he killed him?

A No, I don't know that.

Q Did you see the man that he killed?

A No, I didn't see the man.

End ta 187 wfj folo

Q Did you have separate places to keep prisoners there in your headquarters?

A Where you could keep them? We never kept any flyers.

Q You must have had two there that night, didn't you?

A Yes, that is right.

Q Where did you keep them in confinement?

A As far as I know, the flyers weren't in confinement in our place.

Q You didn't confine flyers did you, as a matter of fact?

A No other flyers except the one of the end of February and the one in March was ever in confinement in our place.

Q Now this man that you killed, didn't you testify that this man was brought in by the civilians?

Q That same night after you and Reaf had completed your killings, the whole Gestapo headquarters moved out of Bensheim, didn't it?

A Yes, that's right.

Q How about how long after you reported you had killed your man was it that you talk to Reaf about him having killed a soldier?

A Reaf didn't talk to me any. The only way I found out was that he made a report to Major Hellenbreich.

Q How long as far as you know was that after you made your report?

A It might have been two or five minutes later.

Q Do you know who he killed?

A No, a flyer.

Q Do you know why he killed him?

A No, I don't know that.

Q Did you see the man that he killed?

A No, I didn't see the man.

Q Did you have separate places to keep prisoners there in your headquarters?

A There you could keep them? We never kept any flyers.

Q You must have had two there that night, didn't you?

A Yes, that is right.

Q There did you keep them in confinement?

A As far as I know, the flyers weren't in confinement in our place.

Q You didn't confine flyers did you, as a matter of fact?

A No other flyers except the one at the end of February and the one in March was ever kept in confinement in our place.

Q Now this man that you killed, didn't you testify that this man was brought in by the antiaircraft unit? report was added to the file A. Yes, that was the chaos from the rural police in Warna.

Q Did you hear any conversation that was had or any statements made by the antiaircraft soldiers who brought the Americans to the Gestapo Headquarters? CE: Is there something wrong with the translation?

A Soldiers who brought the flyers. word should be translated as

Q Did you not say that some members of some antiaircraft battalion brought the flyer to Gestapo headquarters? or question.

A Yes, there were a sergeant and two aircorps men.

Q Did you talk to these men? t was forwarded from your headquarters to

A No, I didn't talk to these men.

Q Did you hear anything these men said? brief by way of the

A No, I didn't on whatever happened to be necessary. It might

Q Did you see these men did know the legacy of the flyer or

A No, I didn't see these men either of the burial of the flyer

Q Do you know who these men talked to when they got to Gestapo headquarters? them together.

A I don't know that, but I assume that they talked to Major Hellenbroich. At any rate they would have to talk to the Sergeant of the Guard because he would have to take these flyers away from them.

Q Now you didn't have time to make your written report of your this killing that took place in Warna, do that right? him?

A I didn't have time that evening and later on it wasn't to be required.

Q Now what is the purpose of making these written reports on the killing of allied flyers?

Take 188 - 20 2/25 - wfj 3 4

A All I ever wrote was one report and that was about the
Q Are you quite sure of that?
flyer at the end of February, 1945, and that report was added to the
A Quite sure of that, yes.
file which had been brought there from the rural police in Worms.
Q Where did that report go to from your office?
Q Are you just as sure of that as you are of everything
A That went into the files.
else you have told the court today?
CAPTAIN VANCE: Is there something wrong with the translation?
A Yes, I am sure of that.
DR. SUERGER: In my opinion this word should be translated
Q This morning you spent about thirty minutes telling this court
as "Channels".
about the deal that you had seen in Darmstadt and after describing that
CAPTAIN VANCE: I will ask another question.
you said that made you feel justified in killing these two Americans,
QUESTIONS BY CAPTAIN VANCE:
is that right?
Q Do you mean that the report was forwarded from your headquarters
A That wasn't the only reason.
to some other office?
Q Now you knew that neither of these flyers had taken part in
A No, this report went to the Section Chief by way of the
the raid on Darmstadt, didn't you?
Department Chief and then whatever happened to be necessary. It might
A Yes, I knew that.
go to the administration who would keep the legacy of the flyer or
Q So you felt justified in killing them because somehow
to the people who were supposed to take care of the burial of the flyer
had raided Darmstadt?
and they would then take the bills etc. about the burial to the files
A That is not correct.
and staple them together.
Q That is what you said, isn't it?
Q Didn't those reports wind up in Wiesbaden?
A No, I didn't want to express that.
A I can't answer because I don't know. I couldn't say any-
CAPTAIN VANCE: Nothing further.
thing about what happened on a higher level than I was on.
REDIRECT EXAMINATION
Q Now in your report that you made about killing this flyer,
QUESTIONS BY DR. SUERGER:
what did you put down for the reason that you killed him?
Q Mr. Statman, let's just stay on the subject that Captain
A In that report I wrote that I shot the flyer according to
Vance asked you about. What did you want to express when you mentioned
orders.
the air attack on Darmstadt in answer to my question?
Q Didn't you put down that you shot him while he was trying
to escape?

(Statman - Redirect)

1286

(Statman - Cross)

Take 181 - 30 2/19 - wfj 5

Take 188 - 30 2/19 - wfj 4

A I wanted to express by that that I was not in any position to doubt the legality of the orders issued after living through [illegible] Are you quite sure of that, [illegible] attacks, etc., and I would like to [illegible] sure of that, your sole reason. I had the orders which I have [illegible] you are just as sure of that as you are of everything else you have told the court today? [illegible] that they had been students of law and that, I am sure of that.

[illegible] were [illegible] this morning you spent about thirty minutes telling this court about the deed that you had been in command and after describing that you felt that made you feel justified in killing these two Americans, is that right?

A [illegible] foot on the guard room for the first time.

Q Now you know that neither of these flyers had taken part in the raid on Darmstadt, don't you? I compared the name written on the bracelet with the name of the flyer.

A Yes, I know that.

Q So you are not justified in telling this court that you had raided Darmstadt, do you? [illegible] touched anything belonging to the flyer.

A That is not correct.

Q That is what you said, isn't it? [illegible] prosecution in cross examination about the [illegible] "Kohits". Were those services [illegible]

A No, I didn't mean to express that.

Q Certainly not. Nothing further. [illegible] service records it said "Service Record of the Waffen SS [illegible]

REDIRECT EXAMINATION

QUESTIONS BY DR. BUSCH:

Q Mr. Statt[illegible], any false personal data concerning the owner of this bag. [illegible] I didn't [illegible] the only reason there were [illegible] the air attack or [illegible] in answer to my question?

A [illegible] change any service records containing names of units at the time of commitment at the front and substituting therefor service records containing [illegible] updated.

Take 188 - 20 2/19 - wfj 5

Take 188 - 20 2/19 - wfj 6

A I wanted to express by that that I was not in any position to doubt the legality of the orders issued after living through Darmstadt and on account of the low flying attacks, etc., and I would like to emphasize that was not the sole reason. I had the orders which I had received from Major Hollenbroich and Major Girke, who were my superiors and I knew even at that time that they had been students of law and that was enough of a guaranty for me that those commands were likewise legal.

Q When and where were you informed about that?

Q Captain Wahl asked you about the cloth around the wrist of the flyer containing the identification tags. When and where did you see this cloth?

A When your regiment left Vienna and went to Germany proper, did you still [illegible]

A I can't think when I set foot on the guard room for the first time on the thirty-fourth of March 1945. At that time Major

[redacted] it in his hand and compared the name written on the bracelet with the name of the flyer.

Everything you stated today about this subject merely pertained to [redacted]

Q You yourself didn't have this chain in your hand, did you?

A I had not touched anything belonging to the flyer.

Q You were struck by the prosecution in their examination about this service record with the entry "Kranke". Were these service records of the German SS?

A Yes, on the cover of these service records it said "Service Record of the German SS."

Q Was there any false personal data concerning the owner of this book in there?

A No, I didn't say that. No, the only reason these were issued was that it was standard operating procedure in the German Army to change my service records containing names of units at the time of commitment at the front and substituting therefor service records containing APO numbers.

(Statman - Redirect)

Q The personal data of the owners were stated correctly them?

A The names, birthdays, etc. were all the same as they had been.

Q In cross examination and upon questions by the prosecutor you made some statements as to the purposes, aims and goals of the Allgemeine SS. When and where were you informed about that?

A I was informed about that during my membership in the Eleventh SS Regiment in Vienna.

Q When your regiment left Vienna and went to Germany proper, did you still serve in the Allgemeine SS?

A No, jointly with my entry into the police I was furloughed from the Allgemeine SS.

Q Then everything you stated today about this subject merely pertained to what you saw in Vienna?

A It pertains solely to what I was told my unit in Vienna.

Q Do you know of the job of the Allgemeine SS that was carried on throughout the war?

A I can't say that because I wasn't in the Allgemeine SS anymore at that time but I doubt whether any large scale SS matters were still performed because the Allgemeine SS had been all drafted into the Army.

Q In that case you do not wish to state what your co-accused Lasaak said about the role of the Allgemeine SS in the war?

A I can't do that because I don't know what happened in his unit.

It said that I was a member of the unit and following it was the APO of the SS (enlistment) and training battalion, Krems.

I didn't know anything about the Gestapo, Mauthausen, Gusen, did it?

Tabs 188 - 30 2/22 - mfg 7.

4 fo. RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE: It is all.

Q Just one question. I want to ask you about the fictitious papers that Girke issued to you shortly before the twenty-fourth of March, 1945. (The witness was excused and resumed his place in the witness' box.)

MR. RACHAEL: We object to the question -- the characterization made by the prosecutor.

MR. RACHAEL: The defense calls as its next witness the accused Michael Kanf.

CAPTAIN VANCE: He has already testified --

PRESIDENT: Do you desire to be sworn or do you want to make an unsworn statement?

PRESIDENT: Objection overruled.

QUESTIONS BY CAPTAIN VANCE:

THE WITNESS: I would like to be sworn.

Q They showed on that "Waffen SS", is that correct? Yes or no?

MICHAEL KANF, an accused, voluntarily took the stand in his own behalf and being first duly sworn, testified through an interpreter as follows:

A I can't answer that yes or no because it was phrased wrong by the prosecutor.

DIRECT EXAMINATION

QUESTIONS BY DR. NIEBERGALL:

Q Did those papers have "Waffen SS" on them, yes or no?

Q State your full name to the court.

A These papers were not issued on the twenty-fourth of March.

A Kanf, Michael.

Q I am talking about the papers that were issued about or by the twenty-fourth of March by Girke to his outfit there. Do you

Q When were you born and where?

A April '06 in Forstweiler in the District Alsa, Wurttemberg. know what papers I am talking about?

Q Are you married?

A Yes, those must be the papers issued to us but they showed our correct names, etc. Those were not fictitious papers.

A Married.

Q Do you have any children?

Q Did those papers show that you were a member of the Gestapo?

A Yes. Yes or no?

Q How many?

A No, it didn't say.

A Two.

Q Did they show that you were a member of the Waffen SS or

Q What was your civilian occupation? the Wehrmacht?

A I didn't have any civilian occupation.

A It said that I was a member of the unit and following it was the APO of the SS replacement and training battalion, Konitz.

(Kanf - Direct)

Q It didn't show anything about the Gestapo, Bensheim, Germany, did it?

A No.

Q How come you were in the German police then?

CAPTAIN VANCE: That is all.

A When I was eighteen years old in 1924 I went into the

PRESIDENT: No questions by the Court. The witness will

regular country police.

take his place in the dock.

Q Where?

(Whereupon the witness was excused and resumed his place in the prisoners' dock.)

Q MR. RAGHAM: The defense calls as the next witness the co-accused Michael Raaf, police of the state of Wurttemberg from the first of S

PRESIDENT: Do you desire to be sworn or do you want to make an unsworn statement

charged from the police in 1935 or what did you do? THE WITNESS: I would like to be sworn.

MICHAEL RAAF, co-accused, voluntarily took the stand in his own behalf and being first duly sworn, testified through an interpreter as follows:

police of Wurttemberg State in Stuttgart.

Q No, if I understand correctly, you intended to stay

QUESTIONS BY MR. [illegible]: What is your occupation?

Q State your full name to the court. One year I was taken into

the custody Reef, Michael.

Q When were you born and where?

A April 1906 in Feuerwehler in the District Aalen, Wurttemberg.

Q Where were you married? Police in Stuttgart.

A Married. That date you just mentioned in 1940 where were

you at? Do you have any children?

A Yes. First of January 1941 I was detailed to the Secret

State Police [illegible] Stadt.

A Yes. What were the conditions under which you were detailed there?

Q What was your civilian occupation? service.

A I didn't have any civilian occupation. Permanent transfer?

A No, that was merely a detail.

(Reef - Direct)

(Reef - Direct)

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Q How come you were in the German police then?

And did you spend all this time that you were being tried

A When I was eighteen years old in 1924 I went into the

out in Darmstadt?

regular country police.

A Yes.

Q Where?

And after this time of trying out, what happened to your

A In Stuttgart.

professional career?

Q How long were you in this land police or protective police?

About four or five months after I was assigned there I put

A I was in the police of the state of Wurttemberg from the

in an application to be transferred back to the protective police.

first of September 1924 until the thirtieth of December 1935.

After the trial year or before the trial year?

Q Were you discharged from the police in 1935 or what did

During the trial year.

you do?

What was the results obtained by this application?

A On the first of January, 1936, I was sent to the technical

About four or five weeks after I made this application, I

school of the police of Wurttemberg State in Stuttgart.

made an inquiry and I was promised to be sent back to the protective

Q So, if I understand you correctly, you intended to stay

police in Stuttgart.

with the police and make that your occupation?

Did you then get a final decision on this application?

A This course took one year and after one year I was taken into

No, I kept on asking and kept on being promised to be

the protective police.

sent back.

Q Then where were you after 1937?

And when no final decision was made, where did you get sent

A From 1937 until the thirtieth of December 1940 I belonged to

to?

the Wurttemberg Protective Police in Stuttgart.

After my trial year I suddenly received an order that I

Q And after that date you just mentioned in 1940 where were

would have to go to the security police school in Wurttemberg to take

you sent?

a course there.

A On the first of January 1941 I was detailed to the Secret

That was the end of 1941 or the beginning of 1942, if I

State Police in Darmstadt.

understand you correctly.

Q What were the conditions under which you were detailed there?

Yes.

A I was assured of one year of trial service.

And any decision on this application for transfer be made

Q Was 1941 then the date of your legal permanent transfer?

when you were sent to this security police school?

A No, that was merely a detail.

No.

Q And did you spend all this time that you were being tried out in Darmstadt? What to attend this course because I had the order to go to the [illegible] school.

Q And after this time of trying out, what happened to your professional career? You were for five months, from the first of January on. After. About four or five months after I was assigned there I put in an application to be transferred back to the protective police.

Q After the trial year or before the trial year?

A During the trial year. Q. Where were you sent back to?

Q What was the reaction obtained by this application? Chief of the [illegible] About four or five weeks after I made this application, I made an inquiry and I was promised to be sent back to the protective police in Wuerttemberg whether I still wanted to be transferred back to S[illegible] you then get a final decision on this application?

A No, I kept on asking and kept on being promised to be sent back. told the Chief yes, even though I do have this examination I don't want [illegible] Finally one day where did you get sent to? I went to the state police and told him that I wanted to get back to the regular police after my trial year I suddenly received an order that I would have to go to the security police school in Fuerstenberg to take a lecture there. regular police service?

Q That was the end of 1941 or the beginning of 1942, if I understood you correctly. State police Police Rat Schwinn and he told me to see Police Rat Schwinn and you will find out something.

Q Had any decision on this application for transfer be made when you were sent to this security police school? I mean, one [illegible] Albrecht.

Q And did you attend this course in Furstenberg?

A Yes, I had to attend this course because I had the order to go to that school, regulation way?

Q How long were you in that school?

A I had been an express to the agency, was in there for five months, from the first of January until May. A soldier wasn't able to say what he didn't want to go out front. If I would make another application, I would be court martialed by the SS and Police Court.

Q After this course was over, where were you still sent to?

A Sent to Arolsen. After this course was over I reported to the then Chief of the Office, Reichsführer-Himmler Fine.

Q And what did you find out when you reported back there and what?

A Fine asked me whether I still wanted to be transferred back to Stuttgart. I didn't have my family papers for the secret state police. I couldn't please him, so I was then told that I would have to bring [illegible] to me, even though I do have this examination I don't want to gain any benefits by this examination. I don't like the secret state police and told him that I wanted to get back to the regular police, that I wouldn't be transferred.

Q How was your request to be transferred from the secret police to the regular police granted?

A Yes. Fine sent me to the man who was in charge of the administration of the Secret State police Polizei Rat Schwinn and he told me to go see Polizei Rat Schwinn and you will find out something.

Q Did you find out anything from the Polizei Schwinn?

A Schwinn sent me to the man in charge of personnel, Kriminal Sekretary Albrecht.

Time 10:30 - 20 2/19 - Wiy 12

At the time that you were taken over to the Gestapo were

Q What did you find out there?

A Albrecht read me some regulations from Berlin.

Q What did that regulation say?

A It contained the following: That I had been an expense to the government; that I was supposed to do my job where they put me and that a soldier wasn't able to say that he didn't want to go out front either, and if I would make another application, I would be court martialled by the SS and Police Court.

Q So then did you finally take up your duties with the Gestapo in Darmstadt? your rank as an official when you started in the

A No, I was still on trial.

Q Were you finally transferred to the Gestapo in Darmstadt and when?

A Since I didn't have my family papers for the secret state police, I couldn't be taken in, so I was then told that I would have to bring in the papers showing the ancestry of my wife, but since the maternal ancestry of my wife came from France, I was in no position to get these papers and I didn't particularly hurry the matter, thinking that I wouldn't be transferred.

Q But you were finally transferred, so far as I know?

A Yes.

Q When?

A The first of September 1932 I was finally taken into the secret state police.

Q Who pronounced you transferred?

A This transfer I think came from the Reich Ministry of the Interior at the time.

(Thereupon the court reconvened.)

Q At the time that you were taken over to the Gestapo were

PRESIDENT: The court will come to order.

you a member of the NSDAP?

MR. [illegible]: May it please the court, let the record show that

A Yes.

all the members of the court, all the members of the prosecution, all the

Q Since when?

members of the defense except Mr. Trogh who is absent sick, all of the

A Since the 1st of May 1940.

accused, reporter and interpreter are present.

Q Did you have any functions or rank in the NSDAP?

DR. [illegible]: I request that the accused be reminded that he is

A No.

still under oath.

Q At the time that you were taken into the Gestapo were you

PRESIDENT: The accused is reminded that he is still under oath.

a member of the Allgemeine SS?

WILHELM RAFF, the accused, being reminded that he was still under oath, resumed the stand and testified further through an interpreter as follows:

Q What was your rank as an official when you started in the

Gestapo and what was your title?

A [illegible] criminal Secretary, and you had to serve 15 months, promoted to Criminal Assistant.

? President: The court will recess for 15 minutes.

Q Did you serve in Wiesbaden with the SPAD, Darmstadt?

A (Whereupon etc.)

Q Commencing when and until when did you serve in the Darmstadt Office?

A I was with the SPAD Office, Darmstadt from the first of September, 1942 until the end of August, 1943.

Q Where were you sent towards the end of August, 1943?

A Since I was living separately from my family and since the Government was no longer willing to pay for separate quarters, I was ordered here to Berlin.

Q What do you mean by ordered into service?

A I was supposed to be sent to the foreign country.

Q Did you get sent to a foreign country?

A Not at first. I had to report to the Reich Main Security Office in Berlin.

(RAFF-direct)

[illegible]

pld-139-2

pld-139-1

(Thereupon the court reconvened.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Dr. Kraus who is absent sick, all of the accused, reporter and interpreter are present.

DR. BERGER: I request that the accused be reminded that he is still under oath.

PRESIDENT: The accused is reminded that he is still under oath.

MICHAEL RAAP, an accused, being reminded that he was still under oath, resumed the stand and testified further through an interpreter as follows:

DIRECT EXAMINATION continued.

QUESTIONS BY DR. BERGER:

Q When, at the close of the last session, you said you had been promoted to Criminal Assistant--

A Yes.

Q Did you serve in that capacity with the SIPO, Darmstadt?

A Yes.

Q Commencing when and until when did you serve in the Darmstadt Office?

A I was with the SIPO Office, Darmstadt from the first of September, 1942 until the end of August, 1944.

Q Where were you sent towards the end of August, 1944?

A Since I was living separately from my family and since the government was no longer willing to pay for separate quarters, I was ordered into action.

Q What do you mean by ordered into action?

A I was supposed to be sent to the foreign country.

Q Did you get sent to a foreign country?

A Not at first. I had to report to the Reich Main Security Office in Berlin.

(Raap-direct)

Q Where did the Reich Main Security Office send you? When employed with.

A At first I was told that the Reich Main Security Office wanted me to stay there for orientation at some department for political passport forgeries. [illegible]

Q What do you mean by political passport forgeries?

A That was the office where all the passports and papers which were suspected of being forged were kept.

Q How long were you in that department? [illegible]

A I was there until the beginning of December, 1943. After that I got a furlough. [illegible]

Q And after that furlough you started in your service again?

A The first of January I had to report back to Berlin. [illegible]

Q. And what job did you get then?

A There I was to be there I and two comrades of mine were assigned to inspect army trains in the Eastern front.

Q What was the purpose of this inspection or control?

A All army personnel and army auxiliaries on those trains were inspected for proper papers.

Q Are those furlough trains from furlough from the Eastern Front? [illegible] You from the front as well as back to the front.

Q Was this a civilian position or a military position? [illegible] That was a military position. I received the uniform of the Security Police. [illegible] your civil service rank or title at that time?

Q For how long did you serve in that capacity? [illegible]

A I served in this capacity from January, 1944 until the end of August, 1944. A Yes.

Q After this position where were you transferred? [illegible] After that I had to report back to my office in Darmstadt.

(Recess taken)

Q What department of this office in Darmstadt were you then employed with?

A At first I worked on the subject of prohibited relations with prisoners-of-war concerning German women.

Q And then?

A On the 11th of September the office was bombed out.

Q Continue.

A And then the office was transferred to Bensheim.

Q Did you move the same night with this office or later?

A I only moved a few days later.

Q Why?

A That was for the reason that I was assigned to bury bodies--salvage bodies.

Q When you went to Bensheim with your office, what department of the office did you work in?

A There I worked in the Eastern Laborers Department.

Q Did you stay there?

A Yes.

Q In the meantime from 1942 until about September, 1944--I guess it was--were you promoted any?

A Since I had 12 years of active service I had to be promoted automatically. That was on the first of September, 1943.

Q What was your civil service rank or title at that time?

A On the first of November, 1943 I became Criminal Secretary.

Q Was that your last promotion?

A Yes.

Q With the exception of this commitment in the east were you in any other military organization during the war?

(Recd-direct)

A When I returned, or rather when I got to Bensheim I received an SS service record. I had already received my uniform.

Q What was the description of your rank in the SS service record?

A My rank was the same as my civil service rank had been. I became a Sturmscharführer.

Q Did you ever pay any membership dues to the SS?

A No, I didn't belong to the SS.

Q You remained with your office in this capacity as Sturmscharführer until the end of the war?

A Yes.

Q Was your name, your birthdate and birthplace stated in this service record?

A Yes.

Q When you received this service record were you informed that you now belonged to a military organization and were no longer a civilian?

A Yes. Beginning with the time I was issued my service record I received the army pay and no longer commutation for quarters, and I was fed by the army.

Q During the time which you were now with the State Police did you ever come back to your old application for transfer?

A Since I realized it was hopeless trying to get back to the Protective Police again I made several more applications to be sent to the army.

Q Were these applications in any way successful.

A All of these applications were disapproved.

Q Was any reason why these applications were disapproved given?

A I was told that I had to work where I was put.

Q About how many of these applications did you make?

pl4r20-6

A It might have been two or three of them. I don't know.

Q During your time in the State Police office in Darmstadt or Bensheim respectively did you receive any kind of orders concerning the treatment of parachuted flyers?

A No.

Q To get down to the case. Do you remember the incident on the 15th of February, 1945?

A Yes. However, I don't know exactly whether it was the 15th of February.

Q To the best of your recollection what is the date? Is it correct that it was about the middle of February?

A Yes.

Q Where were you then?

A I was in the office in the morning. In my office.

Q Where?

A In Bensheim.

Q In the course of the morning did you hear in your office that an enemy flyer had been turned in?

A In the morning we found out in the office that there was an American flyer in Bongil's office.

Q Did you then go into Bongil's office?

A Since I had never seen a flyer before and many of my comrades hadn't either, many of the men went in there to see or try to see the flyer.

Q Did you try to see this flyer too?

A Yes.

Q What happened?

A When I came into the room Major Hollenbreich was in there and so was the flyer. Several of my comrades went in with me and since the room was half filled up with people Major Hollenbreich chased us out.

(Recf-direct)

Q Did you get back in the office?

A Yes.

Q Continue telling us what happened.

A After a while—it might have been a half hour or an hour—I was called up by Major Girbe and told to report.

Q Did you then go over to Major Girbe promptly.

A No, I had an interrogation and I couldn't get away right away.

Q Continue.

A A short time later Technical Sergeant Stattman came into my room and he told me an order from Girbe. "You will have to come along for an execution."

Q Upon that did you say anything or do anything?

A I put my coat on and put my pistol belt on and went to his room with Stattman, and there this flyer was.

Q What did you do then?

A We went out with the flyer in the direction of town.

Q Were the quarters which you were in in Bensheim inside or outside of town?

A Somewhat outside of town.

Q Continue.

A Then we took the left in the direction of Schoenberg.

Q Did you go through Bensheim with the flyer?

A Yes, part of the way.

Q And then you continued towards Schoenberg you say? Now continue.

A After we had been walking in the direction of Schoenberg for a while we turned to the left through a path through a field in the direction of the woods.

Q Continue.

A Since we had the order to shoot the flyer we had to do it because

otherwise we would have gotten back to Zamsheim.

Q Did you receive this order to shoot and kill this man or did you in any way get knowledge of it?

A Technical Sergeant Stutzman was the man to bring me this shooting order.

Q So you were going towards Zamsheim again in this woods. Continue.

A Everybody was scared to shoot and we continued on but we couldn't possibly take the flyer back to Zamsheim.

Q Why couldn't you come back home with the flyer?

A Because we had orders to shoot the flyer. Stutzman had his pistol in his hand and I had a pistol in my hand. However without the flyer's knowing it.

Q Was the flyer walking ahead of you?

A Yes. So we walked about 20 or 30 meters. Stutzman looked at me and I looked at him. Finally we didn't have any choice any more so Stutzman fired one shot.

Q Did you agree among yourselves who would shoot the flyer?

A No.

Q What happened after Stutzman fired that shot?

A The flyer collapsed and moaned. I saw that Stutzman was very excited and it was too much to expect of Stutzman to fire another shot so I fired one more shot at the flyer.

Q After those two shots was the flyer dead?

A Yes.

Q At what part of the body was Stutzman firing and at what part of the body were you firing?

A I can't say exactly where Technical Sergeant Stutzman was firing. I fired at the head.

Q Did you make sure the flyer was dead?

A Yes.

Q What did you do with the body then?

A We carried the flyer away and covered him up with twigs.

Q And then?

A Then we went back to the office and reported back into Major Hollenbreich.

Q Both of you?

A Yes.

Q And?

A As far as I remember Major Hollenbreich went up to Major Girke with us and reported the fact that the flyer had been shot there.

Q Did you make a written report later on?

A No, that wouldn't have been my job anyway.

Q Did you have anything done concerning the burial of the flyer?

A Major Hollenbreich gave me the order to report to the Army Headquarters in Bensheim and said that a vehicle had been ordered there. That was a home guard battalion at that time located in Bensheim.

Q Did you go there then?

A I reported there and the cart was in there in the yard already with two horses in front of it.

Q Did you tell the driver, the teamster, where to go or did you go along with the body?

A I went along because the driver didn't know where the place was where the flyer was lying.

Q The flyer was then taken in, is that right?

A We put the flyer on the cart and then drove him to Bensheim Cemetery.

(Knaf-direct)

to your office?

A Yes.

Q Did you hear anything else about this case later?

A No.

Q After this incident did you continue your duties at the STAPO Office, Bensheim?

A Yes.

Q I draw your attention to the last days of March, 1945 and particularly to the 24th of that month. Do you remember that day?

A Yes.

Q How could you remember that day?

A Because something extraordinary happened.

Q Explain to the court what extraordinary happened?

A At that time I was supposed to watch a telephone in the office. That started at one p.m. and ended at one p.m. the next day. In the evening I went to eat in the town because I didn't have anybody to eat with in Bensheim. However, Major Hollenbreich did not know that. When I came back from eating

(Raaf-direct)

Q Did you take anything away from the flyer after the shots had been fired?

A No.

Q Do you know whether any personal property of the flyer had been taken away from him before that?

A I didn't see anything taken away from the flyer.

Q Do you know whether the flyer was interrogated before you moved out with him?

A When I had entered this room in the morning I noticed that Major Hellenbroich was trying to interrogate the flyer, but I was in there for a very short time only because Major Hellenbroich kicked me out.

Q After you had taken the flyer to the cemetery did you report back

into the yard I heard my name being called and Stattmann's name.

I said nothing. [illegible] Stattmann

Q What time of day was that, approximately?

[illegible] one flyer and one guard with him, and I with another

A That was between 19 and 20 hundred hours, approximately.

flyer walked right behind him.

Q Continue.

You just said that Major Hellenbroich informed the

A I was supposed to see Major Hellenbroich.

flyers that they would be shot. [illegible] speaking English or

Q Did you report to him?

German?

A Yes. I thought I'd be chewed out that time. Major Hellenbroich

I can't say exactly anymore, but I think he spoke

was in the room where I was supposed to watch the telephone.

English or German or perhaps both mixed.

Q Was that the guardroom?

Did he relieve from that he said that he was telling

A Yes. The lighting conditions were very dark because the lamp was

that to these flyers, or did he expressly say to you that he

pushed down on the table.

was telling them?

Q Why was this lamp pushed down?

No, I gathered it from his words he said, because

A I think there was an air raid alarm going on at that time--blackout.

half was English and half German.

Q Continue. Who did you see in the guardroom besides Hellenbroich?

Well, continue.

A There were several more people in the guardroom but I don't know

A Stattmann was the first one to leave with one of them

the names, and two American flyers.

Q [illegible] immediately behind them in the direction of the

How did you know they were American flyers?

A [illegible] the other one. Stattmann went to the right, and I

I didn't know exactly, but I assumed they were.

Q [illegible] what is the left in the garden. So I said to myself,

Can you recognize these people exactly or see them?

A [illegible] in order to shoot this flyer, at least I took

Major Hellenbroich informed the flyers that they would be shot and

then [illegible] shot him from behind. He is a soldier and I won't be

given an order. And I fired one shot from the front from a machine

Q Was any special order given as to when and where this execution was

to take place?

A Yes. Major Hellenbroich said, "These two flyers will be shot and

you are supposed to do this in the garden next to the office building."

Q What did you do or say to that?

[illegible] a machine pistol on the 15th

of February?

A Mr. I had my police pistol at that time--PAK

caliber 7.65.

(Recess - 1 hour)

Take 101 - 30
[illegible]

A I said nothing. Then Technical Sergeant Stattman took one flyer and one guard with him, and I with another flyer walked right behind him to the guard place. I told

Q You just said that Major Hellenbrelch informed the fliers that they would be shot upon speaking English or German more than one shot, and I didn't want to do that.

A I can't say exactly anymore, but I think he spoke English or German or perhaps both mixed.

Q Did you gather from what he said that he was telling that to these fliers, or did he expressly say to you that he was telling them [illegible] of the chest. I couldn't really aim because it No, I gathered it from his words he said, because half was English and half German, see.

Q Well, continue. I had set my machine pistol for a single shot. Stattmann was the first one to leave with one of them, and I left immediately behind them in the direction of the garden with the other one. Stattmann went to the right, and I went somewhat to the left in the garden. So I said to myself, "If you have this order to shoot this flyer, at least I don't want to shoot him from behind. He is a soldier and I won't be cowardly." And I fired one shot from the front from a machine pistol. As he fell?

Q Did you always have a machine pistol?

A Yes. [illegible] you do after the flyer was dead?

Q And did you also have a machine pistol on the 15th of February? [illegible] that I had assembled the mission.

A No. I had my police pistol at that time--PPK, caliber 7.65. [illegible] Major Hellenbrock on--these

(Raaf - Direct)

Q On this particular evening why did you not use your service pistol and why did you use your machine pistol?

A I had my machine pistol in the guard place. I told myself that I wouldn't want to use the service pistol, because I might not hit well perhaps, and then I would be forced to fire more than one shot, and I didn't want to do that.

Q You just said you did not want to kill the flyer from behind. What did you do? Come around and bury the fliers?

A It was very dark. I put the flyer against the wall and walked away about two or three yards, and then I put the barrel in the direction of the chest. I couldn't really aim because it was night.

Q Do you remember how the flyer you shot was dressed? How many shots did you fire?

A I fired one shot. I had set my machine pistol for a single shot, but it is possible that I pulled the trigger one more time in the excitement. It is possible.

Q Did the flyer collapse on account of your shot?

A Yes.

Q Did you distinguish any insignia of rank or anything else on him?

A I don't see any, and if I had seen any I wouldn't know them.

Q Did you make sure whether he was alive yet or whether he had died?

A Yes, he was dead.

Q What was the reason that this execution was ordered to take place in the garden to the office building?

Q What did you do after the flyer was dead?

A I went into the guardroom to Major Hellenbroich and I reported that I had accomplished the mission.

Q What happened then?

A The same thing I told Major Hellenbroich--these fliers have got to be buried. Then we all of us walked out in the yard on bicycles.

Q Did you then receive instructions to bury these
For what purpose?
fliers?
To take off.
A Yes.
Q Was the office in Bensheim dissolved that night and
moved?
Q Did you bury them?
A Major Hellenbroich told me to pick up a bunch of
A Yes.
more people in the yard to help me--five or six men that came
Q Did you in any way object to the order after you
along.
received it?
Q And did you then dig some graves and bury the fliers?
A No. I couldn't object to the order, because a
A Yes.
couple of days ago Major Dirke had called a formation of all
Q Was anything taken away from the fliers yet?
the male employees, had called them together in the mess hall,
A No.
and said the following, among other things, substantially,
Q Do you still remember how the flyer you shot was
"The enemy has succeeded in making substantial breaks on the
dressed?
Western Front. However, there is no reason for any disquiet
A All I know, all I saw, was a zipper.
as yet, because after all the good old Father Rhine is still
Q Don't you remember the face or the stature of the
in front of them as a last obstacle. You followed your flag
flyer anymore?
in good times. I challenge everybody to do his duty in these
A No.
dire times for the Fuehrer and his country. Anybody who gets
Q Did you distinguish any insignia of rank or anything
soft or cowardly now has no business living."
else on the uniform of the flyer?
Q In accordance with this did you think that dis-
A No, I didn't see any, and if I had seen any I
obeying an order would cause punishment?
wouldn't have known them.
A Yes.
Q What was the reason that this execution was ordered
Q Did you know of any punishments for what you called
to take place in the garden to the office building?
getting soft or breaking the front?
A I knew that the Americans were 5 or 6 kilometers
A Yes.
away from Bensheim, and for that reason I assumed that the
Q How do you know that?
fliers were shot there.
A The papers from the SS and Police Court containing
Q Had part of the office already moved or were all of
the sentences passed came in monthly.
you there yet?
A Half my comrades had already fallen out in the yard
(Raaf - Direct)
on bicycles.

Mein 121 - 30
2-19-47;

Q For what purpose? I ask the court for a short re- a
A To take off [illegible] to convince itself that the
Q Was the office in Ranshain dissolved that night and moved? be possible.
A Yes. The Court will recess in place.
Q Did you in any way object to the order after you received it? The Court will come to order.
A No. I wouldn't object to the order, because a couple of days ago Major Girke had called a formation of all the male employees, had called them together in the mess hall, and said the following, among other things, substantially, "The enemy has succeeded in making substantial breaks on the Western Front. However, there is no reason for any disquiet as yet, because after all the good old Father Rhine is still in front of them as a last obstacle. You followed your flag in good times. I challenge everybody to do his duty in these dire times for the Fuehrer and his country. Anybody who gets soft or cowardly now has no business living." [illegible] conclusion. Raaf, Q Did So in accordance with this did you think that disobeying an order would cause punishment?
A Yes. [illegible]
Q Did you know of any punishments for what you called getting soft or breaking the front? No.
A Yes.
Q How do you know that? The court will [illegible] think this
A The papers from the SS and Police Court containing the sentences passed come in monthly. [illegible] because I don't [illegible]

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Raaf, you spent about 25 minutes telling the court the accused is near collapse and further interrogation would hardly be possible.

Why didn't you want to go into the secret police?

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

A Because I didn't like all this political business, and I was used to serving openly with the protective police.

QUESTIONS BY DR. BUERGER:

Q Is that the only reason?

A Yes.

Q No other reason that you can think of?

A No.

Q What did you say your rank was when you went with Major Girke's Gestapo headquarters?

A Sturmscharführer.

Q Did you consider these orders as binding?

CAPTAIN VANCE: What would that be in English, Mr. Interpreter?

THE INTERPRETER: Master Sergeant, approximately.

Q A few short questions now to draw to a conclusion. Did you say you were an SS Master Sergeant?

Raaf, did you read the charge sheet exactly?

A Yes.

A Yes.

Q But I believe you told the court you were not a

Q Did you read Charge No. 1?

member of the SS?

A Yes.

A Yes.

Q Did you understand Charge No. 1?

Can you explain that?

A Yes.

A I received this rank of Sturmscharführer only on

Q Do you want to tell the court what you think of account of my official civil service rank as criminal secretary.

this Charge No. 1?

A Some time in February, I believe you said, you saw

A I was never engaged in any conspiracy, because I an American soldier in Mueller's office. And you said this was didn't know anything.

the first flyer you had ever seen; is that right?

MR. RACHAEL: Your witness.

(Raaf - Cross)
(Raaf - Direct)

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Kmaf, you spent about 25 minutes telling the court on direct examination why you did not want to go into this secret police; why didn't you want to go into the secret police?

A Because I didn't like all this political business, and I was used to serving openly with the protective police.

Q Is that the only reason?

A Yes.

Q No other reason that you can think of?

A No.

Q What did you say your rank was when you went with Major Girke's Gestapo headquarters?

A Sturmscharfuehrer.

Q CAPTAIN VANCE: What would that be in English, Mr. Interpreter?

THE INTERPRETER: Master Sergeant, approximately.

Q Did you say you were an SS Master Sergeant?

A Yes.

Q But I believe you told the court you were not a member of the SS?

A Yes.

Q Can you explain that?

A I received this rank of Sturmscharfuehrer only on account of my official civil service rank as criminal secretary.

Q Some time in February, I believe you said, you saw an American soldier in Dongley's office, and you said this was the first flyer you had ever seen; is that right?

(Kmaf - Cross)

A Yes.

Q You were at the Gestapo headquarters September 12th at Darmstadt when it was bombed, were you not?

A Yes.

Q Didn't you see some American fliers on that day?

A No.

Q This is the first American flier you ever saw?

A The first American flier.

Q You did not receive any orders about this shooting from any one except Stattman, did you?

A I received the order from Major Girke. The only thing Stattman did was transmit it.

Q Who had the higher rank, you or Stattman?

A I had the higher rank.

Q Could you give orders to Stattman?

A No.

Q Any kind of order?

A I could give Stattman an order when I had express authority to do so from a superior of mine.

Q Now, you told the court that at the time you and Stattman killed this flyer you said to yourself that you were not guilty of anything; is that right?

A Yes.

Q And you are still of that opinion now, are you?

A Yes.

Q Did you and Stattman both make the report back together after you had executed this flyer?

A We went into Major Hellenbroich's place together--reported back in.

(Raaf - Cross)

Q Now, when you got to this second killing--Stattman killed one and you killed one, on the 24th of March 1945, who buried those fliers?

A Those men whom I assigned, or rather who went along voluntarily were the ones who buried the fliers.

Q Were you present when the fliers were buried?

A Yes.

Q And was that the flyer that you had shot and the flyer that Stattman had shot?

A Yes.

Q Where were they buried?

A They were buried in the garden of the office building.

Q Were they buried in one grave or two graves?

A In two graves.

Q About how far apart were they buried?

A I can't say exactly anymore. In the first place, it was night; in the second place, it has been so very long.

Q Do you know of any other Americans that were buried in that garden besides these two?

A No.

Q Who was in the room at the time Major Hellenbroich told the two Americans that they were going to be shot?

A Several men were in there, but I can't say any more who they were exactly.

Q Was Stattman in there?

A Stattman was in there, yes.

(Raaf - Cross)

Q So when Stattman said that when he went in to get the flier they were alone, he was not telling the truth, was he?

A It is possible that he didn't even see me because if I remember correctly, he was standing behind Hellenbroich and couldn't see me.

Q At this time both of the Americans were in the room, were they not?

A Yes.

Q Could you see both of them?

A Yes.

Q Was there anything to keep Stattman from seeing two of them?

A I don't know how Stattman was standing because the light was all the way pushed down to the table.

Q When Stattman delivered the order to you to kill the first flier, did you make any protest whatsoever?

A I couldn't make any protest for Major Hellenbroich was my superior.

Q Well, Major Hellenbroich was not around when Stattman told you about the order, was he?

A Sturmbannfuehrer Hellenbroich was present.

Q Let us back up a little bit. Did you not tell the court Stattman came to you and told you you had to execute a flier?

A No, -- oh, the first flier, -- yes.

Q That is the one we are talking about.

A Yes.

Q Were just the two of you alone?

A No, there were several more in the office. It was in my office.

Q Did you make any protest about killing this flier?

A I couldn't make any protest. It was an order.

Q Did you or did you not?

(Raaf-Cross)

A No.

Q At the time when you, Hellenbroich and Stattmann and the two Americans were in the room and Hellenbroich issued the order to kill them, did Stattmann make any protest whatever about killing this flier?

A No.

Q Did you make a protest, then I withdraw the question.

A No, that was impossible. The order had been issued and Sturmbannfuehrer Hellenbroich would have told us off all right if we had done any protesting.

Q You have heard Stattmann testify that roughly about the 15th of March he was given his papers to show that he was a member of the Waffen SS and not the Gestapo. Did you get a paper like that? In evidence.

A When I returned in October I received an SS service record--

Q I do not want to talk about October, and you can understand the question. We are talking about March 1945, -- did you get a paper from Major Dirks showing you to be a member of the Waffen SS instead of the Gestapo, -- yes or no? I will show that I am pointing to a--

A No, I didn't get any such paper.

Q I want to ask you again, do you understand my question as to what paper I am talking about? I am not trying to trick you.

A I don't know what kind of papers the Captain is talking about. In that [illegible] bodies that you buried that night?

Q I will tell you again. You have heard Stattmann testify that about the 15th day of March 1945, about a week before you killed these two men, that Major Dirks issued some new identification papers. The new papers omitted to show that you were members of the Gestapo, but represented that you were members of the Waffen SS. My question is, did you get one of those papers?

A I didn't get any such papers.

(Rasf-Cross)

Q You know that other members of the headquarters were getting these papers, did you not?

DR. AUBINER: I object to this question on the ground that Stattman did not say that all members of the headquarters received these papers but that seven or eight of the men on a special detail received these papers. If the prosecutor wishes to limit his question to those seven or eight members, then I withdrew my question.

PRESIDENT: Objection overruled.

THE WITNESS: I didn't receive any such papers. Whether Stattman did, I don't know.

QUESTIONS BY CAPTAIN VANCE:

Q I am calling your attention to this large chart which shows the Gestapo headquarters in Bensheim, which has been introduced in evidence as Prosecution Exhibit Number 70, and I will ask you if you found a body on the night of the 24th of March at about this position? (Indicating)

A Yes.

CAPTAIN VANCE: Let the record show that I am pointing to a spot in the bottom righthand corner of the rectangular triangle marked "Cultivated Field" which is beneath the letters "A" and "B" which appear on the exhibit.

QUESTIONS BY CAPTAIN VANCE:

Q Is that one of the two bodies that you buried that night?

A Yes, I assume so.

You assume? Do you not know?

A Well, I didn't shoot that one.

Q I did not ask you if you shot him. I asked if you found a body at that place and you answered that you did.

A Yes.

(Real-Cross)

Q Now, I will ask you, pointing to the same exhibit, if you did not bury that body at a point that is marked around the letter "H" on this chart?

A I can't say exactly whether this man was buried where the "H" is, or the "G" is.

Q He was buried at where the [illegible] of the mark "H" appears on the chart, is that correct?

A Yes.

Q I will ask you if it is not a fact that the man that you shot and killed on that night was buried where the figure "G" or "H" appear?

A It might be the "G" or "H". I don't know it.

Q In other words, the two bodies, of which you cannot signify the one killed by you, or the one killed by Stattman, but anyhow, the two dead Americans were buried in the places marked "G" and "H", is that right?

A Yes, was in an inclination of rocks.

Q I believe you said that you did not know of any other American soldier being buried in this field.

A No; I [illegible]

Q Will you step over to this same exhibit we have been talking about and show the court where you shot the American that you killed on that night? [illegible]

A I think it was about here. (Indicating)

CAPTAIN VANCE: Let the record show that the witness is indicating a point just above the figure which represents a tree with the letter "L" in the center of it. I believe that is all.

(Raaf-Cross) [illegible]

REDIRECT EXAMINATION

QUESTIONS BY DR. PUERGER:

Q Reaf, could Stattman give you any orders if they came from higher authority?

A No, he couldn't give me any orders but he could transmit them, or Major Girke had called up and told me to go over and then there was a delay and then Stattman called, we didn't at all.

Q When were you appointed SS Sturmscharführer? When did you get that rank?

A I got that rank when I was promoted to Criminal Secretary, -- that was the first of November, 1944.

Q Was that about the time you were on the front, in the trains?

A Yes.

Q Was that merely an official rank, or did that include entrance into the SS?

A That was an assimilation of ranks, had some particular significance for army rank.

Q Can you tell the court how deep you dug those graves on the evening of the 24th?

A The graves could not have been very deep because Major Hellenbroich told us to make it snappy, the office had to move out.

Q I show you two pictures which have been marked Exhibit P-77 and P-79, and ask you whether these represent the two fliers which were shot that evening?

A I can't say yes, but I can't say no either. I didn't see a pocket here. (Indicating)

DR. PUERGER: Let the record show that when he said "pocket" he was pointing to the pistol holster, the pistol belt.

QUESTIONS BY DR. PUERGER:

Q When these dead bodies were taken to these two graves marked "G" and "H" over there, were you present?

CHARGE SHEET

A Yes.

Q Did you see the facial features or the wounds of these men in any way?

A No, it was pitch dark, night.

Q Did you dig the graves at night or did you have any kind of lighting?

A No, we didn't have any lighting, no lights at all.

Q So you did the whole burying in the dark?

A Yes.

Q Was there an air raid alarm going on at that time yet?

A I think it was, I think there was a parachute alarm too but I don't know exactly.

Q What do you mean by parachute alarm?

A Sirens were screaming in a high pitch constantly for more than five minutes.

Q Was this the kind of signal that had some particular significance for air raid wardens?

A Yes.

(Whereupon, at 1800 hours, the court recessed until 0900 hours Thursday, 20 February 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

Court (21)

1322 - 1404

Case No. Superior Orders

~~Summary~~/~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 20 FEBRUARY 194 7

Prosecutor Lt Col Dwinell

Defence Counsel Lt Col Berman

Interpreter Rudolf M. Nathanson
Herbert B. Rosenstock

Reporter Peter L. DiCurti, Sgt William F Jones
John MacDonald, Evelyn Cohen, Paula Silverman
Irving J. Hayett

~~*Members of Court~~
WITNESSES:
~~*COMMISSION~~
FRANCESCA METER
MARTHA GELBRICH
WILHELMINA BUDINGER
HEINZ HELLENBROICH

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning 194
- Fine
  - Amount .....
  - To be paid before 194
    or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

(Signature of reviewing authority)

*Strike out words not applicable.

R E C O R D O F T E S T I M O N Y

in trial of

THE UNITED STATES | Versus | JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY | BEGINNING 10 JANUARY 1947

20 FEBRUARY 1947 | PAGES 1322 -1394

W I T N E S S E S

	DIRECT	CROSS	REDIRECT	RECROSS	COURT
FRANCESCA MEYER	1322	1328	1333		
MARTHA GELBRICH	1334	1348	1352-4	1354	
WILHELMINA BUDINGER	1355				
HEINZ HELLENBROICH	1358	1388			

Camp Dachau, Germany

20 February 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show all the members of the court present, all members of the prosecution and all members of the defense with the exception of Dr. Trost, absent sick, all the accused except Wilhelm Hoehler, Number 5 and Georg Best, Number 14, absent sick, the reporter and interpreter, present.

DEFENSE COUNSEL: May I have the court's permission to withdraw Meller, Albrecht and Goehrendt? They are not needed in this charge.

PRESIDENT: Permission granted.

PROSECUTION: Let the record show these three accused have withdrawn from the courtroom with Colonel Berman.

MR. RACHAEL: The defense will call as its next witness Francesca Meter. With the court's permission, Dr. Aheimer will conduct interrogation of this witness.

FRANCESCA METER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR AHEIMER:

Q Please give the court your full name.

A Francesca Meter.

Q How old are you, Mrs. Meter?

A 41 years.

Q What is your profession?

A Housewife.

Q Where is your residence?

[redacted]

(Signature - Barnes)

Q Are you the same Mrs. Francesca Meter who testified here before as a prosecution witness?

A I am the same.

Q Are you in any way related with any accused in this trial?

A No.

Q I think, Mrs. Meter that you testified before that you were employed by the Gestapo headquarters at Darmstadt while it was located at Bensheim?

A Yes, I was employed there.

Q From when to when?

A From 3 September 1944 until 17 March 1945.

Q In which department did you work during that time?

A I worked in the filing department.

Q I think you have identified before already the accused, Stattmann, is that correct?

A It is correct.

Q Did you work together with Stattmann in the same office?

A No.

Q Did you hear or see an application of Stattmann to be transferred out of headquarters Bensheim?

A I read it personally.

Q Are you still in a position to tell us when that happened?

A January 1945.

Q Can you give the approximate contents of this application?

A No.

Q Can you tell us where Stattmann wanted to be transferred to according to his application?

A He requested transfer to front line service.

Q Did you talk to Stattmann about this application?

A Not with Stattmann, but with police counsellor Schwimm.

Q What were the duties of police counsellor Schwimm at headquarters?

A He was in charge of the administration.

Q Why did you talk with police counsellor Schwimm in regard to this application?

A Through a mistake, this application got among my incoming mail and I had to return it to him. On that occasion we had a few brief words about this application.

Q Do you know anything about the result of this application?

A No.

Q Do you know whether Stattmann remained with this headquarters after you had seen his application?

A When I was discharged on the 17th of March 1945, he was still present there.

Q I think, Mrs. Meter, during your interrogation by the prosecution, you had testified you were drafted into the Gestapo office, is that right?

A That's right.

Q Do you know a Mrs. Elisabeth Gantner?

A Yes.

Q How do you know Mrs. Gantner?

A She worked in the same office room with me.

Q Can you tell us from when Mrs. Gantner worked at Gestapo headquarters?

A She was employed together with me and discharged at the same time with me.

Q Do you know whether Mrs. Gantner came voluntarily to the offices, or was drafted the same way you were?

A She was drafted the same way I was.

Q Do you know whether Mrs. Gantner tried to fight the drafting to this office?

A I don't know that.

Q Would you recognize the signature of Mrs. Gantner if I showed it to you?

A Yes.

Q I show you Prosecution Exhibit 65 and ask you whether you can identify the signature on the last page of that statement? Is it the signature of Mrs. Gantner?

A It is Mrs. Gantner's signature.

Q Did it come to your attention during your employment at Gestapo headquarters, Bendheim that prisoners were treated cruelly?

A I never heard or saw anything.

Q Did Mrs. Gantner tell you in any way she did not want to go to this Gestapo headquarters because she knew how cruelly prisoners were treated there?

A No.

Q Were you interrogated together with Mrs. Gantner at any time?

A Yes.

Q When did that happen?

A We were taken into custody together with five other colleagues of mine on the 28th of March 1945.

Q Who was together with you? Give us the names.

A There was Mrs. Gantner, Miss Leonhard, Miss Hoe, Miss Metzger and myself.

Q Were you present during the interrogation of Mrs. Gantner which took place in Darmstadt on or about 16 April 1945?

A I was present, but I left the room several times.

Q I return now to my previous questions about possible cruel treatment at Gestapo headquarters, Bensheim. Do you know whether Mrs. Gantner testified during her interrogation on the 16th of April 1945 that she was forced to work for Gestapo headquarters and she didn't want to work there because prisoners were cruelly treated there?

A It was impossible she made this reply because I was present when Colonel Chaves asked her how she came to work for Gestapo headquarters, Bensheim.

Q And as far as you can remember, what did she say in answer?

A She said, "I was drafted."

Q As far as you can remember, she didn't add that prisoners were treated badly?

A No, she didn't add that.

Q In which physical condition was Mrs. Gantner on the day she was interrogated?

A She was in very bad condition.

Q How did it happen?

A We were all under the deep impression of the painful first interrogation.

Q When you refer to the first interrogation, are you referring to an interrogation which took place before the 16th of April 1945?

A I am referring to the statement of the 28th of March.

Q Was it possible this was still in effect until the 16th of April 1945?

A The effects were so strong that even on the 21st of April I had a nervous breakdown and it was impossible to interrogate me any

Q Do you know if Mrs. Gantner suffered under similar conditions?

A Yes, I had to hold her in my arms and an American physician had to be called. She had cramps and dream ideas.

Q Which night are you referring to?

A The night of the 26th of March.

Q You were speaking of a painful and dishonorable treatment. Please tell us what you were referring to.

A We were cursed, we were beaten, dragged through the room; we were forced to take off our clothes. On top of it, Mrs. Gantner who was crying terribly -- cold water was poured on Mrs. Gantner when she started to cry terribly, in order to bring her back to consciousness. I brought it to the attention of the interrogator that as a result of the terrible treatment which we were subjected to, I and all the other women had their monthly period and I asked the gentlemen to take into consideration my gray hair.

Q Was this treatment stopped as a result of that?

A No, for approximately an hour and a half I had to stand at attention naked, like a soldier.

Q Do you know whether Mrs. Gantner had to go through the same kind of treatment?

A Mrs. Gantner had to go through the same, only her position was different.

Q What do you want to express by that?

A She had to kneel with her feet pressed together, her arms stretched out all the way to the side and on the front of each hand, a weight of approximately one and a half pounds was placed.

Q She treated you and Mrs. Gantner and all the other women in this manner? Do you know the names?

A I don't know the office. It was transferred the next morning.

Q And you said that happened on the 28th of March?

A Yes, it was on the 28th of March.

Q Were these civilian or uniformed men who treated you in this manner?

A They were wearing uniforms.

Q Can you determine the rank?

A I can't remember any more today.

Q If I understand you right, you want to say that this treatment had an influence on the testimony of Mrs. Gantner on the 16th of April 1945?

CAPTAIN VANCE: May it please the court, I have allowed Dr. Ahedmer to lead the witness by the hand, but I think he has gone far enough.

DR. AHEDMER: You may examine.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mrs. Meter, how many times have you talked to me about this case before you appeared before this court?

A I spoke with my colleagues only once or twice about this matter during the time we were in custody.

Q No, I asked how many times you talked to me.

A About this case?

Q Yes.

A Never.

Q Mrs. Meter, do you mean to tell the court you didn't come to my office on three occasions and go over your testimony in this case?

A I didn't speak to any American gentleman about the methods we were subjected to.

Q Now, at any time [illegible]

[illegible] with this statement?

(Meter - Cross)

CAPTAIN VANCE: Will the court please instruct the witness to answer my question. This is the second time I asked the question.

PRESIDENT: Read the question.

(Reporter repeated question.)

A You will have to excuse me, I am very nervous right now.

Q I realize that. Now, do you remember coming and speaking with me at least three times before you testified before this court?

A Yes, I can remember.

Q And did we go over the statement you had made before Colonel Chaves?

A Will you please repeat the question?

Q Do you recall you and I went over the statement you had made and signed before Colonel Chaves?

A Not not entirely as I had made it before Colonel Chaves.

Q Did you and I read that statement over together and discuss it?

A Not the entire statement.

CAPTAIN VANCE: Let the record show the accused Best resumed his seat in the dock.

PRESIDENT: What was the answer?

(Reporter repeated answer.)

Q Do you recall, Mrs. Meter we spent at least a half hour on more going over your statement, which is four pages long?

A That was referring only to the questions about the 5th of February and the 24th of March.

Q That's all I am asking you about.

A That is what I was asked by Captain Vance.

Q And then after discussing this statement, you were then told you would be called before this court to testify, is that right?

A Yes.

Q Now, at any time when you talked to me [illegible] was wrong with this statement?

A [illegible]

A No.

Q Now, do you mean to tell the court Colonel Chaves mistreated you in any way in order to obtain this statement?

A No, on the contrary.

Q And what you told Colonel Chaves and what you told this court is the truth, isn't it?

A You are referring to the 16th of April when we were interrogated by Colonel Chaves?

Q Yes.

A This statement was more correct than the statement made on the 28th of March 1945 because he was the first one who treated us decently.

Q As I understand you, Colonel Chaves didn't mistreat you in any manner?

A No.

Q And didn't force you to answer questions you didn't want to answer?

A No.

Q Now Mrs. Gantner -- did Colonel Chaves mistreat her in any way?

A No.

Q Did he force her to tell anything she didn't want to?

A Not that.

Q What did you say was wrong with her answer that Dr. Aheimer read to you?

A I don't want to say that it is wrong, only that Mrs. Gantner is a nervous wreck today, if you would see her today, you would realize you would have to give her a lot of good words in order to get a decent answer out of her.

Q But you did tell Dr. Aheimer that one of her answers was not correct?

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A Correct. She was under the influence of alcohol then on the 28th of March. (Counsel repeated question.)

Q She wasn't under the influence of anything when Colonel Chavez questioned her?

A On the 16th of April she was the same nervous wreck. In the meantime, her condition has improved somewhat. I have seen her ten to twelve times, whenever we were called to the GPU, Bonnheim, she was terribly frightened. I always had to tell her not to be frightened, nothing was going to happen to us, we were the two employees of the Gestapo hired the last, why are you afraid, but it was impossible to do anything with her. During this time she was under a doctor's treatment.

Q Now, you testified you were working for the Gestapo?

A Yes.

Q You testified you were drafted by the Gestapo?

A No, I didn't say that.

Q Well, did you go to work there voluntarily?

A I was drafted.

Q I just asked you if you were drafted and you said no.

DR. AHEIMER: If the court please, I object. That is not the question asked.

PRESIDENT: Objection overruled.

Q I will ask you were you drafted by the Gestapo.

A I got the request from the employment office.

Q Did you want to work for the Gestapo?

A I didn't have any free will — I got this job assigned from the employment office.

Q I understand that. Did you tell Dr. Aheimer you objected to working for the Gestapo?

DR. AHEIMER: I object. The witness did not say that on direct examination.

QUESTIONS BY DR. ANSLINGER:

Q Can you tell Mrs. Meier what was understood during the war under the expression, "drafted"?

A If I express myself correctly, you were transferred from one working assignment to another working assignment where the work probably seemed to be more important and more necessary.

Q Was there anything possible to take any steps against this drafting for work or not?

A No, it was not possible.

DR. ANSLINGER: That is all.

MR. MACNEIL: Are there any questions by the Court?

PRESIDENT: No questions by the court. The witness is excused.

(Thereupon the witness was excused and withdrew.)

(Meier - Redirect)

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PRESIDENT: Objection overruled. Read the question.

(Reporter repeated question.) during those times, is that correct?

A I never said so, any objection.

Q Now you remember Mrs. Mater the testimony you have given throughout this trial?

A As a witness for the prosecution?

Q Yes.

A Yes.

Q Was it the truth?

A It was the truth.

CAPTAIN [illegible]: Nothing further.

May it please the court, let the record show that the accused, Mechler, Hunter F, has returned to the dock.

Q [illegible] objection to [illegible] the first witness?

[illegible] didn't make any objection.

Q [illegible] throughout this trial?

A As a witness for the prosecution?

Q Yes.

A Yes.

Q Was it the truth?

A It was the truth.

CAPTAIN VANCE: Nothing further.

Q Are you the same Mrs. Colkerich who testified before this

May it please the court, let the record show that the accused, [illegible] already as a prosecution witness?

Koehler, Number 5, has returned to the dock.

Yes.

REDIRECT EXAMINATION

QUESTIONS BY DR. AMEIMER:

Are you with any of the accused here in [illegible]

No.

Q Can you tell Mrs. Meier what was understood during the war

under the expression, "drafted"?

A If I express myself correctly, you were transferred from one working assignment to another working assignment where the work probably seemed to be more important and more necessary.

Q Was there anything possible to take any steps against this drafting for work or not?

A No, it was not possible.

DR. AMEIMER: That is all.

MR. RACHAEL: Are there any questions by the Court?

PRESIDENT: No questions by the court. The witness is excused.

(Thereupon the witness was excused and withdrew.)

(Meier - Redirect)

[illegible]

QUESTIONS BY DR. [illegible]:

Q The defense will call as its next witness, Martha Gallwich.

MARTHA GALLWICH, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

Q Do you know how long Raaf was employed at this headquarters?

DIRECT EXAMINATION

A A few years, I can't say exactly.

QUESTIONS BY DR. [illegible]:

Q Do you know whether Raaf at any time during his employment

Q What is your name?

at Gestapo Headquarters at Darmstadt made an application to be trans-

A Martha Gallwich.

ferred from there?

Q Are you married or not?

A Yes.

A Yes, I am married.

Q How do you know that?

Q Are you the same Mrs. Gallwich who testified before this

A Applications of this type were given to the head of our

Court already as a prosecution witness?

headquarters and during the course of business procedure they had to

A Yes.

come through my hands.

Q Are you with any of the accused here in any way related?

Q As a stenographer-typist did you work for the head of this

A No.

headquarters?

Q Where were you during the war -- that means from the 1st

A Yes.

of September 1939 until the 8th of May, 1945?

Q Do you know how many applications, approximately, Raaf

A I was employed by the Gestapo Headquarters at Darmstadt.

made?

Q In which capacity?

A I remember three applications.

A I was a stenographer-typist.

Q Do you know approximately when the first application was

Q Do you know the accused Raaf?

made?

A Yes.

A I think it was in December 1942 or January 1943.

Q Can you point him out to the court, if he is in the court

Q Do you know where Raaf intended to be transferred to?

room?

A Raaf requested a transfer to the regular police of the

A Yes.

State of Wurttemberg.

Q Please do so.

Q Do you know the result of this application?

A Number 22.

A The head of the headquarters at that time, Kriminal

MR. RACHAEL: Let the record show that the witness identified

Counsellor Schr, had informed Raaf that in view of the small number

the accused, Raaf, wearing placard 22.

of men available it was not possible to approve his application.

(Gallwich - Direct)

(Continued)

QUESTIONS BY DR. BURGER:

Q Do you know approximately when the second application was made?

A I think, if I remember right, shortly before the attack on Darmstadt, on the night of September 11/12, Raaf again requested that his classification as indispensable should be changed.

Q You said before that he made a third application. When did he make this third application?

A The third application Raaf together with other comrades made after they were detailed to Darmstadt, approximately in December of 1944.

Q How do you know that?

A Applications of this type were given to the head of our headquarters and during the course of business procedure they had to come through my hands.

Q As a stenographer-typist did you work for the head of this headquarters?

A Yes.

Q Do you know approximately when the first application was made?

A I think it was in December 1942 or January 1943.

Q Do you know where Raaf intended to be transferred to?

A Raaf requested a transfer to the regular police of the State of Wurttemberg.

Q Do you know the result of this application?

A The head of the headquarters at that time, Government Councillor Mohr, had informed Raaf that in view of the small number of men available it was not possible to approve his application.

Q Do you know approximately when the second application was
Q What was the result of the second and third applications

made?
of Reaf?

A I think, if I remember right, shortly before the attack on
A I assume there was no decision on the second request at

Darmstadt, on the twelfth of September, 1944, Reaf again requested
all. Probably it was burned together with other files, because in

that his classification as indispensible should be changed.
his third application Mr. Reaf referred to his second application.

Q You said before that he made a third application. When
For this reason I assume that he had received no reply to the second

did he make this third application?
application.

A The third application Reaf together with other comrades
Q Was this third application refused?

made after they were detailed to Darmstadt, approximately in December
A Yes.

of 1944.
Q Do you know the reason for the rejection?

Q Do you know the reasons Reaf gave in his applications?
A Yes.

A In these applications in general and also in Mrs. Reaf's
Q Please tell us.

request it was expressed the thought that these men did not consider
A Already shortly after the beginning of the war the decree

their work for the security police so important any more and as young,
was published that all members of the security police had to stay

healthy men they preferred to do their duty in the front lines.
in the service of the security police and it should be made clear to

Q Do you know also whether this was the reason for the first
those men that their work for the security police was just as

application where he requested the transfer to the order police of
important as the work for the Wehrmacht. Approximately the end of

the State of Wurttemberg?
1944 another decree came out with the same meaning but even stronger

A No, at that time Mr. Reaf wanted, as he told me, to return
since it was even said that if anyone should try to make an applica-

to the regular police where he had worked for such a long time and
tion directly to the Wehrmacht without going through channels, he

where he liked his duties much better.
could expect disciplinary action and in view of this decree all of

Q What do you understand as you said, "After they were detailed
these applications had to be rejected.

to Darmstadt"?
Q And where did those decrees just mentioned by you come

A After the heavy air attack on Darmstadt on the twelfth of
from?

September, 1944, the officials of the Gestapo headquarters, together
A Those decrees were from Berlin and the first decree was

with details of prisoners were used to pick up dead bodies for
given as a copy from the commander of the security police at

approximately three weeks.
Nienburg.

(Gellrich - Direct)

Q What was the result of the second and third applications submitted to the Gestapo under these conditions?

A I assume there was no decision on the second request at all. Probably it was summed together with other files, because in his third application he referred to the second application. Now, this means I assume that he did received no reply to the second application requested a transfer. Do you know the accused, Franz Karl Stein? Was this third application refused?

A Yes.

Q Do you know the reasons for the rejection?

A PRESIDENT: The court will recess in place.

(Whereupon the court recessed in place.)

A Already shortly after the beginning of the war the decree was published that all members of the security police had to stay in the service of the security police and it should be made clear to these men that their work for the security police was just as important as the work for the Wehrmacht. Approximately the end of 1944 another decree came out with the same meaning but even stronger wording. It was often said that if anyone should try to make an application directly to the Wehrmacht without going through channels, he could expect disciplinary action and in view of this decree all of these applications had to be rejected at this time, around December or January. And where did these decrees just mentioned by you come from? Do you know where Stein was wanted to be transferred?

A These decrees came from Berlin and the last decree was given to me as a copy from the commander of the security police at Wiesbaden.

(Gelbrich - Direct)

(Gelbrich - Direct)

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Q Was it possible or impossible for an official to be transferred from the Gestapo under these conditions?

A Insofar as I can judge it was not possible. [illegible] questions of Mr. Aumeier, also while they were in detail at Darmstadt to [illegible] Gottbrath, you testified before that in addition to Lenz, after the defeat in Darmstadt after the twelfth of September, [illegible] had requested a transfer. Do you know the accused, Frank Karl Stattmann? [illegible] number of personnel and simplified and one of the [illegible] or Ban. would be available then and I have to add that I told them[illegible] are IF you use him in court, please point him out. Their application[illegible] The court will recess in place, make such applications[illegible] (Thereupon the court recessed in place.) [illegible] was the wrong one [illegible] the PRESIDENT: The court will come to order, the detail of picking up the [illegible] Mr. Aumeier: at any time before the desire to permit Mr. Aumeier: Let the record show that the witness identifies the accused Stattmann, entering plaintiff's [illegible] as evaluation of this

QUESTIONS OF MR. AUMEIER:

Q Do you know whether Stattmann too made an application to be transferred? summer of 1944.

A When you are referring to the Wehrmacht, you are referring to [illegible] Can you still recall when he made his application?

A It was approximately the same time, around December or January. And this first request had been rejected before, in that [illegible]

Q Do you know where Stattmann wanted to be transferred?

A If I remember right, Stattmann too wanted to go to the Wehrmacht. [illegible] request, [illegible] which he made after the [illegible] Front, and it [illegible] was rejected as Ruff's request.

Q Do you know anything about the reasons for this application for transfer? Another question. Do you remember a day or

A Yes. These men came already before and tried to make such applications during the time while they were on detail at Darmstadt to pick up the bodies. At that time they thought it would be easier to have their applications approved because the headquarters at Darmstadt had been destroyed and they thought the headquarters would be decreased in number of personnel and simplified and one or the other of them would be available then did I have to tell them? I told those men that they should wait a little bit longer with their applications because it would be impossible that they make such applications at that time because I thought this moment was the wrong one and the men told me they thought just now after the termin of picking up the bodies, they felt more than at any time before the desire to do front line duty.

Q Do you know whether Stottmann made an application at this time, which I believe identified already before in this trial, had a telegram from Mr. Stottmann tried to be released to the Wehrmacht before, in the summer of 1944.

Q When you are referring to the Wehrmacht, you are referring to the front line troops referring to an American flyer because I was absent from my office for sometime and during this time I was the Q [illegible] this first request had been rejected before, is that [illegible] while -- sometime later -- I heard Government Councillor [illegible] Personal Council [illegible] talking to each other [illegible] Q [illegible] Stottmann's request, his second request, which he made after the Darmstadt detail, did it have the same results as Knaf's request?

(Selbrich - Direct)

(Selbrich - Direct)

A Yes.

Q Just another question. Do you remember a day on or approximately the fifteen of February, 1945, when an American flyer was at Gestapo headquarters at Bensheim?

A Yes.

Q Did you have anything to do with this incident?

A No.

Q Where was your office?

A In Bensheim I worked in the same room as the chief of this headquarters, Government Counsellor Girke.

Q Did you stay in your office during the entire forenoon of this day?

A I would like to say that just on this date I was not in my office only four hours on and off because my husband was on furlough from the front.

Q Do you know whether the chief of this headquarters, Girke, whom you have identified already before in this trial, had a telephone call or tried to make a telephone call in regard to this American flyer?

A Yes and I like to assume it for this reason that this telephone conversation was referring to an American flyer because I was absent from my office for sometime and during this time I saw the American flyer in the other office. When I returned to my office a short while -- sometime later -- I found Government Counsellor Girke and Criminal Counsellor Hellenbreich talking to each other and I just heard when Criminal Counsellor Hellenbreich said to Girke the same what the flyer had said to me before while I was in

the other office and in this case Girke said I should get him as quickly as possible a telephone connection to the commander of the security police in Wiesbaden.

Q Do you know who was the commander of the Security Police at Wiesbaden at that time?

A Yes, it was Colonel of the SS, Trumpler.

PRESIDENT: Court will recess for thirty minutes.

(Whereupon at 1000 hours the court recessed until 1030 hours.)

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(Whereupon the court reconvened at 1025 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense except Dr. Frost who is absent sick; all the accused except the accused, Albrecht, Heller and Gebhardt, who are absent with the defense counsel; the reporter and interpreter are present.

DR. AHLEMEIER: The witness, Mrs. Gelbrich, is still on the witness stand.

PRESIDENT: You are reminded you are still under oath.

HANNA GELBRICH, called as a witness by the defense, resumed the stand and being reminded she was still under oath, testified further through an interpreter as follows:

DIRECT EXAMINATION (continued)

QUESTIONS BY DR. AHLEMEIER:

Q Mrs. Gelbrich, before the recess you told the court that during the middle of February 1945 you were supposed to make a telephone connection with the Commander of the Security Police at Wiesbaden. Did you get this telephone contact or did you only make a request for it.

A Because this was a very urgent call, first I tried to get the call through on our internal, so-called IBA lines. This line was busy so I had to make the request for this call over the Postal Emergency Service and of course to get this call through tuk more time and in the meantime I left the room.

Q So you really don't know whether this telephone call came through or not?

A Yes, the telephone call was entered on the telephone register the next day.

(Gelbrich-direct)

Q Did you listen to the telephone call?

A No, because I left.

Q Now we come to another case, the incident at the end of March 1945. If I remember right, you testified before that you did not know anything about the two fliers on the 24th of March '45. Did you hear anything later on about this incident?

A I can remember that on Sunday morning, the day after we had left Bensheim, Government Counciller Girke talked to SS Major Seiler from which I came to the conclusion that he intended to report something to Wiesbaden about two low flying fliers. And Seiler brought to his attention that since Saturday afternoon we had no more connection with Wiesbaden.

Q Do you know anything more about this case?

A No.

Q Now some other questions. Since when were you with Headquarters?

A Since February 1938.

Q You were always the secretary of the head of Headquarters?

A Since the beginning of 1940.

Q Do you know the name "Sprenger"?

A Yes.

Q Who was that?

A Sprenger was Gauleiter and Reichsstatthalter for Hessen.

Q Do you know where he had his headquarters?

A As Reichsstatthalter, at Darmstadt; as Gauleiter, at Frankfurt, on Main.

Q Did Sprenger, in his capacity as Reichsstatthalter, have anything to do with Gestapo headquarters at Darmstadt and later on at Bensheim?

A Yes.

Q What connections existed there as far as you know?

A The connection was that since 1940 the head of Headquarters at the same time was a political expert attached to the Reichsstatthalter.

Q Was it necessary that the Chief of Headquarters as a political expert had to report to the Reichsstatthalter on various occasions?

A Yes, once weekly.

Q Do you know whether the Reichsstatthalter was the superior officer of the Chief of Headquarters or not?

A I would say no.

Q How do you come to this conclusion?

A From the correspondence which existed between them.

Q To what did this correspondence refer?

A That varied.

Q Did the Reichsstatthalter give any orders to the Chief of your Headquarters?

CAPTAIN VANCE: We object, the question is leading. The witness has already answered that, Girke was a superior to him.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. AHLEMER:

Q Did the Reichsstatthalter try to exercise any pressure on the Chief of your Headquarters?

A Yes, he did so on several occasions.

Q Do you know in which way the Chief of your Headquarters reacted to this?

A Mostly the Chief of our Headquarters heard of the different opinion which the Reichsstatthalter had in regard to actions taken

by us only via the Reich Security Main Office at Berlin, and in this connection I can say that since 1943 the major part of my work consisted in taking reports for justification of our actions to Berlin, for the work Gestapo Headquarters, Darmstadt, had done in some cases.

Q You said that these reports were sent to Berlin? To which office did they go there?

A To the attention of the Chief of Department 4, Mueller.

Q In which government office was Mueller employed?

A Reich Security Main Office.

Q Did these justifications by the Chief of your Headquarters refer to the fact that he had acted too strictly or too softly?

A No, it was for this reason -- that often Gestapo Headquarters had not taken the strong measures which the Party had requested.

Q One more question on that point -- Was it possible for the Chief of Headquarters, Girke, to give any orders to the Reichsstatthalter, Sprenger?

A No.

Q Do you remember the time around the middle of March '45?

A What do you want me to remember?

Q Only the time.

A Yes.

Q At that time did you hear or see anything about pay books which were given out to employees of Headquarters?

A A few days before we moved from Bensheim I participated in the issuing of new pay books.

DR. AHLEMER: I don't want to make formal objection to the translation but only for the purpose of the record I'd like to say that yesterday the word "Soldbuch" was translated as "service record".

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CAPTAIN VANCE: I'd like to ask the interpreter what the witness said and have it translated as to what the witness answered.

MR. RACHER: If it please the court I believe that was done and I believe the counsel objected to the word "Soldbuch". Yesterday it was translated as "service record" and today it was translated as "pay book".

THE INTERPRETER: That refers to the same German expression.

DR. AHRENS: I brought this point to your attention only so that it is made clear to the court. The question yesterday was referring to the same kind of identification papers.

PRESIDENT: Is there an objection?

MR. RACHER: No, sir. That is only a notation for the record -- the objection by the defense counsel to the interpretation.

QUESTIONS BY DR. AHRENS:

Q Mrs. Gelbrich, you said just now that shortly before Headquarters moved from Bensheim you participated in the issuing of new pay books?

A Yes, I participated in writing out these books.

Q Were these pay books issued to all members of Headquarters?

A No, only for approximately seven or eight men.

Q Do you know the purpose of issuing these pay books?

A Yes, these pay books supposedly served for special detail at Mannheim or Ludwigshaven, I don't recall anymore.

Q At that time were Mannheim and Ludwigshaven already occupied by the enemy or was it shortly before the occupation?

A The were already occupied by the enemy.

Q How many male employees were at Headquarters?

A I can't say that, there were many.

Q Approximately 20?

A No, more. The total at Bensheim?

Q I mean only at Bensheim.

A At Bensheim there were more than 20.

Q Approximately 30, 40, 50? How many?

A I would say 40.

Q And only for seven or eight employees were these books issued on which you participated?

A Yes.

Q Do you know whether one or several of the accused in this trial received some of these pay books?

A I know definitely of three of them, Girke, Knaf and Stattmann. I am in doubt about Hollenbroich.

Q If you can remember, what were the contents of these pay books?

A The personal data of each and every one of these men.

Q Was the personal data given in these books, under which you understand name, date of birth, etc., correct or was it falsified?

A It was correct.

Q Do you know which office was given as the issuing office for these pay books?

A There was a stamp with an APO or field post office number. There was no other office mentioned in the stamp.

Q Do you know whether the other employees of Headquarters were in possession of other pay books?

A You mean in addition to these seven?

Q Yes.

A I would like to say, yes.

Q Do you know what was given as the issuing office in the pay books issued to all other employees of Headquarters?

A If I remember right, Police Training Battalion, Konitz.

Q Did these pay books indicate that the bearer was a member of the Waffen SS?

A With the office, Konitz?

Q Yes.

A Yes.

Q Do you know whether these seven or eight pay books which
Q He wanted to go into the Wehrmacht, didn't he?
were issued to these seven or eight men indicated that these men were
A Yes.
members of the Waffen SS?
Well, was he already in the Wehrmacht?
A In the pay books of these seven men their SS rank was omitted.
A I don't know that.
Q To make it clear once more -- all other employees of Headquarters,
What about Stattmann? Did he want to get out of the Gestapo and
with the exception of these seven or eight, did their pay books indicate
become a soldier in the Wehrmacht?
that they were members of the Waffen SS?
Yes, he did.
A I assume so.
Q Stattmann was a policeman and he desired to become a soldier,
CROSS EXAMINATION
is that correct?
QUESTIONS BY CAPTAIN VANCE:
A Yes, sir. Stattmann was supposed to become a policeman and he
Q Mrs. Gelbrich, why did everyone want to get out of the Gestapo?
preferred to become a soldier.
A I'd like to say that I didn't speak about everybody.
And he wanted to go into the Wehrmacht?
Q Well, how many do you know who wanted to get out?
A Yes.
A A large part of the employees.
And he wasn't a member of the Wehrmacht at the time you knew
Q Why did theywant to get out of the Gestapo?
him, was he?
A As I said before, I think because they were young men. I am
A No, he wouldn't.
referring mostly to the younger employees of Headquarters, and these men
That is right Mrs. Gelbrich wasn't a part of the Wehrmacht
saw that much older men who partly were in pretty bad physical condition
and Girke wasn't a part of the Wehrmacht, were they?
were sent to the front while they, as young men, stayed home and worked
A SS Major Girke, as I know from some talks, was a member of the
at the office.
Wehrmacht before and following the close of his health, he returned.
Q So you think they wanted to get out so they could be fighting
He returned to the police, to the Gestapo?
soldiers?
A I don't think immediately.
A I assume so.
Well, somehow he seemed to be a soldier in the Wehrmacht
Q I believe you said that Rnaf told you he wanted to be transferred
and came back to the Gestapo?
into the army, is that so?
A Yes.
A Yes, he told me about it.
What do you mean by "pressure"?
Q Rnaf was a policeman and he wanted to become a soldier, is that
Under pressure I understand if somebody tries to become his
correct?
will or somebody was under all conditions.
A Yes, in 1944 and '45 when the war situation was very critical
I believe you testified that Gestapo would use the pressure
and decisive.

Q He wanted to go into the Wehrmacht, didn't he?

A Yes, criticising Dirke's actions at the highest authority in Berlin. Well, was he already in the Wehrmacht?

A [illegible] trips Dirks ever made to Berlin.

Q What about Stattmann? Did he want to get out of the Gestapo and become a soldier in the Wehrmacht?

A Yes, he was, to Kaltenbrunner's headquarters.

Q Stattmann was a policeman and he desired to become a soldier, is that correct? Various conferences would be go down to Wiesbaden to have on Wednesdays. Stattmann was supposed to become a policeman and he preferred to become a soldier.

Q He wanted to go into the Wehrmacht?

A Either the Commander of the Security Police or else the Higher SS and Q [illegible] wouldn't a member of the Wehrmacht at the time you knew him, who he?

A No, he couldn't, to these conferences frequently or infrequently?

Q That is right and Hullenbroich wasn't a part of the Wehrmacht and Dirke wasn't a part of the Wehrmacht, were they? [illegible] I believe Major Dirke, as I have from some time, and a number of the Wehrmacht before and following the [illegible] his health, he returned.

Q He returned to the police, to the Gestapo?

A I don't think immediately. Dirke, Graf and Stattmann all received one of [illegible] something he wanted to be a soldier in the Wehrmacht and came back to the Gestapo?

A Yes, Major Hullenbroich got sick.

Q What do you mean by "pressure"?

A Under pressure I understand if somebody tries to impose his will on somebody else under all conditions.

Q I believe you testified that Sprenger would put the pressure on Dirke, is that right?

A Yes.

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Q What pressure did he put on Girke?

A By criticising Girke's actions at the highest authority in Berlin as not being strong enough.

Q Do you know of any trips Girke ever made to Berlin?

A Yes, in connection with these matters he had to report to Berlin on several occasions.

Q Was that up to Kaltenbrunner's headquarters?

A Yes.

Q And on various occasions would he go down to Wiesbaden to in the Hague conferences?

A Yes.

Q Who would he go to see down there?

A Either the Commander of the Security Police or else the Higher SS and Police Leader. I can't say that definitely because I wasn't present.

Q Would he go off to these conferences frequently or infrequently?

A I can say very frequently.

Q I just want to ask you a few questions about these pay books. I believe they were issued a few days before Gestapo Headquarters left Arnsheim on the 24th of March, is that right?

A Yes.

Q I believe you are sure that Girke, Haaf and Stettman all received one of these new books, are you?

A Yes.

Q Did Major Hellenbreich get one?

A I said before, I am in doubt.

Q Yes.

(Colbrich-cross)

Q And his own and Hellenbreich and their [illegible]

A As far as I can recall, yes.

Q You just don't know is that right?

A I don't know.

Q On the front of this pay book there was written "Waffen SS" is that correct?

A I got these Soldbuchs when they were opened already and my job was to put in the stamp and to use the blotter to dry it.

Q Mrs. Gelbrich, you have seen these books, you have filled them out, and you know what they look like?

A No, I'd like to say as I said before, I only participated in the issuing of these pay books. It had to be done very quickly some evening and each and every one of us had one certain job to do on these books.

Q You didn't make but seven or eight of them, did you?

A I know that seven or eight were issued.

Q How long did it take to make out one of these books?

A It was done very quickly because everybody did something else on it.

Q What was the great rush about getting these books out?

A It was in the evening and these men had to go on this detail the same night.

Q So you didn't see the front cover of the book, is that right?

A No.

Q So you can't say yes or no, whether the Waffen SS was printed on the front of the book?

A No, I can't say that.

Q Now, on the inside of the book did it show the man's name to whom it was issued?

A Yes.

Q And his age and birthplace and other data?

A As far as I can recall, yes.

Q Did it say that he was a member of the Gestapo?

A No.

Q Why was that left out?

A I don't know. The detail on which they had to go was considered very dangerous and the men were not expected to return. It was expected that they would be taken prisoner by the enemy and they should not be identified then as members of the Gestapo. I know this so exactly because SS Major Girke told me so in reply to a question of mine.

Q So the idea of the book was to indicate that the particular person having the book was a member of the Waffen SS, is that correct?

A Yes, the men got also insignia of the Waffen SS on their collar.

Q When were these new insignia issued to them? At the same time the books were issued?

A As far as I can recall, yes.

Q Now, Major Girke had one. At that time was Major Girke a member of the Waffen SS?

A A member of the SS in the section of a fighting unit? No.

Q And at that time was Rauf a member of the Waffen SS?

A I would like to say the same.

Q Was Stattman a member of the Waffen SS?

A The same.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DR. AHRENS:

Q Mrs. Goldrich, when you speak here about a member of the Waffen SS or a member of the Wehrmacht, do you understand that always in the sense of fighting units?

(Goldrich-redirect)

A Yes. I am referring to the fighting units.

Q When you said before that Stattmann requested transfer to the troops, you were referring to the fighting troops?

A Yes.

Q Do you know whether the Waffen SS was a part of the Wehrmacht?

A I can't say that.

Q Do you know anything about the fact that members of the Security Police were reported to Geneva at sometime as part of the Wehrmacht?

CAPTAIN VANCE: Objected to as leading.

MR. RACHAEL: The question is "if" she knows. The very first words were "if you know".

CAPTAIN VANCE: He is suggesting by putting the words "reported to Geneva" in. I'll leave it to the judgment of the court.

PRESIDENT: Objection overruled.

THE WITNESS: I remember very vaguely to have heard something about it, some discussions.

QUESTIONS BY DR. AMELMER:

Q You don't know anything definite about it?

A No.

Q When you were asked before by the prosecuter whether Stattmann was a member of the Wehrmacht, in this case, too, you were referring to the Wehrmacht as a fighting unit, is that correct?

CAPTAIN VANCE: I object. She answered my question and I think the question propounded to her was very clear and she answered them very clearly.

MR. RACHAEL: I respectfully submit this is cross examination.

CAPTAIN VANCE: Since when do you cross examine your own witness?

MR. MACHER: Since the prosecution takes the witness as his own witness and asks questions not brought out on direct examination.

PRESIDENT: There will be no more arguing. Repeat the question, please.

(Whereupon, the reporter read the last question as follows:

"Q When you were asked before by the prosecutor whether Seetzen was a member of the Wehrmacht, in this case, too, you were referring to the Wehrmacht as a fighting unit, is that correct?")

PRESIDENT: Objection overruled.

THE WITNESS: I was referring to the fighting troops.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Do you know what the Wehrmacht was?

A Yes.

Q The Wehrmacht is the army of the German Reich, is that not correct?

A Yes, but furthermore there were units of the Wehrmacht back home.

Q That is true, and there was a police force back home, too, wasn't there?

A Yes.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DR. AHRENS:

Q One more question. Were the air force and navy part of the Wehrmacht in your opinion?

A Yes.

Q As far as you know, was the Waffen SS part of the Wehrmacht?

A I was always of the opinion that the Waffen SS was a separate organization.

DR. AHLMER: That is all.

MR. RACHAEL: Any questions by members of the court?

PRESIDENT: No questions by any member of the court. The witness may be excused.

(Whereupon the witness was excused and withdrew.)

WILHELMINA BUDINGER called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. AHLMER:

Q Mrs. Budinger, please give your full name to the court.

A Wilhelmina Budinger.

Q How old are you?

A 24 years.

Q Where do you live?

A In Lorsch in Hessen.

Q What is your profession?

A Stenographer-typist.

Q Are you the same Mrs. Budinger who testified before this court as a prosecution witness?

A Yes.

Q If I remember correctly you identified the accused Franz Karl Stattman before in this court?

A Yes.

Q Since when were you employed by the Gestapo Headquarters Darmstadt or Bensheim respectively?

A Since June 1940 until the end.

(Whereupon the court recessed.)

PRESIDENT: The court will come to order.

(Budinger-direct)

(Continued)

Q With whom did you work in the same office together with a certain [illegible]?

A During the last month I worked with Dengler, Stattman and Reninger.

Q Do you know anything about applications made by Stattman to be transferred from the Gestapo Headquarters [illegible] get in contact with the American?

A Yes, I know about two applications which Stattman made in order to be transferred to front line duty. [illegible] previous testimony you had testified that

Q Do you know when the first application was made? [illegible] was in your office?

A Yes. The first time Mr. Stattman told me about it in the summer of 1944. [illegible] this time an American flyer was there.

Q Did he tell you also about the result of his application? [illegible] office was?

A No, not directly, but it was refused because Stattman stayed at our headquarters, [illegible] approximately one hour to an hour and a half.

Q Do you know when the second application about which you were talking was made? [illegible].

A Yes, it was in January, 1945. I myself typed it on my typewriter.

Q Was there any reason given for this application and if so which one? During his presence was the flyer misinformed by anyone?

A Yes. Mr. Stattman gave his reason that he was not satisfied with his work at headquarters back home and, that he, like any other German soldier, would prefer to do his duty on the front line. [illegible] official of your headquarters? Did he give, in his application or in his discussion with you, [illegible] any other reasons for his application? [illegible] Counselor Hellenbrecht interrupts: No, that was the idea of that.

PRESIDENT: The court will recess in place.

(Whereupon the court recessed in place.) [illegible] interrupted about?

(Whereupon the court reconvened.) [illegible] from, as I said before, and whether

PRESIDENT: The court will come to order.

QUESTIONS BY DR. AMELUNG: [illegible] the answers of the flyer, if he gave any

Q Do you know the result of the application?

(Dengler-direct)

A No, he didn't make any reply to the questions. He only said always,

A Yes. Mr. Stettman told me that it was rejected with a notation that applications of this character were useless since there were orders from higher authority that every man has to stick to his assignment and that he could expect disciplinary action if he would try to get in contact with the Wehrmacht directly. (He was excused and withdrew.)

Q One other question. In your previous testimony you had testified that on or about the 15th of February, 1945 and American flyer was in your office. (Witness: Do you desire to be sworn?

A Yes, around this time an American flyer was there.

Q Can you still recall how long after your arrival at your office on behalf of the following sworn statement through an interpreter: the flyer still stayed at this office?

MR. DAGAL: Dr. Aschner will conduct the direct examination of

A Yes. Approximately one hour to an hour and a half.

the witness.

Q But he was present already when you came to your office?

DIRECT EXAMINATION

A Yes.

BY DR. ASCHNER:

Q Did you remain in your office then during the entire time?

Q Please give the court your full name.

A Yes.

A My name is Heinz Hellenbroich.

Q During his presence was the flyer mistreated by anyone?

Q When were you born?

A No.

A I was born on the 21st of March, 1904.

Q You were interrogated before, during your interrogation, whether

Q Are you married?

you had listened to the interrogation of this flyer by some official of your

A Yes.

headquarters and according to the record you testified that you were present

Q Do you have any children?

for approximately five minutes while Criminal Counselor Hellenbroich

A Yes. I have a boy 5 years old.

interrogated the flyer, is that correct?

Q Where is your family residing?

A Yes.

A My wife and my boy are living at Borgentreich, Westphalia.

Q Can you still recall what the flyer was interrogated about?

Is that your real name too?

A Yes. He was asked for his personal data, as I said before, and

A Yes.

whether he had an order.

Q Next to your present station?

Q Can you still recall the answers of the flyer, if he gave any

A [illegible]

answers at all?

(Dudinger-direct)

A No, he didn't make any reply to the questions. He only said always, "I have nothing to say." [illegible] aren't you now a civilian internee?

A [illegible] Your witness.

Q [illegible] No questions.

A [illegible] No questions by the court. The witness is excused.

(Thereupon the witness was excused and withdrew.) custody?

A [illegible] The defense calls as its next witness the accused Hollenbroich. When were you a prisoner of war?

A [illegible] Do you desire to be sworn?

Q [illegible] He is in uninterrupted custody since the

4th. HEINZ HOLLENBROICH, an accused, voluntarily took the stand in his own behalf and made the following sworn statement through an interpreter:

A Yes. Yes.

MR. RACHEAL: Dr. Aboimer will conduct the direct examination of

Q What are you by profession?

the witness.

A By profession I am a criminal counselor.

DIRECT EXAMINATION

Q What is the professional career you went through?

QUESTIONS BY DR. ABEIMER:

A After I had finished high school and graduated there I studied law

Q Please give the court your full name.

at the university until 1935--I was assistant, until 1936. Then I passed the

A My name is Heinz Hollenbroich.

first legal state examination and I was trained in the various departments

Q When were you born?

of the ministry of justice in the superior court district of Duesseldorf.

A I was born on the 31st of March, 1906.

Q When did you enter the service of the police?

Q Are you married?

A At the beginning of 1938 I left the legal service and transferred

A Yes.

to the criminal police as a criminal counselor.

Q Do you have any children?

Q Please continue in the story of your background.

A Yes. I have a boy 5 years old.

A I was employed at the criminal police headquarters, Duesseldorf. That

Q Where is your family residing?

is the state criminal police. In 1941 I was transferred to the Secret State

A My wife and my boy are living at Dortmund, Westphalia.

Police [illegible] Dortmund. There, unexpectedly, I was to be trained especially

Q Is Dortmund your residence too?

for various purposes. That was done. I was on duty in Dortmund until 1942

A Yes.

as a [illegible] for counter espionage. Then I was transferred to Munster

Q What is your present status?

in the same organization and functioned as chief in the border police.

A I am a prisoner of war at Dachau.

From Munster I was transferred to Cologne [illegible] Nurses Home in

1946. There I was employed in the defense against sabotage and security of

Q Aren't you mistaken? Aren't you now a civilian internee?

A I am in custody here.

Q Since when are you in custody?

A Since August 1946. I don't know the exact date. Here in Dachau.

Q Before you came to Dachau you were already in custody?

A Before I was a prisoner of war.

Q Since when were you a prisoner of war?

A Since the 4th of May, 1945.

Q That means that you have been in uninterrupted custody since the 4th of May, 1945? Now previously? Then I became head of Department Four B. Now Two.

Q What are you by profession?

A By profession I am a criminal counselor.

Q What is the professional career you went through?

A After I had finished high school and graduated there I studied law at the university until 1935--I was mistaken, until 1930. Then I passed the first legal state examination and I was trained in the various departments of the ministry of justice in the superior court district of Duesseldorf.

Q. When did you enter the service of the police?

A At the beginning of 1932 I left the legal career and transferred to the criminal police as a criminal counselor.

Q. Please continue in the story of your background.

A I was employed at the criminal police headquarters, Duesseldorf. That is the State Criminal Police. In 1935 I was transferred to the Secret State Police--Gestapo--Dortmund. There, supposedly, I was to be trained especially for defense purposes. That was done. I was on duty in Dortmund until 1938 as a counselor for counter espionage. Then I was transferred to Munster in the same capacity and furthermore as chief in the border police.

From Muenster I was transferred to Gestapo Headquarters Vienna in 1940. There I was employed in the defense against sabotage and security of (Hollaenderisch-direct) 2397

leaders.

industrial enterprise. [illegible] were

CAPTAIN VANCE: Let the record show that the accused Albrecht, Moller and Goehrandt have resumed their seats in the prisoners dock and that Dr. Mackor, Dr. Berger and Dr. Ma have returned to the court [illegible]

DIRECT EXAMINATION, continued [illegible]

QUESTIONS BY DR. [illegible]:

Q Please continue with your story.

A Then in 1942 I was transferred to Gestapo Headquarters, Darmstadt. There I worked in the same capacity until Gestapo Headquarters was reorganized through the Reich Main Security Office. Then I became head of Department four in Darmstadt.

Q What do you mean Department four? [illegible]

A Well, Department four in the Gestapo contains various sections which have to do with the defense against the enemy. [illegible]

Q What was your rank when you came to Darmstadt? [illegible]

A I was SS Captain and as a civil service employee I was a criminal counselor. [illegible]

Q Were you a member of the SS? [illegible]

A In 1941 when the chiefs of the various departments were transferred into the SS at Vienna I too was taken over as an SS leader in the Security Police. [illegible]

Q Was this the Allegemeine SS or the Waffen SS or an SS of some special kind? [illegible]

A No, that was not the Allegemeine SS. That was only a manner through which we received, in the security police, in comparison the same ranks as they were given in the SS. For instance, since I wasn't criminal counselor for three years as yet I became only SS Captain. Whereas, in 1943, when I had three years in service as a criminal counselor I was promoted to SS Major. We were not members of the Allegemeine SS, but our personnel records were registered at the Security Service--SD--our personnel records were kept at the Gestapo Headquarters. I am referring now to our files as SS leaders.

Q If I understand you rightly these SS files were of not kept at any office or headquarters of the SS, but at the Gestapo headquarters at Darmstadt, a change took place the end of 19[illegible]

A Yes. There the records on files were kept, but were registered with the Reich security main office.

Q Were you a member of the Nazi Party? the time 44-45. Did any change in the person of the chief of headquarters take place [illegible] Since when 44-1945?

A Since let of May, 1933, I remember right, was transferred to [illegible] the end of March 1944, and SS Major Cirke was transferred to [illegible]

Q Did you have any official position in the Nazi Party? been

A As members of the security police persons not allowed to have any official position in the Party on the 1st or [illegible]

Q You said before that you were registered with Russian security service SD. Did you sign any statement when entering there? of personal matters, took charge of our headquarters at that [illegible]

A At the time of the transfer to the SS leader corps of the security police we had to sign a large number of that statements and papers. I know this SD statement, but I can't state definitely whether I signed it or not. But anyway we had to accept the jurisdiction of the SS and had to accept any punishment without legal procedure, and sanctions etc?

Q That is what was said in this statement of the SD, according to Stahlman's testimony yesterday; isn't that correct?

A Yes. Yes, I assume so you in any way in charge or not?

Q Who was in charge of Darmstadt headquarters when you came there? [illegible] at that time SS Colonel Semann had ordered that

A In charge of the headquarters was SS Colonel [illegible] representative Ashamer-Pifrader. [illegible] there were the heads of de- [illegible] and important decisions were requested

Take 196 - 81
2-20-47;JGMcD;S

Take 196 - 80
2-20-47;JGMcD;S

from [illegible] was there a change made in the person of the chief of headquarters, and if so, when? Was there any change made in [illegible] as far as I can remember, a change took place the end of 1943 or beginning of 1944. At that time SS Major Rühr became the head of Gestapo headquarters. [illegible], Mr. Clerk had ordered that I task you to limit your testimony to the time 44-45. Did any change in the person of the chief of headquarters take place during 1944-1945? A I order in this respect from the Fall Von SS Major Rühr, if I remember right, was transferred to Magdeburg in April 1944, or it might have been already the end of March 1944, and SS Major Ehlers was appointed to succeed to Rühr as chief of our headquarters; but as far as I know he was sick and started his duties only on the 1st or 2nd of June. In the meantime, the Inspektor at Wiesbaden was already in charge of our offices. Dr. Krieger, who was in charge of personal matters, took charge of our headquarters at that time. In the [illegible] courts of law [illegible] meant the Gestapo was Inspector of the security police at that time. [illegible] strong and heavy as statements passed on by others of SS Colonel Somann, has to be brought to the attention of [illegible] Dr. Krieger, whom you mentioned just now, the one attached to Rühr's headquarters, is that correct? A [illegible] as I said before, he took care of the personnel matters for Colonel Somann [illegible] members of the security police. During this time were you in any way in charge or respect in case they did not fulfill the requirements of their jobs? A At that time SS Colonel Somann had ordered that during this time each head of a department was a representative for his department. So with me there were the heads of departments one and two, and important decisions were requested

from Wiesbaden and were made there.

Q After Oirke took office was there any change made in your position?

A Yes. Since I was the oldest and highest in rank at that time among the heads of the departments, Oirke had ordered that if he shouldn't be present I should represent him to the outside and that I should also have charge in the offices. There was no special order in this respect from the Reich security main office. As far as I know this arrangement was ordered by SS Colonel Ehrens.

Q You said before you were put under the jurisdiction and the authority of the SS and the police.

A Yes, that's correct.

Q Were any sentences of the SS and police courts brought to your attention?

A Yes. The jurisdiction of the SS and police courts was contrary to the regular courts of law. That meant the sentences of the higher SS and police courts were at least three times as strong and heavy as sentences passed on by other courts; and this fact had to be brought to the attention of the SS men at all times. For this reason, on regularly scheduled roll calls these sentences which came in lists from the Reich security main office were brought to the attention of the men, so that the members of the security police would know at all times what punishment they had to expect in case they did not fulfill the requirements of their jobs.

Q This information about sentences of the higher SS and police courts--was it given out on orders of higher authority?

Tube 106 - 50
[illegible]

A Yes. There was an order of the Higher SS Leader Heinrich Himmler, who had ordered that excerpts of the sentences and reasons for the sentences of the SS and police courts it should be compiled and should be currently forwarded by the various headquarters for the information of the men under their command. Approximately what time of the [illegible] was it when this order [illegible] Under these sentences were there any which referred to cases of disobedience of ordering when I came to my office. It must be between [illegible] time.

Q Can you remember what kind of punishment in individual cases was handed out for disobedience of orders since [illegible] Able: During the last years of the war only the death sentence was given. I still can remember a few individual cases. We were very much impressed with the sentences that Reichsführer SS had given to commanders and commanders who, after the invasion of the Allies, had not followed the order to fight to the last, and, furthermore, had not followed out special orders which were given for their individual discipline or [illegible]. They were, without any hesitation, sentenced to death. As we were told, these sentences were carried out [illegible]. Q If you speak here about commanders of units, and of your referring to commanders of the army or are you referring to commanders of police units? [illegible] report of the rural police station. A They were SS leaders who were commanders of units of the security police in France. Flyer No. [illegible] a low-flying plane. Q Do you remember a day around or about the 15th of February, 1945? I am referring to the day to which [illegible] No. 6 refers. [illegible] entirely. The reasons for [illegible]

A Yes, I do.

(Hollenbroich - Direct)

Q What happened on this day at your headquarters? was shot down

A I can't give you the exact date any more; but it seems happened around the 15th or 20th of February; one morning it was reported to me that at the office of Dengler a flyer had been delivered.

Q Approximately what time of the forenoon was it when this report was made to you?

A It was early in the morning when I came to my office. It must have been around breakfast time.

Q Can you give the exact time?

A I assume it must have been around 8:30 a.m. Since some other stuff was delivered together with the flyer, first it was assumed that this could be sabotage or espionage agent. My both, my major aids, ordered me to investigate and clarify this matter. I should find out what was the matter with this man. I then went to the room in which Dengler's office was located. There, first of all, I sent out of the room a lot of people who had come to this room out of curiosity, looking at the flyer. Then Dengler gave me his report--how this man had come to us. It was reported that this terror flyer had been transferred from the rural police in the neighborhood of Worms. The transfer report was also given to me, which I had checked first. According to the reports of the rural police station--I don't remember any more which station it was--it was a case of a parachuted terror flyer who, from a low-flying plane which was burning, had parachuted and who then later on, when he was surrounded, had shot at farmers and rural policemen who tried to take him into custody. The reports furthermore

(Hellenbroich - Direct)

contained the remark that this low-flying flyer, before he was shot down by the anti-aircraft artillery, had strafed civilians. I first of all then looked over the stuff which had been brought in together with the flyer, and first of all then I questioned the flyer in regard to the things which were lying on the table, as far as it had any connection with his person.

Q You are speaking about stuff--material. What one you referring to?

A I have to add that together with the flyer from the rural police, parachutes had been brought in, equipment, maps, a knife, a rubber boat, and a few other things which had dropped to the ground from the air. My investigation showed as follows: that the terror flyer had nothing to do with these things. Anyway, he said that these things were not his things.

I have to say in this connection that it wasn't too easy to make myself understood to the flyer. At that time I spoke English the way I learned it in school, and had no training in speaking English, and, first of all, my vocabulary and my diction was very small. And so together with the others, as good as possible, I tried to make myself understood, and the terror flyer understood me too and the other comrades too who participated in this interrogation. I'd like to say you can't even say it was an interrogation. The terror flyer had such an excellent attitude--composed. You might say he made a very good impression as far as he was, so that he understood quite well what we wanted to know from him.

PRESIDENT: Court will recess until 1:30.

(Whereupon at 1200 hours the court recessed until 1330 hours.)

(Hollenbreich - Direct)

AFTERNOON SESSION

Q What was the contents of these pockets?

(Whereupon the Court reconvened at 1330 hours.)

A You know, the usual things you carry in a pocket, a wallet,

PRESIDENT: The Court will come to order.

papers, photographs and a handkerchief and the usual things.

PROSECUTION: May it please the Court, let the record show

Q Did those papers give anything about the person himself?

that all the members of the Court are present, all the members of the

A Yes. I think it said something about the person.

Prosecution are present, all the members of the Defense are present with

Q Do you remember the name of the flyer?

the exception of Dr. Treet who is absent sick, that all the accused are

A I only remember the name when I read it in the charge sheet.

present with the exception of number 2, Trumler who is absent with counsel

That it might have been that name.

and that a reporter and interpreter are present.

Q You mean the name Ray Bernat?

MR. RACHAEL: At the close of the morning session the defendant

A The name Warren, the way I do not remember.

Hellenbreich was on the witness stand.

Q Continue please.

HEINZ HELLENBREICH, an accused, being first duly sworn, voluntarily took the stand in his own behalf and testified further through an interpreter as follows:

When we did stop speaking I was asking questions about his outfit

DIRECT EXAMINATION (Continued)

and he answered me did not answer all to. Then I tried to ask him about his

PRESIDENT: The witness is reminded he is still under oath.

family relationships and where he was from and he said little about that

ACCUSED HELLENBREICH: Yes, sir.

now. Then I asked him why he was fired at the German civilian population.

QUESTIONS BY DR. AHRENS:

Q In what manner did you ask that question?

Q This morning we stopped at the time of the interrogation of the

A The way I am asking it now. That is, at first I asked him whether

flyer in the middle of February 1945. What was the nationality of this

he had fired on German civilians and I told him those were the reports on

flyer?

hand.

A The flyer was an American flyer.

Q What was his answer to that?

Q You said something about this interrogation which might have

A When that he shrugged his shoulders and gave a negative answer to

taken place in a unilateral sort of way, will you continue with your

answer to the question why he did it he only shrugged his shoulders.

description please?

Q About how long did this interrogation last?

A At first I asked the flyer about the things which had been

A In the meantime I again started working on these materials

turned in together with him and the first thing I determined was that he did

and also the other documents on their own took too, tried to read an

not have anything to do with the matter that was turned in together with him.

understanding.

With the exception of a pistol which he had admitted to be his own and some

Q You just used a phrase, what do you mean by that?

of the matter that was found in his pockets which he admitted to be his own.

A Well, I gave Dr. Hellenbreich had been picked up with

(Hellenbreich-direct) 1367

Q What was the contents of these pockets?

A. You know, the usual things you carry in a pocket, a wallet, some papers, photographs and a handkerchief and the usual things.

Q Did these papers show anything about the person himself?

A Yes. I think it said something about the person.

Q Do you remember the name of the flyer?

A I only remember the name when I read it in the charge sheet. That it might have been that name.

Q You mean the name Ray Herman?

A The name Herman, the Ray, I do not remember.

Q Continue please.

A I then asked the flyer about his name and about his personnel data which he did state including his number. Questions about his outfit and his missions he did not respond to. Then I tried to ask him about his family relationships and where he was from and he said little about that too. Then I asked him why he had fired at the German civilian population.

Q In what manner did you ask that question?

A The way I am asking it now. That is, at first I asked him whether he had fired on German civilians and I told him these were the reports we had.

Q What was his answer to that?

A Upon that he shrugged his shoulders and gave a negative answer. In answer to the question why he did it he only shrugged his shoulders also.

Q About how long did this interrogation last?

A In the meantime I again started working on these materials and also the other comrades on their own hook too, tried to reach an understanding.

Q You just spoke about other comrades whom do you mean by that?

A Well, Master Sergeant Freudenberger had been picked up and Stattmann was in the room. Those two tried to talk to him also.

Q What was the reason why Freudenberger was called?

A Well, I thought that I had not been able to make myself understood and I wanted to check on that.

Q What was the result of that check?

A That he behaved in a similar manner toward Freudenberger and about replied to his questions.

Q What happened at the conclusion of this interrogation?

A Now that I had found out that we were dealing here not with a possible saboteur agent or a parachuted spy but rather with a terror flyer, I left the room, having first ordered that he was to be kept there and said that I was going to ask the boss.

Q When you say "The Boss" you mean the accused Sima, do you not?

A Yes. I went out in the guard room and still found the rural police employee who had brought the flyer in. There were several of them. He stayed in the guard room and was having breakfast there. For some reason he did not leave. I asked him one more question about the report which had been sent along and I asked him who it had been that had determined that the flyer had come down in a burning fighter or bomber plane. He told me that that had definitely been determined by the anti-aircraft unit that had done the shooting down; that he himself was also present at the time of the arrest and when the flyer had been firing at the civilian population and figures.

Q What did you do when you received that report?

A I then walked into the office of Major Sima and reported the matter to him and told him that on account of this rural police report it was clear that we were dealing not with a saboteur or espionage agent but with a terror flyer. When I asked him what to do about it and that the man was still downstairs he said that he would hear about it and that he would like to take a look at the man first. I went back to my office because I had some visitors. After about one hour or perhaps about 45 minutes

(Hollenbreigh-direct)

I do not remember exactly how long it was, but it was a considerable amount of time -- after that period of time elapsed I was called up from downstairs and asked what was to be done with this flyer or whether any decision had been reached. So, I went over to Major Dirks' place as the officers were in the same building. I asked him whether any decision had been reached about the flyer and that apparently the Luftwaffe did not want to keep him there any longer. Upon that he told me, "well, the flyer will have to be shot in accordance with orders" and he mentioned that he had been talking to Colonel Prehler. Upon that I instructed the Unteroffizier downstairs to send one man up and Oberscharführer Stutzmann then showed up; I told him that the flyer was to be shot upon orders of Major Dirks. Stutzmann asked where was it supposed to happen and whether he was supposed to do it all by himself. Upon that I said that I wouldn't know that either and let's just both of us go over to the block. So, I, together with Stutzmann went over to Major Dirks' office and upon being asked Major Dirks instructed us that the flyer was to be shot in the vicinity of Buchenwald and that I, myself, together with Master Sergeant Graf were to carry out the execution. I call was made downstairs telling Graf that he would have to report. This took a while and then Stutzmann was instructed to unsaddle, in order to that and carry it out.

Q Did Stutzmann say anything after he had received these orders?

A Stutzmann said "Yes, Sir" and clicked his heels and saluted me. After a considerable period of time -- I cannot say exactly how long -- but after a considerable period of time, Stutzmann and Graf appeared and reported the mission completed.

Q What did report made to you?

A Yes it was not right after that I told the two of them to report and to report this to the boss and I went along and reported it to him.

(Hollenbreich-direct) 1570

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2/20 50

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2/20 50

Q And that is what happened?

A Yes. That is what happened.

Q In what form did that report ... report was made besides this verbal report?

A In the form of military reports which is usual in our place.

Q Are you able to reproduce this report verbatim? Or a proper report in the ... Whether I can do it verbatim? I would have to reconstruct it first, but what they probably said is, "Tech Sgt Stettnis and Master Sgt Hauf returning from evacuation mission completed." ... to the post.

Q Do you still remember whether Stein made any reply?

A I think there was some talk about the burial ... after the gentle ... believe Hauf was instructed to take care of it. ... were retained.

Q Do you still remember in what manner the burial took place or was ordered to take place, either? ... were taken away from the flyer?

A No. As far as I remember correctly that was an army vehicle that was used upon which the body was placed and from there it was probably driven to the cemetery and turned over to the cemetery men.

Q Was anything taken away from the flyer before he was taken to that operation? ... happened on that date in connection with an American flyer?

A No. That had been taken away from him before, as I have mentioned, the contents of his pockets -- nothing was taken away from him besides that. That is to say, I was not present when those men searched him, so I cannot be any ... from my own observation but I am sure nothing was taken away from him ... of course in the guard room. However, I cannot tell you that.

Q While you were together with this flyer was he ever mistreated ... Luftwaffe offices. I was surprised because the officer appeared to be ...

Q Do you still remember whether the unit, the military unit or army unit which was to take care of the burial was a prisoner of war battalion?

A As far as I remember correctly that was a part of the home guard ... battalion which was stationed in Bensheim. They furnished the guard troops

(hollenbreich-direct)
(hollenbreich-direct)

A if I remember correctly it might have been around 1:30.

for prisoners of war.

Q You mean 1:30 p.m.?

A 1330 hours.

Q Do you know whether any written report was made besides this verbal report that was made to Girke?

A Yes. The department concerned downstairs sent up a proper report in the usual business channels with the files.

Q Do you know what happened to those documents?

A That matter went through me over to Major Girke- to the boss.

Q Do you know what happened to that later?

A It probably went to department 2, to the administration to settle the burial expenses and to keep the objects which were confiscated.

Q You do not know that from your own observations, do you?

A Oh, you mean the things which were taken away from the flyer? No. I do not know that from my own observations.

Q Let us now turn to the other case, charge number ten. Do you remember the date of the 26th of March 1945?

A Yes.

Q What happened on that date in connection with an American flyer?

A In the evening, when I returned from a reconnaissance mission I had performed in the vicinity of Darmstadt, by order of Major Girke, I found two American flyers in the office. A parachute air raid alarm had be issued a very short time before that, if I remember correctly and there were a number of comrades in the guard room, however, I cannot tell you their names, because we had been joined in our unit by men from all kinds of other retreating offices. I was surprised because the office appeared to be just moving out. The vehicles which were being loaded were standing outside and the men were working on their bicycles and part of them had already fallen out. I was annoyed because they had accepted two more flyers.

Q About what time of day was it when you returned from the reconnaissance mission?

(hellenbroich-direct)

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[illegible]

A If I remember correctly it might have been around 8:30.

Q You mean 8:30 P.M.?

A 2030 hours.

Q Then what happened to these Americans? Continue with the story.

A I asked who had accepted these men and who brought them in. [illegible] Upon that I was told that the two flyers had been brought in by the Air Corps together with some files lying on the table in the guard room and in addition to that there were some objects that were usually kept in pockets. Those had been taken away from these men when they were turned into the office or guard room and they had been searched then. I at once had a look at these files which were there and in these files, which consisted of two pages the interrogation of these two flyers had been recorded. This record indicated that they were two flyers who had come down separately. One of them must have come into the hands of the German Air Corps, one or two days perhaps before the other.

A That was supposed to [illegible] low altitude they would fly along in the roads in the country or even the streets in town, and fire at personnel in the streets as well as horses. That also included the running of personnel which had to get out of the trains or children playing. That included air planes which had been flying [illegible] streets in towns, also open terrain.

Q Was this statement "hunting along the streets" a common one in January for strafing?

A Yes, we [illegible] day after day, hour by hour.

Q Did you receive the flyers or the data which were described in the statement?

A I saved [illegible] I had been sent on their way [illegible] but I did not any

Q Did you ask [illegible]

Q Did these files indicate in what area these fliers had come down?

A Yes, it must have been in the area between Weinheim and Heppenheim, in the area of Weinheim and Heppenheim, the report indicated both of them had come down from shot down airplanes. One of the fliers in fact had been arrested in the vicinity of a place where his plane came down. One report indicated there were two fliers who had come down separately; one of these two must have come into the hands of the German air corps. He had been interrogated, been carried out by one first lieutenant, evidently senior officer of the outfit. These men had made statements about their personal data, their names, nationalities, their outfits and they had admitted they had been flying over Heppenheim and Weinheim and they had been having hunts along the streets there.

Q What do you mean by this "had been having hunts along the streets?"

A That was supposed to mean at low altitutde they would fly along in the roads in the country or even the streets in town, and fire at personnel in the streets as well as houses. That also included the strafing of personnel which had to get out of the trains which had been stopped. That included air planes which had been flying over persons in towns, also open terrain.

Q Was this expression "hunting along the streets" a common one in Germany for strafing?

A Yes, we experienced that day for day, hour for hour.

Q Did you accuse the fliers of the acts which were described in the statements?

A I asked these fliers whether it had been correct that they had been shooting at the civilian population, but I didn't get any answer to that.

Q Did you ask the fliers about their personal data?

A Yes, I did this later when I learned from Major Girke after I had read this statement from the air corps. Now, I didn't finish telling about this statement. After this record of the interrogation, there was a supplement addressed to the commanding officer of the security police in Rensheim signed by the commanding officer of some flak outfit and typed under the signature "Major". This supplement stated that these two Americans had not reached the status of prisoners of war, since they did not deserve the protection of the German armed forces, due to their actions, to wit, firing at the civilian population. They had been transferred to the security police headquarters with the request that the orders available there should be carried out. Signature, "Major".

Q Do you remember the signatures of the man who signed it?

A No, it was not typed under the signature.

Q But this report and the supplement was signed?

A It was not only signed, but was also affixed with the seal of the unit.

Q What did you do with these files?

A With this printed matter I went up to the first floor to try to see Major Girke, whom I finally found on the staircase. The first place I reported to him was that I had returned from this reconnaissance mission. He was rather mad at me apparently for the reason that I had returned rather later and that he had probably received other reports about the enemy situation. I reported to him that the enemy was advancing on a front of approximately six to eight kilometers parallel to the mountain road and that two flyers had been brought in downstairs, together with this file. I described this record to him briefly and explained this supplement to him and I asked him what was to be done now. Upon that he said "Don't ask me stupid questions just as we are about to move out. We have got to shoot them." I went downstairs again right away. I asked for the CQ. I found out his name from the guard book. Master Sergeant Raaf happened to be on duty that day and since I was supposed to use somebody who was on guard that day, I had Raaf called in and the next man whose name appeared on the particular slip and that was Stattmann.

Q Did you ask the flyers yourself?

A I had returned downstairs again and had called for these two men. I asked the flyers about their personal data, which I found to agree with the report, with the ones reported by the airforce. I then told these two sergeants who had appeared, I don't know whether

they appeared at the same time or not, but I told them that these flyers were to be shot by order of Major Girke. I also mentioned that these were Americans who had fired upon the German civilian population and did not deserve the protection of the Army, who had turned them over to us. I also informed those two Americans at that time that they were going to be executed upon orders since they had fired upon German civilians and that they would not be treated as prisoners of war.

Q Do you still remember the personalities, I mean the names of those Americans?

A No, I read these names for the first time in the charge sheet.

Q Did you see any insignia of rank on those Americans?

A No, they didn't have any insignia of rank.

Q How were they dressed?

A As far as I remember, they have had coverall jackets on with zippers.

Q What happened after you gave this order to the two accused, Raaf and Stattmann?

A Well, I have to splice something in here. Girke had told me that I was supposed to use men who were on guard. He then came down behind me and showed up in the doorway for a short period of time and I think Stattman was the man who asked me where this was supposed to take place. So I asked Girke, "Well where are these men supposed to go?" and he said, rather hurriedly, "Let's go, let's go. We have to get out of here."

Q How many men were there in this room where this took place?

A I can't say this for sure. The room was very much darkened, blacked out. The reason for that was the blackout curtain in this guard room had always been defective and it was not permitted to have any light in the hallway either because otherwise a strong beam of light would have gotten out when the door to the house was opened. Out there we only had blue air raid protection lights.

Q Were these two Americans standing next to each other or standing separately?

A I think one was standing next to the wall and the other was standing in the center of the room.

Q Do you still remember whether Raaf and Stattman were present in the guard room at the same time or did they arrive at different times?

A Well, you shouldn't picture it as if these men had just lined up inside this guard room. Everything was pretty well moving. It is possible that I gave this order first to Stattman or that Stattman had left in the meantime to pick up his weapon while Raaf had his own weapon standing in the guard room.

Q Did these two people, Raaf and Stattman, then take these flyers out with them?

A Yes, each took one of the flyers. I can't say whether that happened together or not because everything was going on at that particular moment and in addition to that, since there was a parachute air alarm outside, men kept coming into the office even from the outside so business was really running high.

Q Do you know anything about the manner in which the execution order was carried out?

A No. After these men had left I followed my orders which I had to inspect the rooms downstairs. I was in charge of seeing that everything in these office rooms was cleared out completely and that no papers would remain behind.

Q Did you receive any reports about the carrying out of the order?

A Yes. Out in the hall as I stepped out of one of the rooms, Raaf reported to me and reported the completion of the mission. I then ordered that the bodies would be buried in the proper manner.

Q Did Stattman make that sort of report also?

A I am sure that he did. I don't remember right now but I am sure he did.

Q I show you an exhibit which is marked Prosecution Exhibit 81, the identification papers of William Perman. Do you remember this person pictured on this exhibit?

A No.

Q I show you two more pictures, marked Prosecution Exhibits 77 and 79 respectively. I ask you to examine these pictures and tell the court whether you are in any way able to state whether these bodies belong to the people you interrogated at one time?

A No. You couldn't recognize anything on these dead bodies anyway, but these things which these dead bodies have on them here, the Americans didn't have these.

Q By that you are referring to the belt and this holster on Prosecution Exhibit 79?

A Yes, I mean this belt and this piece of leather here and this little bag.

Q I am referring again to Charge I and I show you several more identification papers, Prosecution Exhibits 94, 97 and 98, of

William Perl[illegible] - I ask you whether you saw such identification papers when searching the flyer, or not?

A. No, I saw these papers, or rather the photostatic copies, for the first time last Saturday in the office of my American colleague, [illegible] where I knew that he had received this order from his [illegible].

Q. I show you some more photostatic copies of identification papers, this time of one Robert Helmuth, Protestation Exhibit [illegible] and I am asking you again the same question, the Government of the Reich h[illegible] I know, there just as well, whether these orders constituted a viol[illegible]. In the case of Charge X, did you search those flyers upon have them searched? t the Reichsführer of the SS, who besides being [illegible] of I did not search those flyers. They had been searched [illegible] already when I entered the camp[illegible]er of the prisoner of war sys[illegible].

Q. And did they have identification papers on them?

A. I didn't see one[illegible] when you say "Reichsführer of the SS"?

Q. Were there any identification papers among the things which had been taken away from the flyers before? [illegible] Chief of the Prisoner of [illegible]. I didn't see that. I had those things which were remaining behind on the table reserved expressly so that nothing would [illegible] behind in our place. Replacement army. In the same manner the higher [illegible] and in that way did your agreement of the [illegible] with the [illegible] names given by the flak unit take place? [illegible] tower of war system and those [illegible] r[illegible]. As I have already said, I asked those flyers for their [illegible] names, one by one, and they agreed, [illegible] early observed the attacks of the [illegible].

Q. Finally, I am talking about Case Number X, you said that you transmitted Himmler's order to Hoef and Stoltzen, or that right [illegible] reference or[illegible]

A. [illegible] I received from Himmler the order that these flyers were to be shot and I transmitted that order to the two sergeants.

(Hellenbrecht - Direct)

Q What did you think about the legality or illegality of this order?

A I did not even have one seconds doubt about this. In the first place this order was given to me by my superior, Major Girth, and furthermore I knew that he had received this order from his superior, Colonel Brunnler, and that orders for such action were available, having been issued by the very highest headquarters and I am sure that before these orders were issued, the Government of the Reich had discussed the matter as to whether these orders constituted a violation of the international law or not. This I had to assume for the reason that the Reichsfuhrer of the SS, who besides being chief of the German Police and Chief of the German Replacement Army, was also the highest commanding officer of the prisoner of war system.

Q You mean Himmler when you say "Reichsfuhrer of the SS"?

A Yes.

Q Do you know since when Himmler became Chief of the Prisoner of War System?

A As far as I know on the first of October 1944 when he came to be Chief of the Replacement Army. In the same manner the higher SS and Police Leader of the Rhein-Westmark, General Stroop, was also the higher commanding officer of the prisoner of war system and these high ranking officers, I am sure, must have deliberated upon these questions. In addition to that we daily observed the attacks of the low flying aircraft among the population and the victims among the population. Furthermore we knew that after the non-interference order had been issued, the population engaged in lynching could not be

(Hollenbreich - Direct)

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who made this report and that he is thinking this up tomorrow.
punished. In fact instructions to that effect had been issued even
Q Do you remember whether Kuniaki was here this guard
to the German courts by the Reichs Ministry of Justice. Now if
room on that evening?
German courts wouldn't even call it illegal, then I certainly had no
A I didn't see him there and I didn't give any instructions
reason for doing so.
concerning mess duty either. That never was my job.
Q Did you hear the statement of Kuniaki read here concerning
Q Another question. There has been talk here repeatedly
Charge X?
about serving rotten meat allegedly, was a lawyer present the middle
A Yes.
of March, do you know anything about that?
Q Do you have anything to say about that?
A Well the first time I heard about these so-called false
A Yes, Kuniaki in one place claims that I had been standing
papers are here through the testimony of Capt Rev. Gentner. I was
in a spot which is described as "A" on this Exhibit "F". I am sure
that one evening Major Girke came in. I think he had just returned
Kuniaki made a mistake there. I was never out there and Reuf did
from Colonel Traveler in Wiesbaden and he had a special mission. Just
not report the carrying out of the execution to me there as Kuniaki
evening he selected certain people and organized them into a detail
claims. I did, in fact, remain in the building and that is where I
which he put under his own command. I didn't even have anything to
received the report.
do with that, nor did I receive any SS service records as Rev. Gentner
Q When you talk about "Exhibit F" do you mean this chart
states. I had my service record ever since the end of November,
which is on the wall here?
Q Was that a service record of the Waffen SS or what kind
A Yes, this chart.
was it?
MR. AUSNER: Let the record indicate that this is supposed
A That was the number 63 Service Record of the Waffen SS.
to mean Prosecution Exhibit 70.
Q What was the office that you belonged to according to that
Q Do you have anything else to say concerning the statement
service record?
of Kuniaki?
A The headquarters stated there was the SS Training Battalion,
A Yes, Kuniaki mentioned something about insignia of rank
Lenin. That was the outfit we were assigned to by the Reichs Main
and other insignia which was on the flyers. That is not right.
Security Office.
I am sure he made another mistake there. Then he talks about an
Q Was that outfit stated there in the flyer
officer who is supposed to have come in and told something about a
A Yes, in fact it even was accused.
Major. I think Kuniaki must have picked up a few words that I
Q Do you know whether those were released by Major Girke pertaining
myself said there in connection with this Major of the air corps
Hitler or Himmler's different commands or not?

who made this report and that he is kicking this up improperly.

A I heard about it but I can't say anything of my own

Q Do you remember whether Kaminski got into this guard observation

room on that evening?

A I didn't see him there and I didn't give any instructions

A I think Mrs. Goldrich had told me that they had some trouble concerning some sort either. That never was my job.

Q Another question. There has been talk here repeatedly

A Do you know what kind of a detail these men were supposed

about service records which allegedly were issued about the middle

of March, do you know anything about that?

A Well the first time I heard about these so-called false

papers was rather a fantastic deal. What I was supposed to do was to

prepare and have through the testimony of this Mrs. Gantner. I knew

her across the Rhine to the other bank which was occupied already

that one evening Major Girke came in. I think he had just returned

and I do not know of observation in connection with the duties of

from Colonel Brunhuber in Wiesbaden and he had a special mission. That

the security police to me.

evening he selected certain people and organized them into a detail

A Did he tell you anything about why that was the reason for

which he put under his own command. I didn't even have anything to

Q Giving different service records to these men?

do with that, nor did I receive any SS service records as Mrs. Gantner

A I don't remember that.

claims. I had my service record even since the end of November.

Q The question raised here once before was whether the Gantner

A Our question raised here once before was whether the Gantner

Q Was that a service record of the Waffen SS or what kind

was and military organization it was when that happened. Do you

was it?

know anything about that?

A That was the regular SS Service Record of the Waffen SS.

A Yes. In the last of my recollection the security police had

Q What was the office that you belonged to according to that

already been at this uniform and remained in Garmisch as early as the

service record?

end of 1944 and I think, if my memory serves me correctly, the question

A The headquarters stated there was the SS Training Battalion,

became acute in January 1945 when the works protection service was

Munich. That was the outfit we were assigned to by the Reichs Main

supposed to receive military combatant powers, which was true and been

Security Office.

assigned as an area in charge of security already due to the increase

Q Was that outfit stated there in the clear?

of the front and Girke therefore came directly to the Reich Main Security

A Yes, in fact it even was stamped.

Office whether these members of this organization who didn't have

Q Do you know whether these men selected by Major Girke received

different Soldbuche, different service records?

(Mellenbruch - Direct)

A I heard about it but I can't say anything of my own [illegible] were supposed from now on to wear combatant [illegible] observations.

Q Did you hear about that at that time, or just now?

A I think Mrs. Colbrich had told me that they had been work- [illegible] uniform or some part of the uniform had already been reported to [illegible] ing overtime until later in the office to change these service records. [illegible] military personnel anyway.

Q Do you know what kind of a detail these men were supposed [illegible] you have a military identification tag?

to be sent on? [illegible] I had one already prior to the time we were [illegible]

A To the best of my recollection the chief had told me that [illegible] Barracks but that were turned back in, required to be issued this was rather a dangerous deal. What he was supposed to do was to [illegible] later, service records and identification tags for inmates get across the Rhine to the other bank which was occupied already [illegible] who had already been received from Berlin and most of this and to do some kind of observation in connection with the duties of [illegible] the leading attacks. For that reason the majority of the the security police there. [illegible] Service Records only in December, 1944. We also

Q Did he tell you anything about why that was the reason for [illegible] receive any pay, we received our rations from the Army and so on, giving different service records to these men?

A I don't remember that. [illegible] you were on the whole, what kind of tickets did you use?

Q One question raised here once before was whether the Gestapo [illegible] had to use Army tickets, was declared a military organization and when that happened. Do you [illegible] did these service records have to say concerning the know anything about that? [illegible] and Yorrect?

A Yes. To the best of my recollection the security police had [illegible] 33 Training Battalion, Koslin was mentioned there. That already been put into uniform and reported to Geneva as early as the [illegible] Court will recess for thirty minutes. end of 1943 and I think, if my memory serves me correctly, the question [illegible] (Whereupon the Court was closed at 1505 hours.) became acute in January 1944 when the works protection service was supposed to receive military combatant papers, since our area had been defined as an area in danger of parachute attacks due to the approach of the front and Girke therefore made inquiry at the Reich Main Security Office whether these members of this organization who didn't have

[illegible] court reconvened [illegible]

[illegible] will come to order.

uniforms to wear were supposed from now on to wear combatant arm[illegible]
bands. The Reichs Main Security Office sent back a report in the
effect that this was not necessary since all persons wearing this
uniform or that part of the uniform had already been reported to
Geneva as military personnel anyway.

Let the record show the accused, Hellenbrich, h[illegible]

Q Did you have a military identification tag?

A I think I had one already prior to the time we were bombed
out in Darmstadt but that was turned back in, required to be turned
back in later. Service records and identification tags for issuance
to the men had already been received from Berlin and most of this
was lost in the bombing attacks. For that reason the majority of the
men received the SS Service Records only in December, 1944. We also
received Army pay, we received our rations from the Army and so on.

Q Mr. Hellenbrich, let us return for a moment [illegible]
Did you look over [illegible], did you [illegible]

A Yes.

Q When you went on the train, what kind of tickets did you use?

A We had to use Army tickets.

Q What did these service records have to say concerning the membership in the Armed Forces?

Did you commit any of these acts?

A The SS Training Battalion, Benits was mentioned there. That belonged to the Waffen SS.

[illegible] of the accused in this case did you know in the time prior to May 1[illegible]?

THE MARSHAL: Court will recess for thirty minutes.

(Whereupon the court was closed at 1505 hours.)

A At the outfit in Darmstadt I knew the chief, Major Dirks, ever since we took the [illegible] and the two secretaries, Stamm and Graf. [illegible] was the deputy [illegible] Inspector of the Security Police from 1942 until the day I left Plaszow on 15 July 1944. [illegible] as a superior I would see occasionally while he was on inspection.

(Hellenbreich - Direct)

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense except Dr. Trost who is absent sick; all the accused; the reporter and interpreter, are present.

Let the record show that the accused, Hellenbroich, has resumed the stand.

HEINZ HELLENBROICH, an accused, voluntarily resumed the stand and being reminded he was still under oath, testified further through an interpreter, as follows:

DIRECT EXAMINATION (continued)

QUESTIONS BY DR. AHEIMER:

Q Mr. Hellenbroich, let us return for a short while to Charge I. Did you look over Charge I, did you understand it?

A Yes.

Q What do you have to say to the accusation raised against you in that charge?

A Well, I do not feel guilty of the acts alleged against me in Charge I,

Q Did you commit any of these acts?

A No.

Q Which of the accused in this case did you know in the time prior to May 1945?

A At the outfit in Darmstadt I knew the chief, Major Girke, ever since he took the job there and the two comrades, Stattman and Raaf. I knew Col. Scmann in his capacity as Inspector of the Security Police from 1943 until his departure from Wiesbaden in July 1944. I knew him as a superior whom I would see occasionally while he was on inspections.

Q Did Col. Somann ever give you any orders pertaining to the treatment of Allied fliers?

A Yes, at one time in the middle of June or beginning of June, 1944, Col. Somann at an occasion when orders were issued at his office in Wiesbaden, announced the non-interference order to the various heads of offices. Although usually only the commanding officers of outfits were called to these meetings, I was called to this one because Major Girke was not present for duty that day. This non-interference order concerned the prohibition for the German police to take part in any disagreement that might arise between the German people and the parachutists.

Q The contents of that order are probably generally known here. What did you do concerning this order?

A I had transmitted this order which was only given verbally and also the supplement added by Col. Somann to Major Girke when I returned.

Q Which of the accused besides Somann did you know prior to May '45?

A During the time that Col. Somann was on duty I also met the Higher SS and Police Leader, Gen. Streop at one occasion of an introduction of the Security Police officers.

Q Did you have anything else to do with Gen. Streop?

A No, only in writing did we have direct communication with the Higher SS and Police Leader. Then, I also knew Col. Trummler when he became Commanding Officer of the Security Police in November 1944. Then I saw Trummler at the office in Bensheim once or perhaps twice, and one time I was ordered to go to Wiesbaden.

Q Did you do any of the things, personally, that are contained in Charge I?

A No, not to my knowledge.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANOS:

Q Hellenbroich, when you first reported to the Gestapo office at Darmstadt, at that time who was the Commanding Officer of the Security Police for Rhein-Westmark?

A At that time there was no such thing as a Commander of the Security Police in Rhein-Westmark but rather an Inspector for Wehrkreis XII, and that was Standartenfuehrer Pffrader.

Q What date did you report for duty with the Gestapo?

A That must have been the beginning of March. I don't remember the exact date.

Q What year?

A 1942.

Q Who succeeded this man you have just named?

A The SS Captain Fens was the successor for a few months. Before that time he had been the Deputy of the Darmstadt office.

Q I don't think you understand me. I am talking about the Rhein-Westmark Security Police.

A Oh, I did misunderstand you. The successor of Dr. Pffrader was Col. Somann.

Q During [illegible] the time that Col. Somann was in charge of the Wiesbaden office I believe you were in charge in Darmstadt of the Gestapo, is that correct?

A No, I was not the man in charge in Darmstadt during the time that Col. Somann served as Inspector of the Police in Wiesbaden. The man in charge of the Darmstadt office was a man by the name Mohr.

Q Who was in charge of the office in Darmstadt immediately before the time that Girke came there?

A From the time Mohr was transferred until Girke appeared, there was no Chief of this office.

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Q Were you the acting chief during that period?

A I was not the acting chief but I took care of the business of Department 4. not only ... to me but he read it to all other

Q During that period of time did you go to Wiesbaden and have a conference with Col. Scmann? ... all of the officers from

A During that time I went to Wiesbaden repeatedly. ... were

Q And on these occasions you had conferences with Col. Scmann, is that correct? ... put it that way. I think the ... who have been

A ... with Col. Scmann than with his personal representative, Capt. Krieger, because this man had been assigned by Col. Scmann to the take-care of the regular office business in Darmstadt. ... the Criminal

Q On several occasions you and Col. Scmann discussed the ... treatment of Allied fliers, didn't you? ... was called in or I ...

A I really don't remember any case of that. Regulations might have come out during that time which might have been discussed.

Q Didn't you just finish telling Dr. Aheimer you were there at the time Scmann read the non-interference order?

A That was sometime later. That was at the time when Girke had just arrived and Girke had gone home for a day or two to Berlin, I don't know. At any rate he was authorized to do that by Col. Scmann and that is why I was sent down to receive the orders.

Q Girke was on leave at the time he was away?

A He wasn't on leave, he had official business in Berlin.

Q Anyhow you went to Wiesbaden to talk to Col. Scmann, is that right?

A I went there because I was ordered there.

(Hellenbroich-cross)

Did you [illegible] Colonel Ehrens?

Q I believe you have already said that Col. Semann read you

A Yes.

the non-interference order, is that right?

After Colonel Semann had read the non-interference order, tell this

A Yes, he not only read it to me but he read it to all other

Court what else Colonel Semann said [illegible] on at that meeting?

chiefs of offices that were present.

When I arrived with this KRIPO [illegible] Colonel Semann had already

Q That was a regular meeting where all of the officers from

read the non-interference order to Major Broder and Major Berger of Frankfurt,

around Frankfurt, Koblenz, Darmstadt and various other places were

but they had already left. Then is the presence of the [illegible] chief of

present, is that right?

Darmstadt, the [illegible] chief of Koblenz, Gerichtsrat and myself he read the

A I wouldn't put it that way. I think the ones who had been

non-interference order.

called were the Chief of the Police Station, Frankfurt; also the

Q I realize that, but after he read this order, what else did he

Chief of the Criminal Police, Main Office, Frankfurt; the Chief of the

do then and the other persons present?

State Police Office, Koblenz; Lt. Col. Christmann. Then the Criminal

He then said that he was being urged to publish that order,

Police Chief joined with him; then the SD Section Chief of Koblenz

that is was instructed to publish it orally only and that his superiors

were there; also the Gripo Chief of Darmstadt was called in and I

had been urged by him to publish it. Then he mentioned that of course

was there for the State Police Chief of Darmstadt.

he didn't want to hear any reports about that from us. By that he meant

the security police -- any files would ever be turned over to the air

corps; now did he want to hear, as he heard of cases occurring, that any-

body would be cowardly enough to give his pistol to somebody else to make

this case stick. It would also have a chance on the transport.

Q When you said that Colonel Semann said that his superiors had

urged him to publish that order, who did you understand him to mean by

his superiors?

[illegible] I object to the question. He can ask him

who was mentioned, but what he understood was said, I think is inadmissible.

[illegible] Objection overruled.

(Hellenbroich-cross) "Higher" or maybe I was misunderstood. The "higher"

in our case meant the higher SD and police leaders. By his words seemed

unquestionably imparted the impression that he was being urged by Streop

to publish State [illegible] paper 1590 that he had received some sort of a

[illegible]

had been urging him to publish it. Then he mentioned that of course he didn't want to hear any reports about that from us. By that he meant the security police -- any flier would ever be turned over to the air corps. Now did he want to hear, as he heard of cases occurring, that anybody would be cowardly enough to give him pistol to somebody else to make that man shoot. We would also have a chance on the transports courts.

Q When you said that Colonel Ramann said that his superiors had urged him to publish this order, who did you understand him to mean by his superiors? [illegible] Stroop?

A DEFENSE COUNSEL: I object to the question. He can ask him who was mentioned, but what he understood was said, I think is inadmissible.

PRESIDENT: Objection overruled.

A I said the "higher" or maybe I was misunderstood. The "higher" in our usage meant the higher SS and police leader. By his words Ramann unquestionably imparted the impression that he was being urged by Stroop to publish that, and apparently that he had received some sort of a

(Hollenbreith - Gross)

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Q Did you go thereupon orders of Colonel Seemann?

A Yes, I came with his orders and that is the only way you could enter.

Q After Colonel Seemann had read the non-interference order, tell this court what else Colonel Seemann told you men at that meeting?

A When I arrived with the KRIPO Chief Colonel Seemann had already read the noninterference order to Major Breder and Major Berger of Frankfurt, but they had already left. Then in the presence of the Kripo chief of Darmstadt, the SIPO chief of Koblenz, Christmann and myself he read the non-interference order in the high SS and police leader's office.

Q I realize that, but after he read this order, what else did he tell you and the other members present?

A He then said that he was being urged to publish that order, that he was prohibited to publish it really only and that his superiors

reprimand from him to the effect that the treatment of the fliers had
A No, such a sentence was passed in Koenigsberg or some other
not been in accordance with his wishes and that is the only way you could
term in that general area. I did know about that.
understand the example in that supplement.
Q Was that in General Stroop's area?
Q Now, Major Hollenbreich, you testified about these higher SS
A No.
police courts in your previous testimony. Who was the man in charge of
Q All my questions refer to the Rhein-Westmark area which was
these higher SS police courts?
under General Stroop's command. Do you know of any one in General
A The SS main office for courts in Berlin was responsible for
Stroop's courts executed for failure to shoot an unarmed prisoner of
these SS and police courts, but there were local and SS police courts
war?
everywhere as for instance in the high SS and police leader's office.
A Nothing was published about that by that court.
Q The courts I am talking about were the ones that were located
Q Now, I believe on February the 15th you said you had a "terror
in the Rhein-Westmark area.
flier" in your office. Is that right?
A I wasn't talking about any particular court this morning.
A This flier which we are talking about in charge of the described
Q Well, did you have such courts located in the Rhein-Westmark
as a "terror flier".
area?
Q Who labeled him as a "terror flier"?
A Yes.
A I called him a "terror flier" this morning and the foundation
Q Who appointed those courts and who was the reviewing authority
for that description I find in the facts I know about this flier.
for those courts?
Q Do you know how many statements you have given in which you
A These courts were under the high SS and police leader who was
have explained the circumstances under which this flier got his death
the appointing and reviewing authority of the high SS and police courts.
on or about the 15th of February 1945?
The sentences of these courts were submitted to him and he had to confirm
A Statements?
them or refuse to do so.
Q Yes, written statements.
Q By the high SS and police fuehrer, you mean General Stroop?
A No.
A The Rhein-Westmark, yes.
Q You didn't make any?
Q Now you say you heard of death sentences being given for failure
A As far as I know, I didn't.
to obey orders, is that right?
Q Well, I will ask you to take a look at Prosecution Exhibit
A Yes.
Number 847 and ask you if that was one of the statements you made and if
Q Do you know any person that was given the death sentence and
that is not your signature that appears on that statement?
executed for the failure to shoot an unarmed prisoner of war?
A I beg your pardon, I thought you said the flier on the 15th of
February. That is the incident of the 24th of March. Did I understand
you?

A No, such a sentence was passed in Koenigsberg or some other town in that general area. I did know about that, we ask for a recess in place.

Q [illegible] talk about the records.

A [illegible] Recess in place.

Q [illegible] my questions refer to the Eighth Panzer Army which was under General Stroop's command. Do you know of any one of General Stroop's officers executed for failure to shoot an unarmed prisoner of war?

CROSS EXAMINATION, continued

A Nothing was published about that by that court.

Q Now, I believe on February the 25th you said you had a "terror flier" in your office, do that right? Got in with a parachute, a map, a knife, a rubber [illegible] this flier which we are talking about in charge of the described as a "terror flier". It was that the rural police brought these things in at the same time labeled him as a "terror flier"? The original impression was that they labeled him a "terror flier" this morning and the foundation for that determination I find in the facts I know about this flier, some things [illegible] Do you know how many statements you have given in which you have explained the circumstances under which this flier met his death on or about the 25th of February 1945? [illegible] questions didn't he?

A Statements? I answer three questions.

Q Yes, written statements. What did he tell you?

A He [illegible] him these things and mentioned to him and said to him, "What is your [illegible] You didn't make him the negative.

A As far as I know, I didn't [illegible] with the flier?

Q Well, I will ask you to take a look at Prosecution Exhibit [illegible] I handed that to you and ask you if that was one of the statements you made and if that is not your signature that appears on that statement?

A I beg your pardon, I thought you said the flier on the 25th of February. That is the incident of the 24th of March. Did I misunderstand you?

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Q Probably like I described already, all the comrades tried to talk to him and CAPTAIN VANCE: If it please the court, we ask for a recess in place. Mr. Englert is back now and wants to talk about the records to the counsel for PRESIDENT: Recess in place, is that right?

(Thereupon the court recessed in place.) ion, but this, in conjunction with (Thereupon the court reconvened.) no the conversation with the rural policeman PRESIDENT: The court will come to order.

Now I believe you CROSS EXAMINATION, continued a former judge, is QUESTIONS BY CAPTAIN VANCE:

Q Now this flyer was in your office. I am talking about the 15th of February, 1945. Now this he may brought in with a parachute, a map, a knife, a rubber hose and a few other small things, is that correct? or of the word lamp. What I said was that the rural police brought these things but at the same time that they did the flyer and that the original impression was that they belonged to him.

Q Well what changed your impression and made you think these things didn't belong to the flyer, a court of some kind?

A Because I asked him about the 's office in Duesseldorf, but I Q Well he refused to answer your questions didn't he? the German legal sys A No, he did answer these questions is not my any means with the exc Q Why what did you ask him? What did he tell you? l work.

A I showed him these things and motioned to him and said to him, "What is yours?" and he answered in the negative.

Q What else did you talk about with the flyer?

A As I said, I was trying to get some data concerning his personal I asked more questions about his family but he didn't answer those--just like the questions about the medicine and uniform.

Q Did you talk about anything else with this flyer? ever, as a (Hollenbrotherscross) judge and the jury and pronounced him guilty, didn't you?

(Hollenbrotherscross)

A That is not right.

A Well, just like I described already, all the comrades tried to talk
Q Didn't you say you yourself branded him as a "terror flyer"?
to him and he understood us all right.
A [illegible] used this term in my statements here, but this term is based on
Q Based on this conversation you had with this flyer you came to the
the determinations made by the police who were eye witnesses, and it is further
conclusion that he was a "terror flyer", is that right?
based on the fact that this flyer did not deny firing upon the civilian
A Not purely because of that conversation, but this, in conjunction
population.
with the report from the rural police and the conversation with the rural
Q And you gave him a trial yourself and sentenced him to death, didn't
policeman who confirmed that.
you?

Q Now I believe you had been a former lawyer and a former judge, is
MR. NATHAN: I object to that. Those are not the facts.
that right?
PRESIDENT: Objection overruled.

A That is not true.
A No. In the first place I didn't have any authority to do so. I
Q Tell me about your legal career again. That is what I understand--
had no authority to determine what was to happen to that man and I had to
DR. AHRENS: Objection. I object to the translation of the word
leave this decision up to the unit commander.
lawyer. It is translated here as Rechtsanwalt, but we usually understand it
Q After you finished your interrogation didn't you go to Major
as jurist.
Dirks and say this man strafed people over in Worms.

Q Did you study law?
A Those were not the only words contained in my report to Major
A Yes.
Dirks.

Q Did you work around a court of some kind?
Did you tell Major Dirks that, yes or no?
A I was trained in the public prosecutor's office in Duesseldorf, but
CAPTAIN YAROS: I am going to ask the court to have this man
I was never permitted to work independently as a judge. Under the German legal
answer my question.
system a person who completed his legal studies is not by any means with the
PRESIDENT: The witness will answer the question.
authority to take a job as a judge or do any public legal work.
MR. NATHAN: If it please the court, the defense objects to the

Q You said you worked in the prosecutor's office, but you were never
question on the ground that it is a trick question.
permitted to determine a case, is that right?
PRESIDENT: Objection overruled.

A No, never.
CAPTAIN YAROS: If it please the court, I understood you to instruct
Q When you had this American flyer, that was the first time you ever
the witness to answer my question. It was a yes or no answer. I don't know
had an opportunity to pass judgement on a man, was it?
what he is talking about, but it certainly is not yes or no.

A I did not pass judgement over that man.
DR. AHRENS: Just a second please. What was the question?

Q On that occasion you acted as investigator, as prosecutor, as a
(Thereupon the reporter repeated the last two questions.)
defense counsel, the judge and the jury and pronounced him guilty, didn't
PRESIDENT: The witness is to go ahead and answer the question.
you?
(Hellenbrock) Well, sir, he did answer the question and that has now

A That is not right.

Q Didn't you say you yourself branded him as a "terror flyer"?

A I used this term in my statements here, but this term is based on the determinations made by the police who were eye witnesses, and it is further based on the fact that this flyer did not deny firing upon the civilian population.

Q Well you gave him a trial yourself and sentenced him to death, didn't you?

MR. RACHAEL: I object to that. These are not the facts.

PRESIDENT: Objection overruled.

A No. In the first place I didn't have any authority to do so. I had no authority to determine what was to happen to that man and I had to leave this decision up to the unit commander.

Q After you finished your interrogation didn't you go to Major Cirko and say this man strafed people over in Worms.

A These were not the only words contained in my report to Major Cirko.

Q Did you tell Major Cirko that, yes or no?

CAPTAIN VANCE: I am going to ask the court to have this man answer my question.

PRESIDENT: The witness will answer the question.

Q Well, whatever you did tell Major Cirko you determined that yourself from your interrogation and investigation, didn't you?

MR. RACHAEL: If it please the court, the defense objects to the question on the ground that it is a trick question.

PRESIDENT: Objection overruled.

CAPTAIN VANCE: If it please the court, I understood you to instruct the witness to answer my question. It was a yes or no answer. I don't know what he is talking about, but it certainly is not yes or no.

DEFENSE COUNSEL: Just a second please. What was the question?

(Thereupon the reporter repeated the last two questions.)

PRESIDENT: Tell the witness to go ahead and answer the question.

INTERPRETER: Well, sir, he did answer the question and that has not

been translated yet.

DEFENSE COUNSEL: I pray the court's judgment until the answer is translated. I would like to submit that before the court can determine whether the question has been answered properly or not that the answer should be translated.

PRESIDENT: He answered once and it was translated and then he answered the second time after we told him to answer yes or no.

DEFENSE COUNSEL: The answer may contain the effect of a yes or no answer, may it please the court.

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: I would like the record to indicate that the witness answered and the answer has not been translated into the record.

THE WITNESS: No, I didn't say that with these words alone.

QUESTIONS BY CAPTAIN VANOS:

Q I didn't ask you anything about anything else. I want to know if you told him that or didn't tell him that?

DEFENSE COUNSEL: I think that that is an adequate answer. I ask the court's judgment.

PRESIDENT: The court considers that an answer.

Q Well, whatever you did tell Major Girke you determined that yourself from your interrogation and investigation, didn't you?

A The result of my investigation stems from the rural police report from the confirmation received from the rural police employee and from my questioning of the flyer.

Q After this, when you went to Major Girke, tell the court what you told Major Girke.

A I reported to Major Girke that this flyer we had downstairs was not a sabotage agent or a spy, but rather that the investigation had disclosed and the report that was turned in jointly with the flyer had disclosed that this was -----

a case of a low flying light bomber flyer who had been shot down, parachuted [illegible] I used the expression "Jabo". That was common usage with us and that this flyer who had been shot down from this light bomber had fired upon the civilian population before being shot down.

Q Now you had determined those facts yourself before you reported at that to Major Dirke, didn't you?

A I couldn't make personally sure that this man had strafed somebody. To determine that I had to rely on the report and upon the testimony of the rural police official. [illegible] flyer to [illegible] for special treatment [illegible]

Q This flyer came from Worms, didn't he?

A Not from the city of Worms or else he wouldn't have been brought in by the rural police, from the area around Worms.

Q What is the distance from Worms to Bensheim?

A I can't say exactly.

Q Would you say it is two hundred kilometers or more or less?

A Well, if I am not mistaken, it is a 45 minute ride at a normal speed in a car.

Q Why would they bring this flyer all the way from Worms to Dirke's outfit?

A I don't know.

Q It would have been easier to shoot him over in Worms wouldn't it?

A Well the rural police probably acted in accordance with their orders to turn single parachuted flyers over to the security police and furthermore this flyer had put up some stiff resistance when being captured so there might have been a chance of the police official's not being sure of themselves.

Q You were familiar with the orders that the rural police should turn over all the flyers to the Gestapo, weren't you?

(Hellenbroich-cross)

A I know that some orders existed to the effect that single parachuted flyers would be turned over to the Security Police.

Q That order was widely known among all police forces, wasn't it?

A That had been published.

Q And full descriptions given over all the Rhein-Weimark area, that is correct, isn't it?

A I don't know that because I didn't do it.

Q So those Rural policemen were just following their orders and instructions by bringing the flyer to Gestapo Headquarters for special treatment weren't they?

A They turned these parachutists over to the security police in accordance with their orders.

A I don't think that these men knew that this man had to be killed by us. I'd be doing an injustice to this official if I accused him of that.

Q Perhaps you do not know what he knew, so I will ask you what you know. You knew that terrors delivered to the Gestapo was to be killed, did you not?

A I knew the order given, told me by my superior, Major Hirke, which he had received from his superior, Colonel Brandis, to the effect that fliers were to be shot.

THE PRESIDENT: I obey the court's judgment. He said terror fliers.

THE INTERPRETER: Terror fliers were to be shot.

1899

DR. [illegible]: That is important.

BY DR. [illegible]:

Q Did you not also verbally hear of the fact that some [illegible]

A That wasn't an order of such a definite nature.

(Adjournment - Recess)

Tabs 205 - 20.
[illegible]

Q Did you bring any witnesses over from the Worms post area to tell you what happened over there in regard to this flyer? [illegible]

A No.

Q And you did not go over to Worms to look into it and to try to get up any witnesses and see what they had to say about it? [illegible]

A No, because I have been able to rely on the police courts. Why should I have any doubts about that?

Q So under their orders they just brought this flyer to the Gestapo at Bensheim to have him killed; that is right, is it not? [illegible]

A I don't think that these men knew that this man had to be killed by us. I'd be doing an injustice to this official if I accused him of that. [illegible]

Q Perhaps you do not know what he knew, so I will ask you what you knew: You knew that everyone delivered to the Gestapo was to be killed, did you not?

A I knew the order given, told me by my superior, Major Girke, which he had received from his superior, Colonel Trumpfer, to the effect that fliers were to be shot.

DEFENSE COUNSEL: I pray the court's judgment. He said terror fliers.

THE INTERPRETER: Terror fliers were to be shot.

DEFENSE COUNSEL: That is important.

QUESTIONS BY CAPTAIN VANCE:

Q And you had also personally been given that same message by Colonel Scmamm when you were up in Wiesbaden?

A That wasn't an order of such a definite nature.

(Hellenbroich - Cross)

T Sake 203 - 50
2-20-47;

This order issued by Colonel Trummler was the order to shoot which came down from higher up, was a joint statement.

Q Let us back up. I know you got it from Trummler, but didn't Scmann give you the same order? Ask if that is an exhibit. Scmann had given us a similar order, with different words, however.

A Yes. It is 100.

Q Tell us as best you can remember what Scmann told you about shooting these terror fliegers. Do you want to see your statement before you answer that?

FLIERS

DEFENSE COUNSEL: Let him answer from memory. I pray the court's judgment, what that in this statement, as well. As supplemental to this non-interference order, the Scmann, as I have already stated, said, "I don't want to find out or I don't want to hear of any Allied fliers being turned over to the air corps, nor do I want to hear anything about anybody getting so soft he turns his weapon over to somebody else to shoot him. We will always have an opportunity on the shipment." That was substantially what was said.

Q Let me ask you if you did not say this, too: "The terror fliers turned over to the security police naturally were to be shot." I would like to explain the following:

A I don't remember these words, and he didn't say that. The were made verbally, and I had told it to interrogation officers.

Q Do you remember that being contained in this statement of yours made on 30 August 1946?

A To the best of my recollection I mentioned and talked about this supplement in my statement only in the same manner in which I have just done now.

Q To refresh your memory I want you to look at

Prosecution Exhibit 106. This was signed when you and Michael Radf were jointly together and made a joint statement. (Handing document to witness.)

DEFENSE COUNSEL: I would like to ask if that is an exhibit.

CAPTAIN VANCE: Yes. It is 106.

QUESTIONS BY CAPTAIN VANCE:

Q Do you know where that is?

A I would like to read it in German.

Q All right.

A I'd like to say to that that in this statement, as well as in the other statement, I had some trouble with the interrogating officer concerning the terminology.

Q That statement you hold is written in the German language, is it not?

DEFENSE COUNSEL: I pray the court's judgment. I do not think he was finished with the answer, and I think he should be allowed to finish what he started out to say.

A Perhaps I may explain this.

PRESIDENT: Proceed.

A (continuing) I would like to explain the following: As you can see already from the typed record, several dis- cussions were made repeatedly, and I had told the interrogating officer that according to what I remembered about the wording of the non-interference order and the supplement thereto that I could not state that he had given an order to shoot. By that time he had already gotten started writing down that this was a shooting order, and that was X-d out. And then I said we'd have to put the explanation in, and he said that

is all the same anyway, and then the text was put in that "terror fliers turned over to the SIPO were, of course, to be shot." And that we did have a disagreement will certainly be confirmed by the comrade Raaf, who was present there, because at the second statement concerning the issuance of orders I specifically requested the substance of the sentences to be recorded, which actually did take place.

Q This statement we have been talking about--Prosecution Exhibit 106--is written in the German language, is it not?

A Yes.

Q And you read and understand the German language?

A Yes.

Q And did you read it over before you signed it?

A Yes.

Q And did you swear to the truth of it at the time you signed it?

A No, afterwards. No, it was sworn afterwards. Can I say something to that? But even in this case I asked the interrogating officer that this be taken down in the manner I wanted to, and in the second statement that did in fact take place.

Q Why did you hold this investigation on the 15th of February, 1945?

A As I have already said in the beginning, I made this investigation in order to clear up a question as to whether we were dealing with a sabotage agent or with a flyer.

Q What difference did it make? You knew he had to be executed, did you not?

A That makes a lot of difference. If this had been a spy or a sabotage agent I would have had to investigate this man--evaluate this man--that is, an attempt would have to be made to find out from this man what his missions were, who his superiors were, and particularly in order to prevent further attacks.

FLIER ?

Q So the easiest way out was to call him a terror flieger and have him shot; is that right?

A I can't give a proper answer to this question, because I am on the witness stand.

Q When you went to Girke, Girke gave the order that the flyer was to be shot; is that correct?

A When I went up to Major Girke the second time and asked him what was to be done with that flyer, Major Girke told me that this flyer was to be shot in accordance with orders, and that order I transmitted.

Q Girke did not make an investigation of any kind, did he?

A When I reported to him the first time he told me, "I will have a look at this man myself."

PRESIDENT: Court will recess until tomorrow morning at 9 o'clock.

(Whereupon at 1645 hours the court adjourned until 21 February 1947 at 0900 hours.)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

(22)

Pages 1405 - 1476

Case No. Superior Orders

Prosecutor Lt Col Dwinell

*~~Summary~~ ~~Military Court~~ Military Court.

Defence Counsel Lt Col Berman

*General

Place DACHAU, GERMANY

Interpreter Rudolf Mathensen
Herbert B Rosenstock

Date 21 February 194 7

Reporter Patricia Stewart, Peter L DiCurt, Imogene Butler, Paula Silverman, Evelyn Cohen, Irving J Hayett

~~Members of Court~~

WITNESSES:

HEINZ HELLENBROICH

FRITZ GIRKE

WILHELM HUCKO

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence

- Imprisonment
  - Term .....
  - Beginning 194
- Fine
  - Amount .....
  - To be paid before 194
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES Versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

21 FEBRUARY 1947 PAGES 1403 - 1478

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	COURT
HEINZ HELLENBROICH		1403	1429		
WILHELM BURG	1440				
FRITZ SIRKS	1446	1462	1474	1476	1477

EXHIBITS

No.	Description	Marked	Received In Evidence
D-18	Statement of Fritz Sirks	1445	

Ta 20k-po-20-2/21-2

I knew an additional crew, which [illegible] Camp Dachau, Germany at that time.

21 February 1947

I am HEINRICH HELLEBRANDT, a [illegible] on direct examination in this [illegible]

(Whereupon the court reconvened at 0900 hours.) [illegible]

PRESIDENT: Court will come to order. [illegible]

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent sick; all of the accused, except the accused Hoehler, No. 5, who is absent sick, the accused Hast, No. 14, Oese, No. 15 and Mishaly, No. 16, who are absent conferring with counsel; the reporter and interpreter are present. [illegible] as before.

MR. MACHAN: If the court please, I believe at the close of the session yesterday the defendant Hellenbroich was being cross-examined.

HEINZ HELLENBROICH, an accused, voluntarily resumed the stand in his own behalf and having been previously duly sworn, testified further through an interpreter as follows: [illegible] been placed on the oath of [illegible]

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q [illegible] You are reminded you are still under oath. [illegible] that right?

THE WITNESS: Yes. [illegible] soldiers at your headquarters.

QUESTIONS BY CAPTAIN VANCE:

Q We are still talking about the February 15th incident. After you completed your investigation and reported to Major Girke and you talked about the disposition of the flier and Major Girke ordered the flier to be executed, at that time you had in mind the order that had been received from Trunmler, did you?

A I knew that there was an order from higher authority, from to Dr. Trunmler. [illegible] Americans there," and that it was [illegible] because

Q At that time, you knew that there had been orders from higher authority, from Colonel Rauxloh, didn't you? [illegible] there was [illegible]

(HELLENBROICH-Cross) 1498

A I know an additional order which Colonel Sensen had given
[illegible] at that time.

[illegible]

Q I believe that you were asked on direct examination if this
[illegible] said no.
flier was mistreated in any manner, and you stated that he was not?
[illegible]

A No, he was not mistreated. He was not touched.
[illegible]

CAPTAIN VANCE: May it please the court, let the record show
[illegible] No. Before [illegible] this one flier, [illegible] middle
that the accused Koehler, wearing Plasard No. 5, has resumed his seat
[illegible] Where [illegible]
in the dock.

[illegible]

QUESTIONS BY CAPTAIN VANCE:

[illegible] In our headquarters we had no other [illegible] than or American
Q Do you consider killing a man a mistreatment?
soldiers at all, and I [illegible]

A The flier was executed, not mistreated, and this execution
[illegible] You seem to [illegible] that the three Americans that were
took place on orders.
executed by [illegible] and that were the only three soldiers that you [illegible]

Q So you don't consider that a mistreatment?
[illegible] I pray the court's judgment. He didn't say

A Just an execution of an order. If I mistreat somebody, I have
anything of the kind.
no right to do so.

[illegible] Objection overruled.

Q Now, we will pass on to Charge I, the incident that took place
[illegible]
on the 24th of March, 1945.

[illegible]

A Yes.

[illegible]

Q I believe you have testified that you went to your offices on
[illegible]
that night and that you found two American soldiers at your headquarters,
[illegible]
is that correct?
[illegible]

A There were two fliers in the guardroom.
[illegible] tell this court whether or not [illegible] any American soldiers

Q Do you know the names of either of these two Americans?
[illegible] at that time.

A No. As I said before, I read them only in the charge sheet.

[illegible]

Q Do you know if those are their names or not?
[illegible]

A I don't know that.
[illegible]

Q I believe you said on direct examination, "When I returned to
[illegible]
the office there were two Americans there," and that "I was annoyed because
[illegible]
they had been accepted," is that correct?
[illegible]

A I wanted to say with that that our headquarters was ready to
[illegible]

move already and we really were not able to do any work at that time any more.

Q You did say you were annoyed about it?

A I said so.

Q At the time you saw these two Americans in your office, you had seen many American fliers prior to that time, hadn't you?

A No. Before, I had seen only this one flier, from the middle of February. Where should I get the opportunity?

Q At your office.

A In our headquarters, we had no other American fliers or American soldiers at all, and I didn't know their uniforms.

Q You mean to tell the court that the three Americans that were executed by Stattmann and Rauf were the only three soldiers that you saw?

DEFENSE COUNSEL: I pray the court's judgment. He didn't say anything of the kind.

PRESIDENT: Objection overruled.

QUESTIONS BY CAPTAIN VANCE:

A Yes.

Q Were you in your headquarters on September 12 at Darmstadt when it was bombed?

A Yes, I was at Darmstadt. I was there during the night of this bombardment.

Q Tell this court whether or not there were any American soldiers in your headquarters at that time.

A Now

Q If you had never seen any American soldiers until the time you executed this one in February, 1945, how did you know what an American flier was dressed in?

A I didn't say that I knew how an American flier is dressed. These men were delivered to our headquarters as fliers, and the ones who delivered them to us, they must have known how they came down.

Q You say that a total of only three American soldiers were brought to your headquarters?

A Yes.

Q And all three of those Americans, every one that was ever brought to your headquarters, met his death at your hands, Girke's hands, Stattmann and Raaf, is that correct?

A I didn't execute anyone. I only passed on the order for execution which was given to me.

Q Now, these two soldiers that were there on the 24th of March were wearing steel helmets with camouflage nets on them, weren't they?

A No.

Q And they had belts around their waists with a canteen hanging on it for the purpose of carrying water, didn't they?

A No. I said before, when I was shown the pictures, that I hadn't seen that and they were not carrying that.

Q And they had leather scabbards for the purpose of carrying a long knife in, didn't they?

A No.

Q They had leather holsters attached to their belts to carry a pistol in, didn't they?

A No.

Q One was an officer and the other one was an ordinary soldier, wasn't he?

A I don't know that. I couldn't distinguish that. I didn't see any insignia.

Q Didn't one of these soldiers wore an insignia on his collar that looked like a tank with a cannon protruding from the front end of the tank?

A No, certainly not.

Q You are sure of that?

A Yes, I would have noticed that.

Q Was Marian Kaminski in the headquarters on that night?

A Normally, he should have been there. He must have been there.

Q You heard what he said about the way these Americans were dressed, didn't you? [illegible] were taken prisoner by a unit [illegible]

A Yes. [illegible] had laid down their arms.

Q Where did these two American soldiers come from? By that, I mean where were they captured? [illegible] It is possible that two were [illegible]

A As far as I can remember, according to the report of the Air Force, they were captured in the area of Weisskirch-Hoppenlaith. [illegible] not [illegible]

Q That is the approximate distance from that place to Bamberg?

A I would figure 80 kilometers. [illegible] were delivered to us, they [illegible]

Q When you saw the two American soldiers, were they wearing some type of the American uniform? [illegible] Air Force did not give them the position [illegible]

A I assumed, since they were Americans, that they were wearing American uniforms. That must have been checked before. [illegible] escorted, the [illegible]

Q When you saw them, were they armed?

A No. [illegible] Air Force and no orders to do so. The Air Force [illegible]

Q When you saw them, were they under guard?

A Yes. [illegible] delivered them [illegible] as an agency to do the dirty work, [illegible]

Q How can you say that they were not prisoners of war?

A They were under guard by men at our guard room, and they were delivered to the headquarters of our unit because the Air Force had not transferred them in a position of prisoners of war, and they were not supposed to be given any mercy. [illegible] whether I can [illegible]

Q At the time, you were in the German Army, weren't you?

A Yes. As part of the Waffen SS, we were part of the German Wehrmacht.

Q You know what a prisoner of war is, don't you? [illegible] these men [illegible]

A Yes. [illegible] of war and that no mercy could be [illegible]

Q Tell the court what your idea of a prisoner of war is.

A A prisoner of war is an enemy, a soldier of the fighting unit, who

has surrendered to the enemy.

Q Were these soldiers members of an enemy force who had surrendered to the Germans?

A. They were taken prisoner by a unit.

Q And they had laid down their arms?

A I don't know whether their weapons had been taken away, or whether they had laid them down themselves. It is possible that they were overpowered.

Q Tell this court, were they prisoners of war or were they not prisoners of war?

A When, at this time, the Americans were delivered to us, they were not prisoners of war. Otherwise, they would have been treated as such by the Air Force, but the Air Force did not give them the position as prisoners of war because they didn't give them any mercy, any pardon.

Q Now, if the Air Force wanted these two Americans executed, why didn't they do it?

A Because the Air Force had no orders to do so. The Air Force knew that the Security Police had orders.

Q So they delivered them to you as an agency to do the dirty work, is that right?

A The Air Force transferred these men to us because the Air Force knew that the Security Police had orders to execute terror fliers, terror fliers who were not put in the position of prisoners of war.

Q Did you check into the matter to investigate whether these men were terror fliers or not?

A I read carefully the report of the Air Force which came to us together with these two men, and this report had expressed why these men were not put in a position as prisoners of war and that no mercy could be shown to them.

Q Were these men given any kind of a trial?

A These men were interrogated in an orderly manner by a counter-espionage or legal officer of the Air Force, and therefore the facts were absolutely clear.

Q How do you know they were interrogated in an orderly manner? Were you there?

A I was not present myself, but I know that the legal officer of the Air Force, if he interrogated them, interrogated them in a properly orderly manner. I had no reason to doubt that.

Q Did you interrogate them?

A No. I only asked the Americans why they had acted in such a manner, and didn't get any reply from them.

Q After you finished this interrogation, you went to see Major Girke?

A Then I took the report and went upstairs to SS Major Girke, showed him the file, and reported to him the entire incident.

Q What did you say to Girke?

A I told Girke, "Downstairs we received two fliers delivered to us with this report from the Air Force. They are terror fliers." That was the exact wording as used in the report of the Air Force for fliers who had strafed civilian population in low-flying attacks. And I told him all the facts as they came out from this report. He looked through the report, and when I asked him what has to be done now, he said that these fliers have to be shot.

Q If you hadn't gone to see Girke on this occasion to make this report, then there would have been no occasion for Girke ordering the execution, would there?

A Yes, and Girke wouldn't have known about this incident, about this case.

Q That is right, and the fliers would not have been executed.

A I had to report this incident to my superior officer.

Q But if you hadn't done it, then the fliers' lives would have been saved, is that correct?

DEFENSE COUNSEL: I object to that question. It is a hypothetical question. [illegible] That is not in accordance with [illegible]

PRESIDENT: Objection overruled.

QUESTIONS BY CAPTAIN VANCE: [illegible]

A Yes, but then somehow a decision would have to be made in regard to them anyway. I couldn't have sent them out in the street. [illegible]

Q Why not? [illegible]

A You can't expect this from [illegible] fliers.

Q How far were the Americans from Bensheim then? [illegible] as an officer to [illegible]

A The Americans were six to ten kilometers, or even less, from Bensheim. Every hour, you could expect that they would move in.

Q Now, when you went up to report the fliers' presence to Girke, you had in mind at that time the orders that had been issued by Trumpler and by Sossna, didn't you? [illegible] they should be buried in a properly manner.

A I knew the orders which had been issued by higher authority in regard to the treatment of terror fliers. [illegible] That was [illegible] talk about the

Q So after you and Girke had the conference, you went back and told the two Americans that you were going to have to have them shot, par is that right?

A The order which was given to me, I transmitted to my comrades Ba Raaf and Stattman. [illegible]

Q I am talking about what you told the Americans. Did you tell the Americans they were going to be executed?

A After I had passed on the order to my two comrades, I told the two Americans that in view of their actions, they could not expect any mercy from the Germans, and that they could not be treated as soldiers, and that based on orders from higher authority which I had received, they had to be executed. I saw this to be my duty as an officer as well as a human being.

Q Why did you want to tell these Americans they were going to be killed -- to torture them?

A I explained already before that I saw this to be my duty. It was far from me to torture these men. That is not in accordance with my character.

Q When you ordered the men, I mean, Girke ordered the men in February to be executed, you didn't tell him, did you?

A I had no opportunity at that time, because the last orders were given by SS Major Girke and the men left immediately afterwards. This order was not given in the presence of the fliers.

Q In February, you didn't feel it was your duty as an officer to notify that man he was going to be executed?

A I had no opportunity to do so.

Q After Rauf and Stattmann killed these two Americans that night in the back yard of the Gestapo, you had them buried, is that correct?

A Yes. I said that they should be buried in a properly manner.

Q And did you have those graves marked?

A I only said that they should be buried. That was some talk about that.

Q What did you mean when you said you had them buried in a proper manner?

A That the men shouldn't be left lying there, that they should be put in a proper grave.

Q You told them to dig a hole and bury those bodies and get out quick, didn't you?

A There was no talk at all about a hole.

Q You were hoping that those graves would never be discovered, weren't you?

A No, I didn't think at all about that and I had no reason to do so. If our headquarters would have intended to cover up anything, we could have

that the fliers somewhere else and could have buried them there. They wouldn't have buried them in the back yard of our headquarters. [illegible]

Q Why didn't you bury them in a cemetery and have the graves marked?

A On this evening, there was no time left to do any such furthermore, I like you to take into consideration that at that hour, we really were in the front line, and the administration of the city, as for instance then cemetery administration and anything like that, didn't work any more.

Q I believe you testified that you had no doubt about the legality of the orders to kill the fliers?

A Yes.

Q And you studied law in school?

A Yes.

Q You are an educated man?

A I think from my parents' home I got a good education, yes.

Q Tell this court how you feel personally , or how you did feel personally, down in your own heart, at that time about these orders.

A I said before that in my heart and in my conscience I could not consider this order as an injustice. First of all, this order came down from the highest authority, and I had to assume that up there in the Reichs government and at the various departments where the orders came from, especially at the office of the Reichsfuehrer SS and the Chief of the German Police, who was in charge of all prisoners of war, they must have found out and clarified whether it was a violation of the Geneva Convention. And furthermore, if I may say so, in addition to the impressions which we received every day in the area of highest emergency where we were located, and furthermore, the knowledge we received, the knowledge of the fact that based on the German publications about the air terror, The American-English High Command in a publication to the German High Command had notified same that it was not at all in accordance with their will and intentions that American

and English fliers attack German civilians, and that no orders had been issued to this effect, and that those fliers who did so in spite of it were doing wrong and would not be protected and covered by the American Government. And if then we received an order to execute terror fliers — and daily and hourly we had to see how, in spite of the orders of their High Command, the American fliers strafed the civilian population — then I certainly couldn't have the inner feeling that I was doing wrong if I passed on an order which was given to me.

Q Will you please read the question?

(Question was read by the reporter.)

A That it was a legal order I had to assume because it came to me from higher headquarters and under the conditions which I just described it had to be legal. I could not check the legality of the order.

Q I did not ask you anything about the legality of this order. Did you understand the question?

A You asked me whether I considered it right or just if a GAF were executed under these conditions.

Q I asked you whether you considered it moral.

A I did not have to decide that because I had to carry out an order. I think it is the case in any other army of the world, but it does not matter whether the man who carries the order out was thinking about the morality of the order.

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Q Do you wish to answer this question? If you do not wish to answer it, it will be all right if you tell me so.

A I cannot answer this question with yes or no.

Q All right. I instruct you until an Air Force Tribunal has decided otherwise to answer this question.

(Question repeated)

Q Did you consider a order which required the taking of human life,
I don't think I said [illegible] I don't think I said so.
not in combat, to be moral?
I maintained that the order came from higher headquarters and that I had to
A Outside the military life —
assume that [illegible] regiment headquarters is correct to prisoners
MR. RACHAEL: May it please the Court, I move to strike out the
of war had known [illegible] matter. [illegible] not present and I did not receive
answer and object to the question on the ground that the Prosecution is
[illegible] Himmler personally but that is my inner conviction.
taking into consideration as evidence before this Court the character of the
Is it also your conviction that Reichsführer was in accord with
accused without the accused first having brought his character into issue.
the treatment to be given allied flyers.
PRESIDENT: Objection overruled.
A Certainly.
CAPTAIN VANCE: Will you please read the question?
Q And [illegible] also?
(Whereupon the question was read by the reporter.)
A [illegible] about the matter, certainly.
ACCUSED HELLENBROICH: That it was a legal order I had to assume
Q And [illegible]?
because it came to me from higher headquarters and under the conditions which
A Yes.
I just described it had to be legal. I could not doubt the legality of the
Q And [illegible] also?
order.
A [illegible] certainly.
QUESTIONS BY CAPTAIN VANCE:
Q And [illegible]?
Q I did not ask you anything about the legality of this order. Did you
A Yes.
understand the question?
Q And yourself?
A You asked me whether I considered it right and just if a man were
A Yes.
executed under these conditions.
Q And [illegible]?
Q I asked you whether you considered it moral.
A Yes.
A I did not have to think about that because I had to carry out an
Q And [illegible]?
order. I think it is the same in any other army of the world, that it does
A Yes.
not matter whether the man who carried the order out was thinking about the
Q So there is no dilemma, everybody was in accord and in every
morality of the order.
as to what should be done with captured flyers?
Q Do you want to answer this question? If you do not want to answer
A In view of the orders which were [illegible] was clear what was to be
it I will withdraw it and not force you to do so.
done with flyers and you cannot talk here about harmony of a certain
A I cannot answer this question with yes or no.
[illegible] people.
Q All right. I believe you said on direct examination that Himmler
A As [illegible] in the [illegible] you attended a meeting in Hirschberg
was in accord with the treatment to be given flyers?
at which the treatment was discussed?

(Hellenbreich-cross)
[illegible]-cross)

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I was present when Obersturmbannführer Brandt gave out orders but that A: I don't think I said that Himmler -- I don't think I said so. I explained that the order came from higher headquarters and that I had to assume that Himmler who was the highest headquarters in regard to prisoners of war had investigated this matter. I was not present and I did not receive any orders from Himmler personally but that is my inner conviction.

Q Is it also your conviction that Kaltenbrunner was in accord with the treatment to be given Allied flyers?

A: Certainly. Kaltenbrunner would do anything which would be necessary and as far Q: And Streep also? as I know I that is what I am aware of there. At no time A: That Streep knew about the matter, certainly, to the effect to kill anyone Q: And Trumler? whom he knew I part through life correctly and I was not Lee. advised.

Q: And Sussmann also? charge II and do you understand it?

A: Sussmann, certainly, charge in regard to membership to the organization and Q was And Siebert? arrested in the Nuernberg Trial.

A: Yes, the Court now you read about Charge II?

Q: And yourself? charge I will not be able to defend myself especially with A: Yes, only that I was a member of the Gestapo as an official. and Q: And Kaltenbrunner? Certainly not I would not get out of the Gestapo with A: Yes, enough, I was active, on several occasions, for front line service and Q: And Rauff? the war. I was not permitted to take front line duty but that Yes, was so fatal.

Q: So there did not exist any disparity, everybody was in accord and in harmony as to what should be done with captured flyers? Prior to a number of the

A: In view of the orders which were given it was clear what had to be done with flyers and you cannot talk there about harmony of a certain number of people. I was only with them.

Q: At length, on one occasion you attended a meeting in Hechingen at which the treatment was discussed, were to act illegally or unlawfully and I did not understand.

(Hellenbreich-cross)
(Hellenbrunner-cross)

A I was present at a meeting when Colonel Semann gave out orders but there can be no talk of discussion there. Orders were published and acknowledged.

Q I believe you told your lawyer that you had read and understood thoroughly Charge I against you?

A Yes.

Q You answered that you did not feel that you had done anything to be guilty of Charge I?

A I have not done anything which would amount to conspiracy and as far as I can understand Charge I that is what I am accused of there. At no time was I with anybody in a common plan or conspiracy to the effect to kill people in an illegal manner. Up to now I went through life correctly and I was never punished.

Q Have you read Charge II and do you understand it?

A Yes. That is the charge in regard to membership to the organization which was declared criminal in the Nuernberg Trial.

Q Tell the Court how you feel about Charge II?

A Against this charge I will not be able to defend myself especially since I cannot deny that I was a member of the Gestapo as an official. I was transferred to the Gestapo and I could not get out of the Gestapo anymore. Although, I was called, on several occasions, for front line service at the beginning of the war. I was not permitted to take front line duty but that is not my fault.

Q Do you understand Charge VI?

A Yes. In Charge VI I am accused of murder of a member of the Army of the United States. I never murdered an American.

Q What about Charge I?

A There I can say only the same.

Q What you mean is that you did not murder an American?

A No. If I murder somebody I have to act illegaly or wrongfully and I did not act wrongfully.

(Hellenbreich-cross)

Q During the Prosecution's case you heard the testimony of American officers to the effect that they dug up two bodies in the back yard of the Gestapo?

A I can remember that.

Q And you remember the testimony that there were pictures made of these two bodies that were taken there at the grave and which pictures have been introduced into evidence, do you not?

A Yes.

Q Do you remember the testimony that one of them was Lt. William H. Forman, Tank Destroyer, U.S. Army?

A I —

DEFENSE COUNSEL: I do not remember that there was any testimony about anyone to that effect.

PRESIDENT: Did you object to that question?

DEFENSE COUNSEL: Yes, sir. For the reason that I think cross examination can go far but not to the extent of stating evidence which was not introduced.

PRESIDENT: Will the Prosecution refresh the Court's memory about that matter being brought up before?

DEFENSE COUNSEL: It may have been some pictures, may it please the Court.

CAPTAIN VANCE: I will refresh the Court's memory. There was an AGO card of Lt. William H. Forman introduced into evidence showing that he was a Tank Destroyer. The witness testified that this AGO card came out of the pocket of one of the bodies that were dug up in the back yard of the Gestapo.

PRESIDENT: The objection is overruled. Will you read the question?

(Whereupon the question was read by the reporter.)

ACCUSED HELLENBROICH: No.

(Hellenbroich-cross)

QUESTIONS BY CAPTAIN VANCE:

Q Do you remember Kaminski's testimony to the effect that these two American soldiers were wearing steel helmets with camouflage nets?

A Kaminski said so.

Q That one of them was wearing an insignia that looked like a Panzer to him?

A I don't know that -- whether he said that.

Q Could you explain to this Court how the bodies of these two infantrymen got to the back yard of the Gestapo Headquarters?

A I have no explanation for that. I know that in the back yard these two Americans were buried, who were transferred to us from the Air Corps. I myself was not in the garden and for that reason I don't know that the men were buried on the spot "G" and "H" as shown on Exhibit E. Anyway the two men who were delivered to us had no insignia whatsoever, no knives, no pistols, no camouflage steel helmets, etc.

Q You heard Raif testify that he buried those two bodies at the places marked "G" and "H" on Prosecution Exhibit ?? did you not?

A Yes. He said so.

PRESIDENT: At this time the Court will recess for twenty minutes.

(Whereupon at 1000 hours the Court recessed.)

(Hellenbroich-cross)

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(Whereupon the court reconvened at 1048 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense except Dr. Trest who is absent sick; all the accused except the accused No. 14, 15 and 16 -- that is, Best, Goss and Michely, who are absent conferring with counsel; the reporter and interpreter, are present.

PRESIDENT: Let the record show that Colonel Flores has advised the president of the court that he has read all the testimony which transpired in court on Wednesday, February 19th on which day he was properly absent from the court.

DEFENSE COUNSEL: May it please the court, with the permission of the prosecution I have a matter I should like to present for the consideration of the court which it can decide at some recess before the day is over, but I think the court may want to think it over, so I should like to make it now.

At the rate this case is going we estimate that we will be through with the other two charges sometime Tuesday or Wednesday at the very latest. In our thinking in the past we had decided at the end of the direct evidence on Charge I that we would ask the court for a recess before presenting the general evidence which applies to all the charges and all the accused. Some indication of the nature of that evidence has come out in this talk of reprisals and legal defense, etc. Now, the presentation of that evidence can be put in haphazardly, without careful preparation, with the result it will try the patience of the court and will take a great deal of time, and from our point of view

we believe we will not get the effect we hope to get.

I am, therefore, asking for two days so that all of us might sit down and prepare this evidence in a coherent and orderly fashion and accomplish the purposes I have mentioned.

The result is different from our anticipation in one respect. We had hoped to be through in ten days and then ask for a recess for Monday or Tuesday. However, despite the fact we will not be through before Tuesday or Wednesday with these cases, I am going to ask for that recess for Monday and Tuesday just the same for this reason: We are going to have to have it. When the prosecution's case was first finished we asked for two weeks and urged on the court we needed that amount of time as a minimum. The court thought that eight days was sufficient. We went to trial at the end of eight days and tried to proceed as speedily as possible without any undue interruptions. But we find, as we anticipated, we have to have a minimum of two days and I hope the court will believe me that that is not a bargaining figure.

There are any number of witnesses, I don't know how many. As a matter of fact there must be two or three dozens who have to be examined and discarded. Questions have to be asked to get them off the stand as quickly as possible.

Now, as long as we are going to have that interruption anyway, assuming we get it in the future, I'd rather have it now so that when the case is over so far as the direct charge is concerned, we can proceed forth without any interruptions. It is going to save the government a great deal of money if we can, and I think the entire case will be

presented in a much more orderly fashion. We believe much more orderly and coherently from the point of view of an effective defense.

Now, I imagine and am taking it for granted that the prosecutor or part of them will object. I haven't asked them beyond telling them I was going to ask for this time.

PROSECUTION: May it please the court, the prosecution strenuously objects to any further delay. We should like to call the court's attention to the fact that before this trial began, the president of the court made a concession in that this court was not required to sit on Saturday which is the usual procedure in courts here in Dachau. The defense is represented by seven counsels and the court has made a further concession from time to time to allow this court and trial to be interrupted, almost daily, to permit the accused to leave the court and to confer with counsel and to allow the defense to leave the court at any time to prepare their defense. In the opinion of the prosecution, the defense has not proceeded expeditiously as it should have and there is only one delay that the prosecution will agree to and that is at the end of the defense case when we will agree to a reasonable delay to allow them to prepare final argument. We object to any other dealy at this time.

DEFENSE COUNSEL: I should just like to add one sentence. I know of no court which sits on Saturday and the concession, not to sit, was not due to a request of this court but a change in policy. I don't know whether it came from Dachau or higher than that.

PRESIDENT: The court will take this matter under advisement.

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HEINZ HELLENBROICH, an accused, having previously been sworn, resumed the stand and testified further through an interpreter as follows:

before new [illegible] court, as follows:

CROSS EXAMINATION (continued)

A [illegible] was [illegible] with me. [illegible] were shown,

QUESTIONS BY CAPTAIN VANCE:

to me and [illegible] asked, like all the other comrades, whether I knew

Q Now, Hauf being the man who buried these bodies, he is in

[illegible] would deny that,

a better position to testify where he buried them than anybody else,

[illegible] you hear Wolecki testify he saw [illegible] there

isn't he?

and that one was an American officer and one was an American soldier?

A I have to assume that,

A I think he testified so.

Q Do you deny to this court that the two bodies that were

[illegible]

exhumed three days after you left Neusheim were the bodies of the two Americans who had been executed on the 24th of March 1945?

A I don't know that.

Q Do you consider your defense case stronger if this court believes that the two Americans were fliers and not members of the ground forces?

DEFENSE COUNSEL: I beg the court's judgment.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q When did you first come to the conclusion that the two bodies of which pictures have been introduced in evidence, were not the bodies of the two fliers whom you interrogated in your office on the 24th of March 1945?

A I didn't draw any conclusions but in reply to the question of the defense counsel when he showed me the pictures of the bodies, I declared that I didn't know these two men.

(Hellenbroich-cross)

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Q Mr. , when you saw the two American soldiers, they were just a distance [illegible] very close now, is that correct?

Q You had discussed that proposition with defense counsel before you came into court, of course?

A Nothing was discussed with me. The pictures were shown to me and I was asked, like all the other comrades, whether I knew these men and I had to deny that.

Q Did you hear Kaminski testify he saw both of these soldiers and [illegible] and that one was an American officer and one was an American soldier?

A I think he testified so.

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Q [illegible] Statheson and that brought the soldiers out, isn't that right?

A I think that is not correct. Kaminski didn't say he was in the yard. He was in a joint next to the building.

Q That's right, but he was outside of the building?

A He said so.

Q And he testified here, Kaminski testified and identified the photograph of Lieutenant Forest?

A I don't know now.

Q You don't remember that?

A No.

Q Major Hollingsworth, from your testimony here do you mean to tell this Court here that in 1945 while you were acting under [illegible] while you were a [illegible] soldier?

A Yes, as very members of the armed forces.

Q I believe you testified to being a member of the Communist Party, is that right?

(Recess - [illegible])

Q Now, when you saw the two American soldiers, they were inside Gestapo headquarters in a very dark room, is that correct?

A The room was blacked out because there was an air landing alarm.

Q And it was dark in there, wasn't it?

A You can't say it was dark, the light was covered; it was kind of twilight.

Q And Kaminski was outside in the yard, is that right?

A I don't know that.

Q Well, you heard Kaminski testify he was outside in the yard and he heard that Stattmann and Knaf brought the soldiers out, isn't that right?

A I think this is not correct. Kaminski didn't say he was in the yard. He was at a point near the building.

Q That's right, but he was outside of the building?

A He said so.

Q And he testified here, Kaminski testified he identified the photograph of Lieutenant Forman?

A I don't know that.

Q You don't remember that?

A No.

Q Major Hallenbroich, from your testimony here do you mean to tell this court here that in 1945 while you were working under Major Girke you were a German soldier?

A Yes, we were members of the armed forces.

Q I believe you testified you were a member of the Wehrmacht, is that right?

A The name "Wehrmacht" is a name for all various groups of the Wehrmacht, [illegible] issued to

Q I understand that, and you say you were a member?

A Yes, [illegible] present.

Q Now, your witness brought here to testify named Martha Galbright, how long do you know her?

A Mrs. Galbright I knew since I started with Gestapo headquarters, Darmstadt. [illegible]

Q She worked longer at Gestapo headquarters than you did, didn't she? A I heard about it the next day, on the Major Kirke and

A She was working there before, yes. [illegible]

Q She was secretary of the commanding officer, wasn't she?

A She was the secretary of the man who was in charge of our headquarters, [illegible] only afterwards heard that Kirke

Q Did you hear her testify that you, Kirke, Stattmann and Reaf were all police officials and were not soldiers and not part of the Wehrmacht? [illegible]

A Yes, Mrs. Galbright must have been mistaken because she doesn't know the competions.

Q Is she a truthful woman? [illegible]

A Definitely. [illegible]

Q Now, you heard her also testify about certain pay books that were issued to certain members of the command shortly before you moved out of Darmstadt?

A Yes. I was wearing the uniform of the [illegible] police as prescribed

Q I believe she said one was issued to Kirke, one to Stattmann [illegible] and one to Reaf? [illegible]

A She said so.

Q Was one issued to you?

A No.

(Hollenbeck - Cross)

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[illegible] 4

Q And I believe she testified also at the same time these new identification pay books were issued, the SS insignia were issued to be placed on the lapel of the uniform, is that right?

A I don't know. She testified, but I wasn't present.

Q Now, did you ever talk to Cirke about these new pay books being issued?

A No, only heard there was talk about it.

Q Have you any explanation as to why these books were issued at this particular time when the Americans were closing in?

A I heard about it the next day, that SS Major Cirke had a special order from SS Colonel Trummler that he had to carry out. That had nothing to do with the fact the Americans were closing in on us.

Q What was the special mission?

A I don't know the special details, only afterward heard that Cirke had orders for Gestapo headquarters at Ludwigshaven or Mannheim [illegible] of [illegible]

Q Cirke didn't go along?

A Yes, Cirke was absent and it was even announced it was unknown when he would return and I think he returned after only twenty-four hours with his [illegible]

[illegible] Objection overruled.

Q Do you know who he took with him?

A I can't say that any more. There were approximately six or seven [illegible] seven men, as I heard in the testimony here. This might be correct.

Q Now, when you were working in Bensheim, did you wear the Waffen SS insignia?

[illegible] I object. The question is leading.

A No, I was wearing the uniform of the security police as prescribed.

Q Prior to the time Cirke and the other people left on this detail, did he wear the uniform of the Waffen SS? [illegible] negative answer?

A I don't know that subject. It is too broad. We don't [illegible]

Q And what about Reaf and Stattmann?

[illegible] I think he was [illegible] to [illegible]

just what he said. Q. By way of parenthesis, I understood the objection CAPTAIN VANCE: I object on the further grounds that this is repetition. To that, I am definitely examining this witness on behalf of a main PRESIDENT: Objection overruled. As an integral point of information. Yes, to somebody else or to several people, prior warning his. Q. Now, is it true that sometimes an order does say that someone or a group of people should do something, that sometimes an order says you shouldn't do something? Have you responded in an adverse way by [illegible] CAPTAIN VANCE: I object. The question is leading.

PRESIDENT: Objection sustained. As objected for that reason. Q. Are all orders usually issued in the positive sense or in the positive command, or are they sometimes in the negative sense? Witness shall [illegible] CAPTAIN VANCE: I object. It is too broad. We don't know whether it is an order from a general or a corporal. Have counsel here

DEFENSE COUNSEL: I think the witness should be the one to answer.

(Hallenbrook - Redirect)

A I can't recall [illegible] overruled.

Q After the 15th of March, did you see them wearing Waffen SS insignia? [illegible] they are directed a certain definite attitude.

A I can't remember that. [illegible] orders which had been testified about in CAPTAIN VANCE: Nothing further. security police to kill Allied personnel who were [illegible] REDIRECT EXAMINATION [illegible], were that order CROSS BY DEFENSE COUNSEL.

Q Herr Hohlenbreich, what is an order? [illegible] what does [illegible] highest authority, an order is a military directive which requires a certain action by the man to whom this directive is given.

Q In other words, if I understand you correctly, this is a the statement by someone exercising authority which tells someone else to do a certain thing? was told to me by SS Major Ochs, [illegible] wording of this CAPTAIN VANCE: I object. [illegible] testimony delivered to the DEFENSE COUNSEL: I pray the court that is a fair statement of

[illegible], PRESIDENT: Objection overruled. [illegible] question has been [illegible]. On any kind of orders issued by anybody, they expect from the one to whom they are directed a certain definite attitude. [illegible] lawyers in [illegible]. Well, let's come down to the orders which had been testified about in this case, which instructed the security police to kill Allied personnel who were captured in some circumstances, when was that order issued? [illegible] question.

A: The order that terror fliers should be shot came from highest authority of SS Colonel Brunner and was issued, as I was told by SS Major Girke, if I remember in September 1944. [illegible] may cross examine. Q: Now, as nearly as you can remember, state to the court the language of that order. [illegible] leading the witness in [illegible]. A: This order was told to me by SS Major Girke, the wording of this order was approximately as follows: "Terror fliers delivered to the security police have to be shot."

DEFENSE COUNSEL: By way of parentheses, I understood the objection to my former question was that it was leading and I would like to come back to that. I am definitely examining this witness on behalf of another accused, and I would like to have an an integral point of information, a ruling of the court as to my right to cross examine him. I would like to point out to the court that there is a difference of opinion. I am not examining Hellenbreich on his own behalf, I am representing Semann and his name has beenbrought in in an adverse way by this witness.

CAPTAIN VANCE: The prosecution has no objection for them to prove or show anything they see fit by their accused, but we do object to the defense counsel being in contest with and telling the witnesses what to say.

DEFENSE COUNSEL: I take exception. When these accused were

divided, we definitely kept away, but as long as the issue has been raised, I want to say I would never think of examining a witness of Mr. Rachmel's, for instance, but yesterday we had three German lawyers in there. I have not talked to Hellenbroich, haven't spoken a dozen words to him outside of today.

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

(Whereupon the court reconvened.)

PRESIDENT: Court will come to order. In view of the [illegible] conflicting interests of the accused, the defense counsel may cross examine an accused in the interest of another accused and in view of the joint interests in certain charges, leading the witness in [illegible] certain other instances will be permitted if it cannot be avoided. You may [illegible]

A I can't say that.

Q Did you say it?

A I don't know.

Q Well, do you know whether or not someone did know of this one particular order to the Security Police to kill?

A I don't know that. Colonel Rauer knew of this order which came from or was through Colonel Knoblen.

Q Now let us go back to this meeting that you attended in Rauer's office. That was an order that police would not interfere with anything the civilian authorities were to do with captured flyers, is that correct?

A Yes.

Q Is that what you had here, in September, an order to the Security Police and the order which Rauer had which came from higher authorities merely stated that the relations between the Luftwaffe and the civilian population, is that correct?

(Continued on next page)

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Q This order which you say came down around September first, the according to information that an order to the Nichorheim Police that the Security Police would kill "terror flyers" delivered to them, is that true?

A [illegible]

Q Then did Sumann leave Nienhagen? [illegible]

A I don't know exactly. [illegible]

Q What is your best recollection? [illegible] I haven't completed my question. I think it was the end of July, when the new interrogation order and the order to that this order to the Security Police to kill came down, sometime after Sumann left Nienhagen. That is true, isn't it?

A [illegible] I would like to say further that I have no objection [illegible] I believe you said, in response to a question from the prosecution that Sumann knew of this order to the Security Police to kill. Did you say that? [illegible] the ruling of the court stands.

A I can't say that. [illegible] Would you mind reading to the question again please.

Q Did you say it? [illegible] in the same way?

A [illegible] I don't know. [illegible] read the last question as follows:

Q Well, do you know whether or not Sumann did know of that one particular order to the Security Police to kill? [illegible] Security Police to kill and the order which Sumann read which came down from higher authorities merely stated that the police would not interfere with the civilian

A I don't know that. Colonel Sumann knew of this order which came down to us through Colonel Trumbore. [illegible] my question.

Q Now let us go back to this meeting that you attended in Sumann's office. That was an order that police would not interfere with anything the civilian population wanted to do with captured flyers, is that correct? [illegible] [illegible] came from higher authority was [illegible] out?

Q So that you had here, in September, an order to the Security Police to kill and the order which Sumann read which came down from higher authorities merely stated that the police would not interfere with the civilian population, is that correct? [illegible]

A CAPTAIN VINCENT: I object to that, if it please the court. The court ruled that he could lead him if necessary. I don't think it is necessary. He has testified that Semann read the order and in addition to that said other things. Now the defense counsel is leading him in an attempt to show that he did nothing but read the order and he should only object at [illegible] PRESIDENT: Objection sustained.

DEFENSE COUNSEL: May it please the court, I haven't completed my examination. I am asking a comparison between this non-interference order and the order to kill. I pray the court to reconsider this. There is a vital fundamental difference between these two types of orders.

A CAPTAIN VINCENT: I would like to say further that I have no objection to him letting this man repeat what he said and tell everything that was said but I don't want the defense counsel to tell him what to say. [illegible] were you passing on? PRESIDENT: The ruling of the court stands.

A DEFENSE COUNSEL: Would you mind reading me the question again please so that I can avoid asking it the same way?

(Thereupon the reporter read the last question as follows:

A "This is that you had here, in September, last order to the Security Police to kill and the order which Semann read which came from higher authorities merely stated that the police would not interfere with the civilian population, is that correct?)

A DEFENSE COUNSEL: I will rephrase my question, rather by calling QUESTIONS BY DEFENSE COUNSEL:

Q Among other things that happened in Semann's office at that time that you made the visit to Stockstadt there was a reading by Semann of an order which came from higher authority was there not?

A First the non-interference order was brought to our knowledge.

Q In what fashion was that non-interference order brought to your knowledge? [illegible] Objection overruled.

(Hellmuth showed proof) 1453

A. As I said before, it was kind to me only eliminated through a

Q. All right. Now tell the court just what that order which was read to you said briefly, Krumler.

A. I still remember the chart saying, in substance, "It is not the duty of the German police to prevent actions of the German population against persecuted Jews or to interfere there."

Q. What, in your opinion, is the difference between an order to the police not to interfere with the civilian population in things the civilian population wanted to do and an order to the police that the police should kill? The answer that you gave was, was that the correct order to kill [illegible]. The difference is obvious already through the question.

Q. Now coming down to the two cases before the court today. When you passed down the order [illegible] to Sturmann and Hahn, which order were you passing down?

A. I transmitted the order which I had received from SS Major Girke. [illegible].

Q. That order was which? I address the court?

A. This is the order which SS Colonel Krumler had passed on to SS Major Girke. [illegible]. If it please the court, I think that everybody of this [illegible] order was which contained these numbers particularly the answers [illegible]. That was the order which came down from higher authority calling for executions. [illegible] repeating them and saying "what I understand your [illegible]. In other words the point that got over to Sturmann and Hahn was the order to the Security Police to kill and not the order to the Security Police not to interfere with civilians to anything and I don't want to cover up with CAPTAIN HANN. I object on the ground that it is leading with him. I object further on the ground that it is repetitious.

PRESIDENT: Objection overruled. [illegible] to answer.

(Hahn [illegible] testified.)

A No. This order by this time was already eliminated through a second order. The first order of Romman was already eliminated through the second order of Brunmler.

Q This order from Brunmler came from higher authority. That was the order to kill was it not?

A Yes.

Q The order not to interfere that was read by Romman also came from higher authority, didn't it?

A Yes.

Q The answer that you gave was, was that the second order to kill superceded and wiped out the first order not to interfere? Romman?

CAPTAIN VANCE: I object on the same grounds as stated.

DEFENSE COUNSEL: My question was that the answer you gave was to that effect.

PRESIDENT: Objection overruled.

THE WITNESS: Yes.

CAPTAIN VANCE: May I address the court?

PRESIDENT: Proceed.

CAPTAIN VANCE: If it please the court, I think that every member of this court can hear and understand these answers perfectly well the answers that the witness has given from the witness stand and I can't see any reason for Colonel Romman repeating them and saying "what I understand your testimony to be" and wording it exactly the way he wants it in his own mind and getting a positive answer from the witness. We strenuously object. I don't mind this witness testifying to anything and I don't want to cover up anything or keep it from the court, but Colonel Romman is testifying himself through the mouth of the witness.

PRESIDENT: That is a matter for the court to decide.

(Hollenbeich-redirect)

Q Coming back again to this meeting, in Wiesbaden, at the time this non-interference order was made) Was there anybody there, at the time the order was read to you, by the name of Breder or Berger? (question please.

A (Was that not in my presence? I complied to this before.

DEFENSE COUNSEL: I would like to tell the witness, with the court's permission, that if I ask him a question it would save a lot of time if he would just answer it. (or the penalty points?)

PRESIDENT: That has the approval of the court.

THE WITNESS: Yes.

Q Did you hear any conversation at which this non-interference order was discussed which involved Christmann and Breder and Berger and Hemann?

A No.

Q Did you hear any request made by Christmann to Schmidt that all allied prisoners be turned over to Christmann?

A No.

Q Now you have quoted someone as having said to you after reading the order certain things of which I am going to quote a part.

A Yes, that was done in the presence of Christmann and Ralbe.

Q It is true, is it not, that when the order came down it instructed the police--the Security Police--that they should dispose of "terror flyers" that that order created a new situation for the security police?

DEFENSE COUNSEL: I understand that you object to it on the ground that it is leading.

CAPTAIN VANCE: Without taking the courts time I object to it.

PRESIDENT: Objection overruled.

(Hellenbroich-redirect)

[illegible] off the record [illegible] from the city of Surau to

(Off the record discussion)

DEFENSE COUNSEL: Would you mind reading the question please.

(Thereupon the reporter read the last question as follows: Limit of

Q It is true, is it not, that when the order came down which instructed the police--the Security Police--that they should disregard 'Nuremberg figures' that that order created a [illegible] for the security police?)

[illegible] gives us your estimation, approximately, of the distance from

DEFENSE COUNSEL: I withdrew that question.

[illegible] to the county limits of the county of Surau in kilometers?

Your witness.

A It must have been approximately eight to ten kilometers. The county

CAPTAIN VANCE: No questions.

[illegible] were sworn.

REDIRECT EXAMINATION

MR. RATHAUS: Dr. Berger is interrogating on behalf of the accused

QUESTIONS BY DR. ABSHER:

Q Do you know from when this so-called non-interference order was

[illegible] BY DR. ABSHER:

dated?

Q The non-interference and the later order--were they made known to

A I didn't hold in my hands the non-interference order which was

all employees of your headquarters?

brought to our knowledge at that time by Colonel Summa.

A No, they were not accessible to all employees. It is possible that

Q When, for the first time, did you hear of this order?

most of them did know them.

A At Colonel Summa's office.

[illegible] Past knew these orders?

Q Did you hear when this order was read here in the court with the

A I don't know [illegible].

date?

Haven't these orders [illegible] were secret orders brought to

A I think there was talk about that this order was issued already

the knowledge of all employees of the prison?

in 1943, yes. If the order is issued it must be written.

[illegible] they were brought to the knowledge of the chiefs of the

Q Did you know about this order already in 1943?

[illegible] departments. It is not absolutely necessary that half know about

A No.

them.

Q Yesterday you were asked the distance between Dachau and Surau.

[illegible] Dear Head of the Department?

If I remember right you said the distance is approximately three quarters of

A Yes.

an hour ride by car, is that correct?

[illegible] Dachau [illegible].

A It might be a little bit too much. In the meantime I investigated

[illegible] [illegible] the [illegible] this [illegible] further.

this question. It must be thirty kilometers.

[illegible] [illegible] by the court. The witness will take his

(Hallenbreich-redirect)

place [illegible].

Q Was the flyer in charge 8 brought from the city of Worms to Sandhofen?

(The witness Wolf stood up and resumed his place in the dock.)

A No, he came from the area around Worms, I do.

Q How far is it from the city of Sandhofen to the county limits of Worms?

A I think the county border of Worms is pretty close to the Bergstrasse.

Q Please give us your estimation, approximately, of the distance from Sandhofen to the county limits of the county of Worms in kilometers?

A It must have been approximately eight to ten kilometers. The county limits were near Lorsch.

MR. RACHAMIL: Dr. Berger is interrogating on behalf of the accused Raef.

QUESTIONS BY DR. BERGER:

Q The non-interference and the later order--were they made known to all employees of your headquarters?

A No, they were not accessible to all employees. It is possible that some of them did know them.

Q Do you know whether Raef knew these orders?

A I don't know that.

Q Weren't these orders secret orders? Were secret orders brought to the knowledge of all employees of the office?

A Mostly they were brought to the knowledge of the chiefs of the various departments. It is not absolutely necessary that Raff knew about them.

Q Was Raef head of the department?

A No.

DR. BERGER: Nothing further.

CAPTAIN VANCE: The prosecution has nothing further.

PRESIDENT: No questions by the court. The witness will take his place in the dock.

(Whereupon the Court was recessed at 1330 hours.)

(Thereupon the accused was excused and resumed his place in the dock.)

PRESIDENT: The court will recess until 1400. Court, let the record show that all members of the prosecution; all members of the defense, except Dr. Trost, who is absent sick; all of the accused, except Hamann, number 18, who is sick in the hospital; the accused Rost, 14; Goss, 15; and Richely, 16, who are absent temporarily conferring with counsel; the reporter and interpreter are present.

Lt. CACHAZA: The prosecution will call as its next witness Wilhelm Rusko.

WILHELM RUSKO, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY Lt. CACHAZA:

Q What is your full name?

A Wilhelm Rusko.

Q What is your present status?

A Internment with the criminal police.

Q Are you at present interned at Camp Dachau?

A Yes.

Q Do you know a person by the name of Fritz Hirka?

A Yes.

Q If he is present in the court room, will you point him out?

A Number 10. 1480

Lt. CACHAZA: Let the record show that the witness identifies the defendant, Fritz Hirka, wearing glasses 10.

(Whereupon the Court reconvened at 1330 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court, all members of the Prosecution; all members of the Defense, except Dr. Trost, who is absent sick; all of the accused, except Hammann, Number 12, who is sick in the hospital; the accused Best, 14; Goss, 15; and Michely, 16, who are absent temporarily and conferring with counsel; the reporter and interpreter are present.

MR. RACHAEL: The Defense will call as its next witness Wilhelm Hucko.

WILHELM HUCKO, called as a witness by the Defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q What is your full name?

A Wilhelm Hucko.

Q What is your present status?

A Regierungsrat with the criminal police.

Q Are you at present interned at Camp Dachau?

A Yes.

Q Do you know a person by the name of Fritz Girke?

A Yes.

Q If he is present in the court room, will you point him out?

A [illegible] Number 10.

MR. RACHAEL: Let the record show that the witness identifies the defendant, Fritz Girke, wearing placard 10.

QUESTIONS BY MR. RACHAEL:

Q Were you ever a prisoner confined in a jail at Wiesbaden?

A Yes.

Q Was Girke a cellmate of yours?

A Yes, part of the time.

Q I show you a photostatic copy of a statement made by the defendant, Fritz Girke, which is in evidence as Prosecution's Exhibit 29, and ask you if you ever had a conversation with Fritz Girke regarding that statement.

A Well, I have to have a look at it.

Q Go ahead and look at it.

A Yes.

Q Now, when was that conversation held?

A It was at the end of May or, in June.

Q What did he say to you and what did you say to him in regard to that statement?

CAPTAIN VANCE: We object on the ground that this is immaterial, irrelevant and incompetent testimony regarding a conversation between Girke and this witness.

MR. RACHAEL: I respectfully submit to the Court that it is very material--that it concerns the statement which has been offered into evidence by the Prosecution without having laid a foundation for its offer, without Girke or anyone having taken the stand. I am trying to clarify the basis for that statement.

PRESIDENT: Objection overruled.

WITNESS: What was the question? Oh, yes, the substance. Girke told me that shortly after being sent to

the Wiesbaden jail he had been interrogated and that sometime later he had had to write down the contents of this interrogation. He said that during this interrogation he had been asked whether he had received a letter regarding treatment of parachuted flier or fliers who had landed after being shot down. He said that he had not been able to recall that order right away, but then he had been told that such an order had existed, and upon this he said that upon his being told about that he remembered that he had once received an order which he remembered because of the special treatment described in it. That special treatment consisted of the order being transmitted to the employees and then being burned or destroyed at any rate. No files were to be started on this--that is, specific secrecy had been ordered about it; and he said that upon being told that such an order concerning the killing of fliers or treatment of fliers existed, he then thought that since he remembered this one particular order which was to be treated in this special manner--namely, to be transmitted to the employees orally and then destroyed, that this was the order concerning treatment of fliers, and for that reason in the statement which he later wrote and which was just now shown to me--at any rate, I guess it's the same one--he wrote that there had been such order signed either by Kaltenbrunner or Moller, and that this order which he had been forced to destroy had been an order dealing with the treatment of foreign fliers; and he said because he had reached this conclusion he had made a remark to that effect in this statement. That was the conversation in Wiesbaden, which, however, did not include any details.

QUESTIONS BY MR. RACHAEL:

Q Thereafter, did you meet Fritz Girke when you were both confined here in Camp Dachau?

A Yes.

Q When was that?

A On the first of July we were transferred from Wiesbaden to Dachau jointly.

Q And after the first of July in the year 1946, did you again speak or have a conversation with the defendant Fritz Girke concerning that statement?

A Yes.

Q What was the substance of that conversation?

A After one week in Dachau, we were sent to the same cell. Now as early as Wiesbaden, Girke had already intimated that this first statement he had made did not contain the factual truth, and he told me that upon due deliberation he had reached a conclusion that this order he had been forced to sign was an order dealing not with the treatment of enemy fliers, but with the joint responsibility of the family of a perpetrator; and he expressed his worries that if he would now go and correct this former statement of his that he might be charged with perjury. Upon that I told him that since at that particular time he had testified to the best of his knowledge, therefore the question of perjury was subjectively out of the question. The important thing was for him to tell the truth, if he had changed his mind.

Q Then what efforts did Girke make to bring the true facts to the Americans?

A At first he reported to an American officer, and one or two days after applying for this interrogation he was

taken away from his cell for interrogation. He was informed by an American officer that the papers had not arrived from Wiesbaden as yet, and received paper in order to reduce his new statement in writing.

Q And did he reduce his new statement in writing?

A Yes

Q I show you this paper and ask you if you recognize it?

A Yes

Q What is that paper?

A That is the statement written by Dirks in the cell in my presence.

Q Then what other efforts were made to bring the true facts to the Americans?

A I don't understand the question--you mean this particular case?

Q That's right.

A Well, he wrote this down, and then he requested being called in again, but didn't receive an answer. Then he wanted to turn it over to somebody, but I don't think it was taken right away. Afterwards, however, he was under the impression that he had turned it over to somebody.

Q Do you know whether or not he did turn it over to somebody?

A Well, to the best of my knowledge I would say he did turn it over.

Q To whom--do you know?

A That must have been Albert in that case.

Q Was that Albert the first name or a last name?

A I never saw it written down--I think it was Fiedler, though.

Q And was Albert Fiedler told, if you know, what to do with the statement?

A Oh, yes, pardon me--it just occurs to me now--he was supposed to turn it over to Dr. Dortheimer.

Q Who is Dr. Dortheimer?

A The bunker commandant.

Q And what was Dr. Dortheimer supposed to do with the statement?

A He was supposed to send it to the Court. If I remember correctly, Girke attached another slip to it saying "To Dr. Dortheimer requesting transmittal." And I think at that time Girke was also told that if he wasn't called in again to turn the statement over to Dr. Dortheimer--oh, I remember that specifically now. He was supposed to turn it over to Dr. Dortheimer if he wasn't called back right away.

(Witness excused.)

MR. RACHAEL: Your witness.

CAPTAIN VANCE: Do any of the other counsel intend to question this witness?

MR. RACHAEL: I don't believe so.

CAPTAIN VANCE: No questions.

MR. RACHAEL: I hand the reporter a document and request that it be marked Defense Exhibit 18 for identification.

(The document referred to was marked Defense Exhibit 18 for identification.)

MR. RACHAEL: At this time the Defense offers

in evidence this document which has been marked for identification as Defense Exhibit 18.

CAPTAIN VANCE: Would you mind us taking a look at it, or telling us what it is?

MR. RACHAEL: It's a German statement.

CAPTAIN VANCE: I can't read German.

MR. RACHAEL: Does the Court want it translated—it hasn't been accepted yet.

LAW MEMBER: No.

CAPTAIN VANCE: We have given them copies of our documents, and that was the agreement..

LAW MEMBER: We want it translated.

MR. RACHAEL: If the Court please, I will have a translation of this made and show it to the Prosecution, and at that time I will renew my offer to put it into evidence. No further questions of this witness.

PRESIDENT: No questions by the Court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MR. RACHAEL: The Defense will call as its next witness the defendant Fritz Girke.

PRESIDENT: Do you desire to be sworn?

ACCUSED FRITZ GIRKE: Yes.

FRITZ GIRKE, an accused, voluntarily took the stand in his own behalf, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q What is your full name?

A Fritz Girke.

Q And did you sign up for civil service?
A Yes.
Q What was your first position?
A After being separated from the service, and since I could not declare upon taking a judicial career, I became an associate with the Government in Liegnitz. There I was required to be transferred to the Reich Ministry of the Interior in Berlin in the middle of October. Under what circumstances did you first come to be assigned to the [illegible]
Q Are you a lawyer?
A I was just about to explain that. I was called into the Reich Ministry of the Interior for an interview in October, 1939, and I was thus have qualified for the job of a judge.
Q What year did you qualify for a job as a judge?
A 1939.
Q And then what happened to your career?
A After several artillery maneuvers with the Army before requiring all civil servants to do [illegible] kinds of administrative work from paralysis of the vocal chords; and, as being fit for professional duty only, I was discharged from the Army.
Since I did not intend to become a civil servant, since my former manual training as a metal worker seemed to make me desired to come back into industry instead, I was intending to get out of the civil service job with the Justice Department. This, however, was not possible for me, because I would have had to pay back the advance pay that I had received in my assistant job amounting to 40 marks a month. And since I figured that I would have to remain a soldier during war time anyway, I had to decide upon signing up for five years of civil service.

Q And did you sign up for civil service?

A Yes.

Q What was your first position?

A After being expatriated from the Sudetenland, and since I could not decide upon taking a judicial career, I became an assessor with the Government in Liegnitz. There I was required to be transferred to the Reichs Ministry of the Interior in Berlin in the middle of October.

Q Under what circumstances did you first come to be assigned to the Gestapo?

A I was just about to explain that. I was called into the Reichs Ministry of the Interior for an interview in October 1938, and I was presented to the people there. I was then permitted to return home to Liegnitz, or rather, to the place of my occupation, Landshut in Silesia, and about the end of November, I received the orders to report to the Munich state police for duty in Berlin towards the end of December, 1938. An attempt made by the government president of Liegnitz to keep me from being transferred to the Reichs Ministry of the Interior and the Gestapo was unsuccessful, and since a directive had just been issued that time before requiring all civil servants to do all kinds of administrative work regardless of what the branch of the service may be, I had to follow that call. Thus I started my service on the first of December, 1938, with the State Police office in Berlin.

Q What was your rank? For the record, in the first place, in order to [illegible] My rank was assessor, I was an Allied flier in our custody, [illegible] Q Just a moment. When did you become the chief of the Gestapo [illegible] in Sonnenstein? For the first time since we had taken over the job, the [illegible] A On the first of June, 1944. I arrived in Sonnenstein on the 1st or 2nd of June, 1944. [illegible] I related the facts as they had been told me by [illegible] Q What was your rank then? [illegible] A I was an SS major of the Security Police and Regierungsrat, in government counselor.

Q And you remained as chief of the Gestapo at Darmstadt until the end, is that right?

A Yes.

PRESIDENT: Court will recess in place.

Court will come to order.

MR. RACHAEL: What was my last question?

(Whereupon the last question was read by the court reporter.)

THE WITNESS: Yes.

QUESTIONS BY MR. RACHAEL:

Q I call your attention to a time about the middle of February, 1945. I also call your attention to the testimony given by the witness Hellenbroich and the witness Stattmann. Did you issue an order to kill, or rather, to shoot an American flier on that day?

A Yes, I issued this order on account of the reports transmitted to me by Major Hellenbroich and on account of the orders I had received from Colonel Trumler, whom I even called up prior to issuing the order to Hellenbroich.

Q Is that the telephone call you made concerning which the witness Colbrich testified she put in?

A Yes.

Q What was the substance of your conversation with Colonel Trumler on the phone?

A I put in this call for the reason, in the first place, in order to inform Colonel Trumler that there was an Allied flier in our custody, a terror flier was in our custody. By that, I wanted to signify to Colonel Trumler that for the first time since he had taken over his job, the Darmstadt police had a flier in its custody which had been turned over to it by the rural police. I remited the facts as they had been told me by my deputy, Major Hellenbroich, to Colonel Trumler, and upon my question, as to what was to be done, Colonel Trumler told me that I was to act in

accordance with existing orders. Then there were other questions which were current and which were on this telephone discussed and cleared up by me and Colonel Trumbler. By that, I am trying to say that although the call cause of the call being put in was this flier case, it was not the only subject discussed during this conversation. I should like to describe the status of affairs. What were the existing orders referred to by Trumbler? October, 1944.

A About the end of September, I don't remember the time exactly, when Colonel Trumbler started on his job as commander of the Security Police and SD in Wiesbaden, I was supposed to report to him. At that time, he informed me of the shooting order which he had received from higher authorities, or arrived in fact, the Labor Protection Service, which

Q Is the shooting order which you refer to the shooting order of Reichs Minister Heinrich Himmler ordering the police to shoot? That was given

A Yes, this order, I believe, is the order which in my opinion stated issued from the Reichsführer SS Heinrich Himmler and which instructed and the police, in particular the Security Police, to shoot terror fliers. That was the order which Colonel Trumbler was referring to when he talked about existing orders on this telephone call about the 20th of February.

Main Q When you gave that order to your inferior, when did you give that order to Hellenbreich or Stattmann? necessary for the reason that these men. As far as my memory serves me correctly, Major Hellenbreich came up to to my room together with Sgt. Stattmann, and I told them that after over a parting with Colonel Trumbler, this flier was to be shot in accordance with existing order to receive these combatant persons and army airmen, hence

Q Was that order given to Stattmann to execute or was it given to Hellenbreich to execute? over as well as their army had. For that reason,

A The person to execute it was Tech. Sgt. Stattmann. this case to all

Q And he received that order from you directly, did he not? was a

A Yes, he was present when I, in the presence of Major Hellenbreich, issued the order. I think I have now given the answer of 13th the

[illegible] There have been some questions regarding soldiers. Many witnesses have testified to an incident which occurred about the middle of March in which soldiers were issued to some members of the Gestapo. Will you tell the court why these soldiers were issued and what they contained?

A. [illegible] In answering this question, I should like to describe the status of the Secret State Police as a part of the armed forces after October, 1944.

[illegible] Q. [illegible] already said, that the secret state police was part of the armed forces. A. On account of my work with the Secret State Police in 1943, I found out in the fall of 1943 of an order of the Reichs Main Security Office directing that stating that the Gestapo was a part of the armed forces. Shortly after my arrival in Darmstadt, the Labor Protection Service, which in my district was an outfit assigned to protecting the armament industries, was supplied with combatant papers and steel forces symbols. That proved necessary because this area of Hessen and Nassau XII had been designated and was planned on by the Allies as an area for parachutists to land on, and for that reason the Labor Protection Service was to be put under the protection of the armed forces. And since there were in my office several people who were not wearing uniforms, I put in the request at the Reichs Main Security Office to issue to these men also this same combatant identification paper and steel symbols. That was necessary for the reason that these men, as members of the Secret State Police, were the superior officers to this Labor Protection Service. I received as an answer to that request a statement from the Reichs Main Security Office that it was not necessary for members of my office to receive these combatant papers and army symbols, because the Security Police had been reported to the Geneva Convention as early as 1941, their uniforms as well as their arms [illegible]. For that reason, issuance of these objects became unnecessary. I announced this fact to all the men at a formation, so that every one of my men realized that he was a member of the armed forces. And another fact from which you can see that we were members of the armed forces was that ever since the summer of 1944 the

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Security Police kept working more and more exclusively in military matters. The changeover of the whole counter-intelligence system of the SiPo of the interior to the Security Police also caused quite a number of officers that was to be taken into my command. Two captains of the SiPo worked under my command as counter-intelligence officers until the end. They were subject to my command in disciplinary as well as a technical respect.

Another proof, to my mind, that the secret state police was furnished as a branch of the armed forces is that the secret state police was furnished as well as other services regarding [illegible] which were under my command.

Q. When were they first furnished with service records (Gen. 3, as Ankl. The first time they received these service records was in July or August, 1944, and any members of the Security Police who might have been serving outside the home country received theirs earlier. We also received identification tags at the same time and were assigned to the SS fighting battalion Kessler as our army outfit. were in. And since the enemy was only [illegible] that in the summer of 1944, did you not know that they were part of the armed forces of Germany? in this mission into some overseas.

I ask [illegible] CAPTAIN WAINE: We object. The question is leading, leads are [illegible] THE MARSHAL: Objection sustained. [illegible] eight men.

QUESTIONS BY MR. MICHAELS: [illegible] chief

Q. Continue. [illegible] were not service them. It was a matter of [illegible]. We also received our army pay just like the Waffen SS and just like, in fact, the entire armed forces did. I and my men received the same privileges concerning medical care. We received free treatment in army hospitals. Travel took place along the same lines as it did in the armed forces. In the case of furlough or official trips we would be under the command of the local commanding officer. They are not making any difference whether this man would be an officer of the Waffen SS, the Air Corps, or the Army. [illegible] record when the case in it had been shot

Q I think you have told us enough now about the fact that the

(DIRK-Direct)

To [illegible]

[illegible] the part of the Rhinemetall-Borsig yard down to March 1945 [illegible]. This explanation was necessary in order to explain [illegible] and that I had contact with [illegible] the contact altogether in the most unfortunately time that the left bank of the Rhine was occupied by the enemy. There was no possibility of communication with the [illegible] on the west bank of the Rhine since the bridges had been blown and [illegible] destroyed. The town of Duisburg, located on the left side of the Rhine, was part of Colonel Steinbrink's area of command. Duisburg-Hafen had its office of the Security Police which was under my command, and since all [illegible] had been disconnected with this office, [illegible] the chief of the office located nearest to it, was assigned by Colonel Trumbour the job of [illegible] to the right-in that office. I had the order to hold the present steps as far as the Security Police was concerned in Ruhrgebiet, particularly so far as the moving of the office was concerned

In case the enemy should approach or move in, and since the enemy was only eight kilometers away from Antwerpen, and had in fact already occupied the outskirts of Wuyken, I had to start on this mission this same evening. I assigned eight men from my office to this unit and was forced to issue my service records to them. Tech. Sgt. Steinman was among these eight men.

Q Was [illegible] of these eight men concerning us, the leave of the men, [illegible] was not among them. It was a matter of security, and I think it is common usage in all armies that on the eve of expecting contact with the enemy would not be war fighting with service records containing language in the clear. When I am talking about service records in the clear, I mean the comprehensive description of our unit, in our case, the 99 training battalion Hunts. G-2 from London had reported to us that the term 99 training battalion Hunts had been discovered by the enemy in making Gestapo attacks, and that any person, [illegible] having on himself a service record with that term in it had been with Army.

(CROSS-Direct)

without trial. These incidents had occurred in the vicinity of Aachen, when fighting took place there. For that reason, we had also requested from the Reichs Security Main Office the APO number of this SS training battalion Hamlin, with the APO number 07854, approximately, that might not be wrong. The last two numbers might be switched around. So all I was really doing was changing the service records containing the SS battalion Hamlin in the close to service records containing the APO number of this SS training battalion Hamlin. And in all France there was a prohibition against going into contact with service records in the close in order to make it impossible for the enemy intelligence to identify the APO numbers of these units in [illegible].

Q And so you issued these soldbuchs to eight men who went on that mission, is that right?

A Yes, only in that manner no deception of the enemy was intended by that at all. It was purely the procedure which is used throughout the world, or at any rate, throughout those parts of the world where German troops did fighting, [illegible] civilians in the street.

Q Let's come down to March 24, 1945. Did you issue an order to Hellenbrandt concerning Pilzer?

A On the 24th of March, the hours concerning us, the hours of the evening, and this was in the day after the Rhine had been crossed near Oppenheim on the 23rd. That was in the evening at 2300 hours, 1945. As to the military situation in Darmstadt, the enemy had crossed the Rhine and was proceeding along the autobahn towards Mannheim and also along the mountain road towards Bensheim. To our west, the enemy troops were at the autobahn near Lorsch, about seven kilometers west of Mannheim, and to our north, they were on the road leading from Darmstadt to Bensheim at the town of Mahlsein, about seven kilometers from Bensheim. That evening, I was in constant contact with the commanding officer of the First German Army.

(OIRE-Direct)

Q One moment. In the German Army, is an anti-aircraft unit a part of the Luftwaffe?

A Yes.

Q Continue.

A And he asked me, in view of the fact that it was definite that these men were terror fliers who had been strafing civilians in the street, what was to be done with them. Since I was in a hurry, I can understand the testimony of Hallenbreich that I reprimanded him and told him, "What is the idea of asking questions about that?" I had two men, staff officers, on my staff, and I could certainly assume that these staff officers, with the same position and responsibilities as I, would perform investigations properly. I therefore told Major Hallenbreich, "They are to be shot in accordance with orders."

(GIMEK-Direct)

For that reason, I was not in my office at all times during that evening, but rather had to convey on talks with those headquarters I have mentioned. Since I had the order to move back together with the fighting troops, and since no fighting troops were left at Remagen any more — and I might say here that the local army headquarters had already moved that same morning, as is mentioned in Kraiewski's statement — for that reason, I was the last armed unit in Remagen, with the exception of the anti-aircraft artillery unit which was to put the tank traps in the area between the Ohrenhild and the Rhine. Under these conditions, about 2100 hours Major Hellenbreigh showed me the report of this anti-aircraft unit and told me that two Allied fliers were in the guardroom. [illegible]

Q What orders were you referring to?

A Well, the order which I have already mentioned here, the Superior Order, transmitted to me by Col. Trumpler, that men who have been determined to be low flying, strafing, fliers, would be shot. I left the house again. I didn't see the fliers and all I received was a report that the mission had been accomplished and the fliers buried in the garden. It is entirely possible that I also gave the orders to have the fliers shot in the garden but I don't remember the details about that anymore. If I consider the fact that these fliers were buried in our garden and I had given this order to have them buried in our garden, in our own backyard, that would certainly throw the light that at that time we did not feel we were committing an unjust act because of the fact that when the enemy would occupy the town they would certainly investigate the headquarters of the Secret State Police and in the course of that investigation would certainly find the graves of these dead fliers. That was certainly clear to me. May I finish this sentence? If I tried to camouflage anything it certainly would have been easy for me to take these fliers somewhere into the forest, Oppenwald, and there shoot them and dig them in. The very openness with which we carried out our difficult orders in the middle of February as well as in March will certainly prove this.

Q Major Girke, you spoke about the orders issued through Colonel Trumpler. What would have happened had you refused to obey these orders?

A It was perfectly obvious to me that since we were living in this area of supreme emergency, as the witness Hildebrandt has described it, we as members of the SS would also have been executed promptly. And if the SS non-coms under me had in any way refused

SQ No 211
pls/2

to obey this order, then I would certainly have reported them and would have had them taken care of by the legal office. The character of my superior officers, Col. Trummler and Gen. Stroop, being what it was, it was perfectly obvious to me that there was no other way out except to carry out the orders. And furthermore, I did not see any reason why I should not carry out this order as an officer, as the highest officer in this office.

Q Let me ask you this -- suppose you had refused to obey Trummler's order to carry out that mission to Ludwigshaven. What would have happened to you?

A That would have been the same sort of cowardice before the enemy. We were in an area of combat. In fact, we did cross the Rhein in an assault at the same time the enemy moved into Ludwigshaven. From these facts -- incidentally, you might also reconstruct with precision the exact time of our mission to Ludwigshaven --

Q Aside from the matter of what would have happened had you wilfully disobeyed the order, what was your opinion concerning the legality of these orders issued by Trummler?

A As I have already stated I had no reason to doubt its legality. I knew that this order came from the highest headquarters and I knew that the moral consciousness or better, the moral feelings of the whole population had been directed into these same channels through propaganda. I knew the non-interference order which concisely stated that the police are not authorized to prevent any excesses of the population directed against terror fliers. I knew the propaganda of the German government, particularly concerning the Goebbels article in the periodical called "Das Reich", and I remember exactly the pictures appearing in such magazines of such interests as "Murder Inc."

(Cirke-direct)

"Nazi Killers" and "Home Block Busters", and I also knew the statement of the Supreme Allied Headquarters, as a result of the Goebbels propaganda, stating that the Supreme Allied Headquarters had prohibited any warfare against civilians and that no Allied soldier had any right to demand the protection of the Geneva Convention or any other protecting treaty if he ever attacked civilians. I myself, in my own person, found the effects of warfare of terror fliers against the civilian population and I might add here that I did not consider this attack against me personally as any violation of international law.

All cities within my area were destroyed, you might say to 80%. I physically, myself, experienced the attack on Darmstadt, Mainz which were vast areas of ruins, and the old respected towns of Mainz and Worms are the same. Now, in this general state of mind when such orders came through I was completely and definitely sure that if any scruples would exist in accordance with international law it would not be up to me to examine these, but it had already happened before by higher authorities. Furthermore, there was the additional fact that these very orders came from authorities which were the ones in charge of protecting these rights according to the Geneva Convention. Therefore, if I received such an order from the Reichsfuehrer of the SS who is the commanding officer of all prisoners of war, then any possible doubts anybody might have as to international legality of this order are eliminated since this order came from the very office which was in charge of protection, according to the Geneva Convention. The only regulations I had to stick to were those of the Articles of War which, as in every other military organization, contained the requirements of

(Circe-direct)

absolute obedience. In the German code, and I think it is the same in the American code, there is only one condition under which a subordinate may refuse to carry out an order issued to him -- when it is perfectly clear and obvious to him that carrying out this order would perpetrate an injustice.

Now, where are your possibilities of determining what is good and what is evil? That is based upon the influences of education, religion and morals.

CAPTAIN VANCE: If it please the court, I have sat here very patiently for about a half hour but I think the accused is arguing his case at this time rather than testifying.

PRESIDENT: The court agrees with the prosecution and directs him to answer questions pertaining to the issue.

QUESTIONS BY MR. HAGUAN:

Q Major Girne, what is your opinion concerning the morality of these orders?

A I think I already have answered this question because if I am unable to see the illegality of this order then I must also say I think I act in a morally justifiable manner.

PRESIDENT: Court will recess for thirty minutes.

(Whereupon at 1800 hours the court recessed until 1830 hours.)

(Girne-direct)

(Thereupon the court reconvened at 1546 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Dr. Trost who is absent sick, all of the counsel the reporter and interpreter are present as back to 1942, and makes out

FRANZ GIRKE, an accused, called as a witness by the defense in his own behalf, having been previously sworn, resumed the stand and testified further through an interpreter as follows:

DIRECT EXAMINATION, continued

QUESTIONS BY DR. SEIDL: I object to what is the truth. He can testify as to Major Girke. I show [illegible] exhibit D-80 in evidence and ask you to look at it. I particularly call you attention to the paragraph at the end of page four. As you will notice that is an exhibit--a statement made by the accused Hellenbroich in this case. Hellenbroich said in that [illegible] that is.

Q Were you, yourself, ever interrogated concerning that paragraph to which I called your attention, yes or no? [illegible] you ever

A Yes.

Q When and where was that?

A That must have been here in Dachau in the first half of September, 1948. [illegible] you are charged with to be a part of a conspiracy.

Q Who interrogated you?

A An American interrogated me--Dr. Coates, who has already been interrogated here on the witness stand. [illegible] to do the work set forth in

Q Did he ask you anything concerning the paragraph, yes or no?

A I said something to him about it. [illegible] that that question calls

Q What did you say to him? [illegible] the province of this court.

A I told him that I, as a superior of Major Hellenbroich, did not agree with his statements and that I requested to be particularly interrogated concerning this paragraph.

Q Were you so interrogated?

A Yes or no.

Q What is wrong with the substance of that paragraph?

A The effect created by this impression is to the effect that Major Hollenbreich connects up all orders, I think it goes back to 1942, and makes out of them a structure with the apparent purpose of invalidating and making useless the provisions of the Geneva Conventions. [illegible] you about Hollenbreich. Q [illegible] that is the truth? [illegible] that correct?

A CAPTAIN VANCE: How we object to what is the truth. He can testify as to whether he agrees with Hollenbreich or not but not ask him if it is the truth. No, because we don't know what that means this point in my case.

Q PRESIDENT: Objection sustained. I wanted to tell Mr. Coates that you have Q Do you agree with what the Defendant Hollenbreich said in that paragraph? Yes. Yes. There are statements which I wanted to make to Mr. Coates

A I have to contradict it in every point.

Q You have read charge one of the charge sheet have you until it to the [illegible]

A Yes.

Q Do you understand it?

A Yes. It gives you an opportunity to tell them

Q In that charge one you are charged with being part of a conspiracy, is that correct? charge of a conspiracy and during the whole time I have been

A Yes. any statements or in conference, that is about the part of

Q Were you ever part of a conspiracy to do the acts set forth in charge one? I am [illegible] I will give you an opportunity to explain it

CAPTAIN VANCE: We object on the ground that that question calls for a conclusion of law and invades the province of this court.

PRESIDENT: Objection overruled. [illegible] law in Europe, you took [illegible] (Circumstances) [illegible] qualified to be a [illegible] in 1943, is that right?

A Yes.

(Testimony)

QUESTIONS BY MR. RACHAEL: [illegible] a commissioned judge or a civil judge?

Q Are our military [illegible] are parts of the legal system--are they?

MR. RACHAEL: Your witness. [illegible] a German court?

A As Deputy Public [illegible]

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANDER[illegible] prosecuting criminal cases?

Q You say that you asked Mr. Coates to reinterrogate you about Hollenbroich's statement, is that correct? [illegible] to testify against the accused?

A Yes.

Q And he did not reinterrogate you? [illegible] work [illegible] that already?

A No, because he said that that wasn't the point in my case.

Q Now, is there anything that you wanted to tell Mr. Coates that you haven't already told this court here today? Is that correct?

A Yes. Yes. Those statements which I wanted to make to Dr. Coates at that time I have not made today as yet, [illegible] who took charge and ran it.

Q Did you tell your lawyer you wanted to make those statements to the court? [illegible] that was the [illegible] of Major Hollenbroich.

A I think I did. [illegible] about being ordered by [illegible]

Q Has he given you an opportunity to tell them? [illegible] exactly what you want to tell them?

A Also I hope I shall have this opportunity yet, because this fact is connected to this charge of a conspiracy and during the whole time I have been in solitary confinement or in confinement, that is since the first of April, I have never been asked about these questions which I am thinking of. Therefore, I am quite sure the court will give me an opportunity to defend myself also with regard to charge one, or to answer questions about it.

Q I think they will also, sir, officer.

I believe that you said you studied law in Berlin, you took your two examinations and qualified to be a judge in 1939, is that right?

A Yes. [illegible] examined.

(Cross-cross)

Q Did you qualify to be a criminal judge or a civil judge? It was

A In the German educational system both are parts of the legal system

are contained. What had transpired at that meeting?

Q Did you ever act as a judge in a German court?

A As Deputy Public Prosecutor, the first time you know that you had

Q In that capacity did you prosecute criminal cases?

A Yes. It was the time when Major Hollenbreich reported to me that

Q In trying those cases did you produce witnesses to testify against the

accused that there was a breakdown a liaison of the apparatus. By

A The criminal police doing the preliminary work did that already

and those witnesses were examined in court.

Q You were chief of the Gestapo at Darmstadt and Bensheim from June

1942 until the time you moved out of Bensheim, is that correct?

A Yes. Hollenbreich, did, in fact, present me with the arrest report

Q that you were away from your headquarters she took charge and ran

it in your absence and his flyer had been a low flying aircraft circled

A There was the chief of Department four, Major Hollenbreich.

Q You have heard Major Hollenbreich testify about being ordered by

Colonel Ramsay to come to Darmstadt and you have heard him testify what

took place at that meeting. When Hollenbreich came back did he report that

information to you? receive this instruction from Hollenbreich?you then called

A He reported to me that he had been at Colonel Ramsay's place and that

the so-called non-interference order to the police had been conveyed there.

Q Did he tell you that other matters were taken up at that meeting?

A I don't recall any details but I do consider Major Hollenbreich

absolutely reliable and truthful an officer existing we had to investigate

MR. MACHAN: I ask that that last be stricken from the record as

not responsive.

PRESIDENT: Motion sustained.

(Cross-cross)

Q How will you see if you can answer my question? I think it can be answered yes or no. When Hellenbroich came back from Homann's meeting first did he tell you what had transpired at that meeting? [illegible]

A Yes, we [illegible] this matter.

Q On February 15, 1945 when is the first time you knew that you had an American prisoner in your headquarters? [illegible]

A That was at the time when Major Hellenbroich reported to me that a flyer was down in the guardroom who had been brought in by the Home Police and that there was a parachute a lifebelt and some apparatus. My impression was that by that he meant Radio apparatus. They also said that certain coded matter was there with the flyer. [illegible]

Q Did Major Hellenbroich also tell you that this man was a "terror flyer"? [illegible]

A Major Hellenbroich, did, in fact, present me with the arrest report of the Rural Police and this report made it clear that according to the regular term then used this flyer had been a low flying airman--a so-called "terror flyer". [illegible]

Q You had no knowledge of this until Hellenbroich came and told you about it did you? [illegible]

A I don't think I did.

Q After you received this information from Hellenbroich you then called up Dr. Trummler, is that correct? [illegible]

A No, I then instructed Major Hellenbroich to clear up this matter with the objects turned in--this lifebelt and parachute and apparatus.

Q What do you mean, "clear up the matter."?

A In accordance with regulations then existing we had to investigate any case of communication with the enemy by means of these radio apparatus and for counter intelligence purposes.

Q After that did you call Dr. Trummler?

(Girbs-cross)

A Then later, when Major Hellenbreich reported to me that this radio equipment and the lifebelt and so forth had nothing at all to do with the flyer and had been turned over to us at the same time purely by accident I told him he would hear more about the matter. Major Hellenbreich had already been over. This

Q Then did you call Dr. Trummler's attention to it?

A Then I did call Dr. Trummler--that is before the time that I issued the order to shoot to Hellenbreich and Stattmann.

Q What did you call Dr. Trummler for? [illegible] in connection with this flyer?

A I think I have already explained this once. In the first place because I wished to inform my direct superior, Dr. Trummler, that my office had just received the first "terror flyer". Furthermore, because I wished to find out whether this severe order which, after all, had been given me towards the end of September or the beginning of October, 1944, was still in existence. Furthermore some matters which had nothing at all to do with this flyer were discussed in the course of that telephone conversation, mostly they were matters concerning personnel or administration. [illegible] in our custody.

Q You knew what to do with the flyer without calling Dr. Trummler, didn't you? [illegible] We had no [illegible] flyer in our custody.

A I did know this order of September or October, 1944 to the effect that such flyers were to be shot.

Q I believe on direct examination you said, "I called Dr. Trummler because this was the first flyer we had had since he had taken command.", is that right?

A Yes, and that is also identical with the explanations I have just now given. [illegible] part of the direct [illegible] former?

Q If this was the first one you had since he was in command you mean you had other flyers since before Dr. Trummler took command, is that right?

A That isn't saying that.

(Cross-exam)

Q Well I will ask you: Was this the first flyer you had ever had in your custody?

A Yes. This flyer of the 15th or 20th of February, and I remember this date exactly because the incident of Major Link had already been over. This flyer was the first one the Gestapo in Darmstadt had in its custody. The Gestapo Darmstadt-Bensheim. In Darmstadt until it was bombed out and then it's Bensheim. Those two offices were identicals.

Q Do you remember when the headquarters were bombed out in Darmstadt on the 12th of September?

A Yes. I remember it very well.

Q Tell this court whether or not you had some American flyers in your headquarters at that time?

A This attack on Darmstadt took place at about 2330 hours on the 12th of September. Up to that time we had no American flyers in our custody and since, in the course of this attack, the whole office was completely destroyed all the way down to the cellar we never had any American flyer in our custody.

Q Did you say you did or did not have?

A No, we didn't. We had no American flyer in our custody.

Q Did you have any time during that day of September, 1944?

A No special answer to this.

Q You are just as sure of that as anything you tell this court are you?

A Yes.

Q I understand you to say that in 1945 you saw an order stating that the Gestapo was part of the German armed forces?

A Part of the armed forces of the German Reich.

Q Where did you see this order?

A At the State Police.

(Cirbo-cross)

Q Whereabouts?

A In Graz?

Q Who issued this order?

A That was a General order of the Reich Main Security office. Office number one in charge of organization.

Q Is that the same time you said that Geneva was notified about this fact?

A What was committed in that order, then later on in July, 1944 I asked about it again in Darmstadt and I remember that positively where I cited a special case in order to get the matter clarified.

Q There is no question in your mind about this proposition about Geneva being notified?

A According to my documents and to my knowledge there is none. The documents, I mean the set of orders--I don't have any now.

Q You are just as positive of that fact as you are of any other fact you have testified to before this court?

A That in July, 1944 we received instructions that we are part of the armed forces, I am, because this regulation of the fall of 1944 was a general order issued to all offices, whereas in 1944 I cited a special case and received a special answer to that.

Q When did you get your SS paybook?

A I had an SS paybook already at the time I started my work in Darmstadt and upon arriving there I received another one with a serial number of the Darmstadt office.

Q When did the other Gestapo agents receive there SS paybooks?

A Partly before this air attack on the 11th of September--during this air attack a large number of blank books were destroyed and the others them received theirs later on in October in Bensheim after a new batch came in.

Some of them didn't get them until after you moved to Bensheim, is that correct?

A Yes.

Q So you were taken into the army in 1943 and some of them got their identification after September 1944, is that right?

A In my opinion this question has not been phrased in a precise manner. The Secret Police in particular became incorporated into the German armed forces as a body and the issuance of pay books or identification tags had only a passing importance in comparison to that. That depended upon conditions of delivery and the presence of these supplies in higher headquarters.

Q Now, let's back up and see if you can answer my question. I didn't ask you about all this. You didn't like the way I asked it so I will ask it again. Some of the members of your force did not get these books until after you had moved from Darmstadt on 12 September over to Bensheim, is that correct?

A Some of them didn't have them yet.

Q And some of them didn't get them until about the 15th of March 1945, is that correct?

A No, that is not correct. All men had pay books or service records after the 1st of December 1944.

Q I realize they had them but did they have the Waffen SS pay books?

A Yes, we had the pay books of the SS, that means of the Waffen SS, because the Allgemeine SS didn't have any pay books.

Q These books that you issued to eight of your men on or about the 15th of March 1945 -- what changes were made from the books they had to the new books?

A In the new books which were issued, was the coded units, that is, the headquarters of the SS replacement, Kemks did not appear and in

(Girke-cross)

its place the unit belonged to the APO 07854. The same limitations which I put on that number before I put on it now -- the last two numbers might be 84 or 48.

Q Did they mention these men were members of the Gestapo or not?

A That wasn't permitted to be there.

Q What else was fictitious about these books?

MR. BACHER: If it please the court, I object to that question on the characterization.

PRESIDENT: Objection overruled.

THE WITNESS: Everything that had any bearing as to membership in the Gestapo was fictitious. That only applied to some of the comrades whose rank was that of a criminal secretary because had that been in there it would have been obvious to enemy counter intelligence that this combination of criminal secretary and Waffen SS indicated Gestapo membership.

Q Do you know of anything else that was fictitious about these papers?

A By fictitious we mean counterfeit, forged?

Q Yes, untrue.

A Untrue. Everything else was correct. I remember my own pay book. In it it said Regierungsrat, Government Counsellor, which was my civilian title, which did not indicate I was a member of the Gestapo.

Q When and where, Girke, were you captured by the Americans?

A I was captured under my right name and with my correct papers and surrendered as an unarmed German soldier in the Tyrol on the 8th of May in St. Ulrich by the Rainbow Division, parachute division.

Q Girke, don't you know you were under an assumed name and had assumed papers on you?

(Girke-cross)

A Never in my whole life did I have an assumed name or assumed papers. You can check up on that because I was in Camp Messburg ever since the 21st of July.

Q Will you give me the correct spelling of your name, Girke?

A G - i - r - k - e.

Q On the 24th of March you didn't know anything about the two American soldiers on that occasion until Hellenbreich reported it to you?

A No.

Q I believe you testified that Hellenbreich said they had two Americans who were definitely terror fliers, is that correct?

A Hellenbreich, as he showed me the record of the interrogation together with the conclusion of this intelligence officer of the anti-aircraft unit --

Q Well, did he tell you that two Americans are definitely terror fliers, yes or no?

A If I am to answer this question, yes, without giving an explanation to it, I cannot give you this answer, yes, because Hellenbreich's opinion as to that matter can be gathered from the signature "Major" on that record. In other words, Hellenbreich told me that these men were terror fliers, as you can see from this report.

Q Did you go to see the fliers?

A No, I didn't have time to do that because I was in constant communication with the combat commander, being the last armed outfit in Bensheim.

Q You left it to Major Hellenbreich to make these determinations for you?

A In this case of the 21st of March?

Q Yes.

(Girke-cross)

A There were no determinations which needed to be made because a complete report was available and, furthermore, since Hellenbroich was a staff officer and in charge of the executive, the State Police Dept. of my office, all he had to do in my opinion was to determine whether these men who were turned over to us were identical with the ones mentioned in the report.

Q In that way, as I said, you left it to him to make this decision. You didn't make it yourself?

A There was no decision that needed making. All we had to do was to take him over and they were according to the description of the Air Corps terror fliers. All we had to do was establish the identity. In this report, over the signature of this Major, it said expressly the Air Corps had not put these men into the status of prisoners of war, they having been terror fliers, but rather were turning them over to us to act in accordance with our orders.

Q So all you had to do was establish their identity?

A Yes.

Q Well, who were these two men you had executed?

A I don't know the names. I didn't even see these fliers.

Q How long from the time Hellenbroich came and told you he had two terror fliers was it that you said, "execute them"?

A As I have already testified today, I was in a hurry and in a hallway where Hellenbroich approached me I told him, "What is the idea of asking questions. You know what the orders are."

Q So it was a matter of just a few seconds, was it?

A Seconds is an exaggeration because in addition, Hellenbroich made a report to me about his reconnaissance mission.

Q You ordered the two men killed, did you?

A Yes.

Q And you gave that order to Hellenbreich?

A Yes, as an answer to his question I said, "What do you mean asking silly questions. You know what the orders are. The fliers are to be shot."

Q You were asked if your conscience bothered you any about this killing. Did you say, no?

A I don't get the question.

Q You remember your lawyer asking you if your consedence bothered you any about these killings, don't you?

A Well, I think if I remember correctly my lawyer asked me whether I considered the order a legal one, a moral one.

Q I am talking about your conscience, did it bother you?

A None of my work ever caused me any pangs of conscience. If it did I wouldn't have done the work.

Q Well, by the time these two killings took place on March 24th you had become hardened by that time?

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Will you repeat the question, please.

(Whereupon the reporter read the last question.)

DEFENSE COUNSEL: I think he has gone far enough with that line of questioning.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q Well, let me ask you if your conscience ever bothered you after you had had this first man executed in February?

DEFENSE COUNSEL: He has answered that question, may it please the court, by saying that none of his work ever bothered his consciences.

THE WITNESS: No.

DEFENSE COUNSEL: We are just taking up the time of the court.

PRESIDENT: Objection overruled.

QUESTIONS BY CAPTAIN VANCE:

Q Now, Major Girke, I believe you testified that if you had not carried out the order to kill the Jews that you thought you would suffer some kind of punishment, is that correct?

A Yes.

Q I want to ask you this question: Did you execute these Jews because you feared that you yourself would be punished if you didn't, or did you execute these Jews because you saw nothing wrong with it?

A I had these Jews executed on account of the orders I had received. I had no fear of punishment. After all, I considered the order a legal one so why should I have moral scruples? Why should I fail to carry out the order and subject myself to punishment?

Q Did your ever have a Gestapo man working for you by the name of Wagner, Adolf, in Darmstadt?

A Adolf Wagner? Not in Darmstadt. He was Kommissar in Hanau.

Q Was he a subordinate, an employee of yours?

A Until January, until this last phase in the development of the Security Police in our area he was a subordinate of mine.

Q What about a man named Schultz, was he a subordinate and did he work for you?

A Schultz at first was in my branch office in Mainz. He was later transferred to Hanau and worked under Wagner.

CAPTAIN VANCE: Nothing further.

(Girke-cross)

REDIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Major Cirke, what statements did you want to make to Dr. Coates concerning your defense of Charge II?

A I didn't want to tell Mr. Coates anything about Charge II because I had no idea I'd be charged with a conspiracy in December. I didn't get the charge sheet until the 14th of December, about the 16th of December. But I think that the impression of Major Hellenbroich, citing all these orders beginning 1942 in a row, as if in a chain, gives you the impression that the Security Police started as early as 1942 systematically with orders that climaxed finally in this shooting order in 1944, particularly for the reason that Hellenbroich mentions, the fact that work was done systematically to invalidate the clauses of the Geneva Convention protecting prisoners of war. For that reason I assume that this might be a proof in favor of the conspiracy, and therefore, I must decidedly object to this statement which Hellenbroich made for perhaps his personal reasons, be used as a ground for proving conspiracy against all the other accused.

MR. RACHAEL: That is all. Any further questions?

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Do you object to Hellenbroich stating what he thinks is the truth?

A The testimony of the witness Coates alone shows that this was not the intent of Hellenbroich when he made the statement as it appeared and the way it was reduced in writing. In fact, the testimony of Coates showed that these were his own opinions.

(Cirke-redirect,recross)

Ta 218 80
pel/8

CAPTAIN VANCE: I am going to object to his arguing the case instead of answering the question.

THE WITNESS: I think this is the only place and it is going to be the only place I will be able to defend myself against this conspiracy. Conspiracy, after all, is a mental concept rather than a criminal concept.

CAPTAIN VANCE: I am going to object if he keeps rambling. If he wants to say something he should tell it to his counsel. Do you remember my question?

PRESIDENT: Instruct the witness to answer the question. Do you remember the question?

THE WITNESS: If I remember correctly, you said, "Do you deny what Mellenbroich said?"

QUESTIONS BY CAPTAIN VANCE:

Q That wasn't the question. I asked you if you objected to Mellenbroich telling what he thought was the truth?

A I have no way of objecting to that.

CAPTAIN VANCE: That is all.

MR. RACHAEL: Any questions by members of the court?

EXAMINATION BY THE COURT

QUESTIONS BY THE PRESIDENT:

Q On direct examination did I understand you to say that during February and March Darmstadt was a combat area?

A I don't think we mentioned Darmstadt, we were talking about Bensheim. Darmstadt was finally captured on March 25th and on the 24th of March, the day of the evacuation, Darmstadt had been overrun from the west on the Autobahn so that we in Bensheim were in the immediate operational area on the 24th. The position of the enemy was six kilometers on the north and west.

(Girke-court)

PRESIDENT: That is enough. No further questions by the court. The witness is excused and will take his place in the dock.

(Whereupon the witness was excused and resumed his place in the dock.)

MR. RACHAEL: If it please the court, that concludes the evidence on Charge X with the exception of the opportunity for the defense to offer in evidence a statement which is being translated.

DEFENSE COUNSEL: We are prepared to go into Charge VII if the court wants to hear it. I can make a statement with respect to what the evidence is we expect to offer but I can save that.

LAW MEMBER: How long will that take?

DEFENSE COUNSEL: Two minutes.

PRESIDENT: We will have the statement now.

DEFENSE COUNSEL: The evidence which will be adduced, may it please the court, will show that any shooting in Charge VII was executed by Moller as the evidence of the prosecution indicated. A divergence of testimony will come out to show who gave the order to Moller which he relied upon. There will be some evidence that Eichel gave the order. Moller will claim he got it from Eichel. Moller will also claim he got something by way of an order from Albrecht. Our evidence will show that as far as knowledge of the case and participation in it are concerned, Goehrendt had practically nothing to do with the exception that he was asked to go along and he went along.

PRESIDENT: With reference to the request for two days recess, the request is granted. The court will now adjourn until February 26th, that is, Wednesday morning, at 9:00 o'clock.

(Whereupon the court at 1700 hours adjourned until 0900, 26 February 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden. By Order
Im Auftrage von

.....

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....

(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

Pages 1477 - 1561

(23)

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 26 FEBRUARY 194 7

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Herbert B. Rosenstock

Reporter Patricia Stewart, Imogene Butler, Paula Silverman, Peter DiCurti

~~Members of Court:~~

WITNESSES:

HERMANN MOLLER
WILHELM ALBRECHT
WILHELM GOEHRENDT

Accused JURGEN STROOP, et al

Address Sex Age

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term
  - Beginning 194
- Fine
  - Amount
  - To be paid before 194 or in case of default of payment to serve a *further term of imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JUROEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

26 FEBRUARY 1947 Pages 1477 - 1561

TESTIMONY

WITNESSES	Direct	Cross	Redirect	Recross
HERMANN MOLLER	1477	1510		
WILHELM ALBRECHT	1511	1534		
WILHELM GOEHRENDT	1550			

EXHIBITS

None

Camp Dachau, Germany

26 February 1947

MORNING SESSION

(Whereupon the Court reconvened at 0900 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court except Colonel Ackerman, who is absent sick, all the members of the Prosecution, all the members of the Defense, except Dr. Troet, who is absent sick, all the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: The Defense had made its opening statement on Charge 7 at the end of the recess, may it please the Court, and will now call as its first witness the Accused Moller. The Accused desires to be sworn.

PRESIDENT: Do you desire to be sworn?

ACCUSED: I ask to be.

DEFENSE COUNSEL: The witness will be examined by Dr. Buerger.

HERMANN MOLLER, an Accused, voluntarily took the stand in his own behalf, and having been first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. BUERGER:

Q State your full name.

A Hermann Ludwig Friedrich Moller.

Q Are you married or single?

A I am married.

Q Do you have any children?

A Yes, one boy, four years old.

Q How old are you?

A 45 years old.

Q What is your civilian profession?

A Clerical assistant.

Q Were you a member of the Party?

A Yes.

Q Since when?

A 1 May 1937.

Q Were you a member of the Leadership Corps of the Party?

A No.

Q Were you a member of the SS?

A No.

Q A member of the SD or Gestapo?

A No.

Q Did you belong to the Police?

A Yes.

Q From when until when?

A In November 1940 I was inducted into the reserve police of Offenbach on the Main in accordance with regulations.

Q Did you remain with the police until the end of the war?

A Yes.

Q Did you always remain a reserve policeman?

A No.

Q Did you become a regular policeman?

A Yes.

Q When?

A In June 1943.

Q What was your highest rank in the Party, in the police I mean.

A Technical Sergeant of the Protective Police.

Q What was the location of your office?

A Fifth District of Offenbach on the Main, Hieber.

Q Between January, 1945, and the end of the war, who was your immediate superior?

A First Lieutenant of the Protective Police, Albrecht.

Q Who was your next highest superior?

A Commanding Officer of the Protective Police, Kohlenbeck.

Q And further on up, who was your superior?

A Police Director Eichel of Offenbach on the Main.

Q Do you know Eichel?

A I had seen him two or three times.

Q Do you still remember the 21st of February, 1945?

A The way I remember, it was the 22nd of February, 1945.

Q What happened on 22 February, 1945?

A The incident concerning the flier.

Q Will you please speak louder?

A Yes.

Q What kind of an incident with the flier are you talking about?

A About 1300 hours, a civilian turned in a parachuted flier at the Police District Headquarters, Offenbach, Hieber.

Q How did you know it was an American flier?

A You could find that out from his identification papers.

Q Who was present at the Police Station when the flier was turned in there at 1300 hours, if you remember.

A The officials on duty at that particular time.

Q How many officers were there?

A 15 or 16 [illegible]

Q Were you yourself present there, too, when the flier was brought in? [illegible]

A At that instant I was in the air raid cellar of the Police Headquarters.

Q Do you know what happened to the flier after he was turned in to the Police Station at Hieber?

A His things were taken away from him.

Q What things, if you remember? [illegible]

A A map of Germany, an emergency ration, two packages of cigarettes, a lighter--I don't remember anything else.

Q Was the flier interrogated in any way?

A No. [illegible]

Q Then what was done to the flier after he had been searched and the things taken away from him?

A After the search, the flier was permitted to sit down. He asked for water, which he did get, and then he asked for permission to smoke. That also was granted.

Q Then was anybody notified for the flier to be picked up or was anything else done? [illegible]

A Police Director Michel was notified by telephone.

Q How do you know that?

A The way I remember it, I myself put in the call.

Q Were you in charge of the telephone at that time?

A No. [illegible]

Q Did they reach Police Director Michel by means of that phone call, if you know?

A I can't say, but at any rate he arrived in the car about 20 minutes later.

A 15 or 16.

Q Were you yourself present there, too, when the flier was brought in?

A At that instant I was in the air raid cellar of the Police Headquarters.

Q Do you know what happened to the flier after he was turned in to the Police Station at Minden?

A His things were taken away from him.

Q What things, if you remember?

A A map of Germany, an emergency ration, two packages of cigarettes, a lighter--I don't remember anything else.

Q Was the flier interrogated in any way?

A No.

Q Then what was done to the flier after he had been searched and the things taken away from him?

A After the search, the flier was permitted to sit down. He asked for water, which he did get, and then he asked for permission to smoke. That also was granted.

Q Then was anybody notified for the flier to be picked up or was anything else done?

A Police Director Michel was notified by telephone.

Q How do you know that?

A The way I remember it, I myself put in the call.

Q Were you in charge of the telephone at that time?

A No.

Q Did they reach Police Director Michel by means of that phone call, if you know?

A I can't say, but at any rate he arrived in the car about 20 minutes later.

Q Now what happened after Police Director Michel had arrived at the Police Station?

A Police Director Michel showed up—so did the Protective Police Captain Kiwitt, and the area commander of the Hitler Youth, Brandt.

Q In all these three men walk into the Police Station, or where did they keep themselves?

A All three walked into the Police Station.

Q Now, as these three men entered the guard room or the Police Station, what happened?

A Police Director Michel yelled, "You cowards, you ought to have your faces all beaten up," or, "What's the idea of having this flier still alive" and told him to get up, and he was not permitted to sit down any more.

Q Then what happened later?

A Police Director Michel, Captain of the Protective Police Kiwitt, Police Lieutenant Albrecht and Area Commander Brandt went into the Police Room.

Q What do you mean by the "Police Room"?

A That was the office of the Police District Commander.

Q Do you know what happened in that office?

A No.

Q Describe briefly to the Court what happened next.

A The door opened. I don't know who came back first, but the way I remember it was Kiwitt, and Police Director Michel also came out, and he said, "Who will volunteer to shoot this flier?"

Q Where were you at that time?

A In the Police Station.

Q Upon that, did anybody volunteer?

A Nobody volunteered; most of them left.

Q What do you mean--"left"?

A They moved into another room.

Q And what happened then?

A Police Director Eichel nodded his head to me, indicating I was to come along with him.

Q Did you then take off with Police Director Eichel?

A Yes.

Q Where to?

A Into the Police Headquarters.

Q Were you in the office of the District Commander of the Police with Director Eichel all alone?

A- Yes.

Q Now what was said upon that occasion?

A Police Director Eichel asked for my name. He asked whether I was a reserve man or a regular. I answered "regular". He told me, "I am giving you, as a regular policeman, the order to shoot this flier."

Q Did you reply anything?

A I said, "I can't do that."

Q What did the Police Director tell you then?

A "Then you will be court-martialled and you know what will happen to you."

Q Do you remember exactly that this was the way the incident occurred?

A That's the way I remember it.

Q Upon that, what did you do?

A I went out to the waiting room. Shortly after that, Police Lieutenant Albrecht came out, went over into his room and called me in.

Q Then were you alone with Albrecht in his room?

A Yes.

Q Continue.

A District Commander Albrecht then told me, "You know what the Police Director's orders are. I will send Como along with you and I will come along, too."

Q Then what did you do?

A He then said, "You and Como will take your carbines along and five rounds each and a steel helmet."

Q Who told you that--to take the carbine and ammunition and so on along?

A Police Lieutenant Albrecht.

Q Continue.

A I went down to the cellar and picked up the carbine. I got ready, put on my pistol belt; and I wasn't even ready yet as Police Lieutenant Albrecht came up the stairs and said, "Why are you people hiding out? Let's go."

Q Where was the flier at that time?

A I can't say that exactly, but when Como and I came out the flier was standing out in the yard.

Q And where was Police Director Aichel and the people accompanying him?

A They were standing in the vicinity of the car.

Q Continue with your story.

A I received the flier and walked out the gate with him.

Q Who did you receive the flier from?

A From nobody,really, He was standing out there in the yard, just like that.

Q Were any civilians around?

A They were standing around the car in the street.

Q Continue.

A The flier, Como and I went on out. Lieutenant Albrecht told me, "You will be going along Rebstock Strasse and Hamburg Strasse, and the path through the fields."

Q Were you told any destination to go to?

A No, that's all that was said.

Q Where did this path go to?

A That went towards the woods.

Q Did this path go towards Offenbach past the woods or did it not?

A It went to Offenbach as well.

Q Did you go along that path then?

A Yes.

Q Who was with you?

A Well, I will have to start with the time I left the door.

Q Tell the Court about it.

A We went out the door, and that's where I heard Police Director Eichel yell, "These are the murderers who will kill your wives and children and bomb your apartments." The flier was walking ahead of me and Como was behind me; and about a hundred meters down Rebstock Strasse I turned around. As I turned around, I saw the Police Sergeant Goehrendt, together with Lt. Albrecht.

Q Had you seen Goehrendt before this time?

A Only in the morning.

Q Did you see him during those incidents at the Police Station?

A No.

Q Continue.

A We went along Robstock Strasse, Hamburg Strasse and the field path.

Q Did the civilians follow you, or did you go along by yourself with the flier and the other officers?

A I didn't see anybody.

Q Continue.

A Starting from this path through the field, I went into the woods with the flier. There the path is cut into the ground, leaving from there; and I went into that path with the flier; and as we had walked a piece down that path, Goehrendt suddenly called, "Moller, where in the world are you going? Turn right."

Q Where would this path that was cut into the ground have taken you?

A That would have taken us to a settlement of the town of Offenbach.

Q Did you then follow this challenge or these instructions or orders to turn right?

A I turned right right away and went up the embankment of this path with the flier.

Q Continue, please.

A After I had walked into the woods about 20 meters with the flier, there were some bushes; and the thought flashed through my head at that time, "This is where you have to do your shooting." I fired.

Q How many times did you fire?

A. Twice.

Q Did the flier fall down on account of the shots?

A. Yes.

Q Did you examine the flier to determine whether he was dead?

A. I had a look at the flier and determined that he wasn't showing any life.

Q Continue telling what happened.

A. Police Master Sergeant Cochendt and Lieutenant Albrecht came over to me and talked to me.

Q What were they talking to you about?

A. I I couldn't comprehend it and I couldn't give an answer. Come along." He said, "Take a bicycle; I've got one, too." Why? together rode over to the place where the pilot A. I was so excited, standing a few paces away from Q. All right, continue. at the pilot and said, A. Police Lieutenant Albrecht ordered Cole to remain standing next to the body." and turned it over to Q. What did you do? in his pocket. left together, A. I went back to the Police Station with Albrecht. Q. And what happened then? rode back to the Police A. On the way, Lieutenant Albrecht, Commander Albrecht, told me, "This man was shot while attempting to escape."

Q Did you make any comments on that?

A I wasn't able to talk.

Q Continue.

A He told me, "I am giving you a leave until tonight. After all, you wouldn't be able to do any work anyway." When we returned to the Police Station I got ready to go

A. After [illegible]

home, and before that I had given my carbine to a comrade and I had asked him to unload it and clean it, and since I was in no condition to go home yet, I spent some more time in the waiting room. After a while, suddenly you heard talk, "Where's Moller?" I came on out and saw an officer.

Q Who was this officer?

A At that time I was of the opinion, of the conviction, that it was Captain of the Police Hivitt. And he asked me, "Has this order been carried out" and when I affirmed that, he said, "I want to make sure, myself. Come along." He said, "Take a bicycle; I've got one, too." We together rode over to the place where the pilot was lying. Camo was standing a few paces away from the body. The officer had a look at the pilot and said, "Look at that. He's still got a ring on. Take that off right away." I took his ring off and turned it over to the officer, and he put it in his pocket. We left together, and when we got to Hausenstammer Weg the officer rode off in the direction of Offenbach, and I rode back to the Police Station. I locked up my bicycle there, and I used my own bicycle to go home.

Q Did you go home?

A I rode home.

Q About what time was that?

A About 1430 hours.

Q Did you spend all afternoon at home then?

A Yes.

Q What else happened?

A After I had spent about two hours at home,

Police Master Sergeant Heberer came, and he gave me a report which had been written at the Police Station. I had to sign it because the Courts were told by the report stated that the flier had been shot while attempting to escape among them for insubordination, and an order?

Q Did you sign that report?

A Yes.

Q Why did you sign this report?

A The report had been written in the Police Station, and no report ever left the Police Station without the Police Station commander having seen it. For that reason I had no reason not to sign the report.

Q Was the substance of the report true?

A No.

Q Did you then return to the Police Station?

A In the evening I returned to the Police Station.

Q Did you hear anything else about this matter, or did you have anything done about this matter afterwards?

A No.

Q Do you know whether this report was sent over to anybody else and if so to whom?

A Well, the report was sent out.

Q Do you know who this officer was that arrived at noon time whom you took to the body?

A I found out now that it was the Police Captain Blum.

Q What punishment would you have made yourself subject to by a court-martial had you refused to carry out the order?

A I would have been shot.

Q How do you know that?

A In the course of the orientation lectures we had to attend weekly, the reports of the Police and SS Courts were read to us.

Q Were there any sentences among them for insubordination or for refusal to carry out an order?

A Yes.

Q Did you know of any orders about the treatment of shot down allied fliers?

A I would like to add something here. In the course of these orientations we were read a supplement which was sent to the Police Station in October, 1944, and that was also posted in the Police Station.

Q What was the contents of this supplement?

A That was a supplement to the regulations concerning the use of arms. It read as follows: "The superior officer is permitted to use his weapon or to make use of his weapon in order to enforce obedience or to give the proper emphasis to his orders."

Q Now, let's back up to my last question. Did you know of any regulation concerning the treatment of murder shot down or captured allied fliers?

A No.

Q Are you familiar with the "non-interference regulations"?

A I only found out about that in Camp Hersbruck.

Q Which of the accused did you know?

A Police Director Eichel, Captain of the Police of Kiwitt--I knew him by his name only--First Lieutenant of the Police Albrecht, and Master Sergeant of the Police

A Didn't Como leave together with you?

Goehrendt. Both of us left together.

Q You didn't know any of the other accused at that time?

A No.

Q With the exception of this one case of alleged issuance of orders, did you have any conversations or talk with any of these men concerning allied fliers?

A No, many times?

A DEFENSE COUNSEL: I was just thinking that if any of the other German attorneys want to cross-examine this witness they will do it now and then let the Prosecution have the witness. Dr. Rau wants to cross examine on behalf of Albrecht.

End ta file pe fols

QUESTIONS BY DR. RAU:

Q Where were you standing when Albrecht told you to pick up your carbine?

A Behind his desk in the office of the District Commander.

Q Who else was present?

A Nobody.

Q Did you leave right away, or did you wait a while?

A I left the office of the Police District Commander right away.

Q Do you know what kind of orders Como received?

A I told Como, "You are coming along."

Q You didn't answer my question. Do you know what kind of an order Como had?

A I don't know anything about any order to Como.

Q Didn't you talk to Como about what the purpose of your leaving was?

(Moller-Direct) A I had no chance to do that.

Director Kimmel.

[illegible] thank you.

MR. [illegible] I am examining [illegible] counsel in behalf of Kimmel.

DIRECT EXAMINATION

QUESTIONS BY MR. [illegible]:

Q Mr. Moller, are you having difficulty with your eyes?

A I wouldn't know.

Q Did you ever suffer at any previous time that time?

A I was ill, all right.

Q What was wrong with you?

A I [illegible] kidney disease.

Q I mean eliminate [illegible] with your eyes.

A I didn't have any.

Q Mr. Moller, please give us a brief description of the incidents as you saw them [illegible] Pearl Harbor.

Ta 215-pm (-2/26-)

Q Didn't Gsme leave together with you?

A Both of us left together.

Q Didn't you have a chance to talk to Gsme at that time? I can't say that because I didn't turn around at that time any more.

Q Now, then, at that time, [illegible] your superior officer would not accompany you on your way? Did Gsme accompany you on your way?

A Gsme was walking behind me, my way.

Q How many meters? did you tell to Albrecht about this

A 15 meters.

Q Why was he walking behind you? Do you know that?

A I don't know.

End ta 214, pm fols

A Police District Commander Albrecht said to that if he had known of this crime, he would have tried to prevent it.

Q What did you answer?

A I said that would have been impossible. I had the order from

Q How far behind you was Albrecht?

A About 10 meters behind [illegible] first interrogated about this case?

Q And when you reached the woods, how far behind was Albrecht then?

A I can't say that because I didn't turn around at that time any more.

Q You did not, then, at that time, fear that your superior officer would use his weapon in case you didn't carry out the order, did you?

A I was just about to carry out the order any way.

Q After the end of the war, did you talk to Albrecht about this case in the PW Camp Hershey? I mean at that time?

A It is possible, [illegible] Police Director Knoll at that time, this was the [illegible] Yes, in it, the guy. If you hadn't been sent away [illegible]

A Police District Commander Albrecht told me that if he had known about this order, he would have tried to prevent it.

Q What did you answer?

A I said that would have been impossible. I had the order from Director Kichel. [illegible] didn't get the question.

DR. HAU: Thank you. [illegible] of Knoll on the 23rd of February, was my question.

DR. WACKER: I am examining the accused in behalf of Kichel.

He was a Tech. [illegible] DIRECT EXAMINATION of the Reserve.

QUESTIONS BY DR. WACKER:

Q Mr. Keller, are you having difficulty with your memory?

A Q I wouldn't know. [illegible] ing to do with your [illegible]

Q. Did you never suffer of any diseases along that line?

A Q I was ill, all right. [illegible]. His statement that he would have taken action [illegible] you hadn't been sent away.

Q What was wrong with you?

A A severe kidney disease. explaining himself.

Q I mean ailments in connection with your memory. Interrogation of Knoll's

A I didn't have any [illegible] to the two Police Director Knoll, and

Q Mr. Keller, please give us this description of the incidents as you gave it the first time you were interrogated.

[illegible]

(KELLER-Direct)

In Sache 4 Ks 2/64

A What interrogation are you talking about? We are going to object to this. The first one. Where were you first interrogated about this case?

MR. MILLER: That was in Offenbach on the Main, from the then Police Director Knoll.

MR. STOLLE: I have to ask this question to be permitted because I would like to know when that happened yet. Since murdered by Kaiser Wilhelm, I have to present to the court his various statements that year.

A MR. MILLER: Objection overruled.

Q And what did you tell Knoll at that interrogation?

A When I had to see Police Director Knoll at that time, this was the way he greeted me: "Here he is, the guy. If you hadn't been under the protection of Knoll's, I would have bumped you off long ago. Now I'll tell you, to the best of my recollection, something was said to the effect: If you hadn't been sent away the other day, I would have bumped you off."

Q What did he mean, "this other day?"

A 23rd of February.

Q What was Knoll's position on the 23rd of February?

MR. STOLLE: Mr. Miller, what I primarily want you to do is to describe to the court what sort of description you gave Knoll at that time.

A I didn't get the question.

Q What was the position of Knoll on the 23rd of February, was the description I gave was the same I have just now given my question.

Exactly the same description you have given now?

A He was a Techn. Sgt. of the Police, of the Reserve.

A As far as I remember, sgt.

Q Where?

Was this interrogation reduced to writing?

A At the Vehicle Platoon in Offenbach on the Main.

As I have already said, Police Director Knoll dictated it into a typewriter and I signed it later.

Q Did he have anything to do with your headquarters?

A No.

Was you confronted with this statement later on sometime?

Q Then how do you explain his statement that he would have taken action against you yourself if you hadn't been sent away?

Was this a later interrogation?

A He told me that without explaining himself.

I don't remember.

Q Please continue with your description of this interrogation of Knoll's where were you interrogated the next time.

A I described the incident to the then Police Director Knoll, and was then interrogated in Hersbruck.

He dictated it into a typewriter.

What was that?

(MILLER-direct)

Ta 215-po-80-2/26-3
Ta 215-po-80-2/26

CAPTAIN VANCE: May it please the court, we are going to object to this on the ground it is immaterial. I don't know who this person is he claims interrogated him, but I don't see where it fits into this trial.

DR. WACKER: I have to ask this question to be permitted because I shall demonstrate very soon that the descriptions rendered by Moller varied, and for that reason I have to present to the court his various statements, one by one.

PRESIDENT: Objection overruled. What interrogation?

DR. WACKER: I would like to have the question repeated.

(Whereupon the last question was read by the court reporter as follows:

"Q. Please continue with your description of this interrogation of Knoll's.")

THE WITNESS: To the best of my recollection, something was omitted during that interrogation.

QUESTIONS BY DR. WACKER:

Q Mr. Moller, what I primarily want you to do is to describe to the court what sort of description you gave Knoll at that time.

A Yes.

A The description I gave was the same I have just now given.

Q Exactly the same description you have given now?

A As far as I remember, yes.

Q Was this interrogation reduced to writing?

A As I have already said, Police Director Knoll dictated it into a typewriter and I signed it later.

Q Were you confronted with this statement later on sometime?

A Yes, over there at the police headquarters.

Q I mean, at a later interrogation?

A I don't remember.

Q Where were you interrogated the next time?

A I was then interrogated in Hersbruck.

Q When was that?

(MOLLER-Direct)

Is fd 235-po-80-6/26-4

A In 1945, not during the time when you had given a copy of

Q Which month? an officer as being the man who had issued the order?

A July or August.

Q Who were you interrogated by at that time? that Michel was dead?

A By Mr Albrecht. I never stopped at that Michel was supposed to

have Q Do you know his name? but upon that, I may said, "That is quite

impossible. A No, he is too much of a coward to do that."

Q What did you say in the course of that interrogation? report

that given In the course of this interrogation, I also stated that I

received this order at this time, and the occasion I heard it was when

Q Mr. Moller, did you give this same description of the incident that you gave the Court today, that you gave to Knoll at this other time?

you A As far as I remember, it was the same description. read the

order Q By that, do you mean to tell the court that your description of the incident was exactly the same today in court and to Knoll and to this American in Nuernberg? ly impossible.

A Yes. Now do you explain the fact that at that time you said that Albrecht

Q Mr. Moller, did you not write in one interrogation in Nuernberg, that Albrecht had given you this order, and at that interrogation, didn't you mention Michel at all? Michel gave the order?

A I don't explain this. What I meant to say by it was that Albrecht told me, "You know that the order of the Police Director is," me

this order Q Mr. Moller, is it not a fact that you did not use the name Michel at all during that interrogation in Nuernberg? questions. me, it pleases the Court A I don't know that any more. I don't have the interrogation in mind, my memory right now. But I can withdraw this question for the and ask

Q Mr. Moller, a while back you testified that you had a talk with Albrecht in Nuernberg?

A Yes. Moller, I will back you to the incidents in the nature relative to Stalag. You to me that at that time Michel, Kiwitt and an

Q Was that not during the time when you had given the name of Albrecht to this American officer as being the man who had issued the order?

A I wouldn't know. [illegible] before that.

Q Mr. Muller, at that time was there some talk that Eichel was dead?

A At one time, the rumor cropped up that Eichel was supposed to have committed suicide by shooting, but upon that, Fay said, "That is quite impossible. He is too much of a coward to do that." Captain Kiwitt.

Q Do you know that Eichel's wife actually received the report that Eichel was dead? [illegible]

A I heard about this here, and the occasion I heard it was when Police Director Eichel said so himself, said that you had been asked by [illegible] Q in Mrs. Muller, in the course of this conversation with Albrecht, or you had made this statement declaring him to be the man who issued the order. Was it not then that, "Eichel is now dead, so we will put the blame of issuing the order on him[illegible] to do something.

A That is entirely impossible, for a police director to say a [illegible]

Q Then how do you explain the fact that at that time you said that Albrecht was the man who issued the order, and that on the other hand, today, you say that at that time you said that Eichel had given the order and that you even today say that Eichel gave the order? [illegible] Nobody paid any attention I am not at all convinced that I ever said that.

DR. WACKER: I ask for a short recess in order to examine [illegible] this record. I heard a police [illegible] like yourself and tell him, "come on in," or [illegible]

DEFENSE COUNSEL: I could ask him a few questions, may it please the court, while he searches, and save time, unless the court wants to recess.

DR. WACKER: But I can withdraw this question for a while and ask it after recess and go on. [illegible] actually [illegible] you in this

QUESTIONS BY DR. WACKER:

Q Mr. Muller, I will back up now to the incidents in the police station in Mainz. You told us that at that time Eichel, Kiwitt and an

officer of the Hitler Youth had shown up?

A That is what I said. I gave you any of the details concerning the

Q How long had you known Kiwitt before that?

A I hadn't known him at all, only his name.

Q Didn't you say, in reply to a question of your defense counsel, that you had known Kiwitt? was said at all about any other orders I was supposed to? I said that I knew the name of the Police Captain Kiwitt.

Q So that was the first time you saw Kiwitt, that particular such a incident at the police station? of a person that these orders be given in an official manner, the way you have just described it?

Q Mr. Moller, later on you also said that you had been asked by Eichel into the police leader's office, and that that asking had been done by means of a nod, is that right? between the time in which you claim you were You can't really talk about asking here. It wasn't SOP for a superior officer to ask a subordinate to do something.

Q Well, is it SOP, Mr. Moller, for a police director to ask a subordinate to come into a room by nodding his head?

A That was possible at that time already. We didn't know anything.

Q What do you mean by saying that you didn't know anything?

A I mean by that we didn't count anything. Nobody paid any special attention to us.

Q Isn't it unusual for a police director to be particularly explicit in his orders toward a police sergeant like yourself and tell him, "come on in," or something like that? ly and clearly was then the thing was to be done.

A All I can do is confirm what I have said already, and insist on it.

Q Mr. Moller, please tell us one more time, verbatim, if possible, or what the substance of this order that Eichel allegedly gave you in this office was?

CAPTAIN WAGE: We object, on the ground it is repetitious.

PRESIDENT: Objection sustained.

(MOLLER-Direct)

Ta 215-pp-80-2/26-7

QUESTIONS BY DR. WACKER:

Q Mr. Muller, did Eichel give you any of the details concerning the execution of this order?

A No, [illegible] you inform him?

Q Who was supposed to give you these orders?

A No one. Nothing was said at all about any other orders I was supposed to receive.

Q Mr. Muller, is it common practice in cases of orders of such a serious nature involving a life of a person that these orders be given in an indefinite manner, the way you have just described it?

A I don't know what was common practice, but at any rate, that is the way it was in this particular case, [illegible].

Q How much time had elapsed between the time in which you claim you received an order from Eichel and the time you left the police station with the flier?

A Four minutes.

Q What did you do in those four minutes?

A In those four minutes, I talked to District Chief Albrecht and got ready.

Q Did you talk to Albrecht about how this order was to be carried out?

A No.

Q Was there any talk about how, when and where the flier was to be shot?

A The order very curtly and clearly was that the flier was to be shot.

Q And why didn't you take the flier out in the yard and shoot him?

A I can't shoot a flier in the yard with a hundred people looking on.

Q Didn't you ask Albrecht then how to carry out the order?

A No.

Q According to your description, Albrecht told you that he was sending Gems along with you, is that right?

Q Mr. Miller, I show you now Prosecution Exhibit Number 115, a photostatic copy of your statement made on the 25th of May, 1945 and I ask you now, did you make this statement and did you sign it with your mark?

A Yes.

Q Do you still remember the statement you made at that time or would you like to read it through once more?

A I ask for permission to read it once more.

PRESIDENT: Permission granted.

DR. [illegible]: I ask the record to show that the accused Miller read through the statement made on the 25th of May, 1945 marked as Exhibit Number 115.

Q Is it correct Mr. Miller that in your statement at that time you said, "In the meantime the Station Leader Allraunt said to the policemen who had assembled there on orders of the Police Inspector Hofel that this man had to be shot"?

(Miller-direct)

1469-A

A Yes.

Q Was Capa informed what was supposed to happen on the way?

A I don't know. I've told the court, in the record now that all the [illegible] Colonel Schwarzen, who is almost sick, all the prosecution, all the members of the defense except Dr. Fraenkel [illegible]

Q Why didn't you do that if Albrecht told you he was sending Capa along?

DR. BUSCHER: I object to this question. It is suggestive and the accused made a very definite statement about this on direct examination.

DR. WACKER: I withdraw the question. [illegible] are still under oath.

PRESIDENT: Court will recess for twenty minutes. [illegible] still unsworn, remain the stand are cautioned [illegible] through an interpreter as follows:

(Whereupon the court recessed at 1005 hours.)

CROSS EXAMINATION

QUESTIONS BY DR. WACKER:

(Thereupon at 1020 hours the court reconvened.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court except Colonel Ackerman, who is absent sick, all members of the prosecution, all the members of the defense except Dr. Frost who is absent sick, all of the accused, the reporter and interpreter are present. I know the order of Police Director Fickel."

DEFENSE COUNSEL: The accused Moller will resume the stand, and I assume Dr. Wacker will continue with his cross examination, sir?

A PRESIDENT: The are reminded that you are still under oath.

HERMANN MOLLER, an accused, being reminded that he was still under oath, resumed the stand and testified further through an interpreter as follows:

A Well I said so but I am not convinced of it.

DIRECT EXAMINATION

Q But you signed it didn't you?

QUESTIONS BY DR. WACKER:

A I can explain this only through my sentiment.

Q Mr. Moller, I show you now Prosecutions Exhibit Number 116, a photostatic copy of your statement made on the 29th of May, 1945 and I ask you now, did you make this statement and did you sign it with your name?

A I said before in my testimony that sometime before I was arrested and therefore a P.S. had been added.

A Yes.

Q Do you still remember the statement you made at that time or would you like to read it through once more?

A Yes, I read this once.

A I ask for permission to read it once more.

PRESIDENT: Permission granted.

DR. WACKER: I wish the record to show that the accused Moller read through the statement made on the 29th of May, 1945--Prosecutions Exhibit Number 116.

Q Is it correct Mr. Moller that in your statement at that time you said, "In the meantime the Station Leader Albrecht said to the policemen who had assembled there on orders of the Police Director Fickel that this man had to be shot"?

A That is correct that I said so.

Q Is it also correct that in your testimony you said that it wasn't Kiwitt who had to be shot?

A That is correct that I said so.

Q How do you explain this difference in the statements?

A I mean Captain of the Order Police Kiwitt and Captain of the Order Police Blum who said by name.

A I can't explain this. That must be a mistake when it was dictated by Knoll--when he dictated it into the typewriter, through the [illegible] from Kiebel.

Q Mr. Moller, how do you explain this mistake since in this statement you don't say at all that you were called into the room by Kiebel?

A I intended to express by this that my immediate superior was the Station Leader Albrecht, First Lieutenant Albrecht. First Lieutenant Albrecht told me, "You know the Order of Police Director Kiebel, of a matter you met the [illegible]

Q Aren't you saying now, also, that Kiebel asked for volunteers whereas in your statement you said that Albrecht asked for volunteers?

A Yes, Police Director Kiebel asked the flyer and in the forest where [illegible]

Q Why did you say, at that time, that Albrecht asked? It came to

A Well I said so but I am not convinced of it.

Q But you signed it didn't Albrecht tell you that he was

A I can explain this only through my excitement.

Q Did you also read the P.S. to this statement? You [illegible] along the way

A I said before in my testimony that something had been forgotten and therefore a P.S. had been added. I obliged to sheet without Albrecht and without

Q Mr. Moller, I asked you only whether you read through this P.S. too, a few minutes ago. I had the definite order to do so.

A Yes, I read this too. During your first interrogation that the flyer

Q Is it correct that there you stated that Kiwitt was the man with whom you went to the dead flyer by bicycle?

A That is correct that I said so. In my testimony at that time that

Q Is it also correct that in your testimony you said that it wasn't Kiwitt? A [illegible] wasn't released.

A That is correct. Is it correct that during your first interrogation

Q How do you explain this difference in the persons involved?

A I know Captain of the Order Police Kiwitt and Captain of the Order Police Klum both only by name. I saw at these times and I had [illegible]

[illegible] Objection sustained.

On account of the great excitement I made this mistake.

[illegible] BY MR. MCCARN:

Q Mr. Moller, how long would it have taken through the forest from Isn't it true that Albrecht was interrogated at the same time when Sieber to Offenbach?
you were interrogated for the first time?

A You mean to the Police Headquarters?
I didn't know that.

Q Yes.
Let's go did you have any thoughts about the statement you made on

A One hour.
the [illegible] May, 1948?

Q On direct examination you testified that all of a sudden you got an.
the idea that here I have to shoot. Please explain in detail what it means
How is it possible that only much later you changed from the persons
for you when all of a sudden it came to your mind?
and that to Sieber and Kiwitt to them?

A I had the definite order to shoot the flyer and in the forest there
because I heard here that Blum had admitted that he was the one.
were, as I testified before, bushes, and there all of a sudden it came to
Mr. Moller, it is easy to understand that you were excited on the
my head, "Here you have to shoot."
[illegible] May, [illegible], but why didn't you reconsider your statement very soon
thereafter and make the necessary changes?

Q According to your testimony didn't Albrecht tell you that he was
giving you Gomo for this purpose.
CAPTAIN VANCE: We object. He is arguing with the witness.

A First Lieutenant Albrecht said, "I am giving you Gomo along the way
[illegible] Objection sustained.
and I am coming along myself too."
Mr. Moller, did you hear the prosecution's arguments in the

Q Why, then, did you feel obliged to shoot without Albrecht and without
Nuernberg [illegible]
Gomo?

A I heard many things about the Nuernberg Trial.

A Because I had the definite order to do so.
Then did you hear from those that the one who was acting on

Q Didn't you testify during your first interrogation that the flyer
superior orders could expect extenuating circumstances?
really tried to escape and that for this reason you shot him?
[illegible] We object to that question, and this man testifying

A I can't remember that.
about something he heard about that happened up in Nuernberg when I daresay
Can you remember the account of your testimony at that time that
he was in confinement and nowhere near that tribunal.
Albrecht was discharged again at that time?
[illegible] He said he heard.

A Albrecht wasn't released.
[illegible] Heard from whom?

Q Mr. Moller, isn't it correct that during your first interrogation
[illegible] I don't know. He said I heard a lot of things.
you stated that the flyer really tried to escape?
[illegible] Objection overruled.

CAPTAIN VANCE: We object on the ground that it is repetitious. I
A [illegible] hear it all.
think he has asked the witness two or three times and he has answered.
(Mr. [illegible] directed.)

(Moller-direct)

PRESIDENT: Objection sustained.

QUESTIONS BY DR. HACKER:

Q Isn't it true that Albrecht was interrogated at the same time when you were interrogated for the first time?

A I didn't know that.

Q Later on did you have any thoughts about the statement you made on the 29th of May, 1945?

A No.

Q How is it possible that only much later you changed from the persons Albrecht to Michel and Kimitt to Blum?

A Because I heard here that Blum had admitted that he was the one.

Q Mr. Moller, it is easy to understand that you were excited on the 29th of May, 1945, but why didn't you reconsider your statement very soon thereafter and make the necessary changes?

CAPTAIN VANCE: We object. He is arguing with the witness.

PRESIDENT: Objection sustained.

Q Mr. Moller, did you hear the prosecution's arguments in the Nuernberg Trial?

A I heard many things about the Nuernberg Trial.

Q When did you hear from there that the one who was acting on superior orders could expect mitigating circumstances?

CAPTAIN VANCE: We object to that question, and this man testifying about something he heard about that happened up in Nuernberg when I daresay he was in confinement and nowhere near that tribunal.

DEFENSE COUNSEL: He said he heard.

CAPTAIN VANCE: Heard from whom?

DEFENSE COUNSEL: I don't know. He said he heard a lot of things.

PRESIDENT: Objection overruled.

A I didn't hear at all.

(Moller-direct)

A MR. BACK S: No more questions.

DEFENSE COUNSEL: I would like to ask just a few, may it please the court, to the building that you talked about?

QUESTIONS BY DEFENSE COUNSEL:

Q Do you know who gave the flyer permission to have the water and to sit down and smoke? [illegible] angle.

A I don't know the person unfortunately the same place which [illegible] Then you left the Police Station with the flyer you went up first to what street? [illegible] were two were roads.

A Mauerfeld Street: one of those roads which goes to the right creates a [illegible] From Mauerfeld Street to Homburg Street, is that correct?

A Through the Rabstock [illegible] at is right.

Q At the end of Homburg Street that was the next street? you the instructor: The pass through the field [illegible] you remember saying that?

Q Was there a name to that?

A There was extended Richthofen. [illegible] through the woods could you Q Was that the street you took which lead in the direction of the woods? If that continued on the main road [illegible]

A Yes, certified that in the woods there is a road on the right from the [illegible] Now as you went up that street approaching the woods did you not come to a street at right angles to the street which approached the woods?

A Yes the Hill to Ostrowsky?

Q What is the name of that street?

A Hausenstammer Road, that is the Railway to go through the woods to [illegible] As a matter of fact, it is true, is it not, that you had to cross at this Hausenstammer Road in order to get to the woods? [illegible] through the woods.

A Yes.

Q Now this Hausenstammer Road, was that part of the boundary of the Police District of Bieber? [illegible] over the hill to Ostrowsky or how? you know?

A Approximately 30 meters.

Q As you crossed this Autobahnbruecke road into the woods you could, you might, to the Hohlweg that you talked about?

A Does not a road?

Q That goes slightly to the left, does it not?

A Yes, in a sharp angle, it is a pass.

Q Isn't there also a road that begins approximately the same place which turns to the right and goes through the woods? I it was because you [illegible] A There are two more roads.

Q Isn't it true that one of those roads which goes to the right crosses a little hill and goes to Offenbach?

A Over a little hill, that is right, remember, is why you had shot

Q When you were going up the Hohlweg when Gebhardt gave you the instructions, as you said, to turn right--you remember saying that?

A [illegible] you made about the time the ring involving Kindorf [illegible] after you turned right if you had continued through the woods would you have come to the road which goes over the hill to Offenbach?

A If I had continued on the main road--Obermeisterer Weg?

Q You testified that in the woods there is a road on the right from the Mühlweg that goes over a hill to Offenbach; do you remember that? You testified that?

A This pass goes through the woods, yes.

Q Over the hill to Offenbach?

A [illegible] the road to Offenbach through the woods to the [illegible] Now when you turned right on the Mühlweg to go through the woods, Gerichtsrat told you to go, if you had continued would you not have come to that road which goes over the hill to Offenbach--that continued through the woods.

A Yes.

Q How far was it from the place that you turned right on the Mühlweg to this little road that goes over the hill to Offenbach; as best you know?

(Miller-direct)

A Approximately 60 meters.

Q After going through 60 meters you would have been on the road which does go over the hill to Offenbach?

A It is not a real road [illegible].

Q It is a way [illegible] is that correct?

A [illegible] It is not a real road, it is a pass.

Q You have testified that after the shooting Gochrandt and Albrecht both said something to you and you don't remember what it was because you were so excited.

A I know only that Peter Gochrandt called, "Such an excited dog." I meant to say [illegible] you say that Albrecht said it was unnecessary to shoot?

Q You had anything said to you, do you remember, as to why you had shot and that your reply at that time was, "He was escaping."?

A I couldn't talk [illegible] of your own personal knowledge whether or not

Q Now, this mistake you made about who took the ring involving Kimitt and Klum--when and where did you first find out you had made that mistake?

A Approximately three weeks ago. [illegible]

Q And where? [illegible]

A Here.

Q That was during the course of the preparation of this case for the defense? [illegible]

A The trial was already going on.

Q You testified that the road to Offenbach through the woods to the office of the Police Director would take you about one hour, is that correct?

A [illegible]

Q That is by walking the entire distance, is that correct?

A Yes.

Q How long would it have taken you to go the shortest way to the same office, walking? [illegible]

(Keller-direct)

A Not much more than half an hour.

Q Are you certain that you signed the report on the same day that the thing happened? Don't walk.

A The same day, yes. On the next day I was transferred.

Q Do you know who wrote the report -- who directed it be written? Do you really know yourself? He would have to say, "No."

A Yes, approximately that.

Q When you say that Albrecht signed it you were just presuming, isn't that true? Given order to shoot?

A I didn't say that Albrecht signed the report.

Q I meant to say: Did you say that Albrecht saw it and authorized it before you signed it? Klee or Kimbel.

A What would have happened if Albrecht had tried to stop you?

Q But you don't know of your own personal knowledge whether or not that was true, do you?

A No. I can't state that as I wasn't present.

Q You say that you and Albrecht walked back together, or some back ation, together from the scene of the shooting to the Police Station?, nothing that Albrecht -- Klee would have stopped you from carrying out Kimbel's orders, is that -- Q It was during that walk back that Albrecht said to you "shot while trying to escape."?

A Yes. That is all.

Q What else was said at that same time?

A He told me, only that I should go home. He would give me furlough until the evening because I wasn't capable of going on duty anymore.

Q And added these other words, "shot while trying to escape."?

A Yes." [illegible] to do the same as Albrecht -- to do away with him in the forest.

Q Those four words were the only things said by him or by you the entire way home about what happened? Or [illegible] to me.

(Keller-direct)

A Yes, you asked a few questions at the time and did I refuse to answer?

Q During the entire way back you said absolutely not a word?

A Why, I couldn't talk.

Q You were asked by one of the German lawyers Herr Müller, about something that Albrecht said to this effect, "What if Albrecht had known what was going to happen he would have tried to stop it." Is this or this statement true?

A Yes, approximately that.

Q Do you remember saying that Albrecht couldn't have stopped it because you had the direct order to shoot? That came from whom initially. Is it?

A Yes.

Q From whom? The translation will say the original.

A From Police Director Eichel.

Q What would have happened if Albrecht had tried to stop you?

A CAPTAIN VANCE: We are going to object to that because it calls for speculation. Also, is this your signature?

PRESIDENT: Objection sustained.

Q I am going to ask one more question which may be subject to objection. In other words, having received the order from Eichel to shoot, nothing that Albrecht or did would have stopped you from carrying out Eichel's order, is that correct? Is that correct?

A No, that's not. The original exhibit will be used.

DEFENSE COUNSEL: What is allegedly the prosecution to show in the

QUESTIONED BY DR. SACHER:

Q Mr. Müller, I show you now the Prosecutions Exhibit 116, your interrogation of the 8th of May, 1946. I will ask you whether you were then asked the following question and gave the following answer, partition 5a.

"Q Was it your intention to go with the flyer to the settlement or to do away with him in the forest?

Q Mr. Müller, please read once more the question and answer which you have

A My intention was to keep on going until I would receive an additional order or something else would be said to me."

(Müller-direct)

1507 [illegible]

Were you asked t ese question at that time and did you give those answers?

A May I see it?

I know definitely that during my interrogation on the 8th of May, right at the beginning, twice on two spots I had two statements changed. I signed on the side the initials of my name. I can't find this on this statement here.

CAPTAIN VANCE: If it please the court, we would like to have this accused see the original statement that does have those initials. This is a copy.

PRESIDENT: The accused will see the original.

QUESTIONS BY DR. HACKER:

Q Mr. Moller, is that exhibit 116?

A Yes.

Q Mr. Moller, is this your signature?

PRESIDENT: He can ask that question. Rephrase it.

A Yes. That is correct now.

Q All this has nothing to do with the question I propounded. I had asked you whether the questions I read to you were asked you and whether you had given the answers as I read them to you? Would you like to read those questions once more?

PRESIDENT: The original exhibit will be used.

DR. HACKER: I would like to ask for the permission to show him the German translation.

PRESIDENT: Is there an original in German?

DR. HACKER: No, but this is certified to. It is a certified copy.

PRESIDENT: This is acceptable as long as it is certified to.

QUESTIONS BY DR. HACKER:

Q Mr. Moller, please read once more these questions and answers which were read to you before? From here up to here (indicating).

A Yes, I read it.

Q Were you asked these questions at that time and did you give the

answers as shown in the statement?

A That is possible but I can't remember anymore.

Q Didn't you express, with these words, your opinion that it would need an additional order for you to shoot at all?

A If I got an order I don't have to have an opinion, I have to carry out the order.

Q Why didn't you say then, at that time, it was my intention to keep on going until I would get another order or something else would be told to me?

CAPTAIN VANCE: We object to that as arguing with the witness.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: I would like to state to the court what I think he is trying to do. He is asking the witness to explain a statement made at one time in consistence with the testimony now given here and I submit that that is proper cross examination.

PRESIDENT: He can ask that question. Rephrase it.

QUESTIONS BY DR. JACKEL:

Q Mr. Moller you told us today that you shot on orders of Eichel. How is it then possible that in your interrogation of the 8th of May, 1946 you said you intended to keep on walking until you would get an additional order or you would be told something else?

A I was told something.

Q By whom?

A By Police Master Gochrendt.

Q What did Gochrendt tell you?

A "Where do you want to go? "Go to the right;

Q But that is not the way of shooting a flyer?

DEFENSE COUNSEL: I pray the court's judgement. That is argumentative.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. MACK:

Q Moller, do you want to say that Goehrendt gave you an order of any kind?

A No.

Q Please explain then to the court why in your statement of May 8th you mentioned an additional order?

A I can't explain that.

DR. MACK: No more questions.

CAPTAIN VANCE: Are there any more questions by the defense?

DEFENSE COUNSEL: Not at this time.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Herr Moller, you have been testifying before this court since 9 o'clock this morning and I want to ask you one question. Have you been telling the truth to this court?

A Yes.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: We have nothing further.

PRESIDENT: There are no questions by the court. The witness will take his place in the dock.

(Whereupon the accused was excused and resumed his seat in the dock.)

PRESIDING COURT: The accused, Albrecht, will now take the stand. The examination will be conducted by Mr. Rau.

WILHELM ALBRECHT, an accused, voluntarily took the stand in his own behalf and having been duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Wilhelm Albrecht.

Q When and where were you born?

A On the 11th of September 1890 at Stendal.

Q What is your profession?

A I am a police official. My last rank was 1st Lieutenant of the Order Police.

Q Since when are you a police official?

A Since the 8th of January 1919.

Q What are you now?

A I am a prisoner of war in Dachau.

Q You are one of the accused in this trial?

A Yes.

Q Are you married?

A Yes, I am married.

Q Do you have children?

A Two children.

Q We turn back now to the year 1945. Was a flier delivered to your police station in 1945?

A Yes, on the 22nd of February 1945.

Q Where were you at that time?

A I was in the bunker. There was an air raid alarm going on and I saw that an airplane had been damaged and that the crew had to parachute.

Q At which place did that happen?

A That was between Bieber and Helheim.

Q The flier was brought to your police station?

A Yes.

Q Where was your police station located?

A The police station was located in Bieber on the Hebstock.

Q What was your assignment with the police at that time?

A I was the leader of the police station Bieber.

Q Who delivered the flier?

A As far as I can remember a man who worked in the woods.

Q What happened after the flier entered the police station?

A After the flier had entered the police station I searched him for weapons and other pieces of official equipment. He took away his maps; he had a lighter with him. Cigarettes were lying on the table, K rations, two compasses. That was all.

Q After he was searched, what happened then?

A After this was done I asked the flier to sit down.

Q Did you notice the name of the flier?

A Yes. I forgot to mention he had also an identification card. There was his name -- I don't know his first name exactly anymore, I think it was Lillium Duke.

Q Of which nationality?

A He was an American flier.

(Albrecht-direct)

Q After the flier had sat down, what happened next?

A I asked the Policemaster Lueck, he should make a list of all the things which had been taken from the flier.

Q Did the flier express any wishes?

A Yes, he asked me whether he was permitted to smoke. I said, "Yes" and told him to go ahead. Then he asked Master Lueck whether he could get a glass of water. I said, "Yes, if he wanted another one, give him another one."

Q What happened then?

A I then ordered that the flier should be brought to Headquarters of the Order Police, and gave this order to the Policemaster and the Police Sergeant Como.

Q Why should the flier be brought to this place?

A Because this was our order.

Q What was this headquarters of the Order Police?

A The headquarters of the Order Police was our superior office.

Q Was this order of yours carried out?

A Yes.

Q The flier was taken away?

A Yes.

Q By whom?

A The flier was taken away by Como and Moller.

Q Before the flier was taken away what happened?

A A car arrived and Police Director, Eichel, Capt. Kiwitt and some other person from the Party, I don't know whom, came to the police station.

Q Did it just happen that these individuals came to the station or had somebody called them?

A It seemed they just happened to drop in. As far as I remember they were not called.

Q You yourself didn't call for them?

A No.

Q Please continue your story.

A Police Director, Eichel, got very excited because we had treated the flier this way and Capt. Kivitt, too, said something, and we were all surprised that we were supposed to have done something wrong.

Q What was the objection?

A That he was allowed to smoke; that he was allowed to sit down and that he had received water.

Q What happened then?

A The Police Director was standing next to the door. He called me over and said to me, "This man has to be done away with." I replied, "Not by me." Then he said, "Then by some other people would do", or something like that. I won't insist on these exact words.

Q What did you do then?

A I returned to the table where the flier was sitting.

Q Do you know what Police Director Eichel did?

A He continued to stay there. I went to my room and changed my uniform.

Q Why did you change your uniform?

A Because I wanted to go along when the flier has to be taken away.

(Aldrecht-direct)

Q Did you have an order to go along?

A No. I intended to go along until the limits of my police station.

Q How far does your police station extend in the direction of the forest?

A In front of the forest is Heusenstammer Weg. That is as far as the station limits extend.

Q Why did you intend to go along until this road?

A When I was outside the station I heard that the crowd was very excited and incited and Police Director, Eichel, said something to the crowd, something like this -- "These are the men who destroy your houses and kill your women and children."

Q I think you didn't answer my question completely. Why did you intend to go along?

A I didn't want to walk through the excited crowd which was standing there.

Q Why?

A Because the crowd was yelling and I thought they intended to get hold of the flier.

Q After you changed your uniform jacket what happened then?

A Police Director Eichel called me outside once more and said, "Mr. Albrecht, I am now going to take the flier along on top of the motor hood and I am going to drive him through the City." Then I said, "Police Director Eichel, I wouldn't do that on account of the public and, furthermore, that is not a military manner", and then he was thinking for a moment and said, "All right, we'll let it go."

Q Where did this conversation take place?

A Outside on the street in front of the car.

Q Where was the flier at that time?

A The flier was still in the room. Then the Police Director said, "Get going and take the flier away." Then I told Como, "Bring the flier out" and he brought him out, too.

Q Do you know who brought the flier out?

A I can't say exactly, anymore whether Como did it or I myself.

Q Did you see Moller at that time?

A No, I didn't see Moller. I had ordered Lueck to come along and then I called upstairs, "Where is Lueck?" Then my subordinate said, "Lueck isn't there" and then Moller came and said, "Lieutenant, I am coming along and I am taking the flier away."

Q Did you say anything else to Moller?

A Yes. Police Director Eichel said, "Why isn't the flier being taken away" and then I went over to Moller and clapped on my hands and said, "Moller, get going and get dressed and see that you get out of here." Then I drove Moller to hurry up and even went into his room but I can't state this definitely. I think so anyway. Then Moller came out of the room. Police Director Eichel called, "Bring the flier to police headquarters" and then I said, "Yes."

Q What happened then?

A Moller came out of the house and Como came along and they left. I said, "I don't want to go through the

crowd" and he said, "Yes, that's all right, take the back way."

Q Why didn't you want to go through the crowd?

A Because the crowd was restless. I thought I was doing right whatever I did then.

Q Were you afraid?

A This happened on several occasions that fliers had been attacked by civilians and that came in my mind.

Q If I understand you right you were afraid that on the normal road the flier might be attacked by the crowd?

A Yes.

Q And you took the other, more distant, road in

order to protect the flier from the crowd?

A Yes.

Q Please continue.

A This road leads through a neighborhood which is nearly entirely uninhabited.

Q And how is it if you would have taken the normal road?

A The normal road is a little bit closer, the difference is perhaps ten minutes.

Q Does this road lead all the way through living quarters?

A On the normal road you first have to go through Sibor, then you pass by some stadium and then you pass police headquarters at Offenbach. Then you are already in Offenbach.

Q How is the situation on the way you picked?

A There were only a few houses when you left the police station, only very few buildings are located there.

Q Who accompanied the flier?

A The flier was escorted by Como and Moller.

Q Please describe the way these three people were walking.

A Moller and Como went with the flier.

Q At what distance?

A I have to add something else. When I turned around the corner from the station Policemaster Goehrendt came and I said, "Goehrendt, you too come along. We hold the people back if they try to follow us." And that was done. Goehrendt walked on the left of the road and I walked on the right.

Q Did the crowd follow you?

A Yes, some people followed us and we kept them back.

Q Did you hear any statements made by the crowd?

A Yes. "Give us the flier, we will take care of him ourselves" and some similar expressions. They were cursing but that was over very soon because we kept them back and they kept on going. At that time Moller and Como were about 20 or 30 meters away from us but the distance increased later on because a friend of ours came and asked us where we were going with the flier. We told him, "To police headquarters." This fellow left then and we followed them. When we came in front of the forest I and Goehrendt saw that Moller, instead of turning to the right, was turning to the left in the forest. Goehrendt

(Albrecht-direct)

brought this to my attention only. I said right away, "Go ahead, Goehr not, and bring them back." Then Goehrendt ran after them and brought the flier back and sent them off on the correct path to the right, to Offenbach. I called to them, "Where did you want to go with the flier right now?" and Moller said something about "engineers" and then I said, "No, he has to be taken to the headquarters of the Order Police and Goehrendt set them off on the path to Offenbach. Then I saw a man who was standing behind a tree and he started to talk to me. That was the witness, Semrod, and I talked with him.

Q What did you say?

A He asked, "Where is the flier being brought" and I said, "He is being taken to Offenbach." I said, "No harm will be done to him" but, of course, the exact words which were used I can't remember anymore. While I was talking with him two shots were fired.

Q How far away from the place where the shots were fired were you at that time?

A I figured at least 40 to 50 meters.

Q At that time did you see Moller or the flier or both of them together?

A Yes, I saw that Moller and Goehrendt -- Goehrendt was a little bit more away -- that they had started to walk on the path to the right in the direction of Offenbach.

Q Did Goehrendt and Moller walk outside the forest or in the forest?

A They were not on the Hohlweg. He cut off a piece of the road and tried to get on the path to Offenbach.

(Albrecht-direct)

Q Can you describe in a few words how the forest looks like around the station?

A The forest isn't nice and goes already up to the houses where Offenbach starts already and whoever walks through Offenbach doesn't see much of the wood. First the Neuenhainer Weg runs into the Apfelgarten St., then he runs on the road which goes over the hill, leads to Offenbach. One can have a free hundred meters this way. Just to see what did you do when you heard the shots?

A Then I ran over and Keller, "Who did this nonsense?" Keller was standing there with his rifle and I said, "Why did you shoot?" and I was cursing him, too. "How could you do that?" and he said, "If he wouldn't have tried to run away, I wouldn't have shot." Gebrandt was already on the spot where the flier was lying and took the distance from Keller to the flier. Keller was standing about 10 to 15 steps from the flier.

Q What happened then?

A I told Gebrandt that he should take care of the body. I would leave the body picked up later on.

Q What did you say to Keller?

A I told Keller, "Just go back to the station."

Q Why didn't you leave Keller there? I had been told Keller was standing there very excited, he was sweating, he was pale, very pale. I told him to go home and I'll be there over, once 1:00 o'clock.

A What did you do then? Correct. I have no idea. I walked back with Keller to the station. After that I [illegible]

(Albrecht-direct)

Q What happened at the station?

A At the station I asked Moller once more, "Why did you shoot?" and he told me, "He made one jump into the forest and that's when I shot."

Q On account of this did you give any orders to your subordinates in the police station?

A After this had happened. "I don't want to see anymore that a flier is delivered here at the station by a policeman. They have to be brought to the air force immediately."

Q When did you say that?

A After this incident

Q And to whom?

A To the policemen who were present. flier brought

Q In which form did you say it? Was it only just a statement, or was it a direct order? was brought in

A That was an order.

Q After this incident was there any other flier brought to the police station?

A The same day, in the evening.

Q Who delivered this flier?

A I wasn't present because I was home. I had been on duty for 30 hours. There was an air raid alarm. I called up whether anything new had happened and Goehrendt told me that a flier was there.

CAPTAIN VANCE: May I interrupt. I have no objection to the defense counsel going into this matter but they may open up something -- I think you know what I am talking about.

Why were there two persons from the air force present? DEFENSE COUNSEL: We don't intend to open up a thing. I had ordered that immediately when there would be trouble. CAPTAIN VANCE: He is opening it up. That was done. DEFENSE COUNSEL: If he follows my instructions he won't. COURT: Mr. Berger would like to cross ex. CAPTAIN VANCE: I thought it my duty to warm him.

QUESTIONS BY DR. RAU:

Q Please continue with your story.

A Goehrendt told me that the flier was there at the station. I said, "He should be brought to the headquarters of the Order Police, the quickest possible way." That was done. He ordered two policemen and they took the flier over there.

Q After this time was there any other flier brought to the police station? Him where you intended to go with the flier?

A Yes, Sunday forenoon. This flier was brought in by the Catholic priest. He said, "Here is the flier being brought." Q How many days later did this happen? Order Police."

A Two days later, on your orders, told Koller to take the Q Were you present yourself? her follow Goehrendt's order? A No, I was informed about it by telephone.

Q Who was present in addition to the flier at the police station? Goehrendt go with him right away?

A I drove over right away with my bicycle and the gendarmes, the flier, the priest, Goehrendt was there, Lucck was there and let Lt. Blum and let Lt. Zager, court, let the record Q Did anybody else come over there? Give the distance later. A Yes, a Captain of the air force and a Sergeant of the air force. Goehrendt present when you talked to

Mr. Albrecht

Q Why were these two persons from the air force present?

A I had ordered that immediately when fliers would be brought in the air force should be informed and that was done in this case, too.

DEFENSE COUNSEL: Dr. Buerger would like to cross examine.

QUESTIONS BY DR. BUERGER:

Q Where was Goehrendt at the time the flier was delivered?

A Goehrendt was on duty in the bunker because an air raid alarm was going on. He was not present when the flier was delivered.

Q He first came into the picture when he met you at the corner of the police station?

A Yes.

Q Did you tell him where you intended to go with the flier?

A Goehrendt asked me, "Where is the flier being brought?" I said, "To headquarters of the Order Police."

Q When Goehrendt, on your orders, told Moller to take the path to the right, did Moller follow Goehrendt's order?

A Yes, right away he went to the right.

Q Did Goehrendt go with him right away?

A Goehrendt was away from him a little bit, perhaps from here to the desk.

DEFENSE COUNSEL: May it please the court, let the record please show that the witness estimates the distance between Moller and Goehrendt at approximately five meters.

Q Was Goehrendt present when you talked to this Mr. Schrod?

A No, he was approximately, in my estimation, 25 to 30 meters away.

Q Do you remember exactly the words which Moller said when you arrived at the station?

A I asked Moller, "Why did you shoot?"

Q At that time was Moller in any position to give a clear answer?

A No, Moller was very excited. He was shaking. For this reason I sent him home.

DR. BURGER: Thank you.

QUESTION BY DR. WAGNER:

Q When, for the first time, did Michel give the order at the police station at Bieber, to deliver the flier to headquarters at Offenbach?

A As far as I can remember, already at the guardroom it was said, before he left the room, "He has to be brought to headquarters at Offenbach."

Q You have testified about a statement of Michel--"This man has to be done away with" or "this man WILL be done away with". When you testified about this statement on direct examination you made a move with your hand and you made a move with your right thumb in the direction of your back. Did Michel make this move at that time?

A Michel made with his head like this (indicating).

DEFENSE COUNSEL: Let the record indicate that Michel nodded with his head, pointing his head to the rear.

Q Under these conditions was Michel's statement to be considered by you as an order?

A First I thought it was an order but because I objected to it and Michel didn't say anything to Capt. Kiwitt, I then realized it couldn't be an order. That was, you might say, a remark made during a discussion.

Q How was Michel's attitude in office when he was in office, in general? Would Michel have accepted a refusal of an order the way it was testified to here by you?

A Michel was a man, when he gave an order thisorder had to be carriedout. He was feared even by the officers.

Q My question now is this -- If Michel intended to give you an order would he have accepted a refusal from your side with the short remark you made to him?

A No, he wouldn't in my opinion.

Q Was it know at that time that from the highest Party officials, from the Reichsfuehrer of the SS, orders had been issued in accordance with the treatment of fliers?

A We had no orders, only in October at an official meeting, Maj. Kuhlenbeck, our superior officer, read us the non-interference order.

Q Mr. Albrecht, I didn't ask you whether you, at the police, had orders. I asked you whether you knowor whether Michel knew, that such an order from the Party or other government office existed at the Party offices and other government departments.

A No, nothing was known to me.

Q When were you interrogated for the first time in this case?

A I was taken into custody on the 28th or 29th of April and I personally was brought to the Captain of the CIC by the Police Director, Knoll. The CIC Captain asked me for my name and he said, "You are 1st Lt. Albrecht. There is nothing against you. I have already many interrogations in the Bieber case. There is nothing against you. You can go home."

Q According to Knoll's statement had Moller been heard at that time?

A No, Moller had not been heard. He wasn't there.

Q A few days later did you hear about an interrogation of Moller?

A Yes, approximately eight days before I was arrested again.

Q Which description of the incident did Moller give at that time?

A First I have to say something else before I tell you that. May I do so? A policeman came to me and said, "Mr. Albrecht, be careful. You will be arrested again. The Director has said, 'We will get Albrecht anyway.' We will just say about him that he transmitted the order to Moller!" and a few days later I was arrested again. In the prison, we were brought to Frankfurt, the statement was shown to me and there it was written that Moller had said I had given the order.

PRESIDENT: Court will recess until 1:30.

(Whereupon at 1200 hours the court recessed until 1330 hours.)

(Albrecht - Direct)

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, except Colonel Schramm, who is in hospital, absent sick; all the members of the prosecution; all the members of the defense, except Dr. Ebert, who is absent sick; all of the accused, except the accused Trumbler, No. 2, who is absent conferring with defense counsel; the reporter and interpreter are present.

DEFENSE COUNSEL: Albrecht, No. 6, will resume the stand.

WILHELM ALBRECHT, an accused, voluntarily resumed the stand as in his own behalf, and having been first duly sworn, testified further through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. HAGEN:

Q Mr. Albrecht, before the recess, we just discussed that you were interrogated at Offenbach and then you were brought to Hersbruck?

A Yes.

Q When were you taken to Hersbruck?

A On the 1st of June, 1945.

Q When did Moller come to Hersbruck?

A Together with me.

Q Were you together at Hersbruck?

A Yes. We slept in the same room.

Q When, for the first time, did Moller tell you that he had received an order from Michel to shoot the fliers?

A That might have been in July, on the following occasion: I told Moller, "You shot that time. On account of you, several family fathers are

arrested. If I would have known that at that time, I would have prevented it," and then he said, "You couldn't have prevented it. I had the order from the Police Director."

Q Was it known at that time that supposedly Eichel was dead?

A I hadn't heard anything about it. I heard this only here in Dachau.

Q You heard the report was made in regard to the shooting of the flier. Moller has testified that this report was false. Did you agree to, or did you give the order for a false report?

A To my knowledge, no false report was made. If Moller would have given the false report, he wouldn't have signed it. He would have changed it.

Q If Eichel would have given an order to shoot the flier, and if the flier would have been shot on account of Eichel's order, how would this report have been made out?

DEFENSE COUNSEL: I pray the court's judgment. It is one of those hypothetical, supposititious questions.

CAPTAIN VANEK: We join in with the objection on the same grounds.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. HACKER:

Q If Eichel would have given an order to shoot the flier and if the flier would have been shot on account of Eichel's order, would you have made a false report?

DEFENSE COUNSEL: I pray the court's judgment. Same grounds.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. HACKER:

Q Did you make false reports at your headquarters?

A No, never.

Q Did you talk to Moller at that time, how the report should be made out?

A No, Moller had left already, at home.

Q Do you know how the report was made out?

A Based on the statements which Keller had made to me

Q And he didn't mention anything about an order?

A No, he didn't mention anything.

DR. WACKER: No more questions.

QUESTIONS BY DEFENSE COUNSEL:

Q When Geshrandt came from the air-raid shelter back to the police station, and you said to him, "Geshrandt, come along," so far as you know at that time, did Geshrandt know what he was supposed to go along for?

A No, I had to tell him that.

Q At what time that day did Geshrandt's tour of duty end, or should it have ended?

A The tour of duty, which was overnight, was supposed to leave at 1 o'clock. We were on duty for 24 hours.

Q I pray that the witness will listen to the question. I asked you on what hour did Geshrandt's tour end that day, or should it have ended? At what hour, if you remember?

A Yes. At 1 o'clock, he should have gone home.

Q At about what time was it that he first showed up at the police station?

A Geshrandt was there in the morning. I don't know you were standing at.

Q I mean, at the time when you said, "Come along?"

A It was around noontime. I think it must have been 12:30, approximately.

Q Where did Geshrandt live?

A His residence, as far as I know, was on the Hamburger Street. We passed it with the flier.

Q Now, inasmuch as Geshrandt didn't know what the whole thing was about at the time he came up and you said, "Geshrandt, come along," what did you tell him?

A I told him that while we were keeping back the crowd. I said to

Did you hear what Geshrandt said to Keller?

him, "Help to keep the crowd away a little bit," and there Goehrendt asked me, "Where is the flier to be brought?" and I told him, "To headquarters of the Order Police.

Q Did you tell him by which direction, by which route?

A I told him that we wouldn't take the main road because there was still air raid alarm going on, and that for this reason we were taking the back road.

Q Coming down to the point when you reached the Hausenstamer Weg, it was at that point, was it not, that Goehrendt called you, due to the fact, as you said, that Moller was going the wrong way?

A Yes.

Q And as a result of an order received from you, Goehrendt ran after Moller?

A Yes.

Q Just answer the question.

A Yes.

Q Did he reach Moller? Did he come up to Moller?

A It is possible that he didn't run all the way up there, that a few meters were missing.

Q Could you see down the Hohlweg from where you were standing at that time?

A I couldn't see into the Hohlweg, because it is deeper, but I could see Goehrendt, Moller, and flier.

Q And at that time, Moller and the flier were together in the Hohlweg, is that right?

A Yes.

Q And Goehrendt was near them? You don't know just how close, is that what you said?

A He was nearby, I could call to him, yes.

Q Did you hear what Goehrendt said to Moller?

(ALBRECHT-Direct)

In Chapter 4/15-5

A Yes. I heard this. "Where you went to go?"

Tell the court what you heard Goebrandt say to Heller.

A I heard that Goebrandt call to Heller. That also he said, I can't say any more, the three of them, Heller, the flier and

Q I asked you what you heard. All you could hear that was said between Goebrandt and Heller was that you heard Goebrandt call after Heller?

A Yes.

Q And you didn't hear Goebrandt say anything to Heller about going to the left or going to the right, did you?

A No. I didn't hear that. I couldn't.

Q At that time, you could see the three of them, Heller, Goebrandt, and the flier?

A Yes, in which direction?

Q What did you see happen then? One thing at a time.

A I saw that Heller and the flier turned around and walked part of the Hohlweg briefly.

Q In which direction?

A Back in the direction where I was, in the direction of Bieber.

Q At the time that Heller and the flier turned around and came back a piece along the Hohlweg, back to where you were standing, what did Goebrandt do during that time?

A Goebrandt entered the woods immediately following the

Q Did you see Heller and the flier at the time these two people left the Hohlweg and went into the woods?

A Yes. In order to get on the right road in the direction of Offenbach

Q In other words, you did see Heller and the flier leave the Hohlweg and go into the woods?

A Yes.

(ALTERNATE-Direct)

Re Filepp-22-6/26-6

Q- At the time that Muller and the flier left the road to go to the Hohlweg, what did Cochrandt do immediately before and immediately after?

A Cochrandt walked along the Hohlweg in my direction, towards me.

Q In other words, the three of them, Muller, the flier and Cochrandt, turned around and the three of them started back in your direction. So far, is that correct?

A Yes.

Q And after coming back a short way, Muller and the flier left the Hohlweg and went into the woods and Cochrandt continued on his way in your direction, is that correct? the prisoners too well.

A Yes. Cochrandt wasn't in the forest. He continued to walk on the Hohlweg.

Q In which direction? Gauleiter, Kreisleiter things?

A Cochrandt was, the leader of a local ward. He was an ortsgruppenleiter.

Q Did he talk to you? Did he come up to you?

A Not particularly. Local ward had complained about me. I don't know Q What happened? I was transferred.

A The shots were fired in testimony that you made a statement to

Q Did you see what Cochrandt did when the shots were fired?

A He was in the direction of Hohlweg to this because I don't

Q In other words, Cochrandt entered the woods immediately following the sound of the shots, is that correct? ask him what it means. You didn't

A Yes, to

Q Prior to your coming to Bieber, where was your station?

A For 14 years, I was stationed at Buergel, a suburb of Offenbach.

Q What were your duties there? from Frankfurt. Here we say,

A I was the leader of the police station there at the end

Q Were prisoners of war kept in Buergel at that time, or prisoners of some kind? does that mean?

A We also had [illegible] difficulties.

(ALBRECHT-Direct)

1538

1538

A Yes, for this reason, that the prison for women at Offenbach had been destroyed by bombs and so I had the prison for women, together with the police station at Buergel. Did Generaal make such a report to you, Q You were at one time relieved from command at Buergal and sent to Buergal. Do you know why?

A First, I didn't know why. Inquire.

Q Do you know now? EXAMINATION

A Yes, BY CAPTAIN VANCE:

Q What was the reason? police at Bieber, were you not?

A Because I treated the prisoners too well.

Q Who told you that? Is that Lt. Willies name from?

A A party official by the name of Becker.

Q Do you mean one of those gauleiter, kreisleiter things?

A He wasn't even the leader of a local ward. He was an ortsgruppenleiter.

Q Did he tell you how he found out?

A The leader of the local ward had complained about me, I don't know to whom, and for that I was transferred. re Nickel came to your

Q In this case, there was testimony that you made a statement to someone using those words, "Er hat uns eine geschafft." 15 minutes.

CAPTAIN VANCE: I am going to object to that, because I don't know what he is asking.

DEFENSE COUNSEL: I am going to ask him what it means. You didn't give me a chance to finish the question. why his official below me.

QUESTIONS BY DEFENSE COUNSEL:

Q What does that expression mean?

A This is an expression used around Frankfurt. When we say "Er hat uns eine geschafft," we mean the same as in other regions they would say by saying, "He cooked the soup for us."

Q What does that mean? He was in your office.

A He made us troubles and difficulties.

Direct)

Q How long did you keep him there before Eichel came to your headquarters?

A Oh, two, now complaining. No, two, said counting like, you play that about a long, at the most, might have been 15 minutes.

Q What did you do with the flier between the time you had him and Eichel came? What did he make by that?

A He was ordered, I took him the order to check his papers and to record his personal belongings, I mean, only his official belongings, not his private property, he has certified here.

Q Why did you send for Eichel?

A I didn't call for Eichel, no.

Q Who did? Oh, "The officer has to be dealt with."

A Nobody.

Q How did he know the flier was in your office?

ALBRECHT-Cross)

Q There was also some evidence in this case that Goehrendt made a report to you, "that while trying to escape" that may not be the exact language. That is as I remember it. Did Goehrendt make such a report to you, and if so, under what circumstances was it made?

A Goehrendt? He didn't make a report. I don't know.

DEFENSE COUNSEL: You may inquire.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VARNEY

Q You were the chief of police at Bisbee, were you not?

A In Bisbee, yes.

Q Where did you get this 2nd Lt. William Duke from?

A He had this on his identification papers.

Q Where did you get him from?

A The mail was brought by a civilian.

Q Who brought it to you, Michael Thor?

A To the station, yes.

A I don't know. I didn't know.

Q Where was Eichel's office located in reference to your office?

A Eichel's office was in the Bieberer Street, in the Caserne.

Q How far from your office?

A 15 minutes' walk.

Q When Eichel came to your office, who came with him?

A With Eichel came Captain Kiwitt and another man who was wearing a Party uniform, but I didn't know this fellow.

Q I believe you said that the flier had had some water and was smoking a cigarette when Eichel got there, is that correct?

A Yes.

THE WITNESS: I have to object to this question, because this

Q Is that when Eichel said that the flier must be done away with?

A Yes, after he had made his remarks about the flier being seated on the table smoking and drinking water.

Q That was Kiwitt with Eichel then?

A Yes.

Q What did Kiwitt say or do?

A Kiwitt, too, was complaining. He, too, said something like, "You play host to the flier and you let him sit down."

Q When Eichel said the flier must be done away with, what was he talking about? What did he mean by that?

DR. HACKER: I have to object to this question. First, the question was an assumption, and furthermore, the question is not asked exactly the way the witness has testified here.

PRESIDENT: Objection overruled.

QUESTIONS BY CAPTAIN VANCE:

A Eichel said, "The flier has to be done away with."

Q What did he mean by that?

A First, I thought it was an order to me.

(ALBRECHT-Cross)

Q To do what?

A That the flier should be killed.

Q Was Kinitz with him then?

A Kinitz was nearby, perhaps a few steps away, as far as I can remember.

Q What did Kinitz have to say about the flier should be done away with?

A To that, you said you understood that he meant that the flier. Kinitz did not participate in this discussion.

Q All right. Now at that time, you knew that Eichel wanted the flier killed, didn't you? I knew that Eichel's wishes were that the flier

DR. GARBER: I have to object to this question, because this question makes it necessary for the witness to make a conclusion of which he is incapable of doing. In this question a different way.

PRESIDENT: Objection overruled.

QUESTIONS BY CAPTAIN VANDER: Objection overruled.

A Yes, I will remember the question. I told him that I wouldn't do it, I wouldn't harm the flier in any way.

Q I didn't ask you what you said. This was my question: Your knew at that time that Eichel wanted the flier to be killed, didn't you?

A If Eichel would have said, "The flier is to be killed," then I would have known that the flier should be killed.

DR. RAU: I object to the translation. If the witness says Eichel said, "The flier is to be killed," my opinion, it should say, "The flier will be killed."

PRESIDENT: Doesn't the defense have a person designated to check on the translation?

DEFENSE COUNSEL: Not really, sir, because she is here to help us as a clerical assistant, and I don't know how fully competent she is. If the court wants us to name the person whom to question it, that instruction will have to be issued.

QUESTIONS BY CAPTAIN VANCE:

A The question could be misunderstood. It had a double meaning.

Q I am going to break up and ask you again. I think you misunderstood the question. Eichel said, "The flier will be done away with," is that right?

A Yes, Eichel said, "The flier will be done away with."

Q And by that, you said you understood that he meant that the flier would be killed, is that right?

A Yes, the first moment I understood it this way, but I am not sure.

Q So, at that time, you knew that Eichel's wishes were that the flier would be killed?

DR. HECKER: I have to object to this question, because in the morning the witness answered this question a different way.

CAPTAIN VANCE: I realize that, but anything that he said he wanted to get in.

PRESIDENT: Objection overruled.

QUESTIONS BY CAPTAIN VANCE:

Q So, now after this conversation with Eichel, you went to your room and changed your uniforms, is that correct?

A Eichel said to take the flier along sitting on the water hose and

Q Did you get your pistol?

A No, I don't know whether I finished dressing completely. No, I didn't take it yet, I know I only changed my uniform jacket.

Q Why did you change your uniform?

A Because I was wearing an old jacket. That was a so-called house jacket.

Q Wasn't it because you were going to make a trip?

A No, not at that time.

Q At that time, you didn't intend to go anywhere, is that correct?

A

(ALLEGHENY-Cross)

A No, not at all.

Q I believe you talked to Eichel, and said, in substance, if this flier was killed, that that would not be committing him in a military manner, or something to that effect, is that correct?

A Yes.

DEFENSE COUNSEL: Despite the fact that the question has been answered, I most respectfully want to repeat that I think a question which goes so far as to attempt to put in a witness' mouth something that not by the widest stretch of the imagination was said, transcends what I honestly and respectfully submit to this court is not the sort of question which should be asked before an American court.

CAPTAIN VANCE: Does the court wish to have this record read back to them? I certainly didn't dream that I wrote down on this pad.

DEFENSE COUNSEL: You dreamed up anything that he said he wanted to get dressed so as to do something in a military manner. He said it wasn't a military thing to carry a man around on the hood of an automobile.

CAPTAIN VANCE: I will withdraw that question.

QUESTIONS BY CAPTAIN VANCE:

Q What did you say should be done in a military manner?

A Eichel said to take the flier along sitting on the motor hood and driving through the city. And then I replied, "Mr. Police Director, I wouldn't do that; first, not on account of the public, and secondly, that is not a military manner.

Q At that time, you still knew that Eichel wanted this flier killed, didn't you?

DR. WACKER: I want to object to this question, too. This requests a conclusion on the side of the witness of which he is incapable.

DEFENSE COUNSEL: I would to add to that that I think the objection is sound. He could be asked what he thought or understood was Eichel's opinion, but when he is asked what Eichel actually meant, that is something he couldn't answer.

PRESIDENT: Objection is overruled. The question that

QUESTIONS BY CAPTAIN VANCE: [illegible] would be attached by the

[illegible] My I had spoken against it. I had said to Eichel, "Not through me," and since Eichel hadn't done anything against me, I thought, the matter was dropped now. [illegible] and took Goebrandt along.

Q Did you testify there was a large crowd of civilians around the police station who were angry?

A Yes. Let me ask you this--were the civilians trying to Q Did the crowd of people want to get the flier? the police [illegible] I didn't say that, and I didn't think so, because we were strong enough. We were protecting the flier--no question. No, the police.

Q Why did Eichel want to drive the flier through this angry mob on the hood of his car unless he wanted the flier killed?

A I thought that the flier was supposed to be shown all through the city, and that is the reason I objected to it.

Q The flier was already standing in the yard.

Q Who had him in custody?

End ta 218 idb fols

A As far as I can recall, Gene was already with the flier.

Q Were the civilians trying to bother the flier?

A Not there yet.

Q After Heller took the flier, he started walking away from the police headquarters, is that correct?

A Yes, Gene and Heller.

Q And did you go along, too, behind them?

A Yes.

Q And who else went along?

A Goebrandt.

Q And who else?

A Otherwise, [illegible].

(Albrecht - Cross)

Q Didn't you testify on direct examination that "I was afraid that the flier would be attacked by the civilians?"

A Yes, that's only logical. The crowd was incited, and for this reason I came along and took Goehrendt along, too, in order that the crowd couldn't put their hands on the flier.

Q Let me ask you this--were the civilians trying to protect this flier from the police or were the police trying to protect the flier from the civilians?

A I do not answer this question. We, the police, are the ones who were responsible for security and order and peace.

Q Where did Moller get the flier when he started to leave Headquarters with him?

A The flier was already standing in the yard.

Q Who had him in custody?

A As far as I can recall, Como was already with the flier.

Q Were the civilians trying to bother the flier?

A Not there yet.

Q After Moller took the flier, he started walking away from the police headquarters, is that correct?

A Yes, Como and Moller.

Q And did you go along, too, behind them?

A Yes.

Q And who else went along?

A Goehrendt.

Q And who else?

A Otherwise, nobody.

(Albrecht-Cross)

Q Now why did you and Goehrendt go along?

A I told Goehrendt, "You, too, come along part of the way." We didn't have the intention to go along all the way to Offenbach.

Q Well, for what did you go along at all?

A In order to protect the transport.

Q Protect him from whom?

A To protect him from the crowd or from other aggressors.

Q The crowd never did bother this flier, did they?

A Oh, pretty fine remarks were made by the crowd.

Q How many kilometers did you go?

A We walked along for approximately one and a half kilometers.

Q Did the civilian population follow you?

A No, we held them back. They couldn't follow, but from other side roads people were still coming and children.

Q How far back from where the flier was were you?

A That varied. The distance first was short. Then it enlarged a little bit, and to the forest when we stepped up a little bit because he took the wrong road--then the distance again decreased.

Q What was the closest you were ever to the flier?

A That was right in the beginning when we left--then we were right next to the flier.

Q Well, after you got started on the road, how close were you?

A We kept the crowd back, and for this reason the distance increased. Then we talked to some man, and he

kept us for a few minutes.

Q At the time you left, where the crowd was at the Police Station and started following Moller, how far ahead of you was Moller at that time?

A Sometimes we were 50 meters behind, sometimes 30 meters.

Q You weren't in a position to do much protecting of the flier, were you, at a 30-meter distance?

A Yes, we could look over the terrain and see if and when other people would approach him.

Q Albrecht, you went along because you were curious, didn't you?

A Curious? The flier was at the station for 15 or 20 minutes.

Q Yes, but you wanted to see what was going to happen on the march?

A I had no idea--I had no intention whatsoever.

Q I believe you testified on direct examination that at one time while you were walking that Goehrendt ran up ahead and talked to Moller, but you could not hear what they were saying, is that correct?

A That was in the forest, yes, the forest.

Q That was before the flier had been shot, wasn't it?

A That was when the flier was brought back.

Q Was it before the flier was shot or after he was shot?

A That was before, yes.

Q Now you didn't hear what Goehrendt told Moller, did you?

A I heard only when Goehrendt called to Moller, "Where do you want to go with the flier? That's wrong--that's the way to Offenbach."

Q Didn't you just finish telling Colonel Birman that you heard him yell at him and you didn't hear anything else?

A I said only that he said, "This is the direction of Offenbach"--that was shortly before the flier was shot.

Q Didn't you just a few minutes ago in answer to Colonel Birman's question say, "I heard him yell at Moller, but I didn't hear anything that he said?"

A That was the case when he walked to the left, but that was at the time when he was already walking back and was already again in the direction of Offenbach.

Q Now you say somewhere on the road you stopped to talk to someone, is that correct?

A Yes.

Q Whom did you say you talked to?

A With a man named Bosse.

Q How long did you talk to this man?

A Yes, it might have been one minute; it might have been a minute and a half; it might have been two minutes.

Q And while you were talking to him, you heard some shots fired, is that right?

A No, that wasn't at that time--that was Mr. Schrod.

Q Well, when did you talk to Mr. Schrod?

A The moment the shots were just fired or they were

fired immediately afterwards.

Q And that was while you were talking to Schrod?

A Yes.

Q What did you do when you heard these shots?

A Right away I ran to the spot--to Moller--and yelled, "Who did this nonsense?"

Q Now what was the distance from where you were standing, talking, and where Moller had shot?

A Right through the air I was perhaps only 35 meters, but I had to run at an angle, but when you first took the path and then stepped into the woods, it was approximately 50 meters.

Q How did you come to run to Moller? How did you know that's where these shots came from?

A Because I heard from which direction they were fired--at my back.

Q Did you know Moller had fired these shots, of course?

A No, I didn't know that.

Q Why did you run straight to Moller instead of going somewhere else?

A To Moller? I asked, "Who did this nonsense?"

Q -at you couldn't ask him until you got to the place where he was?

A No, no, of course not.

Q And you ran straight to him as soon as you heard the shots?

A No, I didn't run it straight away. I ran first on the path and then through the woods, and there I saw

that Moller was standing there, and I saw Goehrendt running, too.

Q You knew Moller was going to fire some shots, didn't you?

A No, I didn't know that. How should I know that?

Q How?

A How should I know that?

Q Well, you knew that Eichel wanted the man shot, didn't you?

DR. WACKER: Once again, I have to object to this question. This question is asked the third time. It is repetitious.

PRESIDENT: Objection overruled.

WITNESS: That Moller had an order I heard only at Hersbruck. That was in July.

QUESTIONS BY CAPTAIN VANCE:

Q I didn't ask you about Moller's orders. I asked you about Eichel.

A I didn't know that Eichel had given an order to Moller.

Q Now, did you have your pistol at that time out there in the woods?

A Yes, whenever you wear your duty uniform, one has to wear the pistol.

Q Did Goehrendt have his gun?

A Yes, I don't know definitely, but I think so. It was part of the uniform.

(Albrecht-Cross)

said to Q What did Moller have to carry, and that's the way A Moller, in accordance with orders, had a steel helmet and a rifle, and Como, too. [illegible] wrote it.

Q Who ordered him to take the rifle and steel helmet?

A That was SOP for that uniform, because we had only two pistols. All the others had rifles. I cursed him.

Q Now, when you got to where Moller was, was the flier dead? [illegible] he [illegible] can still run.

A The flier was lying. He had fallen in front— to the front—his face down a little bit to the side, and Moller was standing there.

Q My question was, was he dead? Moller tells me the flier [illegible]

A Yes, he didn't give any more sign of life.

Q Now was that the same Second Lieutenant William A. Duke that you had had back in your office? cursed him. I said A "Why did it? Why did he do it?" and so on.

Q So that you ordered Como to stay with the body, and you and Moller went back to your headquarters, is that correct Because I didn't want to walk through the crowds.

A First, I cursed Moller because he had shot, and then he told me if he wouldn't have tried to escape, he wouldn't have shot, the long race. Now which was it?

Q You know he didn't try to escape, didn't you? and still A I hadn't seen it, and then we had to pass a [illegible]

Q Now, who prepared this written report that Moller signed? It [illegible] on the road to Offenbach, then A and Moller had left, and I asked whether Moller had made a report, and Goehrendt then said "no"; so I told Goehrendt to prepare a report; and I told him Moller had [illegible] already on the street. Otherwise, there

said that he was shot while trying to escape, and that's the way the report was made. I don't know who wrote it--whether Gebhardt wrote it or whether Heberer wrote it.

Q Now, why did you curse Keller for killing this flier? You thought he was trying to escape, didn't you?

A That was right at the beginning when I cursed him. He was wearing heavy boots and heavy overalls. We would have caught him again. I, myself, can still run.

Q Well, what made you think, or even give you any idea, that Keller would have shot the man if he hadn't been trying to escape?

A Nothing. He has gotten us into trouble. I have to assume that when Keller tells me the

flier was shot while trying to escape, it was the truth?

Q Why did you curse him, then?

A We were four; I don't know why I cursed him. I said, "Who did it? Why did he do it?" and so on.

Q Now, why did you take this flier on the long road to Offenbach?

A Because I didn't want to walk through the crowd.

Q Well, you just finished a few minutes ago telling Colonel Dinsmore that there was an air raid in progress; so you decided to take the long road. Now which was it?

A First, through the crowd, and secondly there was still an air raid alarm going on, and then we had to pass a bunker, and then he had to be taken on through Offenbach.

Q If there was an air raid on one road to Offenbach, there would be an air raid on the other, would there not?

A It wasn't the large alarm any more. It was then already given that the alarm would be over soon. For this reason the people were already on the street. Otherwise, there

(Albrecht-Cross)

wouldn't be any people on the street.

Q Now, what you want this Court to believe is that when you started along towards the woods and Moller had the flier, that you knew nothing was going to happen to the flier, is that right?

A I didn't know anything what would happen to the flier. He was to be brought to Offenbach.

Q And when Moller shot and killed this American flier, it was a great shock to you, wasn't it?

A Yes, yes, it was. For this reason, I told him, "He has done us something. He has gotten us into trouble," I said to Cuno.

Q Can you give me any reason why four members of your police station went along to take this man to Offenbach?

A Not all of us wanted to go along to Offenbach. I told Goebrecht, "We go along part of the way."

Q What was your total police force at that time?

A As far as I can remember, 14 men.

Q How many were on duty at that time?

A All of them were still on duty. They weren't relieved yet.

Q Now, you say you had another flier in your office on that same day, is that correct?

A Yes.

Q Tell the Court what happened to that flier?

DEFENSE COUNSEL: I pray the Court's judgment.

CAPTAIN VANCE: I ask for a recess in place, may it please the Court.

PRESIDENT: Recess in place.

(Whereupon the Court recessed in place.)

PRESIDENT: The Court will come to order.

The objection is overruled.

WITNESS: This flier, I can't testify anything about it, because I was not on duty when the flier was brought in. My comrade, Coehrendt, was on duty.

QUESTIONS BY CAPTAIN VANCE:

Q Well, by your answer you mean you don't know what happened to him, is that correct?

A No, I can't say it. There was an air raid alarm going on, and then I always thought if there was anything new--

DEFENSE COUNSEL: I now request that he be made to answer questions and not make speeches.

PRESIDENT: The witness will answer questions.

QUESTIONS BY CAPTAIN VANCE:

Q Now, you testified on direct examination that later on some priest brought in a flier, is that right?

A Yes, that was on Sunday.

Q Do you know what happened to that flier?

A He was shot.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: No questions.

PRESIDENT: No questions by the Court. The witness will take his place.

(Whereupon the Accused was excused and resumed his place in the prisoner's dock.)

DEFENSE COUNSEL: The Accused Coehrendt will now take the stand and desires to be sworn.

PRESIDENT: Let's recess first. The Court will recess for 30 minutes.

(Whereupon at 1455 hours the Court recessed.)

(Thereupon the court reconvened at 1525 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court except Colonel Ackerman, who is absent sick, all the members of the prosecution, all the members of the defense except Dr. Trost who is absent sick, all of the accused, the reporter and the interpreter are present.

DEFENSE COUNSEL: The accused Goehrendt will now take the stand, may it please the court.

PRESIDENT: Do you desire to be sworn?

ACCUSED GOEHRENDT: Yes.

WILHELM FRIEDRICH GOEHRENDT, an accused, called as a witness in his own behalf by the defense, being first duly sworn, took the stand and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. BERGER:

Q State your full name to the court.

A Wilhelm Friedrich Goehrendt.

Q When and where were you born?

A 9 May, 1898 in Lassas in Pomerania.

Q Are you married?

A Yes.

Q Do you have any children?

A One child.

Q Are you one of the accused in this case?

A Yes.

Q What is your civilian occupation?

A I studied to be a gardener.

Q Did you practice this profession?

A Until 1915.

(Thereupon)

Q And after 1918?

A I was drafted in the army.

Q Did you participate in the first world war?

A Yes. From 1914 until 1918.

Q After the world war?

A I was unemployed until 1921.

Q Did you then practice your profession as a gardener again?

A No.

Q What was the profession that you took up?

A In 1921 I joined the Police of the State in Darmstadt.

Q Did you then remain with the police until the end of the Second World War?

A Yes.

Q Did you participate in the second world war as well?

A From 1939 until 1944.

Q Then in 1944, what month?

A Until May, 1944.

Q Were you discharged from the army at that time?

A I was sent back to my own office in Offenbach.

Q Were you a member of the NSDAP?

A No.

Q Were you a member of the SS?

A No.

Q Of the SD or the Gestapo?

A No.

Q Did you do all your service in the Protective Police or the regular police?

A Until 1945.

Q What was your highest rank in the regular police?

A I was Master Sergeant of the Protective Police.

Q Where were you stationed between August 1944 and the end of World War Number Two?

A In the District Headquarters Bieber, Offenbach.

Q What were your official duties there?

A I was to do internal service.

Q What do you mean by internal service?

A I did all the clerical work that came up.

Q Do you still remember the 22nd or 21st day of March, 1945?

A The 22nd of February, 1945.

Q What happened that 22nd day of February, 1945?

A On the 22nd of February a flyer came down--crash landed in the vicinity of Offenbach. An airplane, that is, crashed and eight or nine members of the crew came down to the ground by means of parachute.

Q Was there an airraid alarm in Offenbach at that time?

A Yes.

Q Were you able to observe where these flyers who were parachuting down to the ground landed?

A No.

Q Did you see any of these flyers that landed?

A Yes.

Q When and where did you see them?

A That was on the 22nd of February, about noon, about 1330.

Q Where did you see the flyer?

A I saw him coming from the air raid shelter in the street Kaiserstock. I saw him walk up that street with Keller.

Q You said that you were coming from the shelter. What kind of shelter was that?

A That was a public air raid shelter.

(Continued-direct)

Q How many persons capacity?

A About four thousand persons.

Q Was there a headquarters of the police there?

A No.

Q Why were you in that shelter?

A I was in that shelter with some of the men in order to maintain order.

Q Was it common practice to have some policemen in that public shelter to maintain order?

A In case of every air raid alarm it was.

Q About what time did you leave that shelter?

A About one-twenty.

Q Were there a lot of people around?

A That was a preliminary end of the air raid attack and people were streaming out of the shelter.

Q Was there a rather large number of people collected in the streets?

A Yes.

Q When you saw the flyer, where was he?

A When I saw the flyer I saw him from a distance of about 100 or 150 meters.

Q Was that the first time you saw this flyer that noon or that forenoon?

A Yes.

Q Will you please tell the court now what happened then?

A I went past this guard Rebstock and went to go to the police station and pick up my bag.

Q Where is that guardroom located--that Police Station located?

A On the corner of Rebstock Strasse and Mauerfeldt Strasse.

Q Continue.

A A pretty large number of people were standing around these streets.

(Goehrendt-direct)

pls-lms-s
pld-220-s

on account of the end of this air raid and I approached the corner of Rostock Strasse. There I saw Moller, whom I had seen before, walking about 100 meters ahead of me with the flyer. First Lieutenant Albrecht and one Sergeant Cuno were standing at the corner of the headquarters and were trying to push back the crowd which had collected there. [illegible] large of the

Q Did that crowd follow Moller and the flyer?

A Not at that moment.

Q Did the crowd remain?

A Some shouts could be heards [illegible]

Q Who were these shouts directed at? [illegible]

A They were directed to the flyer as far as I could tell at present.

Q Then what did happen? What did you do?

A Lieutenant Albrecht, as soon as he saw me, called me over.

Q Was Lieutenant Albrecht your immediate superior? [illegible]

A Yes, [illegible] and after that to camp I guess.

Q Continue, please. [illegible] on your way, and where to?

A I asked him, "Where do you want to go with this man?" He said, "We want to go the Headquarters of the Protective Police." I asked him, "Why go this way?" He answered, "I don't want to go through the crowd." "You can come along a piece of the way in order to keep the men crowded back some." [illegible] empty.

Q Did you follow that bid? [illegible] with the main company.

A Yes. [illegible] Moller.

Q Did you now follow Albrecht and the flyer and Moller all by yourself?

A I went on the left side of the road. Albrecht about 10 meters behind me on the right side of the road and Cuno was about five meters behind Albrecht. [illegible]

(Testimony continued)

Q At that instant where was Moller with the flyer?

A At about the level of Flur Strasse about 70 meters ahead of us.

Q Where did they then go?

A Along this Rebstock Strasse towards Hamburg-Strasse.

Q Is that one of the ways of getting to the headquarters of the police in Offenbach?

A It is a roundabout way.

Q All right, continue.

A The distance decreased some until about 30 meters between me and Moller. Albrecht closed up too and we went along Rebstock Strasse-Hamburg Strasse. On Hamburg Strasse I met an acquaintance and for a short moment talked to him.

Q What did you talk to this acquaintance about?

A He asked us where we were going and I said, "Well this man will be taken to the headquarters and after that to camp I guess."

Q Did you then continue on your way, and where to?

A Moller then went towards the woods towards Housenstammer Strasse.

Q Could you get to Offenbach by way of this Housenstammer Way?

A Yes.

Q Is that the territory which is well cultivated and highly populated or is it more or less empty?

A That is entirely open terrain until the Health Insurance Company.

Q As you followed Moller and the flyer were you able to keep Moller and the flyer in your sight? Were you able to have a look at the terrain?

A Yes.

Q Continue telling what happened along the way.

A At the edge of the woods--at the limits of the Police District several people collected--primarily children.

(Ashren t-direct)

(Goehrendt-direct)

DEFENSE COUNSEL: Just a minute please. Did he mention the name of the street that was the limit?

INTERPRETER: No, sir.

QUESTIONS BY DR. BERGER:

Q What indicated the limits of the district?

A The Houcenstammer Way.

Q Did the woods start at Houcenstammer Way?

A At the place where the road goes to Offenbach, that is where the woods starts there.

Q Continue telling your story.

A I had a disagreement with the children there whom I tried to chase off home because I was trying to avoid them following us, and I turned around and didn't see Moller anymore.

Q Where was Moller at that time?

A As I saw him he went into the path out into the ground.

Q Now this path that is out through the ground, is that the right way to Offenbach?

A No.

Q What did you do then?

A I told Albrecht, who was walking behind me--he had closed up quite a bit, he was a little bit behind me--I asked him where was this man Moller going. He was going the wrong way. He looked at me and said, "Well where is he going?" So I ran after Moller--he was about 40 meters ahead of me already--and from about 20 meters distance I called over to him, "Moller, where are you going to? You are supposed to take a right here."

Q Did Moller understand that call?

A Moller turned around, looked at me, and immediately turned to the right.

(Cochran t-direct)

Q What did you do?

A I walked back toward Albrecht. I might have taken ten paces when the shot was fired. I stopped, completely frozen in my tracks and immediately thereafter another shot was fired and so I ran after Moller and said, "Dag, what are you doing here?"

Q At the time you heard those two shots did you see Moller and the flyer?

A When I turned around I did.

Q Where was Moller at the time?

A At that time he was about 80 meters away from the low path cut through the ground in the direction of the path through the woods.

Q What kind of a path through the woods?

A The path through the woods going to Offenbach.

Q Continue telling what happened after you called over to Moller?

A I ran over to Moller until I was about five meters away from him and I said, "Man, what in the world are you doing here?"

Q What did Moller answer?

A Moller wasn't able to answer at all. He was just standing there shaking.

Q He didn't give you any answer at all?

A He tried to answer but he couldn't spit it out.

Q Was Moller so excited?

A You could even see it.

Q Please continue.

A So I turned around back up to Albrecht and told Albrecht, "What is Moller doing here? I won't have anything to do with this."

Q What did Albrecht answer to that?

A Albrecht said, "Well, what is he doing?", and ran over to Moller.

Q And then?

(Continued-direct)

A I went to the edge of the woods and Coma was standing there.

Q Where?

A At the path to Offenbach.

Q Continue.

A I went to the police station.

Q Did you go to the Police Station all by yourself?

A Yes.

Q From the time you met Albrecht at the Police Station, then on your way to the edge of the woods as you were walking, until the time you pointed out to Albrecht that Moller was going the wrong way, did you have any conversation at all with Albrecht?

A Not a word.

Q You returned to the Police Station?

A Yes.

Q Continue telling your story.

A Sergeant Blunk was present at the police station. He asked me, "Man what do you look like?" I don't know what this is now but if the witness said so I guess it is right. I said, "Moller did something to us."

Q What did you mean to say by that?

A I wanted to express that this man had put the whole police in a bad shape by doing that--if a police offical shoots a prisoner.

Q Did you then leave the Police Station or did you spend any more time at the Police Station?

A I spent some more time at the Police station talking to Blunk and he told me about the incident which had taken place in the Police Station before then.

Q What incident?

A When Police Director Bichel and First Lieutenant Kiwitt had come to the Police Station.

(Cochrandt-direct)

Q And then?

A Then Albrecht and Moller came. Moller came up to me in my room. He had his cabinet where he kept his things there. I said,"Moller, what did you do? Did you even think of what you were doing?"

Q Did Moller answer you in any way?

A Yes.

Q Was he in any shape to talk?

A Hardly.

Q What did Moller tell you?

A Moller told me that he had received the order to shoot the flyer from Eichel.

Q Did you have any further conversation with Moller?

A I was so annoyed I didn't do any more talking to Moller.

Q What occured then?

A Then Moller left the room and then First Lieutenant Albrecht came into the door and said, "Did Moller write the report?" I said, "No, Moller went home." So Albrecht told me, "Write a report to the effect that the flyer was shot while trying to escape and send that to his house, to his apartment and have him sign it."

Q Did you write that report?

A I think so. I can't say for sure.

Q Were you familiar with the fact that the contents of it was not right in that form?

A Well, since Moller had told me he had an order I had to assume that it wasn't right.

Q Why was this report written in spite of this?

A First Lieutenant Albrecht gave me the instructions to write that report so I thought he probably had his reasons for that.

(Cochrond-direct)

Q Did you then take this report to Moller?

A No, Sergeant Lahre did that.

Q Did Moller sign the report?

A I don't know. I didn't see the report anymore.

Q Do you know what happened to the report afterwards?

A I imagine it went to the Protective Police Headquarters.

Q Do you know that of your own knowledge?

A No, but that was the official channels.

Q Was any order announced to you or did it come to your knowledge concerning captured flyers?

A No.

Q On that day did you know that there was any order available concerning this flyer who later on was shot?

A No.

Q Which of the accused did you know before the trial started?

A First Lieutenant Albrecht, the Police Corporal, Sergeant Moller personally. I knew those personally. I knew Police Director Michel from seeing him and Kiwitt by name.

Q You don't know any of the other accused?

A Yes, I also knew the accused Fay.

Q Was he an official in your headquarters too?

A No, I once made a report to him when I was a traffic cop.

Q Otherwise you didn't have any contact with any of these accused?

A No.

Q In your circle of friends was there ever any talk concerning the treatment of captured parachuted flyers?

A Yes, there was some talk about this Goebbles propoganda.

Q What kind of talk was that?

A Disparaging.

Q By that do you mean to say that the measures which were suggested by that propaganda did not meet with your approval?

A As a regular policeman, yes.

DR. BERGER: No further questions.

PRESIDENT: The court will close until 0900 hours tomorrow morning.

(Whereupon at 1555 hours the court was closed.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden. By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

Court (24)

MILITARY GOVERNMENT COURT.

CASE RECORD.

Pages 1562 - 1666

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 27 FEBRUARY 194 7

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf Nathanson

Interpreter Herbert B. Rosenstock

Reporter Patricia Stewart, Imogene Butler
William F. Jones, Peter Di Curti, Paula Silverman

~~Members of Court~~ WITNESSES:

WILLIAM GOEHRENDT	OSKAR LUECK	WILHELM ALBRECHT
	PETER COMO	HERMANN MOLLER
JOSEF JOHANN KIWITT	KARL BLUM	ROSEL SCHWAB
PETER SCHROD	ELIZABETH BLUEMMEL	HANS EICHEL
GUNTHER NIEMANN	VALENTIN KAISER	

Accused JURGEN STROOP, et al

Address Sex Age

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term
  - Beginning 194
- Fine
  - Amount
  - To be paid before 194
    or in case of default of payment to serve a *further term of imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

27 FEBRUARY 1947 Pages 1562 -

TESTIMONY

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	COURT
WILHELM FRIEDRICH GOERNERNDT	1562	1566	1576 1581	1581 1584	
JOSEF JOHANN KIWITT	1586	1596	1606	1606	
PETER SCHROD	1610	1617	1628		
PETER COMO	1629	1633	1634		
KARL BLUM	1634				
ELIZABETH BLUEMMEL	1640	1648	1648		
VALENTIN KAISER	1648	1651			
WILHELM ALBRECHT			1653	1653	
HERMAN MOLLER			1654	1655	
ROSEL SCHWAB	1656				
HANS RICHEL	1662				

EXHIBITS

NONE

Camp Dachau, Germany

27 February 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all members of the court, except Colonel Ackerman, who is absent sick; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent sick; all of the accused, except the accused Koehler, No. 5, who is absent sick; the reporter and interpreter are present.

DEFENSE COUNSEL: At the end of yesterday's session, the accused Goehrendt was on the witness stand, may it please the court, and Dr. Buerger has a few more questions. Before he starts, may I ask that the accused Hellenbroich be excused so that he may engage in some defense work. His presence is not necessary at this time.

PRESIDENT: Permission granted.

DEFENSE COUNSEL: Have the record show that the accused Hellenbroich has been excused at the request of the defense for preparing his defense.

WILHELM GOEHRENDT, an accused, voluntarily resumed the stand in his own behalf, and having been first duly sworn, testified further through an interpreter as follows:

PRESIDENT: You are reminded you are still under oath.

THE WITNESS: Yes.

PRESIDENT: Proceed.

DIRECT EXAMINATION

QUESTIONS BY DR. BUERGER:

Q Mr. Goehrendt, you testified yesterday that after the shots were fired, you ran over to Moller and said, "You nervous dog, what have you done here?" And then you said to Albrecht, "I am leaving now.

I don't want to have anything to do with this matter." What did you mean with these sentences?

A I intended to express with these words that Moller was following the flier and was holding his rifle like a hunter under his arm. The first moment, I thought Moller had not been careful and had touched the trigger. For this reason, I used the expression, "nervous dog." That is a dialect expression. That is the word you use with a man who is extremely nervous and is doing more than he is supposed to do. Then I said afterwards, "I don't want to have anything to do with this matter." I said that because I thought for the first moment perhaps he was shot while trying to escape, and I was so angry, because no attempt was made to catch the man again and that he shot at him immediately that I expressed my excitement with these words. For this reason, I said, "I don't want to have anything to do with this matter."

Q Once more, let us return to your activities in both World Wars. On which fronts did you serve during the first World War?

A The first World War, I served on the Western Front from the North Sea down to the southwest border, Russia, Italy and Rumania.

Q What branch of the service were you in?

A I was with the 21st Engineer Battalion.

Q On these fronts, did you always serve in the front lines?

A From the first to the last day.

Q Were you decorated during the first war?

A Yes.

Q Which decoration did you receive?

A I received the Iron Cross, second class, 1914, and the Mecklenburg Service Medal, 1916.

Q On which fronts did you serve during the second World War?

A The last days of the Polish campaign, the Norway campaign, and Russia up to 1943.

Q In this war, too, you were decorated?

A Yes.

Q Which decorations did you receive?

A War Merit Cross, second class; Close Combat Medal; and for the second time, the Iron Cross, 1914-18.

PROSECUTION: May it please the court, let the record show that the accused Koehler, No. 5, has resumed his place in the prisoners' dock.

QUESTIONS BY DR. BUERGER:

Q Yesterday you testified that you came out of the air raid bunker when you met Albrecht?

A Yes.

Q Where did you intend to go then?

A I wanted to go to the guard room to pick up my breakfast case and to go home.

Q Where did you live?

A At the corner of Rebstock and Hamburger Streets.

Q Why, then, did you go with Moller and the others?

A Because Albrecht asked me to do so.

Q Your duty hours were over already?

A We policemen were always on duty.

Q The path you took passed by your house?

A Yes.

Q How far were you supposed to go along?

A I assumed that I should go along as far as Albrecht went along.

Q Did he tell you, anyway, how far he intended to go along?

A Part of the way.

DR. BUERGER: Thank you.

QUESTIONS BY DR. HACKER:

Q Mr. Goehrendt, after your arrest, were you at Hersbruck?

A Yes.

Q Were you together with Moller there?

A Yes.

DR. WACKER: Thank you. No more questions.

DEFENSE COUNSEL: Prosecution may cross examine.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Goehrendt, you were a master sergeant with the police force?

A Yes.

Q Who was the highest rank, you or Moller?

A My rank was higher.

Q On the 22nd of February, 1945, at what place did you first see the American flier?

A In the Rebstock street, approximately 50 meters from the police station.

Q Who had him in custody?

A Moller.

Q Had you seen him prior to this time on the inside of the police station?

A I wasn't at the police station.

Q Had you seen the flier at any place prior to the time you saw him in the street with Moller?

A It is possible that he was one of the men who came down with the parachute.

Q I believe you said that eight or nine fliers came down from one plane, is that correct?

A Eight or nine, yes.

Q And was that a large plane?

A As far as I could see, it was a four-motored bomber.

Q At the time you saw Moller with the flier, did you see Como?

A Yes.

Q Where was Como in reference to the flier?

A Como was standing with Albrecht at the corner of the Rebstock and Maufeld streets.

Q What were Como and Albrecht doing?

A They were talking to the crowd which was standing there.

Q Did you hear what they said?

A I couldn't hear that.

Q Did you see Kiwitt?

A No.

Q Did you see Eichel?

A No.

Q Did you have a conversation with Albrecht after you saw him standing there talking to the crowd?

A Only that what I testified to already yesterday. Albrecht called me over, "Come over." Then I asked Albrecht, "Where do you intend to go with this man?" "To headquarters of the Order Police," he said.

Q Where was that headquarters?

A At the corner of Kaiser and Dom streets in Offenbach.

Q In reference to directions, north, south, east and west, which direction was that headquarters from your headquarters?

A Northwest.

Q Which direction did they leave with the flier when they left?

A Southeast.

Q In other words, about the opposite direction, is that right?

A At the beginning, yes.

Q Did you leave in the direction that the flier, Como and Moller were going?

A I went in the direction in which Moller went.

Q Why did you go?

A Because I was requested so by Albrecht.

Q Were you requested, or were you ordered to go?

A I was requested.

Q I believe you testified yesterday that somewhere during this march, before the flier was killed, that you stopped to talk to some man, is that right?

A Yes.

Q How far were you from your police station at that time?

A Approximately 400 meters.

Q Did you make any more stops?

A Only at the edge of the woods.

Q What did you talk to this man about?

A We only talked for a short moment. He asked me, "Where do you want to go with this man? What is going to happen to him?" and I said, "He is being brought to headquarters of the Order Police, and from there, probably to the Air Force, to the camp at Oberursel."

Q What is the name of that man?

A Karl Bosse.

Q Do you remember Bosse saying that you were going in the opposite direction from Oberursel?

A Yes. He said, "Why are you taking the back road?" so I said, "Probably Albrecht doesn't want to walk through the crowd."

Q Now, you told Bosse that you were going to the police headquarters at Offenbach. How did you know that?

A Albrecht had told me so.

Q You went along because Albrecht asked you to do so, is that right?

A Yes.

Q What did Albrecht want you to do?

A We should hold back the crowd which was standing around the doors so that the flier could pass unmolested.

Q Who left the police headquarters first, you or Albrecht?

A Probably Albrecht, because he was standing outside on the corner.

Q He was holding the crowd back, wasn't he?

A Yes, he was talking to some of the men.

Q What were you doing?

A I came over then and talked to Albrecht.

Q After you left? You said you left.

A Then I followed Moller on the left side of the road.

Q So all you did was just follow, is that correct?

A Only follow.

Q And you followed to see what was going to happen, is that right?

A No, I followed in order to obey Albrecht's request to protect the flier.

Q Whatever Albrecht's orders were to you, you followed them, didn't you?

A I thought this request was justified, and I obeyed it.

Q Now, somewhere along the march, you chased some children away. Where was that?

A At the edge of the woods.

Q How far was that from where Moller killed the flier?

A Approximately 60 meters.

Q Why did you run those children away?

A I didn't want the children to follow the men who were escorting the flier, and this way would draw more curious people to the group.

Q Goehrendt, you didn't want those children to witness a murder, did you?

A I didn't know anything about a murder.

Q Were these children molesting the flier?

A No.

Q You just didn't want them around?

A They shouldn't follow us any longer.

Q They shouldn't follow you any longer after you got to the woods, is that what you mean?

A They shouldn't follow any longer, so that these two people could get away unmolested.

Q Where were you when you heard the shots?

A I was approximately 30 meters from the edge of the woods.

Q Where was Albrecht?

A He was standing at the edge of the woods.

Q Behind you or in front of you?

A Behind me.

Q Was he behind you or in front of you when you heard the shots fired?

A He was behind me.

Q He wasn't facing you?

A Yes, I was walking towards him.

Q How could he be behind you if you were walking towards him?

A In relation to the place of the crime, it was behind me, because he was at the edge of the woods.

Q Were you in the woods?

A I was in the forest, approximately 30 meters.

Q How many shots did you hear?

A Two shots.

Q After you heard the shots, I believe you testified that you ran to Moller and called him a dog, is that right?

A Yes, with the words, "nervous dog."

Q Were you in sight of Moller at the time he shot the flier?

A I was walking with my back turned towards Moller.

Q When you heard the shots, did you turn around?

A Yes, I turned around.

Q Did you see Moller then?

A Yes, I saw Moller.

Q Could you see the flier?

A I could see only the shadow of the flier, because he was lying on the ground.

Q What was that distance between where you were and where Moller and the flier were?

A I can't say exactly, but I estimate 25 to 30 meters.

Q You have heard various people testify, and also yourself, that you shouted something at Moller prior to the shooting. Do you remember that?

A Yes, that is correct.

Q What did you say to him when you shouted to him?

A "Moller, you are going the wrong way. You have to go to the right."

Q Why did you tell him that?

A Because he was taking the road, the Mohlweg, to Tempelsee, and he should have taken the road to the right.

Q How do you know what Moller was ———

DEFENSE COUNSEL: I don't think you finished, may it please the court. I think the witness said, "the road to the right, to Offenbach."

THE WITNESS: To the right, to Offenbach.

QUESTIONS BY CAPTAIN VANCE:

Q You didn't know what Moller's instructions had been to do with the flier, did you?

A No, I didn't know that.

Q Why did you make that remark?

A Because I was of the opinion, and Albrecht told me so, that he should be brought to Offenbach, and so he was walking in the wrong direction.

Q Were you in charge of that detail?

A No.

Q Why were you giving the instructions?

A Because Albrecht said, "Where does this man want to go? Where does this man want to go? He is going in the wrong direction." Then Albrecht said, "Where do you want to go?" Then I ran after him.

Q Haven't you just finished testifying that Albrecht was way down at the edge of the woods at that time? How could you talk to him?

A I was together with Albrecht when he told me so.

Q You were together with Albrecht when you shouted these instructions to Moller, is that what you say?

A No. At that time, I was already running after Moller and was about 30 meters away from Albrecht.

Q What were you running after him for?

A Because I thought this man is walking in the wrong direction. This way, he will never get to Offenbach.

Q Did Albrecht tell you to run up and catch Moller and give him these instructions?

A No. He said, "Where does Moller want to go? He is going in the wrong direction," and then I asked the policeman junior in rank, I am supposed to run after Moller.

Q Who was in charge of this detail?

A In charge? You can't say that. Moller had the order to go together with Goma and the flier to the headquarters of the Order Police.

Q How do you know that?

A Because Albrecht told me so.

Q If Moller had his orders and knew what to do, why did you and Albrecht go along?

A I don't know that, either.

Q What was it you said about to Moller to this effect, I don't

remember exactly what it was, that by his actions he had put the whole police force on the spot?

DEFENSE COUNSEL: I don't remember hearing any such thing in the evidence, and I want to repeat an objection to putting words into a witness' mouth that by no stretch of the imagination can it be said he said.

PRESIDENT: Objection overruled.

THE WITNESS: I never said anything like this to Moller.

QUESTIONS BY CAPTAIN VANCE:

Q Didn't you tell this court yesterday that you said, "Moller, by your actions you are going to get the whole police force in trouble," or something to that effect?

A I never said that.

DEFENSE COUNSEL: If I remember rightly, if I may make the suggestion, the language to that effect was introduced in this case by the witness Lueck, who said that when Albrecht and Goehrendt got back to the police station, he told them what Moller had done and he said something about shooting the man in the presence of the whole Tempelsee, or something of that kind. Lueck was the man who brought in this testimony, not Goehrendt.

QUESTIONS BY CAPTAIN VANCE:

Q Are you willing to stand on the fact that you didn't say anything about this, is that right?

A I wouldn't know that I said so.

Q If you said it, you would know it?

A Yes.

Q After you ran up to Moller and called him a nervous dog, what did Moller tell you?

A Moller couldn't talk. He opened his mouth and he stuttered something, but you couldn't understand him at all.

Q When did Moller first talk to you after the killing?

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A At the station.

Q What did he tell you then about the killing?

A I complained to Moller, and told him how could he shoot the flier. And then he told me, I can't repeat the exact words, that he had the order from I don't know whether he said Police Director or Mr. Eichel.

Q Did you carry your weapon that day out into the woods?

A I always carry my weapon.

Q Did Albrecht carry his weapon?

A It was a duty regulation.

Q After you got back to the police station, did Albrecht order you to make up your report showing that the flier was killed while trying to escape?

A Albrecht asked for Moller. Then I said, "Moller went home." Then Albrecht asked "did he write a report?" I said, "I don't know, I don't think so." Then Albrecht said, "Get a report ready and write in it that the flier was shot while trying to escape."

Q Did you write the report?

A Yes, I wrote the report; at least, I think I did.

Q Did you know that the flier wasn't shot while trying to escape?

A Through my talk with Moller, who had told me something different.

Q So you knew you were making up a false report?

A False report? First lieutenant Albrecht should know better, because he was walking with Moller all the way.

Q I am not talking about Albrecht. I am talking about you.

A In this sense, I have to say yes to this question.

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Q Well, you knew it because you knew that all fliers that got into the hands of the police were executed, didn't you?

A I didn't know that.

Q You didn't know that?

A No.

Q Well, you knew that you had three fliers at your headquarters, didn't you, within a few days of this instance?

A I couldn't know that because that was the first flier. This flier here was the first flier.

Q You had two more after him, didn't you?

A After this one, yes.

Q And what happened to those other two fliers?

A As far as I know, they were shot.

Q And these are all the fliers that you know about ever coming to your headquarters, aren't they?

A These are the three.

Q As far as you know, everybody that ever came to your police headquarters was shot, is that correct?

A Yes, these three.

Q And were they shot while trying to escape, or do you know?

A The one case I heard about here and through the report of two of my men who returned to the station, and the others I heard about from hearsay.

Q Now, you knew about the orders that had come down to the effect that fliers would be killed, didn't you?

A I never heard about any order or read an order.

Q Did you ever see an order?

A No.

Q Were you familiar with the propaganda that was going around in Germany about terror fliers?

A Yes, I knew that.

Q What was supposed to be done with terror fliers?

A Goebbel's propaganda said, as far as I know, that the police should not interfere with the civilian population.

Q When you left the police station on that day, following along behind Moller, you knew that that flier was going to be executed, didn't you?

A No, I couldn't know that.

Q And it was a great shock and a great surprise to you when Moller shot that flier?

A I think so.

Q You think so? Do you know?

A Yes.

Q When you heard the shots, you knew Moller had fired them, didn't you?

A Yes.

Q How did you know that?

A Because there was nobody else.

Q You were expecting to hear those shots, weren't you?

A No.

Q How many automobiles did you have at your headquarters?

A At our headquarters there was only one car with a siren which was to be used when the electric siren was out of order.

Q How many motorcycles did you have?

A None.

Q Was that car there on the 22nd of February, 1945?

A I can't say that.

Q If they wanted to get this flier to Headquarters at Offenbach, do you know of any reason why they shouldn't have taken him there in this automobile?

A They weren't allowed to do so.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY THE DEFENSE COUNSEL:

Q After this incident with Moller, was anything said in the police station by Albrecht with respect to the handling of any future allied flying personnel?

A After the second incident on the same day, Albrecht, at noon-time during the relief of the guards, said, "I don't want to see any more that a policeman brings a flier to the police station. If possible he is to be delivered immediately to the air forces or to the anti-aircraft units."

Q Were you on duty at the police station when this second flier was brought there?

A Yes.

Q By whom was he brought there?

A A civilian.

Q Did you have any talk with Albrecht about the second flier?

A Yes.

Q Tell the Court when and what the conversation was.

A The flier was brought in by a civilian at approximately seven o'clock P. M. He had surrendered voluntarily.

I searched him.

Q Well, just the talk that was had.

A There was an air raid alarm going on. Albrecht called over the phone, as he did usually during air raid alarms, whether anything new had happened. I said, "Yes, unfortunately, another flier is in the station," and Albrecht said, "Take this flier immediately, without delay, on the shortest route under safe conduct to the headquarters of the Order Police."

Q Where was that?

A At the corner of Kaiser and Dom Street in Offenbach.

Q Do you remember what time of night that conversation took place?

A That was perhaps 10 minutes after the flier had been delivered.

Q What did you do?

A I wrote out the report. I made a record of his belongings, ordered two men, who took this man on the shortest route to Offenbach to headquarters and delivered him there.

Q Who were these two men?

A That was First Sergeant Michel and Sergeant Schneider.

Q What did you tell them?

A They should bring the man to Offenbach on the shortest possible route and should deliver him there.

Q Did they bring this second American flier to the commando in Offenbach?

A Yes.

Q Now, come down to the third one. Were you there when he was brought in?

A Unfortunately, yes.

Q What time of day was that?

A Sunday morning at eight o'clock.

Q Did you have some talk with Albrecht about that?

A Yes.

Q What was that talk?

A I called Albrecht over the phone. I said, "Albrecht, unfortunately another flier is in the station. Come over immediately."

Q Going back to the second one for a moment. When did you last hear anything further about this second man who was brought to Offenbach at your order?

A In the evening at eleven o'clock.

Q And how did you hear that?

A The two men returned and reported that the man had been shot while trying to escape. They had gone to the Headquarters of the Order Police and there they had received the order to shoot him, but they didn't do it, and intended to return to me at Bieber. On the way back, an air raid alarm was given and they went to the bunker near the Bierbrauer Weg. There the flier started to escape and there he had been shot.

Q Did you make a report of this shooting of the second flier to Albrecht?

A In the morning at eight o'clock. I told him--he came from his home to our station--and reported to him, "Yesterday's flier has been shot while trying to escape."

Q And this report referred to the second flier--not to the first?

A Yes, to the second flier.

Q All right, you tell us about telling Albrecht about the second flier, and you say he came right down.

A Yes.

Q All right, what happened?

A I went home to wash up and to have breakfast, and handed the flier over to Lueck with the order to let him sit there on the stove until Albrecht did arrive.

Q Let's skip all that. Albrecht did arrive. What then?

A When I returned, Albrecht was just coming in.

Q Yes, go ahead.

A When I arrived, a car was already standing in front of the station. A Captain and First Sergeant of the Air Force were already present. As far as I can remember, Albrecht then handed the flier over to the Captain of the Air Force.

Q What happened?

A Then arrived a First Lieutenant named Zager of the headquarters of the Order Police.

Q What was his job there?

A He was in charge of the branch office of the police, and he was an adjutant of Major Kohlenbeck.

Q In that capacity, did he have command jurisdiction over the police force in Bieber?

CAPTAIN VANCE: I object to that question.

DEFENSE COUNSEL: I will withdraw the question.

QUESTIONS BY THE DEFENSE COUNSEL:

Q What authority, if any, did he have over the

police force in Bieber?

A He was a representative of Major Kohlenbeck, and whenever he was representing him he had full authority over the police station at Offenbach.

Q At any rate, Zager was there, a Captain of the Air Force was there, and Albrecht was there.

A Yes.

Q What happened after that, if you know?

A This I know only from hear say.

Q From whom?

A From Albrecht and the other men who were present at the station.

Q What did they tell you happened?

A The Captain of the Air Force interrogated the flier, and Zager came and requested the flier from the Captain of the Air Force. The Captain didn't want to hand over the flier, and then supposedly Zager gave him a receipt that after the flier's interrogation at the headquarters of the Order Police, he would deliver the flier at Oberursel; and it seemed that the Captain of the Air Force accepted this then, because afterwards he drove away with his car. As far as I can still remember, Albrecht came to my room and said, "Zager, the beast, wants to take away this flier from the Captain of the Air Force."

Q. At any rate, who took him away?

A Zager.

Q That was the last time you saw him?

A Yes.

DEFENSE COUNSEL: Nothing further.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q What did Zager do with him?

A As far as I heard, he shot him.

Q Why didn't Albrecht want any more fliers in his headquarters after 22 February 1945?

A On account of the incident of the first and second flier, we got wise and knew what would happen to the flier, if we didn't take some other steps.

Q Was Albrecht the chief of the police there at Bieber?

A He was the leader of the police station in Bieber.

Q Didn't he feel it was his duty to protect prisoners of war?

A Yes, he tried to do so.

Q But he didn't want any brought to his police headquarters after this incident?

A They should be delivered to the Air Force as far as possible.

Q But the last one you handed over, instead of going to the Air Force went to a man named Zager?

A He was brought by a Catholic priest to the station.

Q Yes, and wound up in the hands of Zager.

A After he was taken over already by the Air Force and the Air Force released him again.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DR. BUERGER:

Q Mr. Goehrendt, you testified before that you sent

(Goehrendt-Cross) Re (Redirect)

along with the second flier Michel and Schneider. Why did you send these two men along?

A Michel and Schneider, they are my two most harmless policemen. They wouldn't do harm to anybody. If the flier would have escaped, then he would have been gone away for good. Until they would have made up their mind who has to do the shooting, he would have been far away.

PRESIDENT: The Court will recess for twenty minutes.

(Whereupon at 1002 hours, the Court recessed for twenty minutes.)

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(Whereupon court was opened at 1030 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show that all members of the court are present, with the exception of Colonel Ackerman, who is absent sick; all members of the prosecution are present; all members of the defense are present, with the exception of Dr. Trost, who is absent; that the accused are all present, with the exception of Hallenbreich, Number 20, who is temporarily absent in conference with defense counsel; that the interpreter and the reporter are present.

DEFENSE COUNSEL: Goehrendt will resume the stand. I think Dr. Wacker has a question or two.

WILHELM FRIEDRICH GOEHRENDT, an accused, voluntarily resumed the stand in his own behalf and being reminded that he was still under oath, continued to make the following statement through an interpreter as follows:

RE DIRECT EXAMINATION (Contd)

QUESTIONS BY DR. WACKER:

Q Mr. Goehrendt, had the head police director Michel been informed that a second flyer had been delivered to the police station in Bieber?

A Deliberately I didn't do so.

Q Had Michel been informed of the presence of the third flyer?

A No.

Q In regard to the transport of the second flyer, you mentioned two policemen, Michel and Schneider, and you testified about the intelligence of these two men. Was the intelligence of these two men lower than that of Heller?

(Whereupon court was opened at 1030 hours.)

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A No.

Q In regard to the transport of the second flyer, you mentioned two policemen, Michel and Schneider, and you testified about the intelligence of these two men. Was the intelligence of these two men lower than that of Heller?

A I didn't give them an IQ test.

DEFENSE COUNSEL: Nothing further by the defense.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You said that you deliberately withheld from the knowledge of Michel that these other flyers were there. Why did you do this?

A On account of the incident in the morning.

Q Any other reason?

A No.

Q You were afraid that Michel wanted this man killed and would give you the order to do so, weren't you?

A Yes.

Q Once he had given the order in the morning?

A Yes.

Q Now, I am going to read some of your testimony that you gave in court yesterday. "Question. You returned to the police station? Answer. Yes. Question. Continue telling your story. Answer. Sergeant Gluck was present at the police station. He asked me, 'Man what do you look like?' I don't know what this is now but if the witness said so I guess it is right. I said 'Moller did something to us.' Question. What did you mean to say by that? Answer. I wanted to express that this man had put the whole police in a bad shape by doing that--if a police official shoots a prisoner." Do you remember telling that?

A Yes, that is what I testified.

Q Now, could the act of one enlisted man in the police force put the whole police force in a mess?

A It was to be expected that the war was lost and it would make a bad picture for the population if a policeman kills a prisoner. The last was my opinion.

Q That was in February, 1945?

A Yes, February 1945.

Q At that time I believe you said that you thought the war was lost?

A Yes.

Q Do you know the approximate distance from Bieber to Bensheim?

A I don't know Bensheim.

Q What is the approximate distance from Beiber to Frankfurt?

A Six to seven kilometers.

Q Beiber and Offenbach are on one side of the river and Frankfurt is on the other side, is that right?

A Not exactly. The river goes right through Frankfurt itself.

Q About six kilometers?

A Yes.

Q How far is Bieber from the bank of the Rhine River?

A I can't say that exactly.

Q Do you know where Bieber is?

A Yes.

Q Do you know where Bensheim is?

A Yes, I know where it is located.

Q Is it on the Rhine River or near the Rhine River?

A Bensheim on the Rhine. Bensheim is on the Bergstrasse.

Q Is it near the Rhine River?

A What you call near the river. I can't visualise anymore how far.

Q All right. Now I want to ask you this again. You said that Albrecht asked you to go along for part of the way, is that right?

A Yes, part of the way.

Q How far did he say he wanted you to go?

A He didn't say that.

Q Did you go any further than the place where the killing was?

A I would have gone up to the limits of our police station. That was at Rousenstammer Weg.

Q Why do you say that? You say that you didn't know how far Albrecht wanted you to go.

A It is not customary that the policemen of one district go into another police district.

Q Had you left the bounds of your district before the flyer was killed?

A At this moment, yes.

Q And you did go to the scene of the shooting?

A Yes.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Any questions by the court?

PRESIDENT: No questions by the court. The witness will take his place in the dock.

(Whereupon the witness was excused and resumed his seat in the prisoners' dock.)

DEFENSE COUNSEL: The accused Kiwitt, Number 7, will now take the stand.

PRESIDENT: Do you desire to be sworn?

THE WITNESS: Yes.

JOSEF JOHANN KIWITT, an accused, voluntarily took the stand in his own behalf and being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. BUERGER:

Q Please give your full name?

A Josef Johann Kiwitt.

Q When and where were you born?

A On the twentieth of February, 1895 at Essen on the Ruhr.

Q What is your civilian profession?

A I was a police official.

Q Was this your profession all your life?

A No, not always.

Q What kind of a profession did you learn?

A After the First World War, first I was a miner until 1925 and on the first of January, 1925, I entered the service of the police.

Q Are you married?

A Yes.

Q Do you have children?

A Yes.

Q Did you serve in the German Army during the first World War?

A Yes.

Q From when to when?

A From 1915 until the end.

Q Which branch of the service did you serve in?

A I was an infantryman. I was wounded three times.

Q Where did you serve as a police officer after you entered the service of the police in January, 1925?

A On the first of January, 1925, I started with the city police of the City of Gladbach. The city police was taken over by the state police in 1925 and so I entered the service of the state police. I was taken over as a sergeant into the order police.

Q How long did you serve in the police?

A Until the first of April, 1934, then I was discharged.

Q During the entire time until 1934 you were with the order police?

A Yes.

Q Why were you discharged in March, 1934?

A On account of political unreliability.

Q What kind of profession did you have afterwards?

A First for two years and four months I was without occupation, unemployed and then on the first of August, 1936, I was hired by the municipal administration of the City of Gelsenkirchen as City Secretary.

Q How long did you serve with the municipal administration there?

A Until the second of May, 1940.

Q And after the second of May, 1940?

A On the second of May, 1940, I was drafted into the police. I got a temporary assignment as first lieutenant in the order police. I did duty as an instructor in a police battalion. Then, for one year I was adjutant at a police school and then afterwards I was leader of a police station.

Q When were you transferred to Offenbach - Main?

A My permanent duty station was Strassburg in Alsace. From there I was transferred on a detail for temporary duty on the twenty-second of November, 1944, to Offenbach.

Q In which capacity were you transferred to Offenbach for temporary duty?

A I was an officer and whenever the commander, Major Kuhlenbeck, was not present I was representing him.

Q What were your main duties there?

A I got a special assignment from Major Kuhlenbeck. I had to work out a defense plan for the City of Offenbach. That occupied my entire time.

Q Major Kuhlenbeck was your immediate superior?

A Yes.

Q Who was the next higher superior officer?

A Police Director Richel.

Q You were a member of the Nazi Party?

A Yes.

Q Since when?

A From the first of May, 1933.

Q You were a member of the SS?

A No.

Q Were you a member of the Security Service of the Secret State Police?

A No.

Q Were you a member of the Leader Corps of the Party?

A No.

Q Now, I asked you do you still remember the twenty-first or twenty-second of February, 1945?

A Yes.

Q Where were you on this date?

A I was in the airraid headquarters on the Bierbrauerweg.

Q At what time of the day?

A It was around noon.

Q Where did you go from there?

A When we noticed that an airplane had been shot down and that several flyers parachuted in the neighborhood and two men in the immediate vicinity of Beiber, police director Eichel requested me to check the guards in the woods.

Q Did you follow this order?

A Yes.

Q Did you leave the airraid headquarters on foot, on bicycle by car, or how?

A We drove up to the edge of the forest in the duty car of the police director.

Q You said "we". Whom are you referring to?

A The Police Director, his driver and myself.

Q You all checked together whether the guard were on their assigned posts?

A Yes.

Q Did you hear whether parachuted flyers had been taken into custody?

A No. On our way home to police headquarters, the car was stopped in the village of Beiber by some civilians, whose names I do not know, and this civilian said to Police Director Eichel, "Mr. Eichel a flyer has been delivered to the police station in Beiber."

Q Did you then drive to the police station at Beiber?

A Yes, Police Director Eichel, he himself was driving the car, turned the car to the police station.

Q What did you find then in the police station at Beiber?

A We drove to the police station, left the car, the Police Director entered the station building, I followed him. Furthermore a third man, Brandt, I don't know him any further.

Q Who was Brandt and where did he come from?

A The Police Director had picked him up on the way.

Q Continue your story.

A When we were in the building we saw a flyer in the guard room sitting on the table, smoking and he had a glass of water in front of him. The Police Director Eichel got mad because the flyer was treated so well. This moment First Lieutenant Albrecht entered the room. First Lieutenant Albrecht reported to him. Now the Police Director Eichel complained to him and asked him who gave the permission that the flyer could sit down and smoke and be treated so well.

Q Did you participate in this discussion?

A I didn't participate. I only griped a little bit.

Q What do you mean?

A I made a few silly remarks.

Q Continue your story.

A Albrecht was wearing his house jacket and now from this spot, it was in the guard room, he went to his office room. The Police Director followed him and went into the room too and kept on admonishing him.

Q Did you too go into the room of the station leader?

A When I saw that the Police Director was admonishing the First Lieutenant, I didn't like to be present there when a comrade of mine was admonished and for this reason I didn't enter the room.

Q During this admonishment of the station leader, was the door to his room open or not?

A The door was open, it wasn't closed.

Q Did you hear anything about what was talked about?

A I heard only that all the time Eichel had complained to Albrecht that he had treated a flyer in this manner. I didn't bother with this anymore and because I didn't know this station, I started now to look over the various rooms. I went from one room to another and intended to leave the station again. There I heard when the Police Director Eichel said to Albrecht, "Albrecht bring this flyer to police headquarters but he shall not arrive or he will be done away with", I don't remember the exact words.

Q In which room were these remarks made and where were you at that time?

A I remember this happened at the exit from the guard room to the small hall outside. When I passed then I heard these remarks. The Police Director also asked, "Did you understand me?" and Albrecht said "Yes Police Director I understand the flyer is to be bumped off or shall be killed. I don't know exactly but not through me. I refuse to do it." I left then and went back to the car.

Q Where was the flyer during this talk between Eichel and Albrecht?

A I don't remember anymore.

Q Whom did you meet when you arrived at the car outside?

A There were a few civilians standing on the car and I started to talk to them. Shortly thereafter the Police Director Eichel left the building and called for First Lieutenant Albrecht. Albrecht then came out and Eichel then said to Albrecht, "Albrecht why aren't you leaving, why aren't you taking the flyer away?" Albrecht then replied "One man has to get ready yet. He has to get his carbine and steel helmet." At this moment a policeman arrived.

Q Do you know who he was?

A No, I don't know the policemen there. The Police Director sent him to police headquarters and then he entered the car and I entered the car and then we drove away.

Q Did you go then to the police headquarters?

A At the office of the Police Director I left the car and then I rode on my bicycle to headquarters of the Order Police and then I didn't leave this office building for the rest of the day.

Q Weren't you in Bieber once more in the afternoon?

A No, the entire day I didn't leave the building anymore.

Q Did you hear whether a report was made about this incident or what happened?

A Yes. In the afternoon, about five o'clock, that was the usual time when the reports came in from the various police stations, a report came in from Station Bieber with the contents, "On orders of the Police Director Eichel, a flyer was being brought to the

the office building of the Police Director. On the way the flyer made an attempt to escape and was shot while trying to escape." That was approximately the contents. I can't give the contents too exactly.

DR. BUERGER: That is all.

DR. RAU: Cross examination on behalf of the accused, Albrecht.

DIRECT EXAMINATION (Contd)

QUESTIONS BY DR. RAU:

Q When Albrecht said to Eichel, "I refuse to shoot the flyer", what did Eichel say in reply?

A Eichel then said, "Then somebody else will do it or some other policeman will do it."

Q Did you notice whether Eichel gave an order to another police official?

A No, I didn't bother with the Police Director. I looked over the station and then left the building.

Q Did you notice in any way that the other policemen went out of Eichel's way?

A Yes, they took off.

Q Did you see whether Eichel spoke to Moller?

A I can't recall that. I didn't see that.

Q Did you see whether Albrecht spoke to Moller?

A No, I didn't bother with it.

Q Do you remember that shortly before he left Eichel expressed the desire to take the pilot along on his car?

A I can't testify in regard to this point either because I neither saw it nor heard it.

Q Weren't you always together with Riebel outside at the car? A

A No. First I was on the car alone and afterwards he came.

Q Is it possible that he made this remark while you were absent, that he intended to take the flyer along on the motor hood of his car?

A I don't know that. I didn't hear it.

Q I only asked you whether you were present all the time, or was it possible that he said this while you were away?

CAPTAIN VANCE: I object as to the possibility of what could have been done. This man has said that he didn't know.

PRESIDENT: Objection is overruled

THE WITNESS: This possibility exists, but I didn't hear it.

QUESTIONS BY DR. RAU:

Q What was your personal impression or opinion what would happen to the flyer at the time you left the police station at Riebel?

A My impression was that the flyer would be delivered according to the orders.

Q Why was this your impression, didn't you hear before that the flyer was to be shot on the way to police headquarters?

A The Police Director had made this request to First Lieutenant Albrecht, but Albrecht had refused this definitely so this case was settled.

Q What was the last utterance of the Police Director when you left?

A When I entered the car he called over to First Lieutenant Albrecht, "to police headquarters then". That was the last he said.

Q If I understand you right then the Police Director had given up his plan to have the flyer shot?

A I don't know that.

DR. RAU: Nothing further.

DR. WACKER: I have a few questions in favor of the accused Eichel.

DIRECT EXAMINATION (Contd.)

QUESTIONS BY DR. WACKER:

Q Do you have difficulty with your hearing?

A I don't hear so well. Will you please repeat the question.

Q Do you have bad hearing?

A Yes, I don't hear so well.

Q Is it possible that during this talk between Eichel and Albrecht you didn't hear everything right or didn't hear some remarks at all?

A That is all I heard. I don't make the story any better or any worse. I just said it as I heard it. I don't hear so well, but that is what I heard.

Q Was it an order by Eichel to Albrecht or wasn't it an order?

A My first impression was it was an order to Albrecht, but since the Police Director didn't take any action when First Lieutenant Albrecht definitely refused to do it, then I got the impression it wasn't an order.

Q For how long did you know Eichel before the twenty-second of February, 1945?

A When I started my duty I visited him. I paid him a visit and then four weeks later I was together with him several times at airraid headquarters.

Q Did it happen often that Eichel accepted a refusal to obey an order in this manner?

A That is the first time I saw it.

Q Was the remark made on the police station, "And this fellow is still alive."?

A I can't remember this.

Q Did you talk to Miller about the testimony of Goma?

A It might have been here in the bunker, when the charges were served.

Q What did Miller tell you at that time?

A We had meetings at that time and during one of these meetings I asked Miller what is Goma going to testify because I went together with him at that time. Then Miller told me, "Goma can say only, ' I shot him while he was trying to escape!".

Q Did you speak afterward at the police station that the flyer should be shot?

A No.

DR. HACKER: No further questions.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Did you say, before you went to work for Albrecht, that you attended a police school?

A I was adjutant at the police school.

Q Did they teach a subject on the treatment of prisoners at that police school?

A Not even once was that talked about--this subject.

Q You talked about a Major Kuhlenbeck as being dead.

A Whether this is true, I don't know.

Q On February 22 you saw a plane shot down is that correct?

A Yes.

Q I believe you were in the car with Eichel, the driver and yourself and proceeded to the woods, is that right?

(Kivitt-direct)

A We drove to the forest, yes.

Q After you checked the guards you drove through Bieber?

A Yes. We checked the guards in the woods and then through Bieber we returned to police headquarters. We were returning to police headquarters.

Q Who was driving when you got to Bieber?

A Police Director Biehel.

Q What had happened to the driver?

A He was sitting next to him?

Q When is the first time you knew that they had an American flyer at the Bieber Police Station?

A We came through the village of Bieber. The car was stopped. A civilian reported or told the police director that a flyer had been delivered at the police station. That is where I heard, for the first time, about the flyer.

Q After you heard about it did you go to the Bieber Police Station?

A Yes. The Police Director turned and went to the Police Station, Bieber.

Q Why did he want to do that?

A I don't know that.

Q Did he discuss it with you before you got there?

A He didn't say anything.

Q You didn't know where he was going until you got there?

A The civilian told him that the flyer was already at the police station and when he turned with the car now, from the main road, I noticed that he was going to the police station.

Q Had he planned to go by the police station until he heard this flyer was there?

A No. We intended to return to police headquarters.

(Kiwitt-direct)

Q When you got there the American flyer was smoking and drinking some water, is that right?

A Yes.

Q Was there anything wrong with that in your opinion?

A It was all right.

Q Well you said you were a little griped about it.

A When Police Director Michel entered the room and First Lieutenant Albrecht reported to him the flyer didn't get up. The Police Director was in uniform.

Q Is that what griped you?

A And about this was my excitement.

Q Do you get up every time an American Officer comes in your room?

A Yes.

Q You weren't annoyed because he was smoking?

A No, that didn't bother me.

Q You had no objection to him drinking some water did you?

A No, not at all.

Q Well, was Michel a little mad or was he furious about this?

A Michel was furious.

Q He more or less flew into a tantrum when he arrived there didn't he?

A Yes, you might say he lost his nerves.

Q Tell the court everything that Michel did and said that you can remember.

A Michel cursed that the flyer was smoking. He also said, "Who gave him water?", and First Lieutenant Albrecht came then. He cursed Albrecht because the flyer was treated so well. Albrecht then took the cigarette away from the flyer. I don't know whether he threw it to the floor or put

(Fwits-Direct)

it in an ash tray. At this moment the Police director took the scarf which the flyer was wearing around his neck and pulled it off. Then the flyer took it off and put it on the table. In the meantime Albrecht went into his room and the police director followed him.

Q Did Albrecht take the cigarette away from the flyer or did he slap it out of his mouth.

A He didn't slap it out of his mouth. The flyer was smoking. He was holding the cigarette in his hand. Albrecht took the cigarette out of the flyer's hand and put it on the ashtray.

Q Did Albrecht say who had given the flyer permission to smoke?

A I don't know that.

Q He didn't admit to Eichel that he did it, did he?

A I can't remember this anymore.

Q I believe you said that after this occurred that since you had never been in the Sieber Police Station that you walked through all of the rooms, is that correct?

A I had been once before at the Police Station, Sieber, but I didn't know the rooms yet and for this reason I looked them over.

Q What were you looking for?

A I wanted to get acquainted with the rooms. It is usual that a superior officer or another officer who is doing something with the police station looks over the locality.

Q Were you Albrecht's superior?

A Major Buhlenbeck.

Q Were you Albrecht's superior?

A I was a rank higher comrade of his.

Q How long did it take you to look through all of the rooms?

A Perhaps five to seven minutes.

Q During this five to seven minutes you were looking through the rooms you don't know what Eichel may have said to Moller, do you?

A No, I don't know that.

Q You don't know what Albrecht may have said to Moller, do you?

A All this I couldn't observe because I was walking from one room to another.

Q You did hear Eichel say that the flyer must be done away with, is that right?

A When I intended to leave the building again I had to pass both of them and then I heard.

Q Was that before you went around to look at the rooms or after you had looked at the rooms?

A After I had looked through the rooms and intended to leave the building again.

Q What did Eichel mean by that statement, "The flyer will have to be done away with."?

A He should be shot.

Q At the time he made that statement he was talking to Albrecht, is that correct?

A To Albrecht, yes.

Q Then Eichel asked Albrecht, "Do you understand?", is that right?

A Yes.

Q Then Albrecht said, "He will be bumped off, but not by me personally.", is that right?

A Albrecht said, "Not through me, I refuse that."

Q But did he say, "He will be bumped off."?

A Who?

Q The American flyer.

A I didn't understand you question.

Q All right I will repeat it. Albrecht said, "The flyer will be bumped off, but not by me."

A Not through me, yes.

Q Albrecht was an officer wasn't he; a first lieutenant?

A Yes.

Q Eichel wouldn't expect an officer to carry out an execution personally would he?

A If an officer gets an order he has to carry it out.

Q Well Eichel didn't order Albrecht to do the shooting, did he?

A I don't know that. I don't know whether this was a personal order for Albrecht or whether he meant something else with it too. I testified exactly what I heard.

Q After hearing Eichel make this remark to Albrecht you know what Eichel wanted done with this American Soldier, didn't you?

A Yes, I could know that.

Q After that you and Eichel went back to your headquarters, is that correct?

A Yes. Police Director Eichel returned to his headquarters. In the yard I left his car and rode away on my bicycle. We didn't talk at all anymore.

Q Do you know Geehrendt?

A I got acquainted with him here.

Q Did you see him on that day?

A I don't know. I didn't know anyone of the policemen. I knew only First Lieutenant Albrecht.

(Hiwitt-cross)

Q I believe you said that on the afternoon, on the same afternoon, a report came from Bieber to the effect that this flyer was shot while trying to escape, is that right?

A Yes, I said so.

Q Is it customary to make these type of reports on incidents?

A About all happenings at a police station reports had to be made to headquarters of the Order Police.

Q Of course you know that the report was falsified?

A No, I didn't know that.

Q You don't mean to tell the court you think the flyer was shot while trying to escape, do you?

A Yes, I assumed that.

Q That is what you thought at that time?

A Yes.

Q You were very much surprised to find out different later?

A Yes.

Q When did you find out he was murdered?

A Here in the bunker.

Q You were surprised even though you heard Bichel say he wanted him killed?

A First Lieutenant Albrecht had refused to obey this order so I had assumed that this would not be done.

Q Where did that report go after it came to your headquarters?

A Where it went, I don't know.

Q Well it goes on up to your next higher headquarters, doesn't it?

A That is the usual way.

Q Is that headquarters in Wiesbaden?

A We had no connection with them.

Q Who was your next higher headquarters?

(Kimitt-cross)

A There was a Commander of the Order Police.

Q Wasn't he in Wiesbaden?

A No, he was in Darmstadt. I heard that Nichel said to Albrecht, "The

Q Who was he? Q. Did you understand." Please repeat exactly

A I don't know that.

Q Where was his next higher headquarters? The headquarters over the headquarters in Darmstadt. possible that he also said something about the

A Then came the Commander of the Order Police, whether those re-

Q Was he in Wiesbaden?

A This office was in Wiesbaden. repeated, "Yes, the flyer is to

Q Did those reports take that channel that you have mentioned to these various headquarters? another expression, but that was the meaning.

A Part of the report went through these channels but part of the reports also went through the headquarters of the Police Director.

Q Do you tell the court that Albrecht refused to carry out Nichel's order? of the matter?

A Yes. was the last order Nichel gave to Albrecht.

Q You have heard various witnesses and various accused talk about the punishment for refusing to carry out orders, haven't you?

A Yes. no more questions.

Q You have heard some of them testify that they would be given the death sentence for refusal to obey, haven't you?

A Yes, I do say, "being him to Police headquarters, but they him at?

Q Whatever happened to Albrecht for his refusal?

A For the time being nothing happened to Albrecht. For this reason I assumed that the Police Director didn't want to have this considered an order. this any questions by the court?

CAPTAIN VANCE: Nothing further. now. No witness will have his

(Kiwitz-cross)

REDIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q You said before that you heard that Eichel said to Albrecht, "The flyer will be done away with. Did you understand." Please repeat exactly what Albrecht said in reply?

A "Yes, I understood. The flyer is to be bumped off, but not through me. I refuse that." It is possible that he also said something about the flyer shall not arrive, but I don't know that. I don't remember these expressions exactly anymore.

Q Are you certain that Albrecht repeated, "Yes, the flyer is to be bumped off."

A He might have used another expression, but that was the meaning.

Q If I understand you right, you don't want to stick exactly to the wording?

A I am of the opinion that is what he said.

QUESTIONS BY DR. WACKER:

Q What was the last order Eichel gave to Albrecht?

A That was at the end of the car. He called to Albrecht, "To Police Headquarters."

DR. WACKER: No more questions.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Didn't he say, "Bring him to Police Headquarters, but bump him off on the way."

A He said that before. He had said this before in the building.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Any questions by the court?

PRESIDENT: No questions by the court. The witness will take his place in the dock.

DEFENSE COUNSEL: The defense now calls Lueck, Oscar.

I will have to change that, may it please the court. I can't find Lueck. I will now call Peter Schrod.

PRESIDENT: He will be sworn.

PETER SCHROD: I was sworn once before. Do I have to swear once more. I was already a witness for the prosecution.

PRESIDENT: You will swear once more and take the stand.

PETER SCHROD: I won't take a second oath.

PRESIDENT: Take him out of the courtroom.

DEFENSE COUNSEL: I ask that he be held for contempt of court.

PRESIDENT: Recess in place.

(Whereupon the court recessed in place.)

(Whereupon the court reconvened.)

PRESIDENT: The court will come to order. You have

We want to ask him a few questions.

EXAMINATION BY THE COURT

LAW MEMBER: You were a witness in this case for the prosecution before this day, were you not?

PETER SCHROD: Yes.

LAW MEMBER: At that time you took an oath to tell the truth without any objection did you not?

PETER SCHROD: Yes.

LAW MEMBER: You are now called as a witness for defense, is that correct?

PETER SCHROD: Yes.

LAW MEMBER: You have just declined to be sworn as a witness?

PETER SCHROD: Yes.

LAW MEMBER: What is your reason for refusing to be sworn as a witness at this time?

PETER SCHROD: My personal opinion is: I tried to prevent the crime at that time and I said whatever I had seen at that time. I didn't withhold anything or add anything and I don't know why, for the defense, I should be sworn for a second time.

LAW MEMBER: Have you any religious scruples or beliefs as to why you should not take an oath before testifying?

PETER SCHROD: No. As far as religion is concerned, it has no meaning.

LAW MEMBER: This court requires that a witness, before he takes the stand, take an oath that he will tell the truth.

PETER SCHROD: Yes. I said already--I testified already to whatever I had seen and heard. I have nothing to add or to withhold and for this reason the case is settled as far as I am concerned.

LAW MEMBER: Mr. Schrod I don't want anymore arguments. You have been called as a witness for the defense. Are you willing to take the oath and testify as a witness?

PETER SCHROD: I don't know why a second oath is necessary.

LAW MEMBER: Answer the questions that I ask you and don't quibble.

PETER SCHROD: Then I would like to hear the reason why.

LAW MEMBER: Are you willing to take the oath before you testify?

PETER SCHROD: I referred to my first oath.

LAW MEMBER: I think the court should find him in contempt.

Do you understand that this court can find you as being in contempt of court and punish you for being in contempt?

PETER SCHROD: No.

LAW MEMBER: It can. How do you wish to take the oath before you testify or do you not?

PETER SCHROD: I need time.

PRESIDENT: We haven't any time.

LAW MEMBER: By your silence are you declining?

PETER SCHMOD: No, I would like to get, only once more, an answer to my question, why a second oath is necessary.

LAW MEMBER: Because the court ordered it, for you to testify.

PETER SCHMOD: All right, if it can't be helped. All right.

PETER SCHMOD, called as a witness by the defense, being first duly sworn took the stand and testified as follows:

DEFENSE COUNSEL: I would like a recess in place.

PRESIDENT: Recess in place.

(Whereupon the court recessed in place.)

(Whereupon the court reconvened.)

PRESIDENT: The court will come to order.

The court will take a recess until 1430.

(Whereupon at 1155 hours the court recessed.)

AFTERNOON SESSION

(Whereupon the Court reconvened at 1340 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court, except Colonel Ackerman, who is absent sick, all the members of the Prosecution, all the members of the Defense, except Dr. Trost, who is absent sick, all of the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: We were just about to present the witness Peter Schrod when the court recessed. Bring in Peter Schrod.

(Whereupon the witness Peter Schrod was brought in.)

PRESIDENT: You are reminded you are under oath.

WITNESS: Yes.

PETER SCHROD, called as a witness by the Defense, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY THE DEFENSE COUNSEL:

Q Your name is Peter Schrod?

A Yes.

Q And you have previously testified in this case?

A Yes.

Q Is the expression "er hat uns eins geschafft" familiar to you?

A Familiar? You hear it several times--quite often in our place.

Q What does it mean?

A Well, in my opinion, and I emphasize that this is only my subjective opinion, it means this doesn't suit me, or I can't make this agree with my conscience or something.

Q Now, in your direct examination, you testified that you heard a voice and the expression "The flier will be shot." Where did that voice come from? Did it come from inside the police station or from outside from some of the people standing around the police station?

A From the crowd outside.

Q Now, also in your testimony, you said something to the effect that your conscience bothered you because "we did not know of such orders on the front." In making this statement I have just quoted, were you referring to a voice which said "he will be shot"?

A In the Army we didn't have that sort of orders, and when they said "he will be shot", I had to assume that he will be shot.

Q What order are you talking about?

A Well, I am not talking about any orders. When I said "orders" I meant the Army.

Q You didn't hear anybody give any order to shoot this particular flier, did you?

A No. I didn't say so, either.

Q Could you hear at all what went on inside the police station?

A No, I wasn't able to hear what was going on inside the police station.

Q Now, coming down to the scene in the forest, are you acquainted with Heusenstammer Strasse?

A Heusenstammer Weg, yes.

Q And the forest, which has been mentioned in this case, begins on that Weg, does it not?

A Yes.

Q Do you know whether or not any streets or paths or Hohlweg which ran through the woods beginning at Heusenstammer Weg?

A There is one path going to a settlement, and I knew also of one Hohlweg and another one to the right.

Q And where does the one to the left go--the Hohlweg?

A It will take you down to the community of Tempelsee.

Q And this other Weg that you mentioned--where does that take you?

A If you go up to the right, you will get to the so-called Buchhegel.

DEFENSE COUNSEL: What's that?

INTERPRETER: A hill.

QUESTIONS BY THE DEFENSE COUNSEL:

Q And if you continue to follow that road over the hill, what will it take you to?

A You can get to the Offenbach Landstrasse or Bieber Strasse that way.

Q Now did you testify that you saw Moller leave the Hohlweg to go into the forest?

A I was engaged in a conversation with Albrecht then.

Q If Moller or any other person had turned right from the Mehlweg to go into the woods, could he, by going through the woods, have reached this road that you mentioned which goes over the hill to Offenbach?

A If you go to the right, it will take you directly into the woods.

Q If you continued going through the woods, would you come to that road that we have been talking about?

A You will get to the community of Tempelsee.

Q Now, the Mehlweg, if followed, goes to Tempelsee, that's true, isn't it?

A Yes.

Q Standing where you were standing with Albrecht and looking down the Mehlweg, that is the road that goes to Tempelsee, is it not?

A Yes.

Q Now, if Moller had followed the Mehlweg as the evidence is that he did, going from the spot where Albrecht was standing in the direction of Tempelsee and had turned right into the woods--I am making this explanation because I want you to understand which direction I mean by right--and gone through the woods, would he have reached the road we have been talking about?

A If he went left or else entirely about face and walked the same road back.

Q By going through the woods, could he have reached the main road to Offenbach or any road to Offenbach?

A If he had turned left, he would have gotten to Heusenstammer Weg, and he would have gone down Heusenstammer

Weg.

Q Have you an idea of the approximate place at which Moller left the Mahlweg to go into the woods?

A Well, the approximate amount of meters from the cross roads to the place where Moller turned into the woods and where the shot was fired was about 800 meters.

Q My question was, are you familiar with the approximate place on the Mahlweg from which Moller went into the woods? Have you an idea where it was that he went into the woods?

A Yes, I had been at the place of the incident.

Q From the place of the incident to the road to Offenbach, how far was it?

A On the Offenbach Strasse to Offenbach?

Q From the place where the incident took place--occurred--how far was it, if you know, to this road which went through the woods to the hill that you mentioned?

A If he had gone back on the Weg to the hill, about 500 meters.

Q Gone back to which hill?

A To this Buchhegel hill, which further on goes back down to Offenbach.

Q I am going to repeat my question and ask your particular attention to it. From where this shooting took place, how far was it by the shortest line to this road which leads through the woods to the hill?

A I have to ask you again, straight through the woods past Heusenstammer Weg or straight through the woods past Heusenstammer Weg back to the road, which way?

Q You have testified that there was a road through the woods which went up to the hill which lead to Offenbach. Do you remember saying that?

A Yes, if you go back.

Q Is there such a road? I think you can answer that.

A I am not so good at geography.

Q Did you testify--and I ask you to answer this question yes or no--that there was a road through the woods which went up to a hill which went to Offenbach? Did you say that or did you not?

A Yes, back.

Q I want you to draw a sketch showing Heusenstammer Strasse or Weg, and this road you are talking about in the woods?

A That's the woods; that's the Hohlweg; that's the Heusenstammer Weg; and that's the road to Offenbach. (Indicating).

Q Now, Heusenstammer Strasse, right the name on there.

A This is Heusenstammer Weg. (Indicating).

Q Right the name down there. Now which is Hohlweg? Mark it. Now, which is the trail that goes through the woods to the hill?

A There should be another path here from Bieber.

Q Mark it. Mark it also where the incident occurred. Now, draw a straight line from the spot where it occurred to the road going to Offenbach at the nearest point.

CAPTAIN VANCE: May it please the Court, I am going to object to that because there is no testimony that anybody left the spot and went on a road to Offenbach.

DEFENSE COUNSEL: I didn't say there had.

CAPTAIN VANCE: Then what's the purpose?

DEFENSE COUNSEL: I want to show how far it is from the scene of the killing to this road that goes to Offenbach, and I am having difficulty.

PRESIDENT: Objection overruled.

WITNESS: You have to go a piece through the woods.

QUESTIONS BY THE DEFENSE COUNSEL:

Q How far is that piece? Approximately. Give your best judgment.

A About 300 meters.

DEFENSE COUNSEL: That's all.

End ta 225 ps fols

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Schrod, you live in Bieber, don't you?

A Yes.

Q Are you familiar with the surrounding territory of Bieber?

A Yes, pretty well.

Q About what is the distance from Bieber to Offenbach?

A Three kilometers.

Q If you were at the police station in Bieber and wanted to go to Offenbach, which direction would you start out, north, south, east or west?

A The direct road, the Bieber-Offenbach Landstrasse.

Q Does that road run directly from Bieber to Offenbach?

A Yes.

Q What is the general direction of that road, north, south, east or west?

A West.

Q On this day, when you saw the flier being taken away from police headquarters, which street did they take?

A I don't know exactly which road it was, because I only met the flier later on in the woods, but they must have gone through the field.

Q Let me ask you this: When you met them with the flier, is it not true that they were going in the opposite direction from Offenbach?

A In my opinion, yes.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: No further questions.

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: Defense offers as its next witness Gunther Niemann.

GUNTHER NIEMANN, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. WACKER:

Q State your full name, please.

A Gunther Niemann.

Q How old are you?

A 46 years.

Q Are you married?

A Yes.

Q Did you appear here once before as a witness?

A Yes.

Q Do you know one Police Director Eichel?

A Yes.

Q If you see him in here, will you please point him out?

A No. 6 (indicating).

DEFENSE COUNSEL: Have the record show he identifies No. 6 as Eichel.

QUESTIONS BY DR. WACKER:

Q What was your official position in February, 1945?

A I was commanding officer of the regular police, Wehrkreis XII.

Q And what was Eichel's position?

A Eichel was a police director of Offenbach.

Q Who was the immediate superior of Eichel?

A The Reichsstatthalter.

Q What was your relationship to Eichel?

A The protective police in Offenbach was under my command.

Q Were there any regulations applicable to the issuance of orders of a police director to his subordinates?

A Yes. This relationship was clarified in special regulations,

because the positions of the commanding officer of the regular police and the police director had caused repeated friction.

Q What was the manner in which a police director would issue orders to his subordinates?

A I will have to give some more detail explanation here concerning the organisation of a police system in a city. The police director or police president -- in smaller cities, it would be the police director -- he would be the chief of the police, and thus he had under him the organisations which he was authorized to command, such as the protective police and the industrial police and several other branches of the police. For the protective police, he had as his officer the commanding officer of the protective police. In the case of Offenbach, that was a major.

Q Was that Kohlenbeck?

A Yes.

Q What I want to know from you, Mr. Niemann, is the following: Would it be common practice for a police director to issue orders to one of his subordinates directly?

CAPTAIN VANCE: We object to what is common practice. It is a question of what was done.

DR. WACKER: That is what I am asking. There would probably be certain exceptions, but I do want to know what was common practice.

PRESIDENT: Objection overruled. Let him answer.

DR. WACKER: I would like to have the question repeated.

THE WITNESS: I understood it. In this regulation concerning orders which I have just mentioned, the authority assigned a police administrator, that is, a police president, a police director, was defined. He could give instructions and orders to the commanding officer of the protective police, but he wasn't able to give any direct orders to any particular policeman of the protective police. That always had to be done through the commanding officer of the protective police.

QUESTIONS BY DR. WACKER:

Q Is it possible for a police director to give a direct order to a police sergeant in a police district headquarters in the presence of two officers?

A If a police director or police president would have done that, he would have been violating this command regulation. He had to give the order to a commanding officer.

Q Do you know what kind of orders existed in February, 1945, concerning the treatment of captured fliers?

A Yes, I have testified about this here once before.

DR. WACKER: No further questions.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Colonel Niemann, you are talking about what a police director is supposed to do according to regulations, aren't you?

A According to those regulations, yes.

Q I say you are talking about what they are supposed to do, not what they actually do?

A All I was doing was answering the question I was asked. Do you want some specific answer? I don't quite understand the way the question is put.

Q All right. You said that if a police director gave a sergeant an order, he would be violating regulations, is that correct?

A Yes.

Q And a police director is supposed to follow the regulations?

A Yes, he is supposed to.

Q But you have often heard of people who violated regulations, haven't you?

A Well, what do you mean? Generally, of course, it happens once in a while that somebody does not act in accordance with instructions.

Q You don't know whether Police Director Eichel gave any orders or not concerning this flier, do you?

A No, I don't know a thing about it.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Nothing further, may it please the court.

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

OSKAR LUECK, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Your full name, please?

A Oskar Lueck.

Q And you have testified previously in this case, have you not?

A Yes.

Q Were you in the police station at Bieber the afternoon of the Moller incident?

A Yes.

Q Was anything said there by anyone about the future handling of any Allied fliers?

A Yes.

Q By whom was it said?

A By Lt. Albrecht.

Q Please tell the court on what day and about what time.

A That might have been about 4 o'clock on the 22nd of February.

Q That was the day that the flier was shot by Moller?

A Yes.

Q Who was present at this time?

A Well, several police officials were there.

Q What did Albrecht say?

A Well, we were talking about the matter, and Albrecht then said that if any police official would ever again pick up a flier anywhere, he wasn't supposed to take him to the police station any more, but to the army directly.

Q Do you know whether or not a second flier was brought to the Bieber police station that same day?

A Yes.

Q Was this order by Albrecht given before the second flier came or after the second flier came?

A Before.

Q Do you know Michel and Schneider?

A Yes.

Q What kind of police officials were they?

A They were reserve policemen.

Q I mean, what kind of men were they, cautious or incautious?

A They were harmless, harmless people.

Q What does that mean, this harmless business?

A They were pretty soft, you might say.

DEFENSE COUNSEL: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q When Albrecht made this speech, who was present? You said several officials.

A Well, so many of them were running up and down, I can't say the names today. It has been too long.

Q Can you name anybody that was there?

A No, I can't do it any more. I can't say.

Q Well, after he gave this instruction, did any more fliers come to the police headquarters?

A Yes.

Q They kept coming anyhow?

A Yes.

Q What happened to them after they got there?

A One of them was turned in the same evening by a civilian, and on Sunday, another one was turned in by a Catholic chaplain.

Q Any more you know of?

A No.

Q What is the matter? Couldn't Albrecht control his headquarters?

A Oh, how should I understand that?

Q You said he gave orders for not any more to come there, but they continued to come?

A Well, if a police official picks up one out there, but he didn't have anything to do -- he had no influence on those civilians.

Q Do you remember if Moller was present when Albrecht made this speech?

A No, as far as I remember, Moller went home right away.

Q What about Goehrendt? Was he there?

A I can't say. I don't really know.

Q You don't know of anyone who was there, is that right?

A No, I really can't remember any names now. Goehrendt might have been there, but I can't claim that he was.

Q Did you see Goehrendt at any time on that day?

A Yes.

Q Where?

A After the flier came to the police station.

Q Are you talking about the first flier, or the second one, or the third one?

A The first one.

Q Where did you see Goehrendt?

A He was in the room, in his office.

Q On the inside of police headquarters?

A Yes.

Q Was the flier present there at that time?

A Yes.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Herr Lueck, three fliers we are talking about now. The first one was the one shot by Moller, is that right?

A Yes.

Q And the second one was the one that came in that evening, is that right?

A Yes.

Q You have just said something about Goehrendt being in his office when the flier was there. Which flier are you talking about?

A The first one and the second one.

Q When did Goehrendt come to the police station that day for the first time?

A We had been together in the air raid shelter during the alarm, and when the airplane was shot down, he went on out to search for the fliers when they came down, and then I saw Moller leave with the flier and Goehrendt left with Albrecht.

Q Left from where?

A From the police station.

Q I will ask the interpreter to read to you a part of your testimony when you first appeared, from here to here.

(Whereupon the interpreter did as directed.)

Q That testimony you gave in the beginning ——

CAPTAIN VANCE: I am going to object to that. I don't know what he is talking about.

PRESIDENT: Read it in English.

DEFENSE COUNSEL: The following has been read to him:

"Q At the time Moller loaded his carbine, did you see Goehrendt?

A No.

Q Did you see him at any time after that?

A Yes, afterwards, because later on I was in the orderly room in the front. He had been on the road to look for persecuted fliers and I hadn't seen when he had returned and when Moller and the flier left the room Albrecht said to Goehrendt -- and only at that time I noticed that Goehrendt was back again -- 'Come with me.' And then these two went into the yard."

QUESTIONS BY DEFENSE COUNSEL:

Q Is that testimony correct?

CAPTAIN VANUS: I am going to object, may it please the court. He is attempting to impeach his own witness.

DEFENSE COUNSEL: He is also yours.

CAPTAIN VANUS: Not now. We released him and sent him home. The defense brought him back.

DEFENSE COUNSEL: I have a right to ask him if what he testified as a prosecution witness is accurate, and anything he may have testified in this case, and I ask the court's judgment.

PRESIDENT: Objection overruled.

QUESTIONS BY DEFENSE COUNSEL:

A Yes.

Q So that you didn't see when Goehrendt came back, did you?

A No, I didn't see that.

Q And you didn't see where he left to go with Albrecht either, did you?

A No.

Q Or where he came from when Albrecht spoke to him, did you?

A No. When he returned, he was there, when he called me and called me into the room.

DEFENSE COUNSEL: No further questions.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q I am going to read you a little of your testimony that you gave before. I will read it to you first and then let the interpreter read it.

"Q Did you know a man at that time by the name of Goehrendt?

A Yes.

Q Who was he?

A He was assistant to Albrecht.

Q At the time Moller loaded his carbine, did you see Goehrendt?

A No.

Q Did you see him at any time after that?

A Yes, afterwards, because later on I was in the orderly room in the front. He had been on the road to look for parachuted fliers and I hadn't seen when he had returned and when Moller and the flier left the room Albrecht said to Goehrendt -- and only at that time I noticed that Goehrendt was back again -- 'Come with me.' And then these two went into the yard."

DEFENSE COUNSEL: I submit it is the same thing I read him, unless I am very much mistaken.

CAPTAIN VANCE: That is right. I want to ask him about what he said.

End ta 226
pls fols

Q Now, did you see them on the inside of the police station?

A That was in the place outside.

Q Well, did you see them on the inside of the building or not?

A Yes.

Q Did you hear Albrecht talk to Goehrendt in there?

A Well, all he said was those few words, he didn't say anything else.

Q There is no question in your mind about Goehrendt being on the inside of the police headquarters, is there?

A Yes, I don't have any doubts. Where could he have come from otherwise?

Q Was Eichel there at that time?

A He was outside in the yard. He wasn't in at that time anyway.

Q Goehrendt was there before Eichel left in his automobile, wasn't he?

A I assume so because I didn't see Eichel anymore.

Q Did you see Kiwitt there on that day?

A Yes.

Q Did you see him talk to Goehrendt?

A No.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: What was that last question about the automobile?

(Whereupon the reporter read the question as follows:

"Q Goehrendt was there before Eichel left in his automobile, wasn't he?")

(Luncheon recess)

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q I will ask you the same question you were asked by the prosecution -- whether Goehrendt was there before Eichel left and your answer was, "Yes, I assume so because I didn't see Eichel anymore." Do you personally know whether Goehrendt was there before Eichel left or do you not? Do you personally know?

A I didn't see Eichel anymore so I can't make any statement about it because I didn't see Eichel anymore. I really don't know whether Eichel was out of the yard or not.

Q The answer to the question whether Eichel was there when Goehrendt came is that you don't know?

CAPTAIN VANCE: I object to his leading and putting words in the mouth of his own witness. He's been doing it constantly since this witness took the stand.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q In answer to another question as to whether Goehrendt came from the building of the police, inside the building, you answered, yes, where else could he have come from. Do you remember saying that?

A Yes.

Q Are you not then assuming --

CAPTAIN VANCE: I object. This is not cross examination, this is redirect you are conducting.

DEFENSE COUNSEL: I haven't finished. All right, I'll start over again.

QUESTIONS BY DEFENSE COUNSEL:

Q Did you hear Albrecht say to Goehrendt, "Come along" or words to that effect?

CAPTAIN VANCE: I object to the question as leading and repetitious.

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection overruled.

THE WITNESS: Yes.

QUESTIONS BY DEFENSE COUNSEL:

Q Just exactly where were these words said, in the street, in the courtyard or inside the building?

A In the building itself.

DEFENSE COUNSEL: Nothing further.

PRESIDENT: Anything further by the prosecution?

CAPTAIN VANCE: Nothing further.

PRESIDENT: No questions by the court. The witness will be excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: May I ask one thing. I'd like to clarify the agreement we have with the prosecution. As I understand it, with the exception of three witnesses you have named we can excuse permanently anybody who has testified and was excused by the court. We can excuse him?

CAPTAIN VANCE: That is right. I just want Miss Appel, Miss Geis and Miss Leonhard.

PETER COMO, called as a witness by the defense, having been first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Your full name is Peter Como?

A Peter Como.

Q And you have previously testified in this case?

A Yes.

(Como-direct)

Q Were you the police officer who captured this flier that Moller was involved with?

A Yes.

PRESIDENT: Will you ask the witness to speak louder?

THE WITNESS: Yes.

QUESTIONS BY DEFENSE COUNSEL:

Q I believe in your previous examination you testified that as you brought this American prisoner toward the station there was a crowd of people assembled at the railroad crossing. Is that true?

A Yes.

Q What was the attitude of the people at the railroad crossing towards the American flier as you led him along the road?

A Several people were threatening him.

Q Did they say anything?

A "Beat him to death."

Q In your opinion was there any chance that they might hurt him?

A Yes.

Q Now, you were present in the police station when the flier was given permission to drink and smoke and sit, etc?

A Yes.

Q By what person or persons was permission given to the flier to do these things?

A Sgt. Lueck and Lt. Albrecht.

Q What does the expression "Er hat uns eins geschafft" mean?

A Well, I guess Lt. Albrecht didn't like it, "er hat uns eins geschafft."

Q What does that expression mean to you?

A Well, what it means? Well, Moller got us into trouble.

(Como-direct)

Q Was there any regulation about smoking in the police station in Bieber?

A A prisoner wasn't supposed to smoke in a police station.

Q Now, are you familiar with the territory or with the geography of the woods involved in this case?

A Yes.

Q What is the boundary, the name of the road or street which is the boundary line for Bieber?

A The limits of the woods?

Q The boundary line of Bieber. Do you know Heusenstammerstrasse?

A Yes.

Q Was that part of the boundary of the City of Bieber?

A Yes.

Q Where did this woods begin?

A At Heusenstammer Weg.

Q Do you know whether or not there are any roads or paths which go through the woods beginning at or about Heusenstammer Weg?

A Yes.

Q Name them, one at a time.

A Well, the roads -- I can't name them exactly. I can't give you the names.

Q Well, what is the Hohlweg?

A The Hohlweg goes diagonally from the road to Heusenstammer road.

Q What settlement is that?

A The woods settlement.

Q Do you know the name of it?

A Community, they call it.

(Cross-direct)

Q Never mind. What was the name of the road or street that follows going up to Heussenstammer Road.

A Well, I don't know path Moller did take. I only observed him to the end of the wood.

Q In addition to the Mehlweg are there any other paths leading through the woods?

A Well, there is some little footpath there.

Q Is there any path to Offenbach?

CAPTAIN VANCE: I am going to object to his leading the witness. He is starting to tell the witness what to say.

DEFENSE COUNSEL: I haven't finished that question.

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: I will withdraw it.

QUESTIONS BY DEFENSE COUNSEL:

Q Is there an indirect road to Offenbach other than the main road that goes past the police station?

A Heussenstammer Weg goes back to the main street going to Offenbach.

Q You were present as a guard for the body for a time, were you not, Gene?

A Yes.

Q What was the distance between the spot where the body lay back to the road towards Offenbach, back by the shortest line. About how far is it?

A The body? Twenty minutes.

Q Not to Offenbach, back to the road leading to Offenbach.

A Ten minutes to the main street, main road.

Q What is the name of that main road?

A Offenbacherstrasse.

(Gene-direct)

Q We are talking about Heusenstammerstrasse. You just named the indirect road to Offenbach. How far is it in meters from the place where the body lay to the indirect road to Offenbach, not the direct road but the indirect road?

A There are quite a few indirect roads.

Q Is there an indirect road which goes over a hill to Offenbach? Is there such a road?

A By way of Heilandsruh.

DEFENSE COUNSEL: You may question.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q About what is the distance from the Bieber police station to the spot where the flier was killed?

A Twenty minutes.

Q About what is the distance from the Bieber police station to Offenbach?

A About twenty minutes walk, too.

Q So the place where the flier was killed would have been about forty minutes walk from there to Offenbach, wouldn't it?

A Well, the place where the flier was killed, that starts right at the kaserne. That wouldn't have been forty minutes anymore.

Q How far would it be from where the flier was killed to Offenbach?

A Half an hour to the City of Offenbach.

Q In other words, where the flier was killed they were further from Offenbach than when they left Bieber police station?

A Yes.

CAPTAIN VANCE: Nothing further.

(Cross-cross)

REDIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q When you say it was twenty minutes to Offenbach, what do you mean by Offenbach? Do you mean the center of the City or the City limits?

A Offenbach to me means a railroad crossing.

Q Where is that railroad crossing?

A At Biebererstrasse.

Q Is that where the town of Offenbach starts or is that in the center of the town?

A The City of Offenbach starts as far out as Bieber.

Q Where is the Offenbach headquarters of the Protective Police?

A The headquarters is at the corner of Kaiserstrasse and Domstrasse.

Q Is that in the center of town?

A Yes.

DR. RAU: I have nothing further.

PRESIDENT: Anything further by the prosecution?

CAPTAIN VANCE: Nothing further.

PRESIDENT: No questions by the court. The witness will be excused.

(Whereupon the witness was excused and withdrew.)

KARL BLUM, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name, please?

A Karl Blum.

Q What is your present status?

A At this time I am a merchant.

Q Where do you live?

A Offenbach on the Main.

Q In 1944 and 1945 what was your occupation?

A I was the 1st Lieutenant of the Protective Police Reserve.

Q In what town?

A In Frankfurt, in Bochum and Offenbach.

Q Mr. Blum, are you a prisoner in Dachau now?

A Yes, since January 6th.

Q Who was your superior in Offenbach in the police?

A My direct immediate superior was the assistant commanding officer, Capt. Kiwitt. Above him, the commanding officer, Major Kuhlenback, and above him, police director, Michel.

Q Where did you say you performed your duties? In whose office?

A In Offenbach?

Q Yes.

A At the Protective Police Headquarters, Darmstrasse.

Q Do you remember the 22nd of February 1945?

A I don't remember the date exactly.

Q Well, you remember a day in which an American flier was killed, sometime in February?

A Yes.

Q Do you know who was supposed to have killed this flier or shot him?

A I don't know.

Q Did you, sometime in February, go out to Bieber or to the neighborhood of Bieber to view the body of an American flier who had been shot?

A Yes, that was as follows: I left home and I was told that a foreigner had been shot in Bieber. Upon that I went to Bieber with a bicycle. On the way I met some police officials who told me this man was a flier. He showed me the way and I asked him where it was and I went to the place.

Q What did you see when you got there?

A I saw two guards standing there and I asked what the deal was and I was told that this flier had been shot while attempting to escape.

Q Did they say who had done the shooting?

A No.

Q Will you describe to the court just exactly where this body lay when you saw it?

A I was on the road which was on the high level in the woods that was going through and the body was lying in the woods there.

Q Is that the road through the woods from Offenbach to Bieber?

A Yes.

Q Do you know where Heusenstammer Weg is?

A No, I don't know what the name of this path is. I don't know Offenbach so well. I was there only on a detail. My regular station was Frankfurt.

Q Was this body you saw inside the wood?

A Yes, inside the wood.

Q Was that wood between Offenbach and Bieber?

A Yes.

Q While you were there did you happen to notice whether there was still a ring on the hand of the flier?

A Yes, I was told that on the way already that the flier still had a ring on him.

(Blum-direct)

Q Did you have something to do with that ring? If so, please tell the court what that was.

A Upon that I said that this ring will have to be turned over to the personal property of the flier and some police sergeant whose name I don't know gave me the ring. I said at first that this ring was supposed to be sent to the police station but I was told that all his personal property was at the police headquarters already so I was supposed to take it along. I then turned this ring over at police headquarters at the guardroom and the sergeant put it in the box with the other things there.

Q Where was that?

A Offenbach.

Q Do you know a man by the name of Como?

A I have heard the name but I don't know the man personally.

Q Have you seen a man by that name around the court recently here in Dachau?

A I just now heard the name "Como" being called outside. I don't know the man.

Q Will you describe the ring to the court as best you remember now?

A It was a ring thicker than this one (indicating).

Q Well, describt its thickness in meters or centimeters or however you do it.

A The front side might have been a little bit less than one centimeter wide.

Q What was it made out of?

A Gold probably. I can't tell, though, it might have been an imitation.

Q Did it have any jewels on it?

A No.

Q Was it something like a signet ring or some other kind of a ring?

A There wasn't any seal on there, that is, initials. There weren't any.

Q Was there any kind of emblem on it at all?

A I can't say today. I didn't look at it that close.

Q What time of day was that?

A I don't know that either. I'm sure it was in the afternoon sometime.

QUESTIONS BY DR. BUERGER:

Q In the afternoon when you came to Bieber were you at the police station?

A Yes, I went up to the police station.

Q Did you ask for a police sergeant there?

A I wouldn't remember.

Q Didn't you ask anybody to send to go along to show you the way?

A The man who showed me the way was assigned to me in front of the house.

Q Did you ask the man anything about the incident as you went to the place where the body was?

A No.

QUESTIONS BY DR. WACKER:

Q Do you know a man named Meller?

A I heard the name but I don't know who the man is.

Q You wouldn't know him if you saw him today?

A Well, you can tell me that this guy is Meller or that guy is Meller, I wouldn't know.

Q Did you have any conversation at the Bieber police station? I mean on that day in question?

A No, no conversation.

Q Did you there ask somebody the question, "Has the order been carried out?"

A No, since I didn't know anything of any order. After all, I was coming from home, I couldn't have asked that question.

Q What would you say if I told you that the police Sergeant has testified to this court that you came to the police station and asked if the order had been carried out?

A That would be completely incomprehensible to me.

DEFENSE COUNSEL: Your witness.

CAPTAIN VANCE: No questions.

PRESIDENT: No questions by the court. The witness is excused.

(Thereupon the witness was excused and withdrew.)

PRESIDENT: Court will recess for thirty minutes.

(Thereupon at 1500 hours the court recessed until 1530 hours.)

(Thereupon the court reconvened.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court except Colonel Ackerman, who is absent sick, all the members of the prosecution, all the members of the defense, except Dr. Frost, who is absent sick, all of the accused the reporter and the interpreter are present.

DEFENSE COUNSEL: The defense calls as its next witness Elizabeth Blummel.

ELIZABETH BLUMMEL, called as a witness by the defense, being first duly sworn, took the stand and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name?

A Elizabeth Blummel.

Q Where do you live?

A Offenbach on the Main.

Q What is your present occupation?

A I work inside a house--housekeeper.

Q During the years 1944 and 1945 what was your occupation?

A I had been drafted to work for the police.

Q Where?

A In Offenbach.

Q What police?

A At the Headquarters of the Protective Police.

Q In what Capacity?

A I was sitting in the anteroom of Major Kuhlenbeck.

Q What was your work?

A Oh, work I might be detailed to, clerical work.

Q Who was in charge of the office?

A Major Kuhlenbeck, and in the anteroom with me was First Lieutenant Zager.

Q What was Major Kuhlenbeck's position?

A He was the commanding officer of the Protective Police.

Q From what district?

A From Offenbach.

Q Whom did you say Zager was? What job did he have?

A He was a Police First Lieutenant.

Q What was his relationship to Major Kuhlenbeck, if any?

A Well, he worked for Major Kuhlenbeck.

Q Did you know Kiwitt?

A Yes.

Q Did you know Albrecht?

A Yes.

Q Did you know Gechrendt?

A Yes.

Q Came?

A Yes.

Q Meller?

A Yes.

Q How sometime in February of 1945 did you happen to have occasion to see an American pilot or somebody from the American air force?

A Yes.

Q What day and where was that?

A That was towards the end of February, 1945 at the District Branch Office in Bieber.

Q Do you know what day of the week?

A It was Sunday.

(Bluemmel-direct)

Q How did you happen to go there?

A Well, it was a Sunday and I live in Bieber and I was called in for the interrogation of the pilots.

Q By whom?

A By Lieutenant Zager.

Q How were you called in?

A He came to my apartment personally and picked me up.

Q What time of day did you say that was?

A Sunday.

Q I meant what time of day?

A It might have been nine or ten o'clock a.m.

Q What did he say to you?

A Come over to the District Headquarters right away. There is some work to be done there.

Q Did you go?

A Yes.

Q Where was that?

A That was the Bieber Branch Office of the police station.

Q Who did you see there?

A I saw Mr. Albrecht there, Mr. Lasch, some captain of the air corps, an adjutant, and the captured pilot. There were several more policemen over there too, but I can't say there names today anymore.

Q Will you tell the court in your own language just what transpired, beginning at the time of your arrival at the police station? Tell what happened and what was said.

A When I saw the pilot I went into the room next door. There was a catholic priest in there. I asked him what he was doing at the police station. He said, "I brought the flyer over here. He ran into my arms as I was coming out of church." I spent a short time in that room and,

then heard Zager arrive.

Q Did he say anything as he came in?

A Yes, he did some talking and I recognised his voice, but I don't know what he said.

Q Yes?

A He was talking to this Captain of the Air Corps. In the meantime I left this room too, in order to find out what was going on.

Q Did you hear anything that he said to the Captain of the Air Force?

A Yes, he told this Captain of the Air Corps, "Why didn't you come five minutes later?".

Q Yes?

A "In that case I would have had him."

Q Yes, go ahead.

A He did some more talking. I don't know what. I didn't observe it so I couldn't understand all he said. Mr. Albrecht did some talking there too.

Q What did he say?

A I saw him arguing upon Zager, but I couldn't understand what he was saying. I asked Mr. Albrecht, "Why doesn't Mr. Zager send this pilot along?", because the Captain wanted to take the pilot along to a prisoner-of-war camp. Mr. Albrecht said, "I don't understand that either, why he doesn't send him along. After all he could send him along."

Q You just said the Captain of the Aircorps wanted to take the prisoner along. How do you know that?

A Well, because they were arguing together--Mr. Zager and this Captain.

Q Did you hear anything that was said?

A Yes. He wanted to take him along.

Q Repeat the words that the Captain and Zager said, nearly as you can remember, or if you don't remember the exact words repeat the sense of what

(Blumenel-direct)

he said as best you can.

A Yes, he wanted to take the pilot along. He had a car with him and he wanted to take the pilot along to the prisoner camp.

Q What was said in reply to that?

A "No.", Mr. Zager said, "I have to keep him here for a while to interrogate him first. The purpose of that is not to find out any military information but just to get this priest involved."

Q Who said that?

A Mr. Zager. "But I got to get an interpreter first. It will be a while until he gets here because he is a long way off and he has a long way to go. I will take the pilot over to the prisoner camp myself then, but I am not sure of that anymore. I will bring you the pilot. I don't know exactly where."

Q Was any of that conversation reduced to writing?

A Yes, later.

Q Go ahead.

A The Captain wanted to make or get himself in a safe position and wanted a certificate to the effect that he had requested Mr. Zager to turn the flyer over to him. So I had to write a piece of normal size paper to the effect, approximately, that Mr. Zager was instructed to turn the flyer over. Captain signed it.

Q What happened to the paper?

A As far as I remember the Captain took it along.

Q Do you know whether or not Zager signed the paper too?

A I don't know that for sure anymore.

(Bluemel-direct)

he said as best you can.

A Yes, he wanted to take the pilot along. He had a car with him and he wanted to take the pilot along to the prisoner camp.

Q What was said in reply to that?

A "No.", Mr. Zager said, "I have to keep him here for a while to interrogate him first. The purpose of that is not to find out any military information but just to get this priest involved."

Q Who said that?

A Mr. Zager. "But I got to get an interpreter first. It will be a while until he gets here because he is a long way off and he has a long way to go. I will take the pilot over to the prisoner camp myself then, but I am not sure of that anymore. I will bring you the pilot. I don't know exactly where."

Q Was any of that conversation reduced to writing?

A Yes, later.

Q Go ahead.

A The Captain wanted to make or get himself in a safe position and wanted a certificate to the effect that he had requested Mr. Zager to turn the flyer over to him. So I had to write a piece of normal size paper to the effect, approximately, that Mr. Zager was instructed to turn the flyer over. Captain signed it.

Q What happened to the paper?

A As far as I remember the Captain took it along.

Q Do you know whether or not Zager signed the paper too?

A I don't know that for sure anymore.

(Bluemel-direct)

Q Can you tell the Court whether or not Zagar was the superior officer to Albrecht?

A Mr. Zagar did have the same rank as Mr. Albrecht it is true since Mr. Zagar was working in headquarters. In my opinion he was authorized to give Albrecht orders.

Q Do you know whether or not Kohlenbeck had an adjutant?

A When I first came to the police I was told Kohlenbeck did have an adjutant and that was Zagar now or whether that would be still sometime before that I don't know.

Q What happened eventually after this paper was signed?

A The Captain drove away.

Q Where was the prisoner?

A The prisoner was still in another room.

Q What did you do next?

A Then the priest was interrogated.

Q By whom?

A By Mr. Zagar.

Q Did you have anything to do with that?

A Yes. I wrote that down then Mr. Zagar was asking the questions.

Q Do you know whether or not the American was interrogated by Zagar?

A Yes.

Q Who acted as interpreter?

A Some Tech Sgt Schellhorn.

Q Do you know whether or not he was the man that Zagar told the Luftwaffe Captain they were waiting for?

A Yes. That is the man all right.

Q There came a time when the interrogation of the American was finished and the interrogation of the priest was finished, what happened next?

A Mr. Zager left with the pilot.

Q Who else went along?

A Well, from the window I saw Mr. Blum was going along. I don't know where he came from or for how long a distance he went along.

Q Who is Blum?

A Mr. Blum was the air raid protection officer.

Q Did you see him around this building at any time today?

A Yes.

Q Do you know whether or not he came into this courtroom?

A Yes.

Q Will you please look around this courtroom and see if Albrecht is present and if he is will you point him out to the court?

A Number 6 (indicating).

DEFENSE COUNSEL: Let the record indicate that the witness has identified the accused Albrecht as wearing number 6.

QUESTIONS BY DEFENSE COUNSEL:

Q Kivitt?

A Number 7 (indicating).

DEFENSE COUNSEL: Let the record indicate that the witness has identified the accused Kivitt as wearing number 7.

Q Oechrendt?

A Number 10 (indicating).

DEFENSE COUNSEL: Let the record indicate that the witness has identified the accused Oechrendt as wearing number 10.

QUESTIONS BY DEFENSE COUNSEL:

Q Do you know Heller?

A Yes.

Q Will you point him out to the court?

A Yes. Number 9 (indicating).

(Bluemmel-direct)

DEFENSE COUNSEL: Let the record indicate that the witness has identified the accused Moller as wearing placard number 9.

QUESTIONS BY DEFENSE COUNSEL:

Q Whom else of the accused do you know?

A Mr. Michel.

Q Is he in the courtroom?

A Yes. Number 6 (indicating).

DEFENSE COUNSEL: Let the record indicate that the witness has identified the accused Michel as wearing placard number 6.

Q Did I ask you about Goehrendt?

A Yes.

Q When Zagar went away from the police station in Bieber—— when the American pilot left the police station in Bieber that Sunday about what time of day was it?

A It might have been 10:30 or 11:00 o'clock.

Q You say you looked out the window and saw him going away with Zagar and Blum?

A Yes.

Q At the time you saw the American pilot going away in the company of Zagar and Blum where was Goehrendt?

A I didn't see Mr. Goehrendt at all. I don't remember having seen him at all.

Q Did you not say that you saw him in the police station that morning that you saw Goehrendt?

A No.

Q At the time you saw these three people going away where was Albrecht?

A Mr. Albrecht was in the same room with me.

Q Was Moller at the police station that morning?

(Klemmel-direct)

A I wouldn't remember.

DEFENSE COUNSEL: You may inquire.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Zagar, Albrecht and the Air Corps Captain had a conference about the disposition of this flyer, is that correct?

A Yes.

Q About how long did this conference last?

A Fifteen minutes.

Q At the end of that time this Air Force Captain left and Zagar wound up with the flyer, is that correct?

A Yes.

Q Then you saw the flyer leave with Zagar and the witness Blum, is that correct?

A Yes.

Q How long after that did the American flyer live?

A Maybe twenty minutes.

CAPTAIN VANCE: I have nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q How do you know?

A Because before Zagar left he said, "I won't be going any further than the stadium. I won't be going any further with him."

DEFENSE COUNSEL: Nothing further.

PRESIDENT: Any questions by the Court? The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: Call Valentin Kaiser.

VALENTIN KAISER, called as a witness by the Defense, being first duly sworn testified through an interpreter as follows:

(Kaiser-direct)

DEFENSE COUNSEL: This witness will be interrogated by Dr. Buerger.

DIRECT EXAMINATION

QUESTIONS BY DR. BUERGER

Q What is your full name?

A Valentin Kaiser.

Q What is your civilian occupation?

A Farmer.

Q What is your residence?

A Bieber.

Q Do you know a man by the name of Gochremit?

A Yes.

Q Take a look around the courtroom and see if you can find him and point him out to the Court?

A Here (indicating) number 10.

DR. BUERGER: Let the record indicate that the witness has identified the accused Gochremit as wearing number 10.

Q Do you still remember the 22nd of February 1945?

A Yes.

Q For what reason do you remember that date?

A On account of that flyer.

Q What flyer?

A Well, that was the British or American flyer, I don't know which.

Q Did you see that flyer?

A I saw that flyer.

Q Where did you see the flyer?

A In the police station.

Q Was the flyer all by himself?

A No. Two policemen were there with him.

Q Where was the flyer; in what street?

(Kaiser-direct)

A When I saw him, in Mauerfeld Street.

Q Was the flyer standing there or was he walking?

A When I came there he was standing still.

Q Later?

A Later on he walked ahead of -- ahead with the Lieutenant a piece.

Q When this flyer was standing there did you see Goehrendt?

A Not at that moment.

Q What do you mean "Not at that moment"?

A That was at Mauerfeld Street.

Q Did you see Goehrendt at all that morning?

A Yes.

Q Where did you see Goehrendt?

A The officer with that one policeman went ahead up to Rebstock Street on the corner of Mauerfeld Street and then the officer turned around. At that instant Goehrendt came on up. I don't know whether he came straight up from police headquarters or whether he came from Rebstock Street.

Q Was Goehrendt walking along Rebstock Street?

A I don't know whether he came from the police station or from the street ahead of me because I was standing in Mauerfeld Street.

Q You understand German, do you not?

A I beg your pardon.

Q I asked you where Goehrendt was going and not where he was coming from. Where was he walking, in Mauerfeld Street or which?

A Rebstock Street.

Q Continue telling us what happened. Did you observe what Goehrendt was doing?

A The officer motioned to him to come along.

Q Did the officer tell Goehrendt anything? Did you hear that?

(Kaiser-direct)

A Something like "Come on along".

Q Did Goehrandt come on along?

A Goehrandt had to come along.

Q Then you did not observe anything else?

A No. I went home.

DR. BUERGER: I have nothing further.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q This officer that you are talking about, is that Albrecht?

A I don't know the officer closely.

Q Look arocund ---

A I had never been to the police station.

Q Look around the courtroom and see if you can find the man that you described as the officer.

A I cannot say exactly. Maybe number 8. I cannot recognize him exactly.

Q Whom did the flyer leave the police station with?

A With Moller, Number 9 (indicating).

Q Were Moller and the flyer alone or was there somebody with them?

A Yes, the officer with Moller and Goehrandt.

Q Did you not say the officer went first and called for Goehrandt to come along, is that right?

A The police station is located in Mauerfeld Street. Then they went into Mauerfeld Street up to Rebstock Street.

Q Let me ask you this: Were the American flyer, Moller, Goehrandt all together in one bunch close to each other?

A Well, I went home the back way. I didn't see it.

Q Did you see them at all?

A Well, I was standing there; later on I went home.

(Kaiser-cross)

Q Did you see Keller, the flyer, Geehrendt and the officer?

A Yes. I saw them.

Q When you saw them were they all four together or were they in different places?

A I don't understand what you mean.

Q You saw four people there that you have named as Keller, Geehrendt, an American flyer and some officer, is that correct?

A Yes, these four.

Q Did you see them all at the same time or at different times?

A Well, I was there for a moment only. I had just come from home.

Q Did you see them all at one time or did you see one two miles away or another one two miles in another direction?

A No, together, they were together.

Q Did you see them go down the street with the flyer away from the police station?

A No. That was in Rebstock Street. I went home the back way later on.

Q Did you see them in motion walking with the flyer or were they standing still with the flyer?

A They went along the street, Rebstock Street from the police station. I didn't see anything else.

Q Were they all four together when you saw them on Rebstock Street?

A Well, that is at the corner, yes. They took off later.

Q Together?

A They were together.

Q That is all.

CAPTAIN VANCE: I have nothing further.

PRESIDENT: Defense?

MAJOR SAXON: We have nothing further.

PRESIDENT: No questions by the Court, the witness is excused.

(Whereupon the witness was excused and withdrew.)

MAJOR SAXON: May it please the Court, the Defense would like

Q Did you see Heller, the flyer, Geehrendt and the officer?

A Yes. I saw them.

Q When you saw them were they all four together or were they in different places?

A I don't understand what you mean.

Q You saw four people there that you have named as Heller, Geehrendt, an American flyer and some officer, is that correct?

A Yes, these four.

Q Did you see them all at the same time or at different times?

A Well, I was there for a moment only. I had just come from home.

Q Did you see them all at one time or did you see one two miles away or another one two miles in another direction?

A No, together, they were together.

Q Did you see them go down the street with the flyer away from the police station?

A No. That was in Hobstock Street. I went home the back way later on.

Q Did you see them in motion walking with the flyer or were they standing still with the fly-r?

A They went along the street, Hobstock Street from the police station. I didn't see anything else.

Q Were they all four together when you saw them on Hobstock Street?

A Well, that is at the corner, yes. They took off later.

Q Together?

A They were together.

Q That is all.

CAPTAIN VANCE: I have nothing further.

PRESIDENT: Defense?

MAJOR SAXON: We have nothing further.

PRESIDENT: No questions by the Court, the witness is excused.

(Whereupon the witness was excused and withdrew.)

MAJOR SAXON: May it please the Court, the Defense would like

to recall the accused Albrecht for a question.

WILHELM ALBRECHT, an accused, voluntarily resumed the stand in his own behalf and having been previously duly sworn testified further through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY DR. BUERGER:

Q Mr. Albrecht —

PRESIDENT: The witness is reminded that he is still under oath.

ACCUSED ALBRECHT: Yes, sir.

QUESTIONS BY DR. BUERGER:

Q Mr. Albrecht, when did you see Cochrendt the first time on the 22nd day of February 1945?

A He had been on guard before that. That was before the air raid alarm. Then he went into the shelter. Then I saw him again as we left with the flyer as he was coming back from the shelter.

DR. BUERGER: I have nothing further. Excuse me, just one question. Where did you see him?

ACCUSED ALBRECHT: He was coming out of Rebstock Street and I called over to him to come along.

DR. BUERGER: No further questions.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You have heard the witnesses that your lawyers brought here to testify before this Court, have you not?

A Yes.

Q And you have heard them testify differently from what you say?

A I testified to the truth. I was under oath.

Q I am talking about the witnesses. You heard what they said?

A Yes. I heard the witness.

Q Do you know any reason why they should come here and lie about this?

A He wasn't lying. He was saying I motioned him over.

Q I am talking about what all these witnesses have said.

A This witness Lueck, he did not express himself properly. Cochrendt was not on guard.

Q Is that all you have to say about it?

A Cochrendt was coming out of the shelter. I saw him on the road and called over to him to come along.

CAPTAIN VANCE: That is all.

PRESIDENT: No questions by the Court. The witness will take his place in the dock.

MAJOR SAXON: We would also like to recall Moller for one or two questions.

CAPTAIN VANCE: May it please the Court, I am going to put in an objection here. The defense has brought witnesses in here that have testified to certain things and then they keep jumping these accused off and on the witness stand to disprove what their own witnesses have said. They are attempting to impeach their own witnesses, which is improper in the first place. When these accused are put on the witness stand the Court gives them an opportunity to tell their stories any way they want. I do not think it is fair to the Prosecution to put them on the witness stand again and again, after each witness, to jump back and change the story. I do not think it is proper procedure.

MAJOR SAXON: I believe the Prosecution is unduly alarmed. We are merely trying to correct little errors that have crept in from time to time.

PRESIDENT: The objection is overruled.

HERMAN MOLLER, an accused, voluntarily resumed the stand in his own behalf and having been previously duly sworn, testified further through an interpreter as follows:

REDIRECT EXAMINATION

PRESIDENT: You are reminded that you are still under oath.

ACCUSED MOLLER: Yes.

QUESTIONS BY DR. BUERGER:

Q Moller, after the flyer had been turned over to the police station when did you first see Goehrendt on this 22nd day of February 1945?

A The first time I saw Goehrendt again that day was one hundred meters down Rebstock street.

DR. BUERGER: That is all.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Moller, were you at the police station when this flyer was first brought there for the first time?

A Yes.

Q What time of day was that?

A That might have been 1300 hours.

Q What time did you leave with this flyer to take the American to the woods?

A About 1345.

Q Had Goehrendt been at work at all that day?

A I had seen Goehrendt in the morning, yes.

Q Did you see Goehrendt around noon?

A I saw him until the air raid?

Q Where?

A At the police station.

Q Was the flyer there?

A The flyer was not there yet.

Q When the air raid started where did you go?

A When the air raid alarm started I went into the cellar of the police station.

Q Did Goehrendt go into the cellar with you?

A No.

Q So you do not know where Goehrendt was after you went into the cellar, do you?

A No.

Q You did not see Goehrendt any more until you saw him out in the street, is that correct?

A The first time I saw him again was when I was in Rebstock Street.

Q So you do not know where Goehrendt was from the time you went to the cellar until the time you saw him in Rebstock street, is that correct?

A Well, if he had been in the police station I would have had to see him.

Q You could not see him if you were in the cellar, could you?

A When the flyer was brought in I went up from the cellar to the police station.

Q That is all.

MAJOR SAXON: We have nothing futher. Does the Court wish to inquire?

PRESIDENT: No questions by the Court. The witness will take his place in the dock.

(Whereupon the witness was excused and resumed his seat in the dock.)

MAJOR SAXON: The Defense will now call the accused Eichel. May it please the Court, it now develops that there is another witness by the name of Rosel Schwab who is in the hallway. Counsel desires to question her first.

ROSEL SCHWAB, called as a witness by the Defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. WACKER:

Q What is your name?

A Rosel Schwab.

Q How old are you?

A Thirty one.

Q Are you married?

A Widowed.

Q Where do you live?

A Offenbach.

Q What is your profession?

A Clerical employee.

Q What was your position in February 1945?

A I was Mr. Eichel's secretary.

Q What was Mr. Eichel's position?

A Police director.

Q Would you know Eichel if you saw him again today?

A Yes.

Q Point him out if you see him in the courtroom?

A Number 6 (indicating).

DR. WACKER: Let the record indicate that the witness has identified number 6 as the accused Eichel.

QUESTIONS BY DR. WACKER:

Q How long did you work for Eichel?

A Three years.

Q From when you -- from when to when?

A From '42 to '45.

Q What kind of work did you do for Eichel?

A I did all the written work for him.

Q Did you have knowledge about all the orders issued by Eichel and received by him?

A I did not know of all the orders. I had no way of knowing about secret orders.

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Q Who received the mail?

A Police counsel Schultheiss.

Q Did the mail go through your hands?

A Yes.

Q Did you take note of that?

A Yes.

Q Do you know what kind of orders the police headquarters had received, at that time, concerning Allied flyers?

A I do not know of any such orders.

Q Do you remember the 22nd day of February 1945, on that day an American flyer is supposed to have been at the Bieber police station?

A Yes.

Q Where were you at that time?

A I was in the office.

Q What was Eichel doing on that day?

A After the end of the air raid Eichel drove over in the direction of the place where the parachutes had come down.

Q Did you remain at the police station?

A Yes.

Q When did Eichel leave?

A After the end of the air raid.

Q About what time was it?

A It might have been about noon.

Q When did Eichel return?

A I cannot say that exactly any more.

Q Do you know whom he came with or did he come by himself?

A I don't know that.

Q Did he say where he came from?

A Yes. He came from Bieber, as far as I know.

Q Did you talk to him about his activity while he was gone?

A While he was gone?

Q No, I mean whether he ever talked to you about what he did while he was away?

A No.

Q Didn't you find out from him where he had been?

A Yes. He said he was in Bieber.

Q What else did he say?

A He said that when I went to the police station I saw the parachute of the flyer who had come down and I asked him where the flyer was.

Q What did Michel say?

A He said the flyer will be coming over here.

Q What did he mean by saying he will be coming over here?

A To the police headquarters.

Q- What else was said?

A Nothing else.

Q Do you know anything about the relations between Police Director Eichel and the Kreisleiter?

A Yes. They were not good.

Q What makes you conclude that they were not good?

A We often had disagreements with him, arguments.

Q Do you remember a case of Junker?

A I don't remember that personally, but the Junker himself told me about it.

Q What did this Junker tell you?

CAPTAIN VANCE: We object to that. I don't even know who Junker is.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. HACKER:

Q Who is this man Junker?

A He lives in Offenbach and runs a hardware store.

Q How old is he?

A He might be about 52 or 53.

Q Now, what did this Junker tell you?

CAPTAIN VANCE: I object, may it please the court. It is immaterial, irrelevant and incompetent testimony and has no bearing on the issues before this court.

MAJOR SAXON: We can't tell yet. It is impossible to tell yet, if it please the court, whether it has a bearing or not. I think it should come in.

DR. HACKER: Might I give a brief explanation? I would like to prove by this witness, through a few very brief questions, what Eichel's political attitude was.

PRESIDENT: Objection overruled.

QUESTIONS BY DR. WACKER:

Q Please answer this question as to what this man Junker told you.

A This man Junker told me that he had been reported on account of having listened to enemy radio stations, and that Eichel had suppressed this report.

Q Do you know a man named Heberer?

A Yes.

Q Who is this guy Heberer?

A Heberer was one of our sergeants.

Q Did you talk to Heberer?

A I have talked to Heberer on occasion.

Q Did any special incident occur concerning Heberer?

A Yes. His son had been sentenced to death for desertion on that time, and he went over to Eichel at that time asking Eichel to do something for his son.

Q Did he do anything?

A Yes.

Q With what results?

A Yes.

Q Do you know a man named Herold?

A Yes.

Q Who is this Herold?

A Police Director Eichel's driver, chauffeur.

Q Anything special take place concerning him?

A Yes. He told me he owed his life to Police Director Eichel.

Q How come?

A Because he was supposed to be shot this time in March.

Q Do you know why?

A Because he didn't want to keep it up any more.

Q Did Eichel prevent the shooting?

A Yes.

DR. WACKER: No further questions.

MAJOR SAXON: Your witness, Captain.

CAPTAIN VANCE: No questions.

MAJOR SAXON: Does the court have any questions?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MAJOR SAXON: Defense calls Hans Kiehel. I understand this accused desires to be sworn. May it please the court, the interrogation of this accused will be conducted by Dr. Wacker.

HANS KIEHEL, an accused, voluntarily took the stand in his own behalf, and being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. WACKER:

Q What is your full name?

A Hans Kiehel.

Q Are you one of the accused in this case?

A No.

Q I request to be permitted to repeat this particular question. Are you an accused in this case?

A Yes.

Q How old are you?

A 56 years old.

Q Are you married?

A Married.

Q Do you have any children?

A Two children.

Q How old?

A One daughter, 31; one son, 27.

Q Were you a member of the Nazi Party?

A Yes.

Q From when to when?

A From 15 December 1931 until the end.

Q Were you a member of the SS?

A No.

Q SD?

A No.

Q Leadership Corps?

A No.

Q SA?

A SA.

Q What were you in the SA?

A Colonel.

Q Until when?

A I was an active officer in the SA until the Roehm putsch. I was then dismissed from the SA, but later on was carried again as a member of the special services branch.

Q What is your profession?

A Police director in Offenbach.

Q Mr. Eichel, please give us a brief description of your professional career.

A From 1910 until 1920, I was a regular army soldier. I went through the campaigns of 1914 through 1918 at the front. I got the position of a platoon leader, company commander, and battalion adjutant. In 1921, I was discharged on account of the reduction of armed forces, and was transferred to the police.

Q What was your rank you joined the police with?

A As a master sergeant.

Q Where?

A Offenburg in Baden. About one year later, my former battalion commander, who in the meantime had gotten a high job in private industry, called me and offered me a position in private industry. So from the fall of 1921 until 1931, I was an employee at the large scale industry, and the day I left private industry, I was assigned the job of leading the police in Worms by order of the Reichsstatthalter.

Q How long did you stay in Worms?

A I stayed in Worms until 1941.

Q When did you get to Offenbach?

A On 1 July 1941.

Q What was the rank you held when you went to Offenbach?

A The same position as police director, and according to rank, a lieutenant colonel.

Q Who was your immediate superior as police director in Offenbach?

A The immediate superior was Reichsstatthalter Sprenger, whose seat was in Darmstadt.

Q How many people did you have under you in Offenbach?

A That was about 600 men, including reserve men, air raid protection police, and administrative and clerical workers.

Q Mr. Eichel, in February, 1945, what was applicable concerning captured fliers? I mean, applicable to you as police director?

A In summer, 1944, this so-called non-intervention order came in.

Q Where did that order come from?

A Well, I really can't say that today any more. It either came from Berlin directly or it came from the commanding officer of the regular police in Wiesbaden.

Q What other orders were there applying to captured fliers?

A Otherwise, the orders were that parachuted fliers are to be turned over to the armed forces without delay.

Q Did you have any authority of command to decide what would happen

to a captured flier?

A No.

Q Was it within your power to keep a flier under the jurisdiction of the police?

A I didn't quite understand this question, because I don't hear anything in this ear.

Q Was it within your range of authority to keep a captured flier within the powers of the police?

A No.

Q Do you remember the 22nd of February, 1945?

A Yes.

Q What exceptional occurred on that day?

A I was in my C.P. at Bieberauer Weg. Since there was an air raid and the air corps was going back across Central Germany, I wasn't in the shelter but on a raised position in the vicinity of the shelter. We happened to have nice weather that day, so we spent part of the time outside the shelter. Suddenly, I saw one airplane, a four-motored bomber, leaving its formation, circling around in the vicinity of Rieber, and apparently trying to land. The same time, I saw five or six or seven pilots parachuting out and hanging in the air, so it had to be within the district of Offenbach. I ascertained it to be in the vicinity of Hausen, near Offenbach.

Q Was there an air raid alarm on yet?

A Well, when I left, when I drove off, the air raid alarm was over, or else I couldn't have driven off.

Q Before you tell us where you went, Mr. Kiehl, will you tell us where your police headquarters at Offenbach is located?

A After being bombed out in 1943, I moved the police headquarters to the Casserne near Bieberstrasse. This caserne is located about half-way between Offenbach and Rieber.

(Recess - Direct)

A It was a small Opel cadet, the smallest car produced by Opel.

Q How many seats did this car have?

A Four seats.

Q And who left in this car?

A The driver brought the car over.

Q You are talking about a driver. Who is that?

A That wasn't my own driver at that time. It was a replacement driver named Fritz Koch.

Q Who else was coming along besides you?

A Since I loved to drive myself, I drove the car myself. The driver was sitting to my right and Captain Kimitt was sitting behind me.

Q Was the fourth seat empty?

A At first, it was empty. When we reached the Offenbach-Bieber highway, there was a Hitler Youth officer standing out there motioning to us.

Q Do you know his name?

A Yes. He wanted to come along.

PRESIDENT: Court will recess until tomorrow morning at 9 o'clock.

(Whereupon the court recessed at 1650 hours.)

Date
Datum

Q How far is it from the center of Offenbach to Bieber? This time, by Bieber, we mean the police station Bieber.

A About four kilometers.

Q And how far is it from this Caserne where you had your police headquarters to this police station?

A That is about half way between.

Q Mr. Eichel, will you now please tell us what you did on this 22nd day of February after you saw these fliers parachuting down?

A I called a car and asked Captain Kivitt to come along, because I had the intention of coming out there one time to check the clearing up measures.

Q What kind of a car were you using?

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

Court. (25)

CASE RECORD. Pages 1667 - 1770

Case No. Superior Orders

~~Summary~~ ~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 28 February 1947

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolph Nathanson

Interpreter Herbert B. Rosenstock

Reporter Patricia Stewart, Imogene Butler, William F. Jones, Peter DiCurti, Sally Hayett, Irving J. Hayett

~~Prosecution~~ WITNESSES:

EICHEL, HANS
REITER, LUDWIG
SCHNEIDER, KARL
MICHEL, FREDERICH

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning 194
- Fine
  - Amount .....
  - To be paid before 194
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

28 FEBRUARY 1947 Pages 1667 - 1770

TESTIMONY

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	COURT
HANS EICHEL	1667	1703	1735	1743	1740
LUDWIG REITER	1746	1754			
KARL SCHNEIDER	1755	1762	1766		
FREDERICH MICHEL	1769				

EXHIBITS

No.	Description	Marked	Received in Evidence
D-18A	English Translation D-18	1744	
D-19	Statement of Adolf Alt	1688	1689
D-19-A	English translation	1688	
D-20	Map of Bierbrauer Weg	1744	1752

CAMP DACHAU, GERMANY

28 FEBRUARY 1947

MORNING SESSION

(Whereupon court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, except Colonel Ackerman, who is absent sick, all the members of the prosecution, all the members of the defense, except Dr. Trost, who is absent sick, all the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: If I remember rightly, Eichel was on the stand at the close of the session yesterday.

HANS EICHEL, an accused, voluntarily resumed the stand in his own behalf, and having been previously duly sworn, testified further through an interpreter as follows:

PRESIDENT: You are reminded you are still under oath.

DIRECT EXAMINATION (Continued)

QUESTIONS BY DR. MACHER:

Q Mr. Eichel, at the end of the last session yesterday you told us that you took a Hitler Youth leader into your car.

A Yes, on the road from Offenbach to Bieber the Hitler Youth leader Brandt was standing and he waved his hand. When I stopped he asked me whether he could come along.

Q Mr. Eichel, when did you hear that a captured flier was at the police station at Bieber?

A We drove through Bieber into the forest behind Bieber. In this forest was a guard chain made up of auxiliary policemen, Hitler Youth and so on.

Q Why was this guard chain made?

A The forest was searched but the airplane had come down much further back.

Q Mr. Eichel, how did you hear that a captured flier was at the police station at Bieber?

A When we returned and intended to go back to Offenbach. In order to go to Offenbach you have to go through Bieber again.

Q Mr. Eichel, from whom did you hear that a captured flier was at the police station at Bieber?

A When I came to Bieber a friend of mine stopped me and told me that at the police station was a flier. Furthermore, from the main road you could look into the side road and could see that quite a large crowd had assembled in front of the station.

Q Mr. Eichel, did you hear for the first time in this way that the captured flier was at the police station?

A Yes.

Q Did you hear that we had testimony in court that you were phoned and that in this way you were called to the station?

A That is absolutely impossible.

Q Please tell us what you found when you stopped with your car in front of the police station.

A When we arrived in front of the station a larger crowd was standing in front of it, but mostly women and children, only a few men.

Q Did all four men who were sitting in the car leave the car?

A In addition to me and Captain Kiwitt. The Hitler Youth leader left the car but the driver stayed in the car.

Q Did you not enter the police station?

A Yes.

Q Which room did you enter at the station?

A I entered the main room.

Q Who was present there?

A In this main room, first of all, the flier was there sitting on the desk and he was interrogated by Lueck, who at that time I didn't know by name.

Q Was the flier smoking?

A Yes.

Q Did he have a glass of water in front of him?

A This too.

Q Who was there in addition to Lueck?

A I was in this police station only once before and with the exception of Albrecht, I didn't know any of the accused before that.

Q Was Albrecht in the room?

A Albrecht entered the room later on.

Q Do you not remember whether in addition to Lueck and the flier, anybody else was in the room?

A Certainly. Various policemen were in the room.

Q What is supposed to happen when you as a police director enter a guard room in a police station?

A Attention is called, of course.

Q And what are the policemen doing then?

A Everybody jumps at attention and makes front to the superior officer.

Q What did the flier do in this case?

A The flier kept seated there and continued to smoke.

Q What influence did this have on you?

A That was the first time that I had contact with foreign soldiers. For me, as a professional soldier, that was an impossible condition. One has to understand our way of thinking. Everybody gets up, -- I was in uniform -- everybody could recognize me as an officer.

Just a prisoner keeps on sitting on a chair and keeps on smoking. This moment I had the feeling this was an insult for us.

Q What did you do then?

A First I asked who gave him the cigarettes.

Q Then?

A Then Gueck said, "These are his own cigarettes."

Q Did you hear, Mr. Eichel, here in court was testified that you got furious?

A You can't talk about me getting furious. I was angry, -- that's correct.

Q Did you curse?

A Yes.

Q What did you order then?

A I was furthermore angry for the reason that only a short time before that an order had been issued in regard to the treatment of prisoners. The reason for this order was the following: I can still remember that a sketch was shown of a man in this order and it was said therein that special care should be taken in the interrogation of parachuted fliers, and a warning was given for self-detonating pistols. A picture was attached to this order in which a man was standing like this (indicating), holding up both his hands, and during this moment, the pistol which he was hiding in his armpits, should have shot automatically at the man in front of him. This sketch was attached to the order. Furthermore, in this order was said, "Prisoners have to stand with the face turned towards the wall." It was furthermore mentioned that through weapons of this kind, supposedly men had been killed.

Q Mr. Eichel, did you give any orders now?

A I really didn't order anything. After I had asked, "Whose cigarettes are these?" and I was told, "these are his own cigarettes," I had no objections against it. But his large scarf came to my attention

and I touched him on this scarf, that's correct, but in no way can one talk about using force. The scarf was around his neck, -- I took off the scarf and put it to his other belongings on the table, which were taken away from him.

Q Mr. Eichel, did Lueck now continue his interrogation?

A I can't say exactly any more whether the interrogation was already finished or not, but anyway, the flier continued to sit there on the desk.

Q Did Albrecht now enter the room?

A I can't remember that exactly any more. Anyway, it was said here in court that I slapped the cigarette out of the flier's hand. Only through the testimony of Albrecht that he took the cigarette out of the flier's hand, I can remember now that necessarily Albrecht must have entered the room by now.

Q I think, Mr. Eichel, these points are not so important. Let us continue now. What kind of conversation did you have with Albrecht?

A I took Albrecht to the end of his room. We didn't enter his room but stayed approximately two feet from the door to his room. There I admonished Albrecht and told him, "Albrecht, you know the very strict regulations regarding treatment of parachuted fliers" and so on, and Albrecht said, as any subordinate officer should do, "Yes, sir." And I asked him something like this: "How is it possible that it wasn't acted according to the regulation?"

Q What else did you tell Albrecht?

A After this conversation?

Q Yes, or during this conversation.

A Yes, -- furthermore, I said to Albrecht, "This man is to be

brought to headquarters of the police director." Furthermore, I said, "He will be bumped off anyway," but that had a different meaning and I have to explain something else further. In reply to my "he will be bumped off anyway," Albrecht replied, "But not through me." I didn't know what I should think about this expression and told him, "Others will do it."

Q How did you come to make a remark like this?

A In December, or it might have been January -- I can't give a definite date -- after an air attack, the Reichstattheilter Sprenger came to Offenbach. At that time I was at my command post in the caserne. I got a telephone call that the Reichstattheilter was at the Company Colloth and Engelhardt. I drove over there and met the Reichstattheilter over there. He was accompanied by the Kreisleiter, Major Kuhlenbeck and five or six gentlemen in civilian clothes who came from Frankfurt, but I didn't know them. I had to report to him about the damage caused, furthermore, the number of dead after the attack. He himself was present at the Company Colloth and Engelhardt, which was damaged mostly, and I reported to him the damages which had come to my knowledge so far.

Q Did you have a conversation with the Reichstattheilter in regard to parachuted fliers?

A After I had made my report Sprenger said approximately the following, "This can't keep up."

Q What did he mean, "This can't go on"?

A With these attacks, with the damages. -- "This can't go on. All fliers will be shot and bumped off." Then he made a move with his hand, turned around and left.

Q Was this order to you to have the flier shot?

A Yes. What I thought at that time, for me as a soldier, it

really wasn't an order.

Q What did you think about this remark?

A I assumed that on account of the propaganda done at that time through radio, et cetera, action would be taken by higher authority and higher government officials against fliers who had parachuted. That was my assumption at that time.

Q Did you order anything based on this remark of the Reichstatthalter?

A I didn't even tell about this remark of Sprenger to my closest associates with whom I worked every day, the Police Kommissar Schultheiss or my secretary or my assistant and government counsellor Gruenbeit.

Q Mr. Eichel, you brought out this remark of the Reichstatthalter in connection with your remark to Albrecht. Please explain this to the court.

A Yes. I mentioned before that I was angry. When I said to Albrecht, "This man has to be brought to police headquarters," I added, "He will be bumped off or they all will be finished off anyway." I don't want to stick to the exact wording.

Q Was this now an order to Albrecht to have the flier bumped off?

A If I would have given an order to Albrecht, -- or if I might make myself even more clear -- I give an order to kill a man, I am used, as a professional soldier, to give this order very clearly. At least, I am of the opinion even today, that such an order has to be given in writing.

Q Did Albrecht consider your remark to be an order?

A I can't say that. I don't know. Anyway, if it would have been an order and Albrecht would have replied to his order, -- "But not through me" -- this would have been a refusal to obey the order, then Albrecht wouldn't have stayed on the police station for another half hour. That would have been the first time in my 25 years as a higher officer that somebody refused to obey an order.

Q Do you want to express by this that you wouldn't have accepted a refusal of an order?

A It is absolutely impossible that a superior officer in the presence of other subordinates accepts the refusal to obey an order. At that time -- and I don't hesitate to say so before this high court -- if at that time I would have had an order from the Reichstattheilter to shoot fliers, I would have had to obey this order and would have observed this order -- no doubt about it -- exactly in the same manner as all other comrades of mine who are sitting here. Disobedience of orders at that time would have meant certain death.

Q What happened after the conversation with Albrecht was finished?

A I could concentrate myself on this entire incident only here now. I wasn't present in this room all the time and from time to time I went to the yard to see what the crowd was doing.

Q What did the crowd do?

A The population altogether was pretty quiet. A few voices were heard; even when I left later on I was explained that in general the population was quiet.

Q You know the story which Moller testified to, to the effect that you and Kiwitt and Albrecht in the police station went into another room?

A Yes.

Q Is this correct?

A Yes. I said before that I walked with Albrecht a few steps inside the door to his room. Kiwitt followed nearby and he had no function at all there. He didn't say anything at all. He was angry, like myself, but otherwise, he was present only on account of my request

because I wanted to have a member of the Order Police with me.

Q Mr. Fichel, please tell us about Moller's statement, according to which there was a request made for volunteers and that nobody followed.

A That is absolutely impossible. None of the witnesses, none of the accused, none of the prosecution witnesses have heard that I asked for volunteers.

Q Did you call Moller all by himself into the next room?

A I stated here that I have seen Moller knowing who he is for the first time here in Dachau--that I have never spoken to Moller. That I have never spoken to Moller; that I have never given him an order; and furthermore, I would like to make the following statement. When I came to Dachau on 25 July 1946, I came into barracks 27. Already on my way there I saw that Albrecht was standing inside of barracks 25, together with three other men from Offenbach. After I was in my barracks for an hour, all of a sudden the accused Fay came to me. When he was standing in front of me, he greeted me, and I made a strange face because I didn't know him; and then he said, "I am Fay," and then I remembered that he was the man of the first brigade who always was near the bunker with his hunting dog; and then I asked Fay, "Fay, tell me what's going on here." Then he said, "We are all sitting here on account of the fliers," and then Fay told me for the first time, "Moller claims to have had an order from you." And he claims to have gotten the official order from me to shoot the flier; otherwise, he would be shot himself; and then I said to Fay verbatim, "Fay, about this I can only laugh. I don't even know Moller. Bring him to me." And nearly two days later--Albrecht came the next day--two days later they came alongside the barracks. We couldn't go over to them because there was a fence between us. Albrecht and Fay passed by there and they had a third man in their middle, and later on they told me that was Moller. Something else I would like to mention too, as a proof that I didn't know Moller at all. One day, it might have been in October--

Q What year?

A 1946. We were called for an interrogation--Fay, Hammann, and all the others who are involved in this incident. On this occasion, the names were called at the roll-call place; and I was standing next to Moller. All of a sudden, Moller said to Fay, "Where's Eichel." I would like you to hear Fay about this. Even there, he didn't recognize me.

Q Mr. Eichel, please tell us once more--did you give an order to Moller at the police station in Bieber?

A I solemnly state here that at the police station in Bieber I have never given an order to Moller.

Q Mr. Eichel, what's the usual way of giving an order of such kind? Please let me continue. Is it usual that a Police Director gives an order to a common policeman or is it usual that the order is given to the leader of the police station, his superior officer?

CAPTAIN VANCE: We object--it is leading.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. WACKER:

Q Mr. Eichel, please explain to the Court how orders are supposed to be given.

CAPTAIN VANCE: We object. It is immaterial as to how they are supposed to be given. He has testified as to how he gave them on this occasion.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. WACKER:

Q Mr. Eichel, are there any definite, written regulations in regard to giving orders?

A (The answer physically stricken by order of the President.)

CAPTAIN VANCE: We object on the ground that it is immaterial. He has testified as to what orders he gave and how he gave them.

PRESIDENT: Objection sustained.

CAPTAIN VANCE: But since the question was answered before the ruling of the Court, I move that the answer be stricken physically.

DR. WACKER: I have to object to this because in my opinion it is quite important whether a police director customarily gives an order to his leader of the police station or gives an order directly to a subordinate policeman or his police station leader. Furthermore, I would like to add that it is quite impossible that ever a police director will give an order to kill a man to a common policeman without giving the order first and through the leader of the police station.

CAPTAIN VANCE: I object to the Defense Counsel's testifying unless he gets on the stand.

PRESIDENT: There will be no more argument. The motion to strike is granted.

QUESTIONS BY DR. WACKER:

Q What is the customary way of giving an order?

CAPTAIN VANCE: We object.

DEFENSE COUNSEL: I agree that the form of the question is inapt in that manner, but I know just what he is driving at, and I think every member of the Court knows that there is a customary procedure in our Army, that the Commanding Officer of a unit would not come into an orderly room and give an order to a junior when a Commanding Officer was present. That's the customary way in our Army

in accordance with my experience, and I think he is trying to show that that is such a custom there, but of course it is not for consideration by the Court, but a basis for agrument, and if things were done in a normal way, it might be done. Well, that's all that's going to be said on that question now. Whatever ruling the Court makes on that will be final.

CAPTAIN VANCE: May it please the Court, what is commonly done has nothing to do with this case. This man has admitted that he gave orders on that occasion. He says emphatically that he ordered Albrecht to bring the flier to Offenbach. He says himself he gave that order. What has common practice to do with that when he says he did it?

DEFENSE COUNSEL: That was right. That's what we would have done. But Moller was Albrecht's junior. If he were going to give Moller an order, he would give it through Albrecht, since Albrecht was present.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. WACKER:

Q Mr. Eichel, when did you leave the police station at Bieber?

A The time, or what?

Q Yes.

A I can't remember the time.

Q How long did you stay at the police station?

A The whole incident at the police station at Bieber, if it took very long, it took six minutes. It must have been around noon-time. I was rushing in order to get away, and I even remember that I said, "Hurry up that

this incident will be closed."

Q Did you give any orders as to how the flier should be brought to police headquarters at Offenbach?

A After the flier had been brought outside, the flier was standing in front of me and next to him Albrecht was standing. A few other policemen were nearby--I don't know who. I gave the following order to Albrecht, "Albrecht, the flier comes to police headquarters. If he makes an attempt to escape, the weapon has to be used." This was the regulation--that this order was given for each transport of prisoners of war or other prisoners. It had to be repeated by the man who gave the order, because we had very strict regulations in this respect as follows: The Reichsfuehrer SS had ordered the official who lets a prisoner escape has to be taken into custody immediately, and every man or Government official who escorts a prisoner or prisoner of war has to be instructed beforehand, and I had to give these instructions to Albrecht, too. After I had given him these instructions, Albrecht said the following, "Mr. Police Director, I won't walk through the crowd. I go around them." What he intended to say by "around" them, I don't know. I had to leave him, as the leader of the police station has the right to pick out the best way himself.

Q Did you say anything in reply to that?

A I said, "Well, okay."

Q Why wasn't the flier taken along in the car?

A First, I had the intention to take the flier in the car.

Q Why didn't you do it?

A I also made this remark to Albrecht--that I

intended to take him along in the car, but since, as I testified before, that it was the smallest car which we had, it was impossible to take him along. I said to Albrecht, "I intended to take the flier along, but I can't put him on the motor hood and drive him through the city." I made this remark, but I have the impression that in Albrecht's mind this expression got a little bit different meaning.

Q Why did you intend at all to have the flier at police headquarters?

A First, I have to add something else to the first things. There was another reason that I didn't take the flier along in the car. Sometime before that, the commander of the Order Police at Darmstadt, Colonel Lessing, came to me and told me that on orders of the commander of the Order Police at Wiesbaden, he had to arrest a Major in Mainz who had taken special care of a prisoner of war, and that also steps had been taken against another official who had taken a flier along in his own car; and I have to admit frankly at that time I had my own doubts, and I was a little bit afraid that this action could have been interpreted wrong by higher authority if I would have taken along this flier just in my car in which no room was left.

Q Please, Mr. Michel, explain now to the Court why you wanted to have the flier at police headquarters.

A It was an order that all fliers had to be delivered to the Wehrmacht. Before that already we had once three or four fliers at police headquarters, and on aother occasion another flier was even picked up inside the city limits, and they were delivered to the Wehrmacht then by car. I didn't know which office of the Wehrmacht it was, and I didn't know where it was located. That was a job assigned to the

Order Police; so I gave the order to bring the flier to police headquarters. There is also the motor pool. At that time we had a strict order--nobody is allowed to use a car without my order--not even the commander was allowed to use a car. He had to have my order on account of the scarcity of gasoline; so I had to give the order to have a car ready; and for this reason I said, "He has to be brought to police headquarters, and from there then he would be transferred by car." Furthermore, I had a personal reason.

Q What was your personal reason?

A I have a number of relatives who are in industry in the State of Wisconsin. My family is in possession of a notary act in regard to the settlement of family matters. Since my secretary speaks English quite well, I wanted to have the flier first in my office, and there was a certain possibility that in spite of the large states he still knew something about this matter.

Q Please, Mr. Eichel, testify as to how the crowd reacted which was standing in front of the police station when the flier was brought out?

A When the flier was brought out, several of them said, "This is one of them." I would like to add that approximately two weeks before that a very heavy attack had taken place on Bieber in which great havoc was done and 54 to 56 people had been killed.

Q Did you say anything?

A The population was still under the impression of the attack which had taken place not such a long time ago and

was still excited. When the flier came out some of them said, "This is one of them;" and then I said, "Yes, this is one of them who destroyed your homes and killed your children." I made this remark.

Q Did you leave then by car?

A Yes, I left then by car.

Q Where?

A To police headquarters.

Q Did you meet there your secretary?

A When you enter your caserne, then there is the guard room. In the meantime, from the airplane which had come down, two or three parachutes had been brought in by some other people.

PRESIDENT: Tell the witness to stick to the subject and not to be wandering around.

(Whereupon the interpreter did as directed.)

WITNESS: And at the guard room was also my secretary.

QUESTIONS BY DR. WACKER:

Q Did you have a conversation with your secretary in regard to the incident that a flier had been shot down?

A You can't call that a conversation. She asked me, "Where is the flier?" and I said, "He is coming later on."

Q Did you hear then later on that the flier had been shot?

A Yes.

Q How?

A Approximately two or three hours later, First Lt.

Albrecht came to my office and reported the following: "Mr. Police Director, I have to report the flier has been shot trying to escape."

Q What did you say in reply?

A So I said then, "How did this happen?" Then Albrecht said, "The flier made an attempt to escape. He made one jump of about 20 meters--I measured the distance--and then was shot."

Q Did you ask for a written report?

A Yes, I asked for a written report.

Q Did you receive this report?

A About evening I received this report.

Q Who brought this report to you?

A I don't know that anymore.

Q What was said in the report?

A I can't remember exactly anymore the wording of the report. Since I didn't know Moller, I can't recall anymore whether the name Moller was mentioned. I don't know exactly whether it said the flier, so and so, and the name was given, and his army serial number, was shot while trying to escape by the Police Sergeant, so and so; and at the bottom it said "presented to the Police Director for information" signed Albrecht.

PRESIDENT: The Court will recess for twenty minutes.

(Whereupon at 1005 hours, the Court recessed.)

End ta 232,
ps fols

(Whereupon the court reconvened at 1030 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, except Colonel Ackerman, who is absent sick; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent sick; all of the accused; the reporter and interpreter are present.

DEFENSE COUNSEL: The accused Eichel was on the stand being examined just before the recess.

HANS EICHEL, an accused, voluntarily resumed the stand in his own behalf and having been first duly sworn, testified further through an interpreter as follows:

DR. WACKER: I request the witness be reminded he is still under oath.

PRESIDENT: You are reminded you are still under oath.

DIRECT EXAMINATION

QUESTIONS BY DR. WACKER:

Q Mr. Eichel, where did the property of the flier, the utensils of the flier, get sent to?

A They were turned over to the protective police.

Q Do you know anything about a ring?

A There was a ring among them.

Q Mr. Eichel, did you read through the whole charge sheet?

A Yes.

Q Do you know what Charge I has to say?

A Yes.

Q What do you have to say as to that?

A I never participated in any conferences or had anything to do with killing any fliers.

DR. WACKER: No further questions.

DEFENSE COUNSEL: Dr. Rau would like to cross examine.

DR. RAU: Cross examination in behalf of the accused Albrecht.

QUESTIONS BY DR. RAU:

Q Mr. Michel, if I understood you correctly, you said that Albrecht took the cigarette away from the flier?

A He put it away from his hand.

Q Did he take it out of his hand, then?

A He took it out of his hand and put it in the ashtray.

Q In that case, you did not take the cigarette away from the flier, is that right?

A I did not take the cigarette away from him.

Q Do you have a good memory?

A You couldn't call it good, but I remember that well, particularly since Albrecht himself told it to me that he had taken it away from him.

Q And if four persons testified before this court that you took the cigarette away from the flier, would you still maintain that you have a good memory?

A This completely is out of the question that I slapped the cigarette out of the hand of the flier, as some people here have testified, and according to Albrecht's own statements, he took the cigarette out of the hand of the flier after I put the question, "How come this flier is smoking?"

Q Did you, as police director, never give an order to an indirect inferior of yours, thereby circumventing your direct inferiors?

A That type of thing happened, all right, but in every case it must have been only trivial orders. Otherwise, the authority of a commanding officer was very definitely delineated in this command regulations of 1937.

Q Do you know the fundamental fuehrer order No. 1?

A Well, this order? I don't know which you mean by it, Doctor.

Q That every headquarters is to know only so much about the matter as is necessary?

A The order reads that only this circle of people would be informed of secret orders who is concerned with it.

DR. RAU: Thank you.

QUESTIONS BY DR. BUERGER:

Q Mr. Eichel, a while ago you said that you did not issue an order to Moller?

A Yes.

Q Do you want to claim that Moller was telling the untruth here?

A I will not claim that Moller was saying the untruth, but I will claim that I did not give him an order.

Q Did you hear testimony from this stand to the effect that about half an hour after the deed, Moller told Goehrendt that you had given him the order to shoot?

A Yes, I heard that.

Q I will ask you what, in your opinion, the reason was for Moller to state even at that early time that you had given him the order?

A I don't want to make any statements about that argument before this court.

Q Mr. Eichel, did you never give an order to anybody that as a matter of principle captured fliers were to be shot?

A No.

Q Mr. Eichel, I will ask you whether you know a certain Adolf Alt?

A Yes.

Q Who was Alt?

A Alt was the first lieutenant of the protective police.

Q Was he a subordinate of yours?

A He was a subordinate of Major Kuhlenbeck, and hence also a subordinate of mine.

Q Do you know Alt's signature?

A Yes.

DR. BUERGER: I hand the reporter two documents and request that they be marked Defense Exhibits 19 and 19-A for identification.

(The documents referred to were marked Defense Exhibits 19 and 19-A for identification.)

DR. BUERGER: I offer in evidence to the court as Defense Exhibits 19 and 19-A a sworn statement of Adolf Alt dated 24 May 1946. Exhibit 19 is the original German and 19-A is the true and correct translation in English.

CAPTAIN VANCE: No objection.

DR. BUERGER: I should also like to state that the oath was certified to by an American investigator named Milton M. Cvenk on the 24th day of May, 1946.

DR. WACKER: I request that the statement be handed to me so I can tell whether I should object to it or not.

DEFENSE COUNSEL: We ask it be received in evidence, may it please the court.

DR. WACKER: I have to object to this for the reason that I would like to cross examine the man who signed this statement, Adolf Alt, and since he is apparently present in Michaelsdorf, his personal testimony would be the best evidence.

DEFENSE COUNSEL: Our information, which I have obtained from the prosecution, is that the man ———

DR. BUERGER: I would like to say, as far as I know, all attempts have been made to locate Alt, but that he cannot be found.

DEFENSE COUNSEL: May I add that the prosecution informs us that the man is dead.

PROSECUTION: We believe he is. That is the information we have at the present time. We know that the War Crimes Headquarters in Augsburg has been trying to locate Alt for many months and have not been able to locate him. It is their opinion, they are not sure, but they are of the

opinion that he is dead.

DR. WAGNER: In that case, I request an official notification from that headquarters be presented to this court. If the man is dead, of course, I am in no position to raise an objection, but until such notification has been presented, I would like to have it definitely established whether this man can or cannot be called.

PRESIDENT: The objection is overruled. Defense Exhibits 19 and 19-A will be received in evidence and made a part of the record.

(The documents heretofore marked Defense Exhibits 19 and 19-A for identification were received in evidence as Defense Exhibits 19 and 19-A, are attached hereto, and made a part of the record.)

DR. BUERGER: I request the court to be permitted to read the statement.

PRESIDENT: Permission granted.

(Whereupon Dr. Buerger read Defense Exhibit 19.)

INTERPRETER: May it please the court, this translation here is not complete. There are several sentences missing. Would you like this read the way this written translation is, or would you like to have it translated?

DEFENSE COUNSEL: We would like it read accurately.

PRESIDENT: Read it accurately.

INTERPRETER: I will translate it from this in that case.

(Whereupon the interpreter translated Defense Exhibit 19 as follows:)

INTERPRETER: Eichelsdorf, 24 May 1946. Statement under oath. Adolf Alt, Eichelsdorf, Borngasse 5, born 17 December 1897, present residence Borngasse No. 5.

I am making the following statement under oath. I remember one evening in February, 1945, when two policemen from Bieber brought an American flier into the office of the protective police headquarters

in Offenbach. Captain Kiwitt talked to the policemen in my presence and told them to take the flier over and to shoot him and to do that upon orders of Major Kuhlenbeck. The two policemen then left the building with the flier. Shortly thereafter, Kiwitt ordered me to follow them and to see to it that no wild shooting would take place. I was opposed to the whole business, but I went out there and found the policemen with the flier later on. I asked them where they wanted to go with the flier, and they said to the Felsenkeller. An air raid alarm started. I left them and went to the air raid shelter. I only saw the flier again after he had been shot. Several weeks before this incident, Police Director Eichel had informed the members of the police that all captured fliers were to be shot. I never saw the order concerning this matter, but 1st Lt. Zager told me that such an order had been issued by the higher authority. Zager was Kuhlenbeck's adjutant.

I swear that I have told the truth in this sworn statement and that it was written by me in my own handwriting. Eichelsdorf, 24 May 1946. /s/ Adolph Alt.

Subscribed and sworn to before me this 24th day of May, 1946. Milton M. Crook, Investigator-Examiner.

DEFENSE COUNSEL: We would like to withdraw the English translation as an exhibit, may it please the court, and substitute the translation as made by the interpreter.

CAPTAIN VANCE: No objection.

PRESIDENT: Permission granted.

QUESTIONS BY DR. BUKMER:

Q Mr. Eichel, I will ask you whether this is Alt's signature?

A Yes, that is Alt's signature.

Q Mr. Eichel, you have heard Alt's testimony. I will ask you again, did you ever give an order to that effect?

A No. I would like to make an explanation to that. I had about

20 officers. The deputy commanding officer, Captain Kiwitt, is sitting over here. I never participated in any officers' conferences, and it was purely a matter up to the commander of the protective police, and if there had been a general order existing in the police headquarters of Offenbach to shoot fliers there, it would certainly be a very simple matter to prove that here, for a very large number of those officers are still on duty in Offenbach today. It is entirely impossible that an official order to shoot fliers was ever given in Offenbach. At any rate, my deputy government counselor Grunhoit, whom I called over here as a witness, would have heard about it too.

Q Didn't you just say in direct examination that you didn't even inform your closest collaborators and your secretary and your adjutant of some matters?

A Yes, about Sprenger's statements, but that doesn't have anything to do with orders. If I issue an order, it isn't any more secret, and all the officers would have to find out about it at any rate.

Q I will ask you to in the future answer my questions. Is it possible that you had wishes or desires presented to officers' conferences through Major Kuhlenbeck?

A The police director had the authority to give orders and instructions to Major Kuhlenbeck, yes, that is why he was my subordinate.

DR. BUERGER: Thank you.

QUESTIONS BY DEFENSE COUNSEL:

Q Would Kuhlenbeck have issued an order to anybody to kill a captured American flier without authority given to him from higher headquarters?

A I can't pass judgment on that, but I am sure he would have asked me

Q You heard the statement that Kiwitt is supposed to have ordered a couple of fliers shot on the authority of Kuhlenbeck, did you? Do you

question the truth of that statement?

A No, but I would like to give an explanation to it.

Q Go ahead.

A Major Kuhlenbeck lived in the same hotel with Kreisleiter Goerner. I myself was on the warpath with Kuhlenbeck, and I would like to say why that was, too.

Q Go ahead.

A In the course of a conference I had with police official Schultheiss, Kuhlenbeck refused to obey my orders without any ado. He left the office and I challenged him to stay in here. Nevertheless, he went out, because he had had an argument with police counselor Schultheiss, who is over here. That, of course, was an impossible situation, and I asked the commanding officer of the regular police in Darmstadt, one Colonel Lessing, to come over to Offenbach. Colonel Lessing came over and cleared the matter up and Major Kuhlenbeck apologized to me and police counselor Schultheiss. I always had to watch Major Kuhlenbeck very closely, because things happened which weren't quite in the clear. I had troubles with him quite often, as quite a few witnesses testified, and Kuhlenbeck was also a man who furthered the argument between me and the kreisleiter. Kuhlenbeck kept intriguing against me in every possible way.

Q You told this court this morning that if you had given Albrecht an order and he had refused to obey it, within one half an hour Albrecht would no longer be in the police station. Do you remember saying that?

A Yes.

Q And here was Kuhlenbeck refusing to obey your order, and not only that, but continued to make trouble for you, and yet you didn't have him out of his office, did you?

A That wasn't such an important sort of an order. All he did was leave the room, and I told him, "Major Kuhlenbeck, stay in here." That really can't be compared with that sort of an order at all.

Q But it was enough to start an open warfare between Kuhlenbeck and you that he succeeded in winning because you never got rid of him, isn't that true? Either yes or no.

A I don't understand.

Q Did you ever get rid of Kuhlenbeck?

A No.

Q Have you been ill at any time since you were taken a prisoner?

A In prison?

Q Since you were captured, have you been sick?

A No.

Q How much do you weigh now?

A 140 pounds, German pounds, approximately.

Q How much did you weigh in February, 1945?

A 170 pounds, German pounds, with clothes.

Q That is the difference, the 30 German pounds, is that right?

A Yes.

Q Have you changed in any other respect since February, 1945?

A I couldn't say in what way, in what respect.

Q Has your face gotten thinner? Have you lost more hair? Has your appearance changed?

A Well, of course, I got thinner.

Q Isn't it possible that the reason Moller didn't recognize you a year and a half after this thing happened was because of the change in your appearance?

A That is quite possible.

Q And so this big story you tried to make of that fact that Moller didn't recognize you is very easily explained, isn't it?

A That is possible.

Q Now, at one time you were reported to have died, is that correct,

there was a report of your death?

A Yes.

Q And that happened, that report got out, at some time while you were a prisoner?

A Yes. My wife wrote me that she had received notification from the National Life Insurance Company that I had died and for her to send in the proper papers so the pension would be paid, and Albrecht or Moller even confirmed in Herebruck that I had died or was dead.

Q Didn't you at one time tell some of the Germans who were fellow prisoners with you that you intended to commit suicide?

A No.

Q And didn't you give them the reason that you were going to commit suicide was because you had issued an order to kill American fliers?

DR. NACKER: I will have to object at this point. Up to now, it hasn't been clear to me whether Colonel Berman is conducting his examination as Eichel's defense counsel — after all, he is Eichel's defense counsel — or as counsel for other accused. This question makes it clear to me, however, and I would like to object to the question.

DEFENSE COUNSEL: I will state that I am cross examining for Moller and Albrecht.

PRESIDENT: Objection overruled.

QUESTIONS BY DEFENSE COUNSEL:

DEFENSE COUNSEL: And in the interests of the court that the truth might come out.

THE WITNESS: I would like to say the following to that. If you are in prison for two years and if you suffer of hunger for two years — until about eight weeks ago, my family wasn't able to send me anything at all — in that case, it isn't surprising that one has a weak moment or weak hour where one says one would like to kill oneself, particularly since

there is no chance for advancement at all for one of us outside, so it is entirely possible that such a statement was made. But certainly, the reason for that would not be that I had any fear of this court.

Q Herr Eichel, I know that you suffered like no one else suffered. What I want to know is did you make such a statement you were going to commit suicide or didn't you? Ja or nein? Yes or no?

A No.

Q You heard Lueck testify in this case that he heard Albrecht give an order, did you not? I mean either yes or no, that is all I want.

A I didn't quite understand it.

Q You heard Lueck testify that he heard Albrecht ask for volunteers? I think it was maybe to shoot the flier, I don't know.

A That Albrecht was looking for volunteers?

Q Yes.

A That I was looking for them?

Q Well, let me repeat the question. You heard Lueck testify as a witness and give evidence against Goehrendt and Moller and Albrecht and you?

A Yes.

Q Your testimony is directly contradictory to what Lueck said about you, isn't it?

A I shouldn't say that.

Q About the cigarette, Lueck says you knocked it out of his hand and you say Albrecht knocked it out of his hand.

A Colonel, only three days ago Albrecht told me personally he took the cigarette out of the flier's hand.

Q Did you hear Lueck testify in this court that he saw you knock it out of the flier's hand? Yes or no.

A Yes.

Q All right. Why did Lueck lie about that?

A As a matter of fact, Lueck was saying the untruth about other things, too. After all, he also said that the -----

DEFENSE COUNSEL: All right. I pray the court's judgment. I submit the witness is arguing. All I want is for him to answer me.

DR. WACKER: But I would like to have the answer of the accused translated so it might get in the record.

PRESIDENT: Go ahead with the translation.

THE WITNESS: After all, Lueck also said that Albrecht was looking for volunteers, and that wasn't so.

PRESIDENT: The witness will answer the questions as directly as he can.

QUESTIONS BY DEFENSE COUNSEL:

Q Who else in this case testified that you knocked the cigarette out of the flier's hands? Didn't Heberer say the same thing?

A Heberer? I don't remember. Heberer said he wasn't even there.

Q Did Como say that?

A Como, I think, said so.

Q Como said that you knocked it out of the flier's hands? Why did Como lie about that?

A I don't know.

Q Now, you said that you didn't take the flier in your car because you were afraid if you did you might get into trouble with higher authority. Were you so much afraid of what higher authority would do to you that you didn't take a flier from Bieber to Offenbach in a car?

A Yes.

Q There was a Kreisleiter in Offenbach, was there not? What was his name?

A Yes. Goerner.

Q Was he the kreisleiter that was present with Sprenger at the time

that Sprenger made the statement that all fliers would be shot?

A Yes.

Q How close were you with Goerner?

A Relations between me and Goerner were very bad, and I was called up to the gauleiter's office three times because of that poor relationship, and I would like to make a statement concerning that.

Q When your own lawyer examines you. You will answer my questions. Which organization in Germany had control of the distribution and allocation of materials to build a house?

A There was an office in a municipal administration which distributed these materials.

Q What was that office called?

A I don't know that any more today. At any rate, there was an office attached to the municipal administration that distributed these materials.

Q It is true, isn't it, that the materials were distributed according to priority?

DR. WACKER: I would like to object to this question, as long as it isn't shown clearly just what the materiality of those questions it.

DEFENSE COUNSEL: It is not clear what I have in mind, I agree, but it is my purpose to attack the credibility of the accused, for one thing, and particularly the statement he just made about his relationship with Goerner, the kreisleiter, and with Kuhlenbeck, etc.

DR. WACKER: I have to object to this in principle. Colonel Berman is the chief defense counsel for all the accused, including this accused, and I have to object to Colonel Berman's attempting to attack the credibility of this accused. At any rate, the least thing I have to ask for in that kind of a setup is that another American defense counsel to represent Eichel's interests. Every one of these accused here is represented by one American and one German defense counsel, and therefore,

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I don't think it is proper for the credibility of this accused to be attacked by one American defense counsel without this accused being defended by another American defense counsel.

DEFENSE COUNSEL: I will make one statement and submit to the judgment of the court, that he is represented by Mr. Rachael in Charge VIII.

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

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PRESIDENT: Court will come to order. Colonel Berman do you wish to make any further statement before the Court rules.

COLONEL BERMAN: Yes sir. May it please the Court, I feel that as the senior defense counsel assigned to this case that I have a double obligation. My first obligation, or at least one of two equal obligations, is to the Government of which I am a part and to the Court before whom I appear, and that obligation is to see as best I can, with justice to a client, that the truth be presented to the court as I believe it to be. I also have an obligation to other of the accused, whom I believe or might believe are affected by evidence from one person or another. And so I believe, may it please the Court, on both of these grounds that I have the highest and most ethical right to do what I am doing. However, I am disturbed by another fact and that is the American Government is going to a great deal of trouble and expense, and taking up the time of a large number of its most valuable officers, to give these accused a fair trial in accordance with American concepts of what a fair trial is and I don't want to do anything which might raise the slightest doubt about the fairness of these trials and because I don't want to do that, I am going to yield what I believe to be my unquestioned right to cross examine this witness within the limits of cross examination, as the law permits cross-examination of a hostile witness. I won't interrogate this particular witness, but I want to make it clear that I am not committing myself so far as other witnesses are concerned. I am turning this one witness over to German defense counsel for such examination as they want to make.

PRESIDENT: Do the German defense counsel who represent Albrecht and Heller desire to continue their questions.

DR. WACKER: I would like to point out one more thing as I have before. Even now Michel does not feel that he is represented by any American defense counsel.

COLONEL BERGAN: Mr. Rachael will take care of that assignment.

DR. WACKER: Thank you.

DR. RAU: Cross examination on behalf of the accused, Albrecht.

DIRECT EXAMINATION (Contd)

QUESTIONS BY DR. RAU:

Q Mr. Michel you have been asked before, what office it was that gave the authorization for the building of these auxiliary homes. I would like to repeat this question.

DR. BUERGER: I object on the same ground. The materiality of this hasn't been stated.

PRESIDENT: Objection overruled.

THE WITNESS: In cities under the jurisdiction of my Kreis there was a municipal office and in country communities where I built my auxiliary home in order to make this statement here, it was to the mayor that gave this authorization. The party would have a certain directive power and since I built an auxiliary home it happened that the Kreisleiter claimed that it just happened to be me that built that home.

QUESTIONS BY DR. RAU:

Q As a matter of fact, weren't you the first one that had authority to build such an auxiliary home on account of your good relations with the Kreisleiter and your Party relations?

A As a matter of fact, the Kreisleiter was the man who reported me for having reached a favorable position and having built this home in Dietenbach but nothing was said about my having been

bombed out in Offenbach and that I merely wanted to build an auxiliary home in order to have my wife with me.

Q Where did the Kreisleiter report you?

A To the Gauleiter.

Q Did you build this home as an auxiliary home or did you build it for other purposes?

A This auxiliary home was located in a settlement and this settlement just happened to be within my hunting area and these State Police in Darmstadt accused me of having built a hunting lodge.

Q Did you build this house in the form of a hunting lodge?

A No. There were four or five houses exactly the same as this, the same design and measurements. These houses were built on the same plot as mine.

Q At what times did you live in that house?

A I didn't live in the house at all. I merely finished it and after that the airraids started. My family just happened to be in the house for half a day.

Q In the Spring of 1945 was Albrecht transferred?

A I found out about this from Albrecht himself here that he was transferred.

Q Did you have anything to do, as Police Director, with the transfer of subordinates?

A No, I had nothing to do with the transfer of Protective Police officials.

Q You were the superior of Albrecht's weren't you?

A I have already stated this famous command regulations which verified the authority of the commanding officer and of the Police Director. The Police Director never said anything to the commanding officer of the Protective Police about internal matters

of the Protective Police.

Q Couldn't the Police Director request or initiate the transfer of certain persons?

A Yes. As a matter of fact in view of the fact that there were bad conditions there I requested to have Albrecht transferred.

Q Weren't you asked for your opinion at all when Albrecht was transferred?

A No, I only found out that Albrecht was transferred when I met Albrecht again here in Dachau.

Q At any time did you ever find out why he was transferred?

A Albrecht described it to me himself.

Q What did he tell you?

A Albrecht told me that one nice day he was called to Major Kuhlenbeck and that he had an argument with Major Kuhlenbeck on account of the alleged shooting of the flyers and upon that Kuhlenbeck is supposed to have said that he had a good position for him and transferred him to Giessen.

Q What caused the argument concerning the shootings? Do you know that?

A I don't know that. Albrecht has to know more about that.

DR. RAU: Nothing further.

DR. BUERGER: Cross examination on behalf of Goehrendt, Moller and Kiwitt.

DIRECT EXAMINATION (Contd.)

QUESTIONS BY DR. BUERGER:

Q Who was your immediate superior?

A Reichsstatthalter.

Q Did he give you direct orders as your immediate superior?

A Yes.

Q Did those orders go through channels of the Commanding officer of the regular police or did they come to you direct?

A They came from the office of the Reichsstatthalter directly.

MR. MACHAEL: No more questions by the defense. Does the prosecution desire to cross examine?

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Eichel, you had approximately six hundred men under your command while you were Police Director, is that correct?

A Yes.

Q About how many cities or villages did you have in your district?

A Only the town of Offenbach and its suburbs.

Q And you had six hundred policemen in that district?

A Offenbach was an airraid protection location of the first class, with airraid protection police and so on.

Q Now yesterday, one of the first questions that Dr. Wacker asked you was to tell the court if you had any authority to give orders to any police and if you ever gave any and you answered "No". Do you want to change that now?

A To give policemen any sort of orders?

Q Yes.

A I certainly gave my subordinates orders.

Q You did answer "No" yesterday, didn't you?

A I didn't say that. What I said was that that sort of orders are not given directly to subordinates and orders to the Protective Police had always to be given to the superiors.

Q Didn't you testify yesterday that the only person you could give orders to was Major Kuhlenbeck?

A An order concerning action I could give to Major Kuhlenbeck alone. That is right.

Q And to no one else?

A That depends on what sort of an order it is.

Q Any kind of order.

A This question isn't phrased right. Of course I can give orders to a man but an order concerning action could be given to Major Kuhlenbeck only and he is responsible for having it carried

out. For instance, I couldn't give an order to have a man transferred from one district to another. I could only express a desire to Major Kuhlenbeck and request him to have this man transferred. I couldn't do it.

Q How could you give orders to in regard to captured [illegible] the prisoners of war?

A Prisoners of war, Major Kuhlenbeck, [illegible] in Offenbach,

Q Nobody else? [illegible]

A Of course I could also tell the chief of the district station as I did to First Lieutenant Albrecht to take this man to police headquarters. That is obvious. [illegible]

Q With the exception of these two, could you give orders to anybody else?

A [illegible] Well I can give orders to anybody not superior than myself.

Q Didn't you just get through saying you couldn't give orders except to Major Kuhlenbeck?

A The only kind I could give to Major Kuhlenbeck was orders that is in an emergency. concerning action.

INTERPRETER: Repeated.

(Bichel - Gross)

Q What do you call "action"? Do you call moving a prisoner of war from one place to another, do you call that action?

A That is no action.

Q What is that?

A I don't know how to express it.

Q What do you mean by "Action"?

A Of course as Police Director I can give orders that a man be sent from Bieber to someplace else.

Q What do you mean by "Action"?

A An order concerning action. Well, let's say that the purpose of the Protective Police was to suppress public disturbances. In such a case I would have to give an order concerning action to Major Kuhlenbeck. The only man responsible to have this order carried out was the Major. I couldn't talk him into carrying it out, except if I wanted to take the whole order back -- rescind the whole order.

Q These six hundred men you had under you in Offenbach, how many Allied flyers did they execute?

A They didn't execute any.

Q Nobody was executed?

A Officially and by orders nobody was executed.

Q Are you sure of that?

A With the exception of the cases known here, nobody was executed, and anyway we can't talk about any executions except these.

Q You don't want to talk about any cases except those discussed here, do you?

MR. RACHAEL: The defense objects to that on the ground that it is argumentative.

PRESIDENT: Sustained.

QUESTIONS BY CAPTAIN VANCE:

Q How, on the day in question, when you left in your automobile to go to the woods to check your guards out in the woods, who went with you on that trip?

A I have already said the driver was with me, Captain Kiwitt,, the Hitler Youth Leader and myself.

Q You said yesterday when you left your headquarters it was Kiwitt, the driver and yourself. Which is correct?

A Yes, that is correct.

Q Why do you now say that the Hitler Youth Leader was with you?

A I testified this morning that the Hitler Youth Officer was standing on the road and bummed a ride.

Q Riebel, you have told this Court so many lies that you can't tell the truth, haven't you?

MR. RACHAEL: The defense objects to that.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q When you left your office to go to the woods, who was with you?

A One minute ago I explained -- the driver and Captain Kiwitt and the Hitler Youth Leader came in later on.

Q I didn't ask you what went on later on. Answer my question. Who was with you when you left your headquarters?

A Captain Kiwitt.

Q And the driver?

A And the driver and I.

Q All right. Now in which direction are these woods from Offenbach?

A I don't quite understand the question. I can't answer it.

Q What is the direction of the woods from Offenbach? Is it north, south, east or west?

A East — Northeast.

Q And what is the direction of Bieber from Offenbach?

A Northeast. We passed through Bieber.

Q Did you pass through Bieber going to the woods?

A Yes.

Q Now, you have heard the place described where Moller executed this American flyer. Is that the same woods you went to at that time?

A I never was in that spot. That woods is much further back.

Q I didn't ask you if you were there. I asked you if these were the same woods.

A No.

Q Was it in the same general direction of the woods where Moller killed the flyer?

A The place we were at was five kilometers away.

Q In which direction?

A Northeast.

Q Now, where along this route did you pick up this Hitler Youth Leader?

A He was standing on the road from Offenbach to Bieber and he was motioning to us and we stopped and he asked where we were going and since the Hitler Youth were doing some of this work to

(Eichel - Cross)

close up the roads, he was interested in coming along.

Q Who was driving your car at that time?

A I was driving.

Q What is the name of this Hitler Youth Leader?

A Bannfuehrer Brand.

Q Did you pick up Brand before you got to the woods or after you had left the woods?

A I picked up Brand in the road from Offenbach to Bieber.

Q Was that before you got to the woods or after you got to the woods and were coming back?

A Offenbach proper yet.

Q Was it before you went to the woods or after you came back from the woods?

A Before we drove into the woods.

Q All right. Now when you left the woods why did you go to Bieber?

A Because the report was received that there was a pilot in the police station. I also saw it from the road itself because you could see from the road a crowd of people.

Q You didn't know that when you were out in the woods and started back, did you?

A No, I didn't know. I had no way of knowing.

Q What was the most direct route from where you were in the woods back to Offenbach?

A Through Bieber. There isn't any other road.

(Eichel - Cross)

Q Is there just one road from Bieber to Offenbach?

A There is one main road which you have to use with a car from Bieber to Offenbach and then there are several paths through the fields which are not usually used by cars.

Q Which is the shortest way?

A That is the shortest.

Q You mean the automobile road?

A For vehicles.

Q Now, when you got to the police station in Bieber, did Kiwitt go inside the station with you?

A Yes.

Q Now, what was the purpose of taking Kiwitt on this trip with you?

A I took Kiwitt along as the representative of the Protective Police. In case any deficiencies could be found in the closing up of the roads he could report this to Major Kuhlenbeck and have them improved.

Q As Police Director of Offenbach, were you then head man in charge of all policemen there in that district?

A I was responsible for the police in Offenbach proper.

Q For all of them, all branches?

A Only the regular police and the administrative police -- that is part of the regular police.

Q When you and Kiwitt walked in to the station that is when you saw the American flyer sitting there smoking and drinking water, is that right?

(Eichel - Cross)

A Yes.

Q Now when you walked in did anybody call "attention"?

A Yes. That is the way it is done — that is the regulations.

Q I am not talking about regulations. I am asking you if it was done?

A Yes.

Q Who called "attention"?

A I don't know.

Q Did all the policemen stand up at attention when you walked in?

A Yes.

Q And the flyer remained sitting, is that right?

A The flyer remained sitting.

Q Now you were a police officer, is that right?

A Yes.

Q And the American was a soldier, is that correct?

A He was a soldier.

Q Can you explain any reason why a soldier should stand up when a policeman comes into a room?

A Well with us in the police in the Army it is a common practice that if a superior walks into a room everybody gets up.

Q You don't claim that you were an Army officer, do you?

A No.

Q You were dressed up in a fine, pretty police uniform and you thought the American flyer should stand up, is that right?

A I was wearing the same coat I am wearing now.

Q And you were insulted by the fact that this soldier didn't stand at attention. That is what you said?

A Yes.

Q And you were angry?

A Angry -- I wouldn't say angry. I was excited.

Q You didn't answer your lawyer "I was not furious but I was angry"?

MR. RACHAEL: I believe the testimony here is the result of interpretation of German into English. I notice that the witness used the same words he used this morning but the interpretation is different.

PRESIDENT: Are you making an objection?

MR. RACHAEL: Yes sir.

PRESIDENT: Objection overruled.

QUESTIONS BY CAPTAIN VANCE:

Q I will just ask you, were you angry?

A No.

Q Not a bit?

A It is not my custom to show anger in front of subordinates.

Q And you didn't show any on this occasion?

A No.

Q Did you do any cursing?

A Yes.

Q Who did you curse, your policeman or the American flyer?

A Our officials.

Q You were cursing them but yet you weren't angry, is that what you mean?

A Well that is a matter of opinion. One man would call it anger and another would call it excitement. I was annoyed I said this morning.

Q Well, what did this flyer do to make you excited? Did he strike at you?

A No.

Q What did he do?

A Since everybody got up by the flyer remained sitting there and smoking, I was of the opinion that it was deliberate on his part to show contempt toward us Germans.

Q You objected because somebody gave this flyer a drink of water, didn't you?

A I didn't ask about the water. What I asked was who gave the flyer the cigarette.

Q You said on direct examination and I will quote it, "That orders had been previously ordered for the treatment of prisoners of war." What did you mean by that? What were these orders?

A I said this morning that these orders concerning prisoners of war were to face the wall during interrogations.

Q Did you issue these orders?

A No. I couldn't issue that type of order. That order came from higher headquarters.

Q Who did you get that order from?

A You couldn't say the Reichsstatthalter, from the NSDO from the Reichsfuehrer of the SS or the Higher SS and Police Officer, but since there was a diagram attached to it, it must have come from higher headquarters.

(Eichel - Cross)

Q When you received that order did you pass it down to Albrecht?

A Concerning the treatment of prisoners of war?

Q Yes, about making them stand facing the wall during interrogations?

A It wasn't my job to transmit these orders. These orders were transmitted by the commanding officer of the Protective Police.

Q Did you transmit it to Major Kuhlenbeck?

A Yes -- no. Major Kuhlenbeck received this order.

Q Which was it "Yes" or "No"?

A Yes, he received the orders.

Q From you?

A From the office, from the headquarters.

Q From your headquarters?

A From my office.

Q All right. Therefore Albrecht was discharging your orders and instructions by letting the flyer smoke, is that what you mean?

A That was diametrical to that order. That was improper treatment.

Q You told the court this morning something about a mystery weapon that the Americans were supposed to be carrying around that would shoot a person without pulling the trigger. Did you ever see that weapon?

A No.

Q Where did you dream that up?

A I am not in the habit of dreaming about that kind of thing. I said that a diagram was attached to that order showing a man raising his hands and thereby setting off a weapon -- firing a shot. That diagram was sent to other headquarters as well.

Q And that is the reason you didn't want that flyer sitting down. You were afraid he had one of these mysterious weapons, isn't that correct?

A I don't know the word "fear". This report, this order said that in the course of interrogation of prisoners and prisoners of war had used fire weapons.

Q You say you don't know what the word "fear" is?

A I had no fear of this flyer.

Q Did you have any fear of anybody else?

A I have no fear. There is no reason for me to be fearful of anybody.

Q Why did you take the scarf away from this flyer?

A That wasn't a scarf. In my opinion, that was just a hand towel.

Q Whatever it was, why did you take it away from him?

A I am sure I can't say today what my thoughts were when I took this piece of cloth away from the flyer and put it on the table.

PRESIDENT: Court will recess until 1:30.

(Thereupon at 1205 hours the court recessed until 1330 hours.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all of the members of the court except Colonel Ackerman, who is absent sick, all the members of the prosecution, all the members of the defense except Dr. Frost, who is absent sick, all of the accused the reporter and the interpreter are present.

MR. RACHEL: I believe at the close of the morning session Eichel was on the stand.

HANS EICHEL, an accused, being reminded that he was still under oath, voluntarily resumed the stand and testified further through an interpreter as follows:

CAPTAIN VANCE: Will the reporter read my last questions and answers?

(Whereupon the reporter read the last two questions and answers as follows:

"Q Why did you take the scarf away from this flyer?

A That wasn't a scarf in my opinion. That was just a hand towel.

Q Well whatever it was, why did you take it away from him?

A I am sure I can't say today what my thoughts were when I took this piece of cloth away from the flyer and put it on the table.")

CROSS EXAMINATION, continued

QUESTIONS BY CAPTAIN VANCE:

Q Eichel you couldn't answer my last question and you have had an hour and a half to think about it in the meantime. Can you answer it now?

A I can't give no explaination for that, what the reason was to take the towel away from the flyer?

Q Well I will see if I can help you. This happened on the 22nd day of February, 1945, is that correct?

A Yes.

Q The weather was very cold at that time was it not?

A No, the weather was very mild.

Q In February, 1945 the weather was very warm, is that right?

A On the 22nd of February, 1945 the sun was shining and I was in uniform even without overcoat. That was also the reason that I went out in the woods with my car, because only a short time before that I had recovered from a great illness.

Q Did you take the scarf away with you?

A General, I don't want to answer this question. I am not a plunderer or a man who steals things from other people. I will answer this question, only, if you General, order me to do so.

PRESIDENT: The court will make its own deductions.

CAPTAIN VANCE: I am not sure I understand the ruling of the court.

PRESIDENT: The witness will answer.

THE WITNESS: I said already in the morning in my testimony that I took the hand towel or the scarf, whatever it is, away from the flyer and put it on the desk where his other belongings were lying.

QUESTIONS BY CAPTAIN VANCE:

Q My question is, did you take the scarf away with you? You can answer, yes or no.

A No.

Q Now, demonstrate to the court the way you removed this scarf from the flyer.

A How shall I demonstrate. The flyer was sitting like you (Indicating). I was standing here. I took the scarf away and here (Indicating) the man was sitting on the desk and that is where I put it together with his other belongings.

Q Did you snatch it away or did you remove it very gently?

A I am not used to mistreating soldiers. That is too much in my flesh and blood never to touch a soldier, always to stay three steps away from him (Eichel-cross)

and never to mistreat him.

Q Well how, if you stayed three steps away from this soldier, did you get your hands on that scarf?

A That was something else.

Q What do you mean by that?

A I was standing close to the flyer--near him. There is no question of snatching the scarf.

Q You just didn't want the flyer to have it so you decided to take it off of him, is that correct?

A I can't answer this question.

Q At this time you were still mad?

A I explained this morning I wasn't mad, I was angry.

Q At this time you were still angry?

A Yes.

Q You are angry now, aren't you?

A I am angry about the questions, Captain, yes.

Q I believe you took Albrecht into a room to admonish him, is that correct?

A Yes.

Q Who was present at that time?

A I think Captain Kiwitt was standing nearby--was standing next to us or at least nearby.

Q Among other things you said to Albrecht "You know about the treatment of captured prisoners.", is that correct?

A Yes.

Q What did you mean by that statement?

A I explained this morning that this order had come through which had also this diagram attached--where there is doubt about it.

Q Let me ask you if you are familiar or were you familiar at that time with the order to turn over captured flyers to the Gestapo for special treatment? (Kiehel-cross)

A At the Police Headquarters there was never known an order that captured parachuted flyers should be turned over to the Gestapo.

Q You never heard of that order until this trial, is that what you mean?

A That flyers had to be delivered at the Gestapo?

Q To either the Gestapo or the SD?

A I heard this here for the first time.

Q Back in 1945 you didn't know anything about it?

A No.

Q Did you know Major Girke then?

A Only by name.

Q Just by name?

A If I testified here that I know him only by name, then this is sufficient.

Q Well I want to get it straight. Do you mean back then you had never attended a conference or ever talked to Major Girke, is that what you mean?

A Never.

Q You are willing to stand on that?

A That is a matter of course.

Q Did you know Colonel Lassak then?

A I met him only during the retreat. Before I knew him only by name.

Q You held the same position at Offenbach that Colonel Lassak held in Giessen, did you not?

A Yes.

Q You were both Police Directors and had the same powers and authority, is that correct?

A Yes, with the exception that I was a leader in the SA and Lassak was a leader in the SS.

Q Can you explain why Colonel Lassak knew about these orders and you didn't?

A The only explanation that I have is that Colonel Lassak, Police Director Lassak might have received these orders through Gestapo or the Security Service--SD.

Q When you were through admonishing Albrecht tell me what orders you gave him?

A I told Albrecht, "The flyer comes to Police Headquarters." Albrecht answered, "Yes, sir", and while I said this or immediately afterwards I said furthermore, "They will be finished anyway." There was still an expression of my anger and memory of conversation with the Reichsstatthalter.

Q What else did you say?

A Otherwise I didn't talk to Albrecht anymore. I left the room. Later on I entered the room again and pressed for hurry so that the flyer would be made ready and would be taken away.

Q You can't remember anything else you told Albrecht?

A Otherwise I didn't talk with Albrecht anything else.

Q Your memory is not so good is it?

A My memory is excellent Captain.

Q Tell me if you said this on direct examination? "If the flyer tries to escape the weapon will be used."

A Captain that was an entirely different time and place afterward when the flyer was already in the yard but not in the building.

Q I didn't ask you where you were. Do you remember saying that to Albrecht?

A Yes, that is correct.

Q Why did you say that?

A I explained this in detail this morning. That any man who escorts a prisoner, a man under arrest, has to be instructed that if the prisoner or man under arrest tries to escape that he has to make use of his weapon because there was a regulation that anyone who would let a prisoner escape would be taken into custody immediately. That was the same with us as with

(Bichel-cross)

the Security Police.

Q Well Albrecht was familiar with the regulation without your having to tell him, wasn't he?

A It was a regulation that had to be told everybody again before the transports.

Q So every time you had a prisoner move from one place to another you would call the man in who was going to move him and give him those instructions, is that right?

A If you wanted to act strictly according to regulations it had to be done, yes.

Q You were a man that stuck right with the regulations?

A Yes.

Q You are a man that follows orders explicitly.

A So far I always followed the orders of my superior officers.

Q If you gave an order you expected it to be carried out exactly like you gave it?

A Yes.

Q You said on direct examination that you didn't order this flyer to be killed but that you knew he would be bumped off, is that right?

A I didn't know that, but I assumed this only from the remarks made by the Reichsstatthalter that something would be done about the flyers from higher authorities. At that time it was already known that in Stalag Number 3, 50 to 70 flyers had been shot on orders.

Q You knew that this flyer would be killed because you knew that every other flyer that had fallen in the hands of the Offenbach Police Force were killed, is that right?

A No.

(Riehel-cross)

Q As a matter of fact they all were killed, were they not?

A But not through my fault. Until the time I came there to Dachau I was convinced and I am still convinced the first flyer and the second flyer that was killed, were killed while trying to escape. During the three cases I was on vacation and only after my return did I hear about it.

Q You are talking about the first flyer, do you contend that the first flyer was the one on the 22nd of February 1945?

A Yes.

Q Are you sure about that?

A I am absolutely certain of that.

Q How many do you know were executed after that date, in Offenbach?

A None. None at all.

Q None after 22 February 1945.

A No. None by the police, none by the Party and not by the Wehrmacht either.

Q Then the witnesses are lying about the fact that the priest brought a flyer into Bieber, that was executed, is that right?

A That is the second case. That is the second case on Bierbrauer Weg. They didn't lie.

Q You said that none were executed since the 22nd of February.

A I wanted to say that was a mistake on my part. I wanted to say in addition to the three cases which are known here, no other flyer was ever harmed.

Q I want to be sure that we get this straight. You admit that three flyers were executed and you say that there were no more, is that correct?

DR. WACKER: I have to object to the question in this form. I object to the expression "executed".

CAPTAIN VANCE: I will call it murder, or killed, or anything you want to call it.

PRESIDENT: The objection is overruled.

THE WITNESS: No.

QUESTIONS BY CAPTAIN VANCE:

Q By "NO", you mean there were no more except these three?

A None in addition to these three.

Q Your lawyer, this morning, asked you some questions about the behavior of the civilian population around police headquarters and I believe you answered they were pretty quiet?

A Yes. You heard a few voices.

Q You mean that they were quiet before you went out there and got them all excited, do you not?

A I didn't incite any people.

Q Did you tell the people that this was one of the flyers who was killing and bombing men, women and children?

A Yes. After one out of the crowd said "This is one of them". I said "Yes, that is one of them that has destroyed your houses and killed your children" because two weeks before that we had an attack on Bieber.

Q You knew you were lying when you told them that, did you not?

A I did not lie. Why should I have lied?

Q You knew those flyers were not there two weeks before that, that they were captured the same day, did you not?

A You cannot take that in that sense. Of course, I did not know that this one flyer had been at Bieber before. I never claimed that. That was not a lie when I said so.

Q You were not trying to incite the crowd, were you?

A There you cannot talk about incitement of the crowd. There was no intention of doing so.

Q But why did you tell them that?

A That was an utterance that was made by 99 people out of 100.

Q What was the purpose of going out and addressing the crowd if it was not to incite them?

A There was no intention to do that. This was just an utterance made to them without any importance.

Q You have already told this Court that you are not the type of man that gets excited, is that right?

A No. I did not tell the Court that I don't get excited. I don't know how to understand that.

Q When you left Bieber and drove your car back to Offenbach, what did you think was going to happen to that flyer?

A I expected the flyer at my headquarters in Offenbach.

Q Why didn't you put him in that automobile and take him there if that is what you wanted?

A I explained in detail this morning why I didn't do so.

Q Will you tell me why you did not put him right into that automobile and take him to Offenbach?

A First, the car was too small and second because there -- it was known to me that officers who had taken prisoners of war along in their cars had received disciplinary punishment. It was brought to our special attention through the commander of the Order Police at Darmstadt.

Q I believe you testified this morning about some orders from Wiesbaden that you were not supposed to transport them in an automobile, is that correct?

A Yes. These were not orders but either the commander of the Order Police or higher SS leader had taken disciplinary action against two officers because they had taken flyers along in their cars.

Q Trummler was head of the SDS in Wiesbaden, was he not?

A Yes.

Q Who was your commanding officer, at that time?

A The commander of the Order Police was Colonel Hiemann.

Q Did those orders not to transport them in cars come from Colonel Niemann?

A No. I don't think so.

Q From whom did they come?

A I can't remember anymore today but I can still recall that Colonel Lessing told me that he had been admonished from Wiesbaden.

Q You said after you got him to Offenbach that you were going to put him in an automobile to go to Oberusl. How did you expect to get by with that?

A No. Not to Oberusl. We had the regulation to deliver flyers to the next nearest Wehrmacht headquarters. It was unknown to me which was the nearest Wehrmacht headquarters at that time, since this matter was entirely up to the Order Police.

Q Do not avoid the question. Regardless of how you were going to take him or rather where you were going to take him, how did you expect to get by taking him in an automobile, which was against regulations?

A No. It was not forbidden to take the flyer in a car, not at all. It was forbidden only that he should be taken along in the personal duty car of the police director.

Q Oh, he could not ride in your personal car, is that it?

A He couldn't ride in my personal duty car in which I was riding.

Q That is the order that you got from Wiesbaden?

A That was not an order, that was information, a regulation, an admonishment for two officers who had done so before.

Q You left Bieber and drove back to your headquarters in Offenbach?

A Yes.

Q And you testified that when you got there first, you talked to and saw your secretary?

A Yes.

Q You said, "My secretary asked me, 'Where is the flyer?'", isthat correct?

A No.

Q You did not say that?

A No. She did not say "Where is the flyer?" That is a mistake, Captain. I have to explain that.

Q I do not want you to explain it, just answer the question.

A No. She did not ask where the flyer was, only later after the parachutes had come and we talked about it, she asked "Where is the flyer?" and then I said, "He is going to come later".

Q Do not argue with me, will you just answer the question. I did not ask you what your secretary said. I asked you if you did not say, on direct examination, what I just quoted? Do you remember saying that?

A "The flyer is coming later on"? Yes. "He is being brought on to police headquarters", yes.

Q That is not the question. I will repeat it for you. Did you say "When I got back my secretary asked me, 'Where is the flyer?'"?

A That is not entirely correct. I said the following, after the people present in the guard room had had the parachutes in their hands, my secretary asked, "Where is the flyer?".

Q Richel, you cannot remember what you told, can you?

A I said that and nothing else. I did not say anything else.

Q If that does not appear in the record of this trial then this court reporter made a mistake, is that correct?

MR. RACHAEL: Defense objects to the question.

CAPTAIN VANCE: This is cross examination, if it please the Court, and I have a right to ask him what he said and he can deny it if he wants to.

PRESIDENT: The objection is overruled.

QUESTIONS BY CAPTAIN VANCE:

Q You are just as sure of that answer as you are about anything else you said during this trial, are you not?

A Yes.

Q As a matter of fact, your secretary did not even know that you had been to Bieber until you told her, did she?

A My secretary knew well before I arrived because their parachutes and other airplane instruments had already been delivered at the guard room and also there at this location it had been said that flyers had landed near Bieber, then she said, "Where is the flyer?" and then she got the answer from me.

Q This secretary that we are talking about is the young lady who testified in this courtroom yesterday?

A Yes.

Q What is her name?

A Rosel Schaub.

Q How long had you been back in your office when you received the report that this flyer had been shot while trying to escape?

A That might have been two hours or even two and one half hours.

Q What did you do when you received this report?

A When Albrecht entered the room he was very excited. I acknowledged the report. For me it was absolutely clear that this matter was all right and according to Albrecht's explanation to me, I never had any doubts about Albrecht's statement.

Q Were you surprised to hear this?

A Yes. I must say I was surprised.

Q You knew that he had been bumped off, did you not?

A No.

Q When you were talking to Albrecht you said, "He will be bumped off anyhow"?

A That was said only in reference to remarks made by the Reichsstatthalter. It was assumptions that the flyer would be bumped off but not

by us but by some other organization in the camp.

Q Then it was your idea to deliver him somewhere else to get him bumped off, is that it?

A No. It was my intention to deliver him to the Wehrmacht to -- according to my orders.

Q What happened to that flyer that you had about one week prior to this one?

MR. RACHAEL: The Defense objects to that, there has been no such testimony.

CAPTAIN VANCE: I would like to state that he did testify to that effect, unless my notes are incorrect. That he had three or four flyers before this time. In any event I am not bound by that direct examination of this accused. I will withdraw the question.

QUESTIONS BY CAPTAIN VANCE:

Q On direct examination did you say that the police of Offenbach had had three or four flyers in its custody prior to the date 22 February 1945?

A I had testified that already before the 22nd of February 1945, three or four flyers, in an ambulance had been delivered to the Wehrmacht at Frankfurt but not by my headquarters but by the headquarters of the Order police at Offenbach. It is furthermore known to me that someday one flyer had been picked up right in the streets of Offenbach. He was walking along in a westerly direction. This flyer too, to my knowledge, had been delivered to the Wehrmacht.

Q What finally happened to him?

A When he was with the Wehrmacht?

Q Is he living or dead?

A I don't know that.

Q This written report that you received stating that the flyer had been shot while attempting to escape, what did you do with that report?

(Michel-cross)

A This written report came from the commander of the Order Police, as it was customary that the police director is informed about special instances by the Order Police daily. The police director initials such reports and then either they are filed or if some other office is interested in the case the report is passed on to that particular office.

Q Don't you pass that report on up to your next higher headquarters?

A No. I don't think so. I don't have a clear picture but I am pretty certain that this report, together with the personal belongings of the flyer, was delivered to the Wehrmacht.

Q In each unusual incident a report did come to you, is that correct?

A For each special incident which was of importance for the police director.

Q Do you consider the execution of a man to be an important incident?

A That is not the execution of a man. It was a report in regard to

the killing of a prisoner while trying to escape.

Q Is that a special incident that would require a report?

A Yes. That is a special incident because something like that does not occur every day.

Q On each occasion when a man was shot while trying to escape a report came to you, did it not?

A That is the only case when a man was shot trying to escape in my area of the police of Offenbach.

Q How did the others get shot?

A Which others?

Q For instance, the flyer that the priest had?

A That is the first lieutenant Zager's business. I don't know anything about that. I said before that I was on leave and know as much about it as you do, Captain.

Q You only got one written report and only knew of one flyer, is that right?

(Kiebel-cross)

A And the one at the Bierbrauer Weg.

Q That makes two then?

A Yes.

Q How many more did you get?

A I said before this morning that in addition to these three cases, known here to the court, no other prisoner or man was killed in Offenbach.

Q When was the first time that you knew the accused Moller?

A I saw the accused Moller for the first time here in Dachau.

Q I believe you were a former Colonel, or Lt. Colonel, is that right?

A Yes.

Q Moller is a Sgt, I believe?

A Yes. I believe he was Staff Sgt of the police.

Q When did you decide to frame Moller in this case?

DR. WACKER: I wish to object to this question. I think this question is improper and argumentative.

CAPTAIN VANCE: There is nothing argumentative about it.

PRESIDENT: Objection overruled.

THE WITNESS: There can be no question of a decision to do so. Because it is absolutely clear that I never spoke to Moller and never gave an order to Moller. If a little police official, as Moller, gets an order from the police director, the first thing for him to do would be at least to tell to his police station leader, "Lieutenant, I just received an order from the police director to shoot a man. When, how and where shall I do it?" That these would be the most natural questions to ask. For this reason there can't be any question of a decision of mine to frame Moller.

QUESTIONS BY CAPTAIN VANCE:

Q You heard what Moller had to say, did you not?

A Yes.

(Eichel-cross)

Q We have heard what you have had to say?

A Yes.

Q Either you or Heller are telling a deliberate lie, are you not?

A Yes. One of us must be lying.

Q You heard Heller admit things that were damaging to his case, for instance, that he actually killed the flier, did you not?

A Yes. He can't help that.

Q You do not admit any wrong, do you?

A I don't have to admit anything wrong. The way I testified the story is true. None of the other accused, -- Heller, Goehrendt, Kiwitt, Albrecht and myself, are in any way involved in the case.

Q When did you decide this?

A That was clear for me right from the beginning.

Q You are talking about from your own testimony, are you not?

A Of course, I have my private opinion of this incident, how it happened. But this is of no importance here. I can imagine how it happened.

Q Everybody that testified that you did anything wrong were deliberately lying, were they?

A Whenever I have done wrong, I admit. If I would have had an absolutely clear order to shoot the flier, and if I would have given the order to Heller to shoot the flier, then I would admit right away, yes, Heller got the order from me because I only transmitted the order. There is no other reason like with all the other comrades, these just transmitted an executed order. But I can't let myself be forced into something which really didn't happen.

(Eichel-Cross)

Q Weller has lied about you, you say?

A Yes.

Q Did Albrecht lie about you?

A No.

Q You are willing to say everything Albrecht said is the truth, is that right?

A Albrecht said the truth.

Q What about Goehrendt?

A Goehrendt, -- Goehrendt is an old proverb. Goehrendt came to it just like the virgin to the child. He had nothing to do with the case, the same as Kiwitt had nothing to do with the case. Kiwitt followed me, was always behind me like a young dog, and whenever his boss was yelling, Kiwitt felt obliged to do so too.

Q Eichel, you were asked this morning if you knew the contents and were familiar with Charge I, and you said that you were, is that right?

A Yes.

Q I believe you said that you never had anything to do with the conference about the treatment of fliers, is that right?

A No.

Q Well, I will ask you, -- what did you say?

A That I never participated in a conference which amounted to conspiracy. Furthermore, I would like to add that I met General Stroop once. He ordered me to Wiesbaden in October or November '44 because I had a car incident on an icy road and he wanted to get information from me how it could happen that I was still in a position to drive my car home on Saturday or Sunday. I explained to him at this conference that I was using gasoline from the Reich hunting administration because I myself was the hunting master for this county. It was a matter of course that General Stroop asked me about the damage in Offenbach. I told him about the damages and gave him the number of

people killed, but there was no talk whatsoever about an order of killing fliers. If anything of this character would have been said at that time I wouldn't have any choice but saying, "Yes, the General said so and gave such-and-such an order," -- but nothing happened.

Q Now, you have admitted that you attended the conference with Gauleiter Sprenger, in which he told you that allied fliers would be killed, have you not?

A Captain, there wasn't any conference. There was inspections the men made.

Q Well, was there some talk between you? We won't call it a conference.

A Not me and him. There were several other people present.

Q That is what I want to know. Who was there?

A The Kreisleiter was present, Major Kuhlenbeck -- and I mentioned before that there were five or six other people present, industrial experts and economic advisors, who were interested in the damage done to industry.

Q If that was not a conference you were holding, what would you call it?

A I don't know how I should express myself. These were remarks made during an inspection. In a conference I understand people are in a room and are sitting down at a table, and that was in the open air.

Q The Kreisleiter was there, you say?

A The kreisleiter was present.

Q Is that Geerner?

A Yes, Geerner.

Q Is this Geerner the same man from whom you get the building material to build your lodge?

A No.

Q You and this kreisleiter were bosom pals, were you not?

A No, I and the kreisleiter were on very bad terms because he used the nickname "Stalin," and for this reason I was called to the gauleiter too and I told the gauleiter the following: "Gauleiter, I am not going to cooperate with this Kreisleiter Goerner because Goerner has taken on the name of this mass murderer." I can bring many witnesses to this effect that it happened like this. Sprenger said, "You return to Offenbach and you two work together and cooperate. Otherwise, a change will take place." The trouble with Goerner started because he always tried to interfere with police matters. This Goerner was well known in all of Hessen as an infamous kreisleiter and even my comrade Girke is nodding with his head.

Q Your "comrade Girke"? Did you not just finish saying you did not know Girke until this trial began?

A I know Girke here now. I knew Girke here.

Q How long have you known him?

A Since we are here in Dachau. I have never seen Girke before.

Q You were very close to the political heads in Offenbach, were you not?

A No.

Q If you were not, how did you get so many rationed things that the other people did not get?

A I didn't get any rationed stuff. I didn't get more than anybody else. That's an infamy.

Q Do you remember the time that a whole hogshead full of sausage jumped out of your automobile on the streets of Offenbach? ____

MAJOR SAXON: I object to that question on the ground that it is fully immaterial to this case.

CAPTAIN VANC: May I state my reason? If it please the court, the purpose of these questions is this: This man has testified

that he could not get along with the kreisleiter, that they were enemies, as a matter of fact. I am going to show that he got material to build a big fine hunting lodge, and that a hogshead full of sausage jumped in the streets out of his automobile and he got in trouble about that. I am going to show that he was a little czar with the political setup and he could get anything he wanted.

MAJOR SAXON: What has that to do with the case?

CAPTAIN VANCE: To impeach him. He says he could not get along with the kreisleiter.

MAJOR SAXON: I do not know how we got into this matter about the kreisleiter.

PRESIDENT: Objection overruled.

INTERPRETER WATRANSON: Will you repeat the question, please?

(Whereupon the question was read by the reporter as follows:

"Do you remember the time that a whole hogshead full of sausage jumped out of your automobile on the streets of Offenbach?")

THE WITNESS: No, not in Offenbach.

QUESTIONS BY CAPTAIN VANCE:

Q Where did it happen?

A I have testified that on account of a slippery, icy road I had a car accident, and since every week I took the stamps of all my relatives -- I have three families; in my household lived my mother-in-law, my daughter with her child -- her husband died in Stalingrad -- and the wife and the children of my son -- there were four families. I myself lived in a very small village near Bensheim. Here there is only one store. It is a fact that once every week I drove home and I took along all the food ration stamps and in Offenbach my valet went shopping. I, as a police director and lieutenant colonel, can't go in a store myself and do the shopping. The day of the car accident, really five

or six small sausages fell out of the car on the street. It is really an infamy to claim it was a whole box of sausages. I would have liked it to be a whole box.

Q Is it not a fact that due to your connection with the kreisleiter and the other political bigwigs that you chiselled so much stuff that the other people could not get that a report on you went up to Colonel Scmann?

A I would like to make the following explanation.

Q Do not explain it. Answer it.

A But I have to. You can't answer this with "yes" or "no."

PRESIDENT: Make your explanation short.

THE WITNESS: Yes.

A As police director and as a hunting master of the county who himself was the owner of two hunting districts there, I could, through the exchange of deer, receive an additional twenty bottles of wine and for instance, two boxes of cigars -- that is a matter of course. I furthermore admit that sometimes I received some stuff without food ration stamps, but who didn't do so at that time?

PRESIDENT: Is the prosecution through?

CAPTAIN VANCE: Yes, sir.

REDIRECT EXAMINATION

QUESTIONS BY DR. WACKER:

Q Mr. Eichel, were you interrogated before in this matter?

A Yes.

Q During this interrogation were you also interrogated in regard to sausages and stuff like this?

A No.

Q Do you have an explanation as to how the prosecution is in a position today to ask you questions of this kind and character?

A I have an explanation.

Q Please give us your explanation.

A It is very regrettable that among the accused are one or two persons who are blowing up such an unimportant matter to a big balloon. These people especially should look after their own noses.

Q I mean, Mr. Eichel, how did this case come to the knowledge of the prosecution?

A I can only guess, but I can't prove --

CAPTAIN WAECK: I object on the ground that it is immaterial as to where I get my information to examine the witnesses on.

PRESIDENT: The objection is sustained.

QUESTIONS BY DR. WACKER:

Q Mr. Eichel, during your examination through Colonel Bergman you intended to make an additional explanation and you were told you should do so during the direct examination by your counsel. Please make the statement which you intended to make at that time.

A My secretary, Mrs. Schwab, has testified yesterday that I had protected a man listening to foreign radio broadcasting and that I had protected a deserter and so on. In other words, I severely neglected my official duties through the protection of enemies of the state. I would like to make the following statement in regard to this: I never protected enemies of the state. I never protected people listening to foreign radio broadcasting stations, but I took steps in favor of the eighteen-year old son of one of my policemen who was under the influence of an older sergeant and I got the favor from Major Kuhlenbeck that this policeman received eight days leave so that he could visit his son who was sentenced to death.

Q Mr. Eichel, do you remember the question under cross examination

that either you or Moller must be lying?

A Yes.

Q Did you change your statements and testimony?

A No.

Q Did Moller do so?

A Yes. According to the testimony of Albrecht, Moller changed his testimony on several occasions.

Q Did you hear that first Moller claimed that Albrecht had given the order?

A Yes.

Q Do you have an explanation for the fact that Moller changed his testimony?

A I can explain it only so -- that Albrecht told me that he was together with Moller in Camp Hersbruck and some day there was handed out an excerpt of the speech by Supreme Court Justice Jackson that the one who obeyed an order from a superior officer would receive a smaller punishment than the man who gave the order.

Q Mr. Eichel, when was your wife informed that you were not alive any more?

A I can't say exactly any more when my wife told me that. Anyway, she wrote me that she was requested to turn in the papers so that she could pay the national life insurance money. She didn't have any message from me for many weeks and for this reason, of course, she was very excited.

Q Do you know whether there was talk in Camp Hersbruck about your death or not?

A I personally can't know it because I wasn't in Hersbruck, but Albrecht confirmed this to me and Moller too confirmed this to me.

Q Mr. Eichel, would you like to tell the court anything else

in regard to this case which so far has not been told to the court?

A I can only state once more, as I said before, that Moller never received an order from me and if I would have given an order, then I would stick to my order. Otherwise, I have nothing to say.

QUESTIONS BY DR. RAU:

DR. RAU: Second cross examination on behalf of the accused Albrecht.

Q Mr. Michel, you testified that in your opinion the accused Albrecht was not involved in the killing of the flier.

A Albrecht, although he became an officer, was still a kind of subordinate officer and Albrecht was a very decent and fair official who had never done something on his own and if Albrecht would have acted on his own, at least he would have explained it to me and he wouldn't have been so excited at the time when he came to my office.

Q Did you hear in the courtroom that Moller testified that Albrecht was not involved in this case?

A Yes.

DR. RAU: Thank you.

DR. BUNGER: One or two more questions on behalf of the accused Moller.

QUESTIONS BY DR. BUNGER:

Q Is it not correct that Albrecht was Moller's immediate superior?

A Yes.

Q Why should Moller then put the blame on another superior officer at Hersbruck after he had put the blame already on some other

(Michel-Redirect)

superior officer before that time?

A I don't understand the logic.

MAJOR SAXON: I object to that as calling for a conclusion and conjecture on the part of this witness.

CAPTAIN VANCE: If the court please, this witness has been giving conclusions for three hours and I believe the question is proper.

PRESIDENT: Objection overruled.

Q Can you tell me why Moller at Hersbruck, after Jackson's speech, should put the blame on another superior officer after he had put the blame before on some other superior officer?

A I can't decide that.

DR. DUBBER: Thank you. That is all.

PRESIDENT: Court will recess until three-thirty.

DB follows (Whereupon at 1500 hours the court recessed until 1530 hours.)

("hereupon the Court reconvened at 1330 hours.)

THE PRESIDENT: The Court will come to order.

MAJOR SAXON: May it please the Court, let the record show that all members of the Court except Colonel Ackerman, who is absent sick, all the members of the Prosecution, all the members of the Defense, except Colonel Hinman, who is absent on business of the Defense, Dr. Trost, who is absent sick, all of the accused, the reporter and interpreter are present.

HANS EICHEL, an accused, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

MAJOR SAXON: Your witness, Captain Vance.

CAPTAIN VANCE: No further questions by the Prosecution.

MAJOR SAXON: Does the Court have any questions of this accused?

EXAMINATION BY THE COURT

QUESTIONS BY THE LAW MEMBER:

Q Mr. Eichel, in your testimony you said that Gauleiter Sprenger said further to you that these men would be bumped off anyway. What was the occasion of your having that conversation with Mrs. Sprenger?

A It was after an air raid. After an air raid, Reichsstatthalter Sprenger came to Offenbach and inspected the damaged sites.

Q What date was that?

A I can't say that exactly anymore. It was either towards the end of December or beginning of January. We had 57 attacks in Offenbach.

(Eichel-Court)

Q Was that 1944 or the beginning of 1945?

A Colonel, that might have been the end of 1944 or the beginning of 1945.

Q Then you also said something to the effect that it was already known that approximately 60 to 70 fliers had already been killed in Stalag Three. What date was that?

A I can't say that either. All I can say is that there were rumors to that effect and that there was no way of telling whether that was true--there were always rumors. And it was a rumor that 60 to 75 prisoners had been shot, but that rumor was confirmed by the Nuernburg trial.

Q Where was Stalag Three?

A I have no idea. I don't know where Stalag Three is--it might be within the area of the Third Army Corps.

Q Do you know what was the occasion of their being shot?

A No.

Q When you entered the police station on the 22nd of February, 1945, and made some remark, were any remarks made following what you had said or preceding them by Mr. Kiwitt?

A In the presence of Kiwitt? I don't quite understand you, Colonel.

Q Read the question.

A Kiwitt was there.

LAW MEMBER: Read the question.

(Thereupon the question was read by the reporter.)

WITNESS: Kiwitt was cursing, too, but I don't know what he said anymore.

QUESTIONS BY THE LAW MEMBER:

Q You do recall that he made some remarks, do you, in addition to the cursing?

A No.

Q Now what was the occasion of this meeting in which an inspection was made, and the Gauleiter Sprenger was present, and the number of industrials were present, and Major Kuhlenbeck and yourself?

A Well, it's common practice that if the Reichsstatthalter comes to some certain town he would call the Police Director over, and Major Kuhlenbeck, who was the Commanding Officer of the Protective Police, and the Protective Police was primarily the organization bearing the responsibility for air raid protection, and Sprenger wanted to get information of the entire damage done within Offenbach.

Q Was that damage that was done by bombing--air bombing?

A Yes.

Q Who else was there besides the ones that I mentioned?

A The Reichsstatthalter took a whole lot of industrial experts with him, because there were war industries located in Offenbach.

Q Was the purpose, then, of their gathering there to inspect what damage had been done by bombing?

A Yes, and the purpose of having the industrial experts along was to find out how the industries which had been damaged in Offenbach might be moved to some other place promptly.

Q And in that discussion, or inspection, what reference was made to the fliers?

A Since the damage done was quite considerable, the Reichsstatthalter said, "It can't go on like this. From now on all fliers will be shot and finished up."

Q Now when was this inspection made--what date?

A At the end of December or beginning of January.

Q Of the year 1944 and 1945?

A 1944-1945.

Q Were any instructions given to you and Major Kuhlenbeck at that time with reference to what should be done?

A No.

PRESIDENT: No further questions by the Court.

DR. WACKER: Nothing further.

CAPTAIN VANCE: Sir, I would like to ask him one question.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Eichel, you have testified that you were a type of officer that if you received an order you would carry it out explicitly, is that correct?

A Just like every other soldier and every other man would do.

Q If you had received an order to execute your own son, would you have carried it out?

A No.

CAPTAIN VANCE: Nothing further.

WITNESS: That's a question you can't answer.

MAJOR SAXON: Would the Court care for anything further?

PRESIDENT: No further questions. The witness

will take his place in the dock.

(Whereupon the witness was excused and resumed his place in the prisoners' dock.)

MAJOR SAXON: If it please the Court, that concludes the evidence on Charge 7. Mr. Rachael is in charge of the Defense and presentation of Charge 8; and the German lawyers, for the Court's information, who represent the various accused--I thought I might mention here--Fay is represented by Dr. Rau, Hermann by Dr. Aheimer, Mahrgang by Dr. Aheimer, Eichel by Dr. Wacker and Kiwitt by Dr. Buerger; and Mr. Rachael is going to proceed with the Defense.

MR. RACHAEL: I hand the reporter two documents and request that they be marked Defense Exhibit 18-A and Defense Exhibit 20, respectively.

(The documents referred to were marked Defense Exhibit 18-A and Defense Exhibit 20 for identification, respectively.)

MR. RACHAEL: If the Court please, at the close of the evidence for Charges 6 and 10, the Defense attempted to introduce into evidence a statement for which a foundation had been laid by the witness Hucko, at which time the Prosecution objected because it did not have an English translation. The Defense had prepared the translation of the same, and at this time the Defense would like to offer into evidence Exhibit D-18, which has been so marked for identification, which is the statement identified by the witness Hucko, and the English translation thereof, marked for identification by the number D-18A.

CAPTAIN VANCE: We object to the introduction of this statement on the ground that it is a self-serving

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declaration made by this accused not at any one's request--that it is just a paper that he sat down and wrote at his leisure. The law is clear that self-serving declarations are not admissible, which I am sure the Law Member is familiar with, and I will not argue the point.

MR. RACHAEL: If the Court please, this is not a self-serving declaration, because it was made by Girke long before the time he was served with the charge sheet and long before the time that he knew he was a defendant in this case; and, in the third place, I believe the original was taken ok of the file of the case and it was a part of the investigation, or part of the complete, official file of the case; and it is respectfully submitted that the Court, in line with the rules of procedure, should take the statement for what it deems it worth.

CAPTAIN VANCE: May I ask the Defense Counsel--if this is proper--where that statement came from?

MR. RACHAEL: I don't know. I was told by Colonel Herman that it came from the file of the case.

DR. AHEIMER: I might explain this.

CAPTAIN VANCE: I know that not to be true, because we had all the files. What papers you received from the files, you received from the Prosecution.

MR. RACHAEL: Perhaps Dr. Aheimer can explain it.

DR. AHEIMER: I am about to say the following, as the Defense Counsel for Girke. As the witness Hucko testified to here from the witness stand, the accused Girke at one time designed this statement; and the original written according to that plan was turned over to the investigator

Upon his suggestion at that time, the outline for this he kept with him. At the beginning of the trial he was represented by the lawyer, Dr. Trost, and since she turned sick in the meantime, I asked Dr. Trost to send this copy to me from her file; and after I received this paper I turned it over to Colonel Herman's file.

PRESIDENT: Objection sustained.

MR. MACHAKL: The Defense will call as its next witness Ludwig Reiter.

LUDWIG REITER, called as a witness by the Defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. AHRIMER:

Q State your full name to the Court.

A Ludwig Reiter.

Q How old are you, Mr. Reiter?

A 48 years.

Q Where is your residence?

A Offenbach, Frankfurter Strasse 78.

Q What was your residence in February, 1945?

A At the air raid watch, at the fire watch.

Q What town?

A Offenbach.

Q What's your profession?

A At this time construction technician.

Q Was that the profession you were carrying on in February of 1945?

A No.

Q What was your profession at that time?

A First Lieutenant of the Fire Protection Police in Offenbach.

Q For how long had you held this position as First Lieutenant of the Fire Police?

A 1943.

Q Who was your immediate superior?

A Captain Bauts.

Q And who would take this superior's place when he was absent?

A I, myself, did.

Q Do you know a man named Wahrgang?

A Yes.

Q Look around the Court, and if you recognize him, point him out?

A Number 11.

DR. AHEIMER: Let the record show that the witness identified the accused Number 11 as Wahrgang.

Q Do you know a man named Hammann?

A Yes.

Q Have a look around the Court and point him out, please.

A Number 12.

DR. AHEIMER: He identifies Number 12 as Hammann.

Q Do you know a man named Fay?

A Yes.

Q Have another look around and if you recognize him, point him out.

A Number 13.

DR. AHEIMER: Let the record show that he identifies

the accused 13 as Fay.

Q What was the position of the accused Nahrgang whom you just identified in February, 1945?

A He was a platoon leader of an extinguishing platoon.

Q Where was this extinguishing platoon stationed?

A This platoon was stationed on the outside at Bierbrauer Weg.

Q Now what was Hammann's position, if you know? This also in February, 1945?

A Hammann was the driver of a vehicle.

Q What was his rank?

A I don't know exactly--I think Sergeant--I can't say exactly.

Q Where was he stationed?

A Bierbrauer Weg.

Q Do you know what Fay's position was in February, 1945?

A He also was a driver.

Q Where was he stationed?

A Bierbrauer Weg.

Q Do you remember the 22nd of February, 1945?

A Yes.

Q Do you know of anything extraordinary happening on that date?

A Yes.

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Q Tell us about it briefly, as far as you know.

A That evening in question, I was in town. I had some official business there. When I returned to the fire police station, I was told that I had been expected for over an hour.

Q Where was your fire police station?

A In town, Herrenstrasse 52.

Q Continue, please.

A I asked why, what was the matter, and then they said that somebody had been shot on Bierbrauer Weg. Upon that, I rode up to Bierbrauer Weg right away and there the pilot was shown me and the report was made to me, "A pilot shot while trying to escape."

Q What time of day was that?

A I don't know the time of day exactly, but it was in the evening. It was dark.

Q When you say the pilot was shown to you, you mean the dead body of the pilot?

A Yes.

Q And who made a report to you that this pilot had been shot while attempting to escape?

A Hammann.

Q As far as you know, did Hammann have any job on this evening?

A I asked him to prepare a written report, because he had made this report to me in his capacity as commander of the guard that night.

Q Do you know what the duties of the sergeant of the guard or commander of the guard on Bierbrauer Weg used to be?

A He was in charge of inspecting the guard for the security of quarters.

Q Did Hammann's report give any details as to the occurrence of the incident?

A No.

Q Did you ask for details?

A Not that evening.

Q A while ago, you said that you demanded a written report of Hannemann. Was that written report made?

A I received it the next morning.

Q Do you remember the wording of this report, perhaps?

A No, only in substance, "flier shot while attempting to escape."

Q After receiving this report, did you conduct any investigations on your own?

A I transmitted this report to the police, since the matter was a matter for the police anyway.

Q Were there any special regulations to the effect that if any incident occurred which might be of a criminal nature that this incident would then have to be reported to the police for investigation?

A Yes.

Q Later on, did you find out any more details about this incident?

A Well, only what was common talk.

Q Did you talk about the case some more to Hannemann, Habrgang and Fay?

A I talked about it to Fay at the fire police station.

Q What did Fay tell you?

A That the flier had run into the shelter, had struck him on the chest, and had run away across the terrain.

Q You said the shelter, he ran into the shelter. By that, do you mean the building itself or do you mean the Valentinalley?

A I mean the territory, the terrain. This terrain was fenced in. There was a gate out front.

Q Do you know the territory around the Bierbrauer Weg?

A Yes.

Q I hand you a piece of paper which has been marked for identification As Defense Exhibit 20 and ask you whether you have ever seen this piece of

(SEVEN-Pieper)

paper before?

A Yes.

Q What does it represent?

A That is the terrain, the vicinity around Bierbrauer Weg, all the buildings, the Feldschmiller.

Q Who prepared this map?

A By the surveying office, Offenbach.

Q Did you have anything to do with the preparation of this map?

A Yes.

Q When?

A By request of Colonel Berman, I had this map prepared.

Q Is the office which prepared this map an official office of the Offenbach municipal administration?

A Yes.

A Yes.

Q What is the scale of this map?

A One to five hundred.

PRESIDENT: Ask the witness to speak loudly.

(Whereupon the interpreter did as directed.)

THE WITNESS: Yes.

QUESTIONS BY DR. AMELUNG:

Q Do you know whether the representation is true to scale?

A It must be, since it was prepared from the original documents of the city.

DR. AMELUNG: I now offer in evidence as Defense Exhibit 20 a chart of the vicinity of Bierbrauer Weg and request that it be received in evidence and attached to the record.

CAPTAIN VANCE: May it please the court, I have no idea of objecting to it, but with the permission of defense counsel, so I will answer a few things for myself, I ask him if he will yield and let me ask him a few questions about the map.

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DR. AHRENER: Yes, I have no objection.

CAPTAIN VANCE: What do you mean by one to five hundred? Is that centimeters, meters, feet, yards or what?

DR. AHRENER: Objection on my part. I think that the matter is perfectly clear, that this is only the representation of a relation one centimeter on the map equal to five hundred centimeters in nature, or one kilometer on the map equal to five hundred kilometers in nature.

CAPTAIN VANCE: That is all. No objection.

MR. RACHAEL: If the court please, for the use of the court we have three additional maps.

PRESIDENT: Defense Exhibit 20 will be received in evidence and made a part of the record.

(The document heretofore marked Defense Exhibit 20 for identification was received in evidence as Defense Exhibit 20, is attached hereto, and made a part of the record.)

QUESTIONS BY DR. AHRENER:

Q I will ask a few more brief questions, with permission, on half of Prosecution Exhibit 126. The original is stapled in there and hard to get at. I request permission to make use of the photostatic copy.

PRESIDENT: Permission granted.

Q On top of Exhibit D-20, I hand you a photostatic copy of another exhibit, P-126. This last-named exhibit is supposed to represent the same area. Have you ever had this photostatic copy shown to you by me?

A Yes.

Q Did you have a look at it while I showed it to you?

A Yes.

Q Since you are personally familiar with the terrain, can you tell us briefly whether there are any material differences between this chart P-126 and D-20?

A Yes.

Q State these differences briefly, please.

A In the first place, this one hollow road here is not as close to this building here and it meets Bierbrauer Weg at an angle.

DR. AHRIMER: Let the record indicate that the witness means the hollow path lying next to the Felsenkeller.

QUESTIONS BY DR. AHRIMER:

Q Any further material differences?

A Adjacent hereto, there is a second garage which is not shown here at all.

CAPTAIN VANCE: May it please the court, I don't think the court can know what he is talking about here. If counsel will let him use the big wall map, then the court would know what he is talking about.

DR. AHRIMER: That is perfectly true. I will ask this same question again with reference to this enlargement of P-126.

QUESTIONS BY DR. AHRIMER:

Q Please come over to this chart marked P-127 and show us these divergencies which you just mentioned one more time.

(Whereupon the witness left the witness stand.)

A This hollow path here meets Bierbrauer Weg over here at an angle, immediately.

Q You mean that this hollow path meets Bierbrauer Weg at a right angle?

A It forms an archway, it is bent over this way around here, and meets Bierbrauer Weg at an angle. Then the other garage adjacent to here, next to this garage. There is a hollow place, an entrance to another beer garden, and the woods starts only over there.

Q By that, you mean to say that this woods does not start right next to this road which leads away, but is further on down?

A Yes, lies further on down.

Q Can you say anything about whether the proportions on this chart, P-127, are correctly represented?

A It doesn't seem that way. The building is somewhat more narrow.

Q What is the true location of this staircase which is indicated on P-127 as Point E?

A The staircase located about here, behind this building.

DR. AHEIMER: Let the record indicate that the witness claims that the staircase is located behind the building labelled as "wood shack."

Have a seat, please.

(Whereupon the witness resumed the witness stand.)

QUESTIONS BY DR. AHEIMER:

Q You just said that you used to be the deputy of this captain in charge of the fire police?

A Yes.

Q Did orders coming to the fire police go through your hands?

A Yes.

Q Do you know whether any kind of orders concerning the treatment of enemy fliers ever came down to the fire police?

A No.

Q You never got any such orders?

A No.

Q Do you know whether Nahrgang was a member of the SS?

A I don't know anything about that.

DR. AHEIMER: That is all.

MR. RACHAEL: You may interrogate.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You would say that this sketch over here was not drawn by an expert and is very crudely drawn and not according to scale, is that right?

A Well, it is all right as a general sketch but not according to scale.

CAPTAIN VANCE: Nothing further.

(REITER-Cross)

MR. RACHAEL: Does any member of the court have any questions?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MR. RACHAEL: Defense will call as its next witness one Karl Schneider.

KARL SCHNEIDER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. AHEIMER:

Q State your full name to the court, please.

A Karl Schneider.

Q How old are you?

A 45 years.

Q What is your residence?

A Offenbach on the Main.

Q Please wait with your answers until the interpreter has translated the questions. What is your status at the present time? Are you free or are you in prison?

A I am in prison.

Q What were you in February, 1945?

A Reserve police sergeant.

Q Are you the same Karl Schneider who once testified here before as a prosecution witness?

A Yes.

Q Do you remember what the end of your examination by the prosecution was at that time?

A Yes.

Q And is it a fact that you ended by saying that you, together with Police Sergeant Michel and an American flier, came over to the gate?

A Yes.

Q What was the purpose of your going to the Bierbrauer Weg at that time?

A On account of the air raid alarm, there was anti-aircraft fire going on, and shrapnel was coming down, so we were looking for protection, for cover.

Q Where were you trying to find cover?

A In the shelter.

Q What shelter are you talking about?

A We went to the police shelter.

Q Did you know that there was a shelter at Bierbrauer Weg near the Felsenkeller?

A Yes.

Q Was that the only reason you went over to Bierbrauer Weg, namely, to seek cover from this shrapnel? Was that the only reason?

A To find cover.

Q I would like to remind you again to wait until the interpreter has translated the questions. What direction were you coming from when you reached the gate next to the Bierbrauer Weg?

A A northerly direction.

Q I show you a chart marked Defense Exhibit 20 and ask you to have a look at it.

A I was coming from over here.

DR. AHEIMER: Let the record show that the witness indicated that he came along Bierbrauer Weg from a direction Gemartungburgal.

Q You just said you were not coming from Gemartungburgal, but from Lemmerspierweg?

A I don't know whether it was the Burgal area; it was this Lemmerspierweg, though.

Q At any rate, it is the same direction just as you said you came from the north, is that right?

Ta 239-ps-60-2/28-9

A Yes.

Q Did you, Michel and the American flier arrive at the gate at the same time?

A No, Michel went on out.

End ta 239
wfj fols

Q Do you how much or for how long Michel might have been ahead?

A Five or three hundred meters he might have been.

Q Why did he go ahead?

A He suddenly said, "It is getting too dangerous for me."

Q So he first left you and the flyer behind, is that right?

A Yes.

Q And when did you meet Michel again, if you met him at all?

A At the gate.

Q You mean the gate entering the Felsenkeller?

A Yes.

Q Please mark "X" here with a pencil.

A That is the gate here. (Indicating)

Q Did Michel wait for you at that gate?

A Yes, he did.

Q And where did you go then?

A We went through the gate with the flyer.

Q You said "WE". Who do you mean by "We"?

A Michel, Schneider and the flyer.

Q What direction did you walk in?

A To the shelter.

Q The three of you, Michel and you and the flyer, did you go there by yourselves?

A We didn't get there all the way when a man joined us.

Q Will you tell us where that happened when another man joined you?

A It might have been fifteen meters ahead of the staircase.

Q Did you know that man who joined you?

A No.

Q Do you know what he looked like?

A No.

Q Couldn't you see that?

A No, it was dark. I should think he was about medium height.

Q You were talking about a staircase. Do you mean a stair going to the air raid shelter?

A Yes, the one going down to the air raid shelter.

Q Did you go down that stairs?

A No.

Q Why not?

A Because the flyer ran away first.

Q Did he run away suddenly or did he indicate his intentions in any way before he did?

A He got himself some elbow room with his arms and ran away.

DR. AHEIMER: Let the record indicate that the witness indicated with his arms both to the right and to the left.

Q By this motion with his arms, did he hit anybody?

A I couldn't observe that because it was dark.

Q What direction did the flyer start running?

A He ran on ahead.

Q You mean in the direction of the staircase?

A In the direction of the staircase.

Q Why didn't you follow him?

A We wanted to cut off his way because we wanted to take him back to Bieber.

Q You said you wanted to cut off his way. Then you thought there was a chance to cut off his way?

A Yes.

Q What was that chance?

A Because I knew the way.

Q What did you do then?

A Michel and I turned around and ran back to the gate. We left by the gate that we came in before.

Q Did you then reach this point where you wanted to cut this flyer off?

A We got a little bit beyond the gate and then the flyer was brought over.

Q Was he brought there alive or dead?

A He was brought there dead.

Q Had you heard any shots before that?

A Yes.

Q How many?

A I think about two.

Q Do you know who fired these shots?

A No.

Q You said that you yourself ran back to cut off the flyer. What did Michel do?

A Michel went back too.

Q So the two of you went back?

A Yes.

Q You said that one man about medium height joined you about fifteen meters from the stairs. What did this man do after the flyer ran away?

A I wasn't able to see anything because there was a building ahead of us on the left.

Q Did this man run after the flyer?

A He might have. This man was running ahead.

Q What do you mean when you say he was running ahead. Do you mean in the same direction as the flyer?

A Just like the flyer.

Q Did you hear any calls or did you yourself call out anything when this flyer ran away?

A Michel yelled that the flyer has run away.

Q Did the other man who had joined you say anything?

A I can't say.

Q How long did it take from the time the flyer ran away until you ran back to Bierbrauer Weg and the flyer was brought back as dead?

A It might have been three minutes.

Q Where was the body of the flyer taken to?

A To the garden.

Q Did you go along that time?

A Yes, I did. Yes, we went along.

Q Did you stay for an extended period of time in that garden?

A No.

Q Where did you go then?

A We went back to the police branch office in Bieber.

Q What did you do at the police branch office in Bieber?

A We reported what the deal was and Sheinrad said he felt sorry for this man, "I tried to save his life and you people were chased out there."

MR. ANDREWS: Nothing further.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Schneider, when you took this American flyer there you knew he was going to get killed, didn't you?

A No.

Q Wait a minute. You remember what you testified before?

A No.

Q Well I don't want to lead you, so you tell me what Captain Kivitt told you before you left with the flyer?

MR. RADEMR: The defense objects on the ground that it is beyond the scope of direct examination.

PRESIDENT: Sustained.

QUESTIONS BY CAPTAIN VANCE:

Q You didn't have any idea that this flyer was going to get killed, is that correct?

to take the flyer to Heinz Strasse and shoot him.

Q So did you take him to Heinz Strasse and shoot him?

A No, we went through Heinz Strasse on the way.

Q And due to an air raid, you decided to go to the air raid shelter with him?

A Yes.

Q So he was shot there and saved you the trouble of shooting him, is that right?

MR. RAUHAUS: The defense objects.

PRESIDENT: Objection overruled.

THE WITNESS: No. We wanted to take the man along. That is why we didn't shoot.

QUESTIONS BY CAPTAIN VANCE:

Q You had your orders to shoot him, didn't you?

A We had our orders to shoot but we said that we wouldn't do that, after all the man is a prisoner of war.

(Schneider - Cross)

A Captain Kivitt told us that we ought to shoot the flyer.

Q So it had all been arranged that the flyer was going to get shot if he did try to escape, is that right?

A I beg your pardon. No, no, we wanted to take him back to Bieber. That is why we didn't shoot.

Q Hadn't there been a discussion about this flyer being shot?

A Discussion?

Q Yes.

A No, we were just told at the headquarters that we ought

Q When you got there at this gate, which is marked "F" on Prosecution Exhibit 127, who did you have a discussion with?

A There was a guard standing there.

Q Did you talk to him?

A The guard said, "Who have you got here?" Upon that we said we had a captured flyer and we were supposed to turn him over and we couldn't turn him over and then we were supposed to shoot him and we said that we couldn't do that and we will take him to Bieber and we will just get here in a bunker until the danger is over.

Q Who else did you tell that story to?

A Nobody else.

Q Well, did Fay know about it?

A Who, Fay?

Q Yes.

A Well, I don't know him.

Q Did Hannann know about it?

A I don't know these people.

Q Who else did you talk to there besides this guard at the gate?

A We didn't talk to anybody else.

Q You knew the flyer was going to get killed because it was the orders that all flyers who fell into the hands of the police, meet their death, didn't you?

A No, we told ourselves that this man won't get shot. We will take him to Bieber.

Q You knew all other flyers who got into the hands of the police were shot, didn't you?

A Yes, but we said that this man is a prisoner of war.

Q I am not talking about this man. I am talking about the others.

MR. RACHAEL: We object. That is beyond the scope of direct examination.

PRESIDENT: Objection overruled.

QUESTIONS BY CAPTAIN VANCE:

Q Didn't you know that all flyers that the German police got their hands on got killed?

A No, Mr.

Q You didn't know about that?

A No.

Q Well, you knew if you didn't kill this flyer that some other policeman was going to kill him didn't you?

MR. RACHAEL: The defense objects.

PRESIDENT: Overruled.

THE WITNESS: No, I didn't know that.

QUESTIONS BY CAPTAIN VANCE:

Q He was killed at the hands of the police force?

A Yes, he was shot while trying to escape up there.

Q Now, did you first hear some shots up near the steps?

A I heard some shots up there.

Q And then did you hear some more shots on the Bierbrunner Weg?

A I heard two shots.

Q You said you heard some at the steps. Did you hear some anyplace else?

A I can't say exactly. I don't remember anymore. I think of only two shots.

(White - Halbert)

(Schneider - Cross)

Q Where did the American get killed?

A I don't know that. I wasn't there.

Q You don't remember much about this case now, can you?

A No, we came to the gate and a little piece beyond it and then the flyer was brought.

Q You don't remember much about this case now, can you?

A No, all I know is that we got beyond the gate and then the flyer was there.

Q You don't remember much about this case now, can you?

A No.

CAPTAIN VANCE: I won't question you any further.

REDIRECT EXAMINATION

QUESTIONS BY MR. MICHAEL:

Q You did learn that the flyer tried to escape? You remember that?

A Yes.

Q And you do remember that the flyer made a motion with his arms as you indicated?

A Yes, that I recall.

Q And you do remember that the flyer ran around the building and down the steps, don't you?

A Yes, there is only this one way down there.

QUESTIONS BY LT. DUNCAN:

Q Where did you get this order to shoot the flyer?

A We got the order, or rather Captain Hewitt told us we ought to shoot this man.

Q Where was that?

A At the headquarters.

Q Where were you coming from when you got to the headquarters?

Q And did you take the man to the headquarters of the Protective Police?

A Yes.

Q And when did you turn the man over to there?

A We went into a room and there was First Lieutenant Trautmann there and then we put his valuables down and then Kimitt was called.

Q What did Captain Kimitt tell you?

A Kimitt took us along the room next door.

Q What did he tell you?

A He asked us why we took this flyer over here.

Q What did you say?

A And he said, "Why didn't you bump him off."

Q I asked you what you said after that?

A That we were supposed to turn him over here.

Q How did this conversation develop then?

A He said, "You are supposed to handcuff him and shoot him in Main Strasse."

A We were coming from Bieber to Offenbach and we arrived in Offenbach and Kirrit told us, "How dare you bring this man down here."

Q Did you take this flyer along from Bieber to Offenbach?

A Yes.

Q What was the order you received in Bieber as to what you were to do with the flyer?

A To turn the flyer over to the police headquarters.

Q To the police headquarters or to the headquarters of the Protective Police?

A Headquarters of the Protective Police.

Q Who gave you this instruction?

A Sgt. [illegible]

Q Was that an order?

A Well, we took it to be an order.

Q Was there any mention of the fact that Major Kuhlenbeck had ordered him there?

A No.

Q Do you remember that definitely?

A I don't know anything about Kuhlenbeck.

Q Was anything said about the commanding officer having ordered that?

A No.

Q Did you then shoot this man upon this order?

A No.

Q Was that man shot on account of this order?

A No, he was shot on account of he ran away.

QUESTIONS BY DR. AHRENS:

Q Mr. Schneider what did you tell Captain Kiwitt when he said you were to take him back and shoot him?

A We couldn't do that because he was a prisoner of war.

Q Did you say that or did Michel say that?

A I think that both of us, but I can't say for sure.

Q One final question, did you just now say that you went back to Biesbrauer Weg after the flyer ran away? Did you run back that path or did you walk back?

A We walked a piece and ran a piece going back.

DR. AHRENS: Nothing further.

CAPTAIN VANCE: Nothing further.

MR. RACHAEL: Are there any questions by the Court?

PRESIDENT: Nothing by the court. The witness is excused and will resume his seat.

(Whereupon the witness was excused and returned his seat in the prisoners' dock.)

MR. RACHAEL: The defense will call as its next witness Frederich Michel.

FREDERICH MICHEL, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. ARNDER:

Q State your full name to the court.

A Frederich Michel.

Q How old are you?

A Fifty one.

Q What is your place of residence?

A Offenbach on Main.

Q At this time are you free or are you in prison?

A At this time I am confined.

Q What is your profession.

A Typesetter.

Q Was that the occupation you were practicing in February, 1945, as well?

A No.

Q What was your profession at that time?

A I had been drafted into the police.

Q Give us your position in the police that you got drafted into.

A As a corporal in the reserve.

Q Where were you stationed?

A Bieber.

Q You mean at the police station in Bieber?

A Yes.

Q Do you remember the twenty second of February 1945?

A Yes.

PRESIDENT: Court will recess until Monday morning at 9:00 o'clock.

(Whereupon the court recessed at 1645 hours until 0900 hours 3 March, 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

Court (26)

MILITARY GOVERNMENT COURT

CASE RECORD.

Pages 1771 - 1871

Case No. Superior Orders

*~~Summary~~ ~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 3 March 194 7

~~WITNESSES~~ WITNESSES:

FREDERICH MICHEL

BERNHARD FAY

PHILIPP HALMANN

PAUL NAHRGANG

Accused JURGEN STROOP, et al

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Herbert B. Rosenstock

Interpreter Rudolph Nathansen

Reporter Patricia Stewart, William F. Jones, Peter Di Curti, Paula L. Silverman, Sally Hayett, Imogene Butler, Irving Hayett, Evelyn Cohen

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning 194
- Fine
  - Amount .....
  - To be paid before 194
    or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JULIUS STREICHER, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

3 MARCH 1947 Pages 1771 - 1871

TESTIMONY

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	COURT
Frederich Michel	1771	1774	1779 1785 1787	1784 1789	1786
Bernhard Fay	1791	1796	1805 1810 1813	1807 1815 1820	1810 1818
Philipp Haussmann	1821	1830			1841
Paul Wahrgang	1846	1852	1865	1869	1866

EXHIBITS

No.	Description	Marked	Received in Evidence
D-21	Statement of Bernhard Fay	1816	1817
D-21A	Translation of D-21	1816	1817

Camp Dachau, Germany

3 March 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent sick; all of the accused, except the accused Truemler, No. 2, who is temporarily absent conferring with defense counsel; the reporter and interpreter are present.

MR. RACHAEL: If the court please, at the close of the session on Friday, the witness Michel was on the stand on direct examination.

FREDERICH MICHEL, called as a witness by the defense, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. AHRENS:

Q Mr. Michel, you told us at the end of the last session on Friday afternoon that in February, 1945, you were stationed at the police station in Bieber, is that correct?

A Yes.

Q Do you know a building in Offenbach which is called the Felsenkeller?

A Yes.

Q Were you ever in this building or the area around this building?

A No, on the 22nd of February.

Q You want to say that you were in this building only once?

A Yes.

Q At what time of the day on the 22nd of February was this?

A Approximately 9 or 9:30 in the evening.

Q From which direction did you come to the Felsenkeller at that time?

A From Offenbach, Laemmerspieler Weg.

Q At that time, did you come to the Felsenkeller alone or accompanied by somebody?

A I was with a Sgt. Schneider and a parachuted flier.

Q For which purpose did you go to the Felsenkeller?

A There was an air raid alarm, and we wanted to find protection.

Q You said there was an air raid alarm going on. Were bombs already dropped and shots fired?

A Shooting was already going on, and I think that bombs were already dropped, but I can't say that for certain.

Q Is there an air raid shelter in the Felsenkeller?

A Yes.

Q Did you go to the Felsenkeller for this one reason, to find protection there?

A Yes.

Q You mentioned before a Sgt. Schneider. Is this the same Sgt. Schneider who testified before this court last Friday?

A Yes.

Q Did you, Schneider and the flier arrive at the Felsenkeller at the same time?

A I was —— I had run ahead a little bit on our way.

Q Where did you meet them, the flier and Schneider, again?

A On the Bierbrauer Weg.

Q You want to say at the entrance of the Felsenkeller?

A Yes, right at the entrance.

Q Did you, Schneider and the flier then go from there together?

A Yes. We went up the stairs, through the garden, up to the air raid shelter.

Q Where is the air raid shelter, if you will look at it from the garden?

A I don't know it exactly. I know only that the air raid shelter was down there in the ravine behind the garden.

Q You mean behind the garden?

A Yes.

Q Did you come to the air raid shelter then?

A No.

Q Did anything happen on your way from the entrance to the garden through the garden?

A When we were nearly through the garden, all of a sudden the flier was gone.

Q At that time, who was in the neighborhood of the flier?

A We were behind him. I can't say it exactly, Sgt. Schneider and myself, and it is possible that somebody else was behind, but I don't know exactly.

Q All of a sudden, you said the flier was gone. Didn't you see him go away?

A All of a sudden, he ran away.

Q Did you see it when he started to run?

A Yes.

Q Did he before make any move or something like that?

A I couldn't notice that.

Q You said you couldn't notice that. Why not?

A It was dark.

Q Did you do anything after the flier had run away?

A I yelled, "The flier is gone."

Q Did any other people yell too?

A We went back, and then I heard that other people were yelling, too.

Q Can you say how many voices were yelling there?

A I can't say that.

Q You said before that somebody had followed you. Do you know where this individual was after the flier ran away?

A No.

Q What did you do after the flier had run away?

A We went back through the garden in the direction of Bierbrauer Weg.

Q Is that the same direction in which the flier went?

A No.

Q Did the flier go in the opposite direction?

A The flier went straight ahead and we went back.

Q Why didn't you follow the flier?

A Because you could hear calls that he would be cut off on the road.

Q The way back — did you walk it or did you run it?

A We walked pretty fast.

Q One other question. On your way from the gate up to the place where the flier started to escape, did you talk to anybody?

A No.

MR. RACHAEL: You may examine.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You and Schneider had the American flier in custody, is that right?

A Yes.

Q When and where did you first see this American prisoner of war?

A In Bieber, in the police station.

Q Is that Colonel Eichel's headquarters?

A No, that is the station of the police at Offenbach.

Q Is that where Captain Kiwitt worked? Was this his headquarters?

A No.

Q What headquarters did you get him from? What police station?

A In Bieber, at the police station, Mauerfeld Street.

(MICHEL-Cross)

Q What I am trying to find out is what kind of police station, the Gestapo, the Order Police, or who was it?

A Order Police.

Q Who had him in custody when you took him?

A Police Master Goehrendt was present. He was assistant station leader.

Q Do you know this man Goehrendt you are talking about?

A Yes. He was my superior officer.

Q Is he in the courtroom today?

A Yes.

Q Will you point him out to the court?

A No. 10 (indicating).

CAPTAIN VANCE: Let the record show the witness identifies Goehrendt, wearing Placard No. 10.

QUESTIONS BY CAPTAIN VANCE:

Q Now, at that time, was the flier turned over to you and Schneider?

A Might have been around 8 o'clock.

Q At night or daytime?

A In the evening.

Q Why was the flier turned over to you and Schneider?

A We got the order and some written paper from Police Master Goehrendt that we should deliver the flier to police headquarters at Offenbach, in the Domstrasse.

Q Did you take him to that place?

A Yes.

Q What happened when you got there?

A When we came there to the second floor, we were called by Captain Kiwitt in the room next door, and there we were told that we were auxiliary policeman and we had taken the flier six kilometers through the woods, and still hadn't bumped him off.

Q Who told you that?

A Captain Kiwitt.

Q Do you know Captain Kiwitt?

A Yes.

Q If he is present in the courtroom, point him out.

A No. 7 (indicating).

CAPTAIN VANCE: Let the record show the witness identifies the accused Kiwitt, wearing No. 7.

QUESTIONS BY CAPTAIN VANCE:

Q Now, this paper that Goehrendt gave you to take over there -- did you read it?

A No.

Q So you don't know what the paper said, is that correct?

A No. Furthermore, I had the personal belongings of the flier, too.

Q So you don't know what was in the message from Goehrendt to Kiwitt, is that right?

A I don't know that.

Q How did you get from the place where Goehrendt was to the place that Kiwitt was? Did you walk or did you ride in an automobile?

A We walked. We walked from Bieber to Offenbach.

Q Did the flier attack you at any time during that walk?

A No.

Q Did he try to run away or escape from you?

A No.

Q Did you have any trouble with him whatsoever?

A No. Once in a while, a civilian was calling something, that was all.

Q How long did you stay at Captain Kiwitt's office?

A Perhaps 15 minutes.

Q Then were you directed to take the flier away from there?

A He said, "Get out with the flier and bump him off."

Q Who is he?

A Captain Kiwitt.

Q All right. After he told you that, did you and Schneider leave with the flier?

A He said to us, "take the flier out and bump him off."

Q Was the flier present when Captain Kiwitt told you that?

A He was standing in front of the door in the next room.

Q Was he in hearing distance?

A He could have heard it.

Q All right. When you left Captain Kiwitt's office with these instructions, where did you go?

A We intended to go back to Bieber.

Q Why?

A Because we didn't want to bump off the flier.

Q Did you and Schneider discuss this and decide you weren't going to bump off the flier?

A We decided that we are going to bring him back.

Q Bring him back where?

A To Bieber, back to the police station.

Q Back to where Sergeant Goehrendt was?

A Yes.

Q How did you get to this Felsenkeller?

A We went through the Main street, past the cemetery, the freight railroad station, and when we were at the freight station, there was an air raid alarm and from there we went under the railroad tracks, through the Laenmerspieler Weg, past the stadium and went to the Felsenkeller.

Q Is the Felsenkeller on the way from Kiwitt's office to Goehrendt's office?

(MICHEL-Cross)

A You can take this road and you can also take another road, but we picked this road because there was a bunker.

Q Which was the shortest route from the [illegible]?

A This must have been exactly the shortest route.

Q Now, how long did it take you to walk the flier from Kiwitt's office to the Felsenkeller?

A More than half an hour. [illegible] to keep the flier off

Q Did you talk to the flier or try to talk to him during that time?

A No, we didn't say anything. [illegible] bumping off

Q When did you and Schneider talk this matter over and decide you didn't want to bump this flier off?

A Already down at the Sex Street. [illegible]

Q And at that time, the flier was with you?

A The flier was with us.

Q He was there close by, and he could hear what you were saying to each other? [illegible] chief of staff and Commander.

A Yes, [illegible] given you?

Q So the flier was in a position to know that the high officials wanted him killed?

A Yes, he could hear it.

Q When you arrived at the Felsenkeller, you told them there that Captain Kiwitt wanted this flier bumped off, didn't you?

A We said only we had a flier who was to be bumped off and we wouldn't do it. [illegible] the flier in the building where Keller [illegible]

Q After you told them that you had a flier that was to be bumped off and that you would not do it, what is the length of time that the flier lived from then until the time he was dead?

A Approximately 15 minutes, I figured. It might have been a little bit more, I don't say it exactly. Kiwitt gave you an order, or was it [illegible]

CAPTAIN VANDE: Nothing further. [illegible] but I will

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REDIRECT EXAMINATION

QUESTIONS BY MR. RACHMAL:

Q How long did the flier live from the time he ran away?

A Might have been 15 minutes, I can't say it exactly.

Q Did you tell anybody to bump the flier off?

A No.

Q Did anybody at the gate say they were going to bump the flier off?

A It isn't known to me.

Q Was there any conversation at all with respect to bumping off the flier after you went into the courtyard?

A No.

Q And you were in the company of that flier at all times until he ran away, is that right?

A Yes.

QUESTIONS BY DR. BUERGER:

Q DR. BUERGER: In behalf of Kiwitt and Goehrendt.

Q What was the order Goehrendt had given you?

A Goehrendt had given me the order that we should bring the flier to Offenbach.

Q Where?

A To police headquarters in Domstrasse.

Q Is police headquarters in Domstrasse?

A Yes.

Q Did you go with the flier in the building where Police Director Eichel has his office?

A No.

Q Where else did you go?

A In the building where headquarters of the Order Police is located.

Q You said before Captain Kiwitt gave you an order, is that correct?

A He said, "Get going with the flier and bump him off," but I really

didn't consider it as a real order.

Q Do you know whether Captain Kiwitt, before he told you so, had telephoned to somebody else?

A No.

Q Do you know whether he said the mayor or the commander had ordered so?

A No.

Q Then why didn't you consider this utterance by Captain Kiwitt to be a binding order?

A If he would have said, "You have to bump him off," then I would have considered it to be a direct order.

Q Was the flier shot on account of this order?

A No.

Q After the flier was dead, where did you go?

A We went back to Bieber.

Q Who was present in Bieber when you returned?

A Police master Goehrendt.

Q Did you report to him this incident?

A Yes.

Q What did you report to him?

A I said that the flier had been shot while trying to escape.

Q What did Goehrendt say in reply?

A Goehrendt said, "I just wanted to save the flier. For this reason, I gave you the flier.

Q Let us return once more to police headquarters. Do you know how far away the police headquarters is from the headquarters of the Order Police?

A The headquarters of the Order Police is in the Domstrasse, and the headquarters of the Police Director Eichel is in the Caserne; as far as I know, approximately half an hour.

Q You just said that Goehrandt told you he wanted to save the flier. Did he say anything else?

A He said, "Only just for this reason I had him escorted by you two harmless fellows."

Q Do you know whether the flier understood German?

A No, I can't say that.

QUESTIONS BY DR. AHEIMER:

Mr. Michel, you were asked before by the prosecutor whether the flier could have heard your conversation with Captain Kiwitt. You said the flier was standing in the next room near the door. How far away from the place where you were talking to Captain Kiwitt was this?

A Four or five meters.

Q And the door was in between?

A Yes, the door was closed.

Q The door was closed?

A Yes, the door was closed.

Q Is it then correct that in spite of the closed door the flier could have heard what was being talked?

CAPTAIN VANCE: I object, may it please the court. The witness has answered this question.

DR.AHEIMER: I think I have the right to clarify whether the witness didn't make a mistake. It was just clarified that the door was closed.

PRESIDENT: Objection overruled.

THE WITNESS: I can't say that exactly. We didn't talk so loud.

QUESTIONS BY DR. AHEIMER:

Q It wasn't talked so loud?

A No.

Q Did you speak with Captain Kiwitt in your Offenbach dialect?

A Yes.

Q Did you tell Captain Kiwitt that you refused to bump off the flier?

A Yes. We said, "we won't bump him off."

Q Did you say so, or Schneider, or both of you?

A Schneider said it and me, too.

Q Did you say so already at the office of Captain Kiwitt?

A We said so while we walked out.

Q Did the flier speak any word of German?

A No.

Q Do you know whether he understood German?

A I can't say that.

Q Did you have the impression that he understood your Offenbach dialect?

CAPTAIN VANCE: We object to what his impression was. He said he didn't know whether the man spoke or understood any German.

PRESIDENT: Objection sustained.

QUESTIONS BY MR. RACHAEL:

Q After you left Captain Kiwitt's office, what street did you go down?

A Down the Dom street.

Q Did you get to the Mainstrasse?

A From there, you get to the Main street.

Q Was that the street where Captain Kiwitt said you were to bump the flier off?

A Yes, because we have to walk through there.

Q And did you walk through there?

A We walked through.

Q About how far along Mainstrasse did you walk?

A Approximately 10 meters. You only walk part of the way through Main strasse, and then you get into another street.

Q When you were on Mainstrasse with Schneider and the flier, did

anybody from Captain Kiwitt's office come to speak to you?

A Not in the Main street, but at the freight station.

Q That was after you passed through and you had finished going on Mainstrasse?

A Yes.

Q And what did this person say to you?

A He called to me over the street, "What is going on with the flier," and I said, "We are going to bring him back to Bieber," and then he walked away and I didn't see him any more in the darkness.

Q Who was that man?

A That was Lt. Alt.

Q And was Lt. Alt in the same office as Captain Kiwitt?

A No.

Q Did Lt. Alt know of the conversation you had with Captain Kiwitt?

CAPTAIN VANCE: We object on the ground this witness couldn't possibly answer that question. How does he know ———

DEFENSE COUNSEL: He might know. I pray the court's judgment, if he knows.

CAPTAIN VANCE: He can ask him if he was there when they had the discussion.

PRESIDENT: How does that question read?

(Whereupon the last question was read by the court reporter.)

PRESIDENT: The objection is overruled.

THE WITNESS: I don't know that.

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Q When Goehrendt turned the flyer over to you and to Schneider, what did he tell you to do. If you know his exact words.

A He said only, "You bring him to police headquarters at Offenbach."

Q Are those the only words he said?

A Yes, otherwise I don't remember anything else.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q And after Goehrendt sent you to the police station is when Kiwitt said the flyer should be killed, is that right?

A Yes, while we were at police headquarters.

Q And if Goehrendt had told you to deliver this flyer to the Wehrmacht or the Luftwaffe, you would have taken him there?

A Yes.

Q And if he wanted to protect this flyer that would have been the place to take him, wouldn't it?

MR. RACHAEL: The defense objects on the ground that it is argumentative.

PRESIDENT: Sustained.

QUESTIONS BY CAPTAIN VANCE:

Q Now, what was the total length of time that you had the flyer with you from the time you got him from the time he ran away and was shot?

A An hour and a half, at least.

Q At the time you say he ran away, how many police officials were present?

A I can't say that.

Q Was it as many as thirty around the area?

A I have no idea.

Q Well, how many people did you see that night?

A Where, at Felsenkeller?

Q Yes.

A There might have been twenty. I can't say exactly. I am not certain.

Q Then the flyer decided to run away in the presence of about twenty people, is that correct?

A No, they were behind in the dark.

Q Now he had been for at least an hour and a half just in the presence of the two of you, is that right?

A Yes.

Q And he never did try to run away from the two of you in that hour and a half period?

A No.

Q Now, I believe you told Captain Kiwitt that you were not going to kill that man, is that right?

A Yes.

Q And you did not kill him, is that right?

A No.

Q What punishment have you received for the failure to kill that flyer?

A Nothing.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q How long before the flyer ran away was there a blackout?

A When we left Bieber it was already pretty dark.

MR. RACHAEL: No further questions.

QUESTIONS BY MR. AHRENS:

Q Mr. Michel, before in reply to a question of the prosecutor you said that there approximately twenty persons in and around Felsenkeller?

A After the flyer had taken off and we returned then there were people around and I thought he was referring to them.

Q You wanted to say that after the flyer ran away you had seentwenty people, is that right?

A Yes.

Q Before the flyer ran away, I mean from the time you went through the gate and through the garden until the time the flyer escaped, did you see any people?

A Nothing.

MR. RACHAEL: That is all. Are there any questions by any member of the Court?

EXAMINATION BY THE COURT

QUESTIONS BY COLONEL ROBERTSON:

Q When you and Schneider and the flyer arrived at the gate you said previously that you told someone that you had brought the flyer there to be shot. Who was that man that you spoke to?

A These were the two guards there.

Q Did you see any other people besides the guards while you were in the garden?

A I can't say that exactly. I didn't see anybody. I can't say definitely.

(Michel - Court)

Q Where did the two guards go to after you spoke to them?

A The guards walked only up and down in front of the gate.

Q From the time you turned in to the gate, where were you and Schneider when the prisoner started to run?

A We were behind the flyer.

Q Who else was with you?

A There was a third man with us.

Q Who was he?

A I can't say that. I don't know him.

Q From which direction did he come?

A He must have come from the garden.

Q What did you do when the man started to run?

A I yelled, "The flyer is gone."

Q What did the third man do?

A I can't say that. There was so much excitement.

COLONEL ROBERTSON: I have nothing else.

DEFENSE COUNSEL: I have another question, may it please the court.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Will you repeat again as exactly as you can remember, what you said when you came up to the gate?

CAPTAIN VANCE: We object on the ground that it is repetitious.

DEFENSE COUNSEL: I know that it is repetitious, but I am asking the question in view of a question asked by a member of the Court.

PRESIDENT: Objection overruled.

THE WITNESS: I said that we had a flyer whom we were supposed to kill but we wouldn't do it and we are going to bring him back to Bieber and just wanted to take cover there.

QUESTIONS BY DEFENSE COUNSEL:

Q At the time the flyer made his first movement to escape, just exactly where were you and Schneider?

CAPTAIN VANCE: We object on the ground that the question is leading. He is telling the witness the flyer attempted to escape. It is not a proper question.

DEFENSE COUNSEL: At the moment the flyer started to run away, where were you and --

CAPTAIN VANCE: We still object. He is leading the witness. I don't mind the witness telling anything that happened, but Colonel Berman is telling the witness what to tell the Court.

PRESIDENT: The objection is overruled.

DEFENSE COUNSEL: Will the reporter read the question?

(Thereupon the last question was read by the reporter.)

QUESTIONS BY DEFENSE COUNSEL:

Q At the time the flyer made his first movement to escape, just exactly where ~~were~~ you and Schneider? Just exactly where were you two.

A We were in the garden, approximately ten meters from the stairs which were leading down there.

Q How close were you to the flyer?

A Perhaps two meters.

Q How close was Schneider to the flyer?

A He might have been a little bit ahead of me.

Q I am going to use Mr. Rashael to simulate the flyer and I want you to show us just exactly where you were standing and where

Schneider was standing at the moment he began his movement to run away. I am Schneider. Where was he, exactly?

A I was a little bit behind. It might have been like this.

DEFENSE COUNSEL: I would like the record to show that Schneider was standing to the right of the flyer, perhaps a meter to the rear and Michel was standing to the right and perhaps two meters to the rear.

Q Tell me where the third man was standing. Take Dr. Abelmer and show us where the third man was.

DEFENSE COUNSEL: The witness illustrates that the third man, who was mentioned but not identified, was standing to the left of the flyer, perhaps one or one and a half meters to the rear of the flyer.

Q Now, as the flyer began, or just immediately prior -- in the flash of an eye before he began to run, was there any movement of his hands or body to indicate anything whatsoever?

A I didn't see that.

DEFENSE COUNSEL: Nothing further.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q When this flyer started to run off, did he slug you?

A No.

Q Did he slug Schneider?

A No.

Q Did he slug that other man there with you?

A I couldn't notice that.

(Michel - Recross)

Q You were close enough to see it if he did slug him, weren't you?

A Yes, it was dark.

Q Now when the flyer started to escape and run away, why didn't you shoot him?

A We didn't want to shoot him.

Q I know you didn't want to shoot him, but he was trying to escape, wasn't he?

A I couldn't help it.

Q Michel, this flyer didn't try to escape, did he?

A Yes, he ran away.

Q Why didn't you chase him?

A He was a tall fellow. I couldn't have caught up with him anyway.

Q This third man with you, didn't he say that you should run back, that he would drive him around and you were to head him off?

A No.

Q Well why did you go back?

A As I said before. We thought this way we would reach the street faster and we thought it might be he has to pass there.

Q Well, there wasn't any place he could go except down the stairs and to the left?

A No, he had a chance to go to the right.

Q Did you and Schneider both have your pistols there when this man started to run?

A Yes.

Q This third man, he had his pistol, didn't he?

A I can't say that.

(Michel - Recross)

Q Did you hear some shots fired?

A Yes, shortly thereafter we heard shots.

Q In the neighborhood of the steps?

A I can't say that exactly. We heard shots and afterwards again we heard shots.

Q And there was an interval of time between the first time you heard shots and the second time?

A Yes, there was a time interval in between.

CAPTAIN VANCE: That is all.

MR. RACHAEL: The defense has nothing else. Are there any questions by the Court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MR. RACHAEL: The defense calls as its next witness the accused, Bernhard Fay.

PRESIDENT: Do you desire to be sworn?

ACCUSED FAY: Yes.

BERNHARD FAY, an accused, voluntarily took the stand in his own behalf and being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Bernhard Fay.

Q When and where were you born?

A Twenty seventh of December, 1895 at Sossenheim near Frankfurt.

Q Are you a prisoner at Dachau now?

A A prisoner of war at Dachau.

Q What are you by civilian profession?

A I am a merchant. A skin and leather merchant.

Q What did you do in February, 1945?

A Since March, 1940, I was drafted to the Air Raid Protection Police at Offenbach.

Q What were your duties there?

A I was with the Fire Brigade and in case of damage we were used.

Q As what?

A I was a driver and machinist.

Q Where were you stationed?

A Bierbrauer Weg, Offenbach.

Q Do you remember that once there was brought an American flyer?

A Yes.

Q When was that?

A I can't remember the exact date, but it was the end of February, 1945.

Q At what time of the day?

A Approximately nine or ten o'clock in the evening.

Q You were on duty this evening?

A Yes.

Q What did you do there at that time?

A I was ready to be used at any time.

Q Where did you stay?

A I was in the guard room at Bierbrauer Weg.

(Fay - Direct)

Q What did you do there. You were sleeping or you were awake?

A Usually in the evening we laid down on our cots early.

Q They awakened you that night, did they?

A Yes.

PRESIDENT: Court will recess for twenty minutes.

(Whereupon at 1000 hours the court recessed until 1020 hours.)

(Thereupon at 1330 hours the court reconvened.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the Defense except Dr. Trost, who is absent sick, all of the accused except the accused number two, Krumler, who is temporarily absent in conference with defense counsel, the reporter and the interpreter are present.

PRESIDENT: You are reminded that you are still under oath.

BERNHARD FAY, an accused, resumed the stand and being reminded that he was still under oath testified further in his own behalf as follows:

DIRECT EXAMINATION, continued.

QUESTIONS BY DR. RAU:

Q What happened after you were awakened? What happened then?

A All of a sudden I jumped out of my cot. Then somebody told me, I don't know anymore whether it is Ehrgang or somebody else, they have here a flyer or a prisoner and I should shoot him. I said, "Who said so?" Somebody said, "The Police Director." In the meantime two policemen arrived with a prisoner. At that time I didn't know there was a flyer.

Q I have to interrupt you just a minute. Who was supposed to shoot the flyer?

A The policeman. Whoever was escorting him.

Q If I remember right it was translated, "I should shoot the flyer."

A No that was wrong.

Q Was this a wrong translation?

A Yes, that isn't correct.

Q Please continue.

A In the meantime they arrived with the prisoner. I didn't know it was a flyer at that time. He came to the garden in the direction of the

(Fay-direct)

A [illegible] bunker and I said, "Lets go to the Police Director." I followed them. The flyer was walking to my right and the policemen whose names I didn't know were following. When I came short in front of the stairs all of a sudden I got a blow against my chest. I fell back and got caught by some other person. Probably that was one of the policemen. Then I grabbed for something. I don't know whether I asked for a pistol. I can't remember anymore, but anyway, all of a sudden I had a pistol in my hand and I yelled, "Stop! Stop!" and the policemen called to me. They were very excited, and so I can't say exactly anymore what happened.

I opened the pistol. I fired one shot into the air. Then the escaped man, fell down a few steps on the stairs and run after him. When I came to the main exit people came, probably civilians who intended to go to the bunker for civilians. I always yelled, "Hold him! Hold him!" and the people said, "There in front he is running." I fired another shot into the air. I couldn't breathe anymore and was very excited and went up to the street. There I heard three or four shots, I can't say exactly anymore, and I followed the other people who had followed the man. On my way I met a policeman who came towards me. He was looking for his pistol. I gave it to him. When I reached the spot where the dead man was lying I saw that he was dead and I said, "Was this been necessary that you hit me against the chest and tried to escape? That is your own fault." After that he was carried away to the guardroom in the garden.

Q Did you know the two policemen who brought the flyer?

A No.

Q Why did you want to go to the Police Director?

A I couldn't believe and was uncertain and in order to make sure what should be done I wanted to go along to the Police Director--in the same direction as the others had already started to walk.

Q What is it you couldn't believe?

(Pay-direct)

A When I was told that a prisoner or a flyer, I don't know the exact words anymore, was supposed to be shot.

Q Where was the Police Director?

A The Police Director had his command post in the bunker.

Q Was the Police Director in the bunker at that time?

A Yes. During each air raid alarm he was at his command post.

MR RACHAEL: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You say on the night of February, 1945 that you were asleep in the guardroom, is that right?

A Yes.

Q Who woke you up?

A I think Hahrgang called me.

Q What did he say when he woke you up?

A He said, "Hey, get up," or something like that. I thought on account of the air raid alarm, or that there was a danger going on that flyers were over the city.

Q You said before that he woke you up because you had a flyer there? Which is it?

A Then I got out of the guardroom. There he said, or at least I assumed it was him. They said--I don't know whether he said the flyer or the prisoner. They had one to shoot him.

Q For whom to shoot him?

A The ones who were escorting him, the policemen.

Q Why did he tell you that?

A It is something like that in our guardroom. If something or somebody strange arrives then everybody is interested.

Q So you think he woke you up so you would know there was a flyer

(Fay-cross)

there that was going to be shot by these two policemen, is that correct?

A He didn't know I was sleeping. Usually we made use of every minute and hour which we could have for our sleep because we always had to expect to be called out at night.

Q Who told you to take charge of this flyer?

A Nobody ordered me.

Q You just, on your own accord, decided to take charge of him, is that right?

A The reply which I received wasn't clear to me and the whole matter looked very unclear to me and since they were walking towards the bunker anyway, so I said let's go to the Police Director.

Q What did you have to do with this thing?

A I had nothing to do with it, because I had no faith in this whole matter. In order to clear up the whole incident I said, "Let's go to the Police Director."

Q Did you take charge of the flyer then?

A I didn't take charge.

Q You were walking closest to him weren't you?

A Yes.

Q Why?

A Because the entire matter looked strange to me. I didn't believe it and so I said we want to see the Police Director.

Q Do you mean you couldn't believe that the flyer was going to get killed? Is that what you mean?

A No, because I never heard anything like that.

Q At that time you never heard of the police executing American flyers?

A No.

(Pay-cross)

Q You never heard about that until this case began did you?

A Yes.

Q When did you first hear about policemen being supposed to do away with American flyers?

A I never heard it.

Q You have just learned of it here in this trial then?

A Yes.

Q You knew on that same day they had executed a man over at Bieber, didn't you?

A No.

Q You hadn't heard about it at that time?

A No.

Q Now, if you were lying in your room sleeping and you say anyone ordered you to get up and take charge of this flyer --

A No.

Q So what part you took in it was voluntary and on your own behalf?

A Yes.

Q Did you bring your gun out with you?

A No.

Q Did you have a pistol?

A No.

Q That is the reason you didn't bring it out with you isn't it?

A I have none.

Q I believe you stated that you don't know who the two policemen were with the flyer?

A No.

Q You have seen the two witnesses the defense brought in, Schneider and Michel. Were they the two policemen with the flyer?

(Fay-cross)

MR. MACHAN: The defense objects. One of those witnesses was brought in by the prosecution.

CAPTAIN VANCE: The prosecution brought one which the defense recalled and the defense brought in the other.

Q Were Schneider and Michel the two policemen?

A I don't know today. I have to assume so.

Q You say you were hit in the chest?

A Yes. A hard blow against my chest.

Q Three of you were within two meters of the flyer at the time you were struck weren't you?

A I walked right next to the flyer on his side to the left.

Q How many people were present there? You said there was Michel, Schneider, yourself and an American flyer. Was there anyone else there?

A Otherwise I wouldn't know anybody.

Q Where did you get the pistol from? Did you just grab it out of the thin air somewhere?

A When I got the blow I fell back and I was caught by somebody.

Q Do you suppose you got that pistol from the American flyer?

A No, no. He was gone already.

Q When did you get it from?

A From one of these two policemen. It must have been that way.

Q You say you got it either from Michel or Schneider, is that right?

A Yes.

Q When Mahrgang told you that the flyer would be shot and you asked these two policemen about this--you did ask them didn't you?

A No.

Q You never did talk to them about it?

A No.

Q After you got your pistol from either Schneider or Michel I believe you said you fired one shot up in the air?

(Fay-cross)

A Yes.

Q Why did you shoot up in the air?

A I can't say exactly anymore how it happened, but I know I yelled, "Stop! Stop!" and then I gave one shot in the air and an alarm shot. My intention was to force the flyer to stop.

Q Did you think the flyer was trying to run away?

A I didn't think anything.

Q If you didn't think anything what were you shooting about?

A Because he had hit me against the chest and tried to escape.

Q I just asked you if you thought he was trying to escape. Do you think he was?

A I don't know that. If I would have known that he wouldn't have escaped.

Q Why did you fire if you didn't know?

A After he had hit me against the chest and started to run away it was my duty in this situation to fire an alarm shot.

Q Why didn't you shoot at the flyer instead of aiming up in the air.

A I couldn't aim at the flyer anymore. He was too far away by that time.

Q Come over here to this map a minute. Show the court where you were sleeping.

A Here in this barracks. Here in this room over there.

CAPTAIN VANCE: Let the record show that the witness indicated a room marked "Guardroom" which appears on prosecutions exhibit number 187.

Mr. RACHAEL: I take exception to the translation. The witness said something about the chart not being correct in certain points.

INTERPRETER: He said this little part is not correct here. He slept in this room.

(Fay-cross)

CAPTAIN VANCE: Make it "guard shack".

QUESTIONS BY CAPTAIN VANCE:

Q When you came out of the room where were the two policemen and the flyer?

A I walked out here, approximately here was the prisoner. Today I know he was a flyer -- and the two officials. In the walk -- this path up here like this -- this isn't correct here either.

CAPTAIN VANCE: Let the record indicate that he met the flyer and the two policemen at a point right outside the little box marked "guardroom" and that he followed a dotted line which leads up to the stair marked "E".

DEFENSE COUNSEL: I take exception to that, may it please the court. He pointed to a place on the chart and there is nothing to indicate how far it was from the exit.

CAPTAIN VANCE: I didn't say how far it was. I said it was marked "guardroom" on the chart. That is what it says here.

DEFENSE COUNSEL: Will the reporter please repeat what the prosecution is indicating in the record?

(Whereupon the reporter did as directed.)

DEFENSE COUNSEL: That is the part I took exception to. The part "right outside the guardroom."

CAPTAIN VANCE: Will you change that to show a point where the letter "G" appears in the word "guardroom".

Q Now, show the court where you were when the flyer hit you in the chest.

MR. RACHAEL: If it please the court, I would like the record to show also that when the witness was answering the previous question he stated that the wooden shack and the stairway is incorrect up there.

A I can't say it exactly anymore, whether I was in front of the shack approximately here or whether I was up there approximately around here.

CAPTAIN VANCE: Let the record show that the witness indicated a point about halfway between the letter "E" and the letter "D" on the chart.

Q Is that the point where you were slugged by the flyer?

A This map isn't correct.

MR. RACHAEL: May it please the court, may I say this: The cross examination of this accused is going to be misleading to the court unless the witness is able to testify from an exact description of the area. Now the description by the prosecution that he was hit between "D" and "E" may be correct on that chart but it is incorrect in fact because "E" represents the stairway and the stairway is not there as the chart shows.

PRESIDENT: You will proceed on this chart.

QUESTIONS BY CAPTAIN VANCE:

Q When the flyer started to run did he run in the direction of the stairs?

A Yes.

Q Did he run down the stairs?

A He ran down the stairs.

Q How do you know?

A Because there is no other way but down to the bunker.

Q There is no other exit out of this yard in that direction except the stairs, is that correct?

A No. This is a fence here. Approximately up here there is another gate but at night that is closed. If the gate would have been open he would have been gone. There would have been my best witness if I would be here today.

CAPTAIN VANCE: All right, you can be seated now.

(Fay-cross)

Let the record show that he indicates a gate somewhere in the vicinity of the steps marked "S".

QUESTIONS BY CAPTAIN VANCE:

Q The only two exits at night, the only two places you can get out of this courtyard is one at the steps and the other at the gate marked "g", is that correct.

A The gate is the entrance to the bunker and our quarters.

Q I say the only way to get in or out at night is through the steps or the gate marked "S", is that correct?

A Yes, day and night.

Q You know when the flyer started running that he had to go down the steps to get out?

A He couldn't go any other way except in the direction of the bunker.

Q In a little bit you fired a second shot into the air, is that correct?

A Yes.

Q Where was the flyer then?

A I don't know that. I fell a few steps down the stairs. I ran after him. When I came to the driveway people came towards me and said, "In front there he is running.", but I was yelling all the time "Hold him. Hold him."

Q Did you fall down before you reached the step while you were on the steps or after you had gone down the steps?

A When I came to the stairs I fell down the stairs a few steps. I don't know whether I fell while I was still on the top of the stairs or in the middle.

(Fay-cross)

1503

Q Now, was that when you fired the second shot?

A On the stairs?

Q Yes.

A No.

Q Where did you fire the second shot?

A The second shot I fired when I came to the curve. The map isn't correct here, either.

Q Was that down at the bottom of the steps?

A No. First I ran. I can show it to you.

Q You mean after you had gone down the steps and taken a left turn?

A Yes.

Q Then was the flier running down in the direction of the Bierbrauer Weg?

A Yes.

Q And were you behind him?

A Yes.

Q Where were you when you shouted back to go around and head him off?

A I didn't hear that, probably the policeman did so.

Q You didn't say that?

A To cut off his way?

Q Yes.

A No, I only yelled, "Stop, stop."

Q Did you follow the flier on down to the point where he was shot?

A Yes. I wasn't running all the time because I lost my breath on the way. Then I went after him in the direction in which he ran.

Q When you got there was the flier dead?

A Yes.

Q Did you shoot him down there?

A Me? No, I didn't shoot anymore.

Q Didn't you and Mahrgang have a discussion about the flier before you left the guardroom?

A No.

Q What you have already told the court, is that all that Mahrgang said to you and all you said to Mahrgang?

A Yes.

Q Did you tell Mahrgang that, "I am going to get up to the steps and then flush him like a covey of birds, firing in the air, and you run around and head him off."

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection overruled.

THE WITNESS: No, I didn't.

QUESTIONS BY CAPTAIN VANCE:

Q Did you say anything like that in substance, not my exact words but something similar to this?

A No. I only could say that in my belief it could not be true that the flier was to be shot and if an order like this comes I try to make absolutely certain. I thought this to be my duty.

Q Suppose you, while a prisoner of war, heard your guard discussing you were going to be shot. Would you have tried to escape?

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection sustained.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Mr. Fay, I show you Defense Exhibit No. 20 and ask you to look at it. Do you know what that is?

A Yes.

Q What is it?

A That is a map of our barracks.

Q Do you know whether or not it is a correct map?

A Yes. I haven't been there but the way it looks it's correct. It's from the Battalion Post. It should be right.

Q I ask you to look at that map of the area which is marked in pencil with the letter "A". What is that?

A That is the approach to our quarters in the bunker.

Q Will you take this pencil and mark with the letter "A" the portion of the chart where you first met Michel, Schneider and the flier?

A Approximately here (indicating).

Q Now will you mark with the letter "B" that spot on the chart where you say you were struck on the chest and flier started to run away?

A It might have been here, it might have been there (indicating).

Q But the letter "B" there.

A (Indicating).

Q Now will you mark with the letter "C" the stairway down which the flier ran?

A (Indicating).

Q Now will you mark with the letter "D" the gateway which you say was closed.

A (Indicating).

Q Will you mark with the letter "E" the place where you fired your second shot?

A (Indicating).

PRESIDENT: Court will recess in place. I'd like to see that.

(Whereupon the court recessed in place.)

Ia 244 80
Pfla/4

PRESIDENT: Court will come to order.

REGROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Show me on this map which is exhibit D-80, the road or the path or whatever leads from the bottom of the steps in a northern direction?

A From the steps "E"?

CAPTAIN VANCE: Let me have the question again.

(Whereupon the reporter read the last question.)

A (THE WITNESS: Northern direction? I'd like to know where there is north. This path here (indicating). It passes by the Command Post, bunker, and goes down here through the gate.

QUESTIONS BY CAPTAIN VANCE:

Q Is that path shown on that map? In such a curve, it leads out

A Yes, this is all very deep here.

Q But I say, is it shown on here? I can't see it. If it's shown on there show me where it is.

A This (indicating) is supposed to represent the yard and driveway. This all is very high and this is deep in. This is the yard and the driveway out of it (indicating).

Q Where is it? Show it to me. I can't see it. Is it shown on there?

A What would you want to see?

Q That path or roadway or whatever it is that leads from the bottom of the steps, the way you said the flier ran.

A This is the yard here and I show you now the way the flier was running.

Q Will you draw a line showing the way he ran?

A I'm a little bit nervous. I'd like to do it on the table. This is the way he ran. It might have been a little bit to the left. I

(Day-recess)

didn't see him anymore but that's the way he came out and I followed the same way running. Something like that.

Q Will you put the letter "R" on that dotted line which will mean running?

A Running? Where do you want me to put it?

Q Somewhere on the line.

A An "R"?

Q Yes.

A (Indicating).

Q Now what, if anything, is the difference from the path that you have drawn and the path that is shown on Prosecution Exhibit 127?

A Approximately the barracks is correct but the stairs isn't there where it is and the driveway doesn't go in such a curve, it leads out a little more straight.

Q I don't mean about the building. You didn't understand me. I said the path which the flier followed.

A What do you want there?

Q Is there any difference in your drawing and Prosecution Exhibit 127?

A I didn't make this map.

Q I believe you said you were taking this flier up to Eichel, is that correct?

A Yes.

Q Did you see Eichel?

A During each air raid alarm he was at the Command Post.

Q Did you see Eichel?

A I didn't see him. That means later on, yes, after the escape.

Q What did Eichel have to say about this incident then?

A Yes, when the dead body was carried back Police Director Eichel came up running and yelled, "What is going on here?"

(Pay-recess)

Q What else did he say?
[illegible] you wanted us take this prisoner from the guardroom [illegible]

A Then we told him and then the corpse was carried to the garden.
Eichel's place without carrying a weapon?

Q What did Eichel say?
Yes.

A Eichel said, "How are you coming here with this man?" To the
[illegible] nothing further.
two policemen he said so.
DIRECT EXAMINATION

Q What else did he say?
[illegible]

A Then he said something like, "You have to write a report" or
Dress examination on behalf of [illegible] and Zahrgang. She was
"You have to report to him", something like that.
sergeant of the guard at the [illegible] or [illegible] that night.

Q What else did he say?
That was Bahrgang.

A When the body was being carried in he said "Put everything
Did Zahrgang say to you in any way that you shoot the flier
down and everybody who has no business has to go away."
Yes.

Q What else did he say?
[illegible] any questions by any member of the court?

A Then we carried the body into the garden.
EXAMINATION BY THE COURT

Q I am not talking about that. I am asking you to tell what
[illegible]
Eichel said.
In your original statement, Fay, you make the statement that

A When the body was put down he chased everybody away and
Bahrgang said the flier must be killed. You now say you didn't make
said that the corpse should be carried in.
that statement.

Q What did he say about the killing?
A No, that isn't correct. That's the English translation.

A He asked who shot then I said, "We intended to go to you to
Then your statement is wrong?
the bunker and when we came to the barracks the flier hit me against
A I didn't make that statement. I remember now that at that
the chest and started to escape."
time when the interpreter was reading it to me he read to me the

Q We have been all over that. Do you want to tell the court
sentence and read "has to be" or "must" and then I said, "So that is
what Mr. Eichel said or don't you? We are wasting time. I'll with-
[illegible], I should say, it is supposed to be" but the interpreter told
draw the question. What is the distance from the guardhouse where
me, "That's the same in English. That's one and the same word in
you were sleeping to the air raid shelter where Eichel was?
English."

A Through the garden, down the stairs and right there is the
Furthermore, you have a stand like that some policemen said
Command Post.
that Eichel gave the order, is that correct?

Q What is the distance?
Yes. I asked who said as [illegible] of the [illegible] case

A Perhaps thirty meters. I don't know exactly, approximately
in there said, the [illegible] Director.
thirty meters.
[illegible] That is all.

(Fay-recess) 1809

Q And you wanted to take this prisoner from the guardroom to Eichel's place without carrying a weapon? The flier had been shot the

A Yes. ahead of you?

CAPTAIN VANCE: Nothing further, don't tell you who was there.

REDIRECT EXAMINATION

QUESTIONS BY DR. AMMER:

Q Cross examination on behalf of Hausmann and Mahrgang. Who was sergeant of the guard at the Felsenkeller during that night?

A That was Hausmann.

Q Did Mahrgang tell you in any way that you shoot the flier?

A No.

MR. RACHAEL: Any questions by any member of the court?

EXAMINATION BY THE COURT

QUESTIONS BY LT. COL. WALKER:

Q In your original statement, Fay, you make the statement that Mahrgang said the flier must be killed. You now say you didn't make that statement.

A No, that isn't correct. That's the English translation.

Q Then your statement is wrong?

A I didn't make that statement. I remember now that at that time when the interpreter was reading it to me he read to me the sentence and read "has to be" or "must" and then I said, "No, that is wrong," it should say, "It is supposed to be" but the interpreter told me, "That's the same in English. That's one and the same word in English."

Q Furthermore, you have stated also that some policeman said that Eichel gave the order, is that correct?

A Yes. I asked who said so and then one of the men who came in there said, "The Police Director."

LT. COL. WALKER: That is all.

(Fay-court)

QUESTIONS BY LAY MEMBER:

Q When you got to the spot where the flier had been shot who was there ahead of you?

A Several people were there but I can't tell you who was there.

[illegible] end ta 244

[illegible]

A It is possible that [illegible] I noticed that Semmen reported to the police director. It was approximately on the building of the Reichsbahn.

You do not remember any person that was there where the body was lying at all, is that correct?

A It was night and it was dark as of course, there were also people from us and also civilians who were on their way to the bunker.

Could you hear one person that was there where the body of the flier was? Not one person?

A I don't know whether Fahrgang was there or further. I can remember only from the time when the police director came up running and said, "Everybody away. There's going on here." Then I, Fabian and Guenther carried the body into the garden.

Q Then when you got there, while you were still there the body was, as well was there, was not?

A No, he couldn't have been there because the corpse was already carried away and Richel must have come from the command post. That was approximately at the building of the Reichsbahn were I came.

Who picked up the body and carried it from the spot where it was lying?

I don't know that.

(Fay-court)

Q Was Hammann there?

A No, I can't say. I don't think so.

Q Was Mahrgang there?

A I didn't recognize anybody. I was very excited.

Q Was the flier lying on the ground or kneeling on the ground?

A He was lying and he was dead.

Q Was Eichel there?

A It is possible that Eichel was there because when we came back I noticed that Hammann reported to the police director. It was approximately at the building of the Felsenkeller.

Q You do not remember any person that was there where the body was lying at all, is that correct?

A It was night and it was dark and of course, there were also people from us and also civilians who were on their way to the bunker.

Q Don't you know any person that was there where the body of the flier was? Not one person?

A I don't know whether Mahrgang was there or Guenther. I can remember only from the time when the police director came up running and said, "Everybody away. What's going on here?" Then I, Fabian and Guenther carried the body into the garden.

Q Then when you got there, while you were still where the body was, Eichel was there, was he?

A No, he couldn't have been there because the corpse was already carried back and Eichel must have come from the command post. That was approximately at the building of the Felsenkeller near the gate.

Q Who picked up the body and carried it from the spot where it was lying?

A I don't know that.

(Fay-Court)

Q Were you there when the body was picked up?

A Yes, I was standing next to the corpse and saw that the man was dead.

Q You don't know who picked the body up?

A No, I can't say it.

Q Did you help?

A No.

Q Did you follow the body back?

A I walked in front of them.

LAY MEMBER: That's all.

MR. RACHEL: Any further questions by the court?

QUESTIONS BY COLONEL DUNNING:

Q Fay, after Nahrgang told you that the flier was supposed to be killed, did you answer, "I will take care of that small matter"?

A No.

MR. RACHEL: Do you want to ask a question?

DR. AHLEMEYER: Yes.

REDIRECT EXAMINATION

QUESTIONS BY DR. AHLEMEYER:

Q Mr. Fay, Colonel Walker confronted you before with your former statement that the flier has to be killed and you said that it was a wrong translation, that it should say, "was supposed to be killed." Was your statement at that time made in German or in English?

A In English.

Q Do you know when this interrogation took place?

A It was the 8th or 10th of May 1946.

Q Where?

A Here in Dachau.

(Fay-Redirect)

Q I show you now prosecution exhibit 138 and ask you, is this the statement you were talking about right now?

A Yes, it is signed with my name. Something had been forgotten. I put this (indicating) at the end of it.

DR. [illegible]: That is all.

EXAMINATION BY THE COURT

QUESTIONS BY LAW MEMBER:

Q Are you referring to the change on your statement as being the change made to the last answer just before you signed your name at the bottom of the statement?

A Yes, the interogator had forgotten it.

Q Were there any other mistakes in the statement?

A Yes, when he read to me "has to be" where I told him it should be "supposed to be" and there he said, "That's the same word in English."

Q You read the statement over, did you?

A No, it was read to me.

Q Was it correct otherwise?

A Yes, there was something else. I had stated that I had seen Lieutenant Alt at the place where the dead flier was lying. It was read to me that Lieutenant Alt had flashed with his light and then I said, "You have to add that I can't state so definitely. I don't want to say anything incorrect."

PRESIDENT: Prosecution?

CAPTAIN VANCE: Could I ask for a recess in place for two minutes?

PRESIDENT: Recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: The court will come to order.

(Fay-Court)

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Fay, you have said there may be some trouble with the translation, though you do not understand English, is that correct?

A Yes.

Q I am going to hand you a statement that is written in pencil concerning this case and ask if it is in your own handwriting.

A Yes.

Q You understand that and wrote it yourself, did you not?

A This I wrote myself.

Q Does that contain the truth?

A Yes.

Q I am going to refresh your memory from this statement a little bit and see what you say about it. "Then Mahrgang said, 'Fay, this aviator is to be shot or to be done away with,' and then I asked who decided that. Then one of the two policemen replied, 'Chief of Police Eichel.'" Do you remember that?

A Yes, that's what I said, that's true.

Q You remember that?

A Yes.

Q Now, the law member of the court asked you who was present where the body was and you carried the body away and I believe you said you could not recognise anyone. Is that correct?

A Today I can't remember so exactly any more.

Q I am going to see if I can refresh your memory again. Now, I am going to read from the statement that you wrote in your own handwriting. I am quoting: "Then I, Fabian and Guenther carried him to the yard of the inn in a decent manner."

(Fay-Cross)

A That's correct. Defense would like to offer into evidence as [illegible] of the statement read by the [illegible]

Q You remember that?

A But that's after the police director came and said to put down the body. [illegible]

Q You remember that you even helped carry the body yourself, do you not? [illegible] Defense Exhibits 21 and 21-A will be received in evidence.

A Yes, for the second time after the police director had said, "put everything down" and then we picked it up again, not from the place where he was shot.

Exhibits 21 and 21-A for identification were received in evidence as Defense Exhibits 21 and 21-A, are attached hereto

Q I want you to read over your statement you have written and see if you can answer the Law Member's question about who was there where the body was found. [illegible] as that is admitted in evidence, I think the statement (The witness reading) court.

Q Can you tell the Law Member who some of the people were on that roster of Defense Exhibit 21 in the Germa language to the interpreter.)

A At the first place where he was lying after he was shot, I can't say who picked up the body, only afterwards, when the body was carried to our barracks an officer came and said, "Everybody away. What's going on here?" And from this place on, Guenther, Fabian and I carried the body into the garden near our barracks.

Q Who shot the American flier and killed him?

A As I heard later on and it was reported, Hammann.

Q You heard Hammann say he did it, did you not?

A When Hammann reported to the police director, the police director asked who shot, and there on the road Hammann said that he had shot at an escaping man.

CAPTAIN VANCE: Nothing further.

MR. RACHEL: Will you mark these documents Defense Exhibits 21 and 21-A for identification, please?

(The documents referred to were marked Defense Exhibits 21 and 21-A for identification.)

(Fey-Becroes)

MR. RACHEL: The defense would like to offer into evidence as Defense Exhibit Number 21 the balance of the statement read by the prosecution, and as Defense Exhibit Number 21-A, the balance of the English translation thereof.

CAPTAIN VANCE: No objection.

PRESIDENT: Defense Exhibits 21 and 21-A will be received in evidence and made a part of the record.

(The documents previously marked Defense Exhibits 21 and 21-A for identification were received in evidence as Defense Exhibits 21 and 21-A, are attached hereto and made a part of the record.)

MR. RACHEL: Does the court desire me to read the statement?

PRESIDENT: As long as that is admitted in evidence, I think the statement should be read to the court.

(Whereupon Mr. Rachel read Defense Exhibit 21-A, followed by the reading of Defense Exhibit 21 in the German language by the interpreter.)

PRESIDENT: Court will recess until one-thirty.

(Whereupon at 1210 hours the court recessed until 1330 hours.)

AFTERNOON SESSION

(Whereupon the Court reconvened at 1330 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court, all the members of the Prosecution, all the members of the Defense, except Dr. Trost, who is absent sick, all of the accused, the reporter and interpreter are present.

MR. RACHAEL: If the Court please, I believe at the close of the morning session, we had just completed the testimony of the defendant Fay. If there is no additional examination, the Defense will call as its next witness the defendant Hassmann.

LAW MEMBER: Just a minute--may we see Defense Exhibit 21-A? Is this the one that you offered?

MR. RACHAEL: Yes, sir.

LAW MEMBER: Put Fay back on the stand.

BERNHARD FAY, an accused, resumed the stand, and being reminded that he was still under oath, testified further through an interpreter as follows:

EXAMINATION BY THE COURT

QUESTIONS BY COLONEL ROBERTSON:

Q Fay, in your statement that was read by the Defense, Exhibit 21-A, the last sentence in that statement says, "Furthermore, I heard that the Police Director Eichel was to be blamed for the whole thing."

A Yes.

Q When did you hear that?

A I would like to make an explanation of that.

Q Answer the question. When did you hear it?

A A few days later.

Q A few days later? What did you understand by that?

A Because I couldn't console myself with this entire matter, and I couldn't understand why the man had tried to escape, though I talked about this matter in general--where did this man come from and how did it happen--and though there was talk that the Police Director alone is responsible. But I understood clearly that this evening, the Police Director had nothing to do with this matter; because I didn't know at all what happened and where this man was coming from. The whole thing was a matter of moments.

Q Whom did you hear this from--that Police Director Eichel was to be blamed for the whole thing?

A A civilian said so, and a few policemen, but I can't say definitely anymore.

QUESTIONS BY THE LAW MEMBER:

Q What were you concerned about?

A Because I had no bad intentions and never had done anything wrong to anybody, and I wanted to find out the truth about the entire matter.

Q When you got to the flier that was lying on the ground, was he lying on his back or on his stomach?

A I can't say that anymore today, whether he was lying on the side or so because it was very dark.

Q Could you see where he was bleeding from?

A One man, I don't know who it was, flashed his flash light for a short moment, then I remember he was bleeding out of his nose and mouth.

(Pay-Court)

Q Was he shot in the head?

A No, I don't know that.

Q Was Zahn standing there when you were standing there?

A No, I can't say that.

Q Do you know Zahn?

A I know Zahn, yes.

Q Was Nahrgang standing there when you were there?

A I can't say that either. I was terribly excited, and it was very dark.

Q Was Fabian there--Fritz Fabian?

A Fabian I noticed only when the Police Director came over and the man had been put down for the first time.

LAW MEMBER: That's all.

MR. RACHAEL: No further questions by the Defense.

PRESIDENT: Does the Prosecution have anything further?

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You do remember blood in the mouth and nose of the corpse?

A Yes, during the short time the flash light was used, I could see that.

Q So he must have been lying on his back or you couldn't have seen that. Is that correct?

A No, I can't say that--his face was sideways.

CAPTAIN VANCE: Nothing further.

MR. RACHAEL: Any further questions by the Court?

PRESIDENT: No questions by the Court. The accused will take his place in the dock.

(Whereupon the accused was excused and resumed his seat in the dock.)

MR. MACHAEL: The Defense will call as its next witness the defendant Philipp Hammann.

PRESIDENT: Do you desire to be sworn?

ACCUSED PHILIPP HAMMANN: Yes.

PHILIPP HAMMANN, an accused, voluntarily took the stand in his own behalf and having been duly sworn, made the following unsworn statement through an interpreter:

A Yes. DIRECT EXAMINATION

QUESTIONS BY DR. AHRENS:

Q Please give your full name to the Court.

A Philipp Hammann.

Q How old are you?

A 51 years.

Q Were you stationed in February, 1945?

A Offenbach.

Q Where is your residence?

A Offenbach.

Q What is your present status?

A Prisoner at Dachau.

Q Since when are you in prison?

A 18 May 1945.

Q What are you by profession?

A I am a carpenter.

Q Did you have the same profession in 1945?

A No.

Q What was your profession at that time?

A I was drafted.

Q Where?

A 1945 I was with the air raid Protection Police at Offenbach.

A Yes.

Q What was your rank?

A I was the rank of Sergeant of the Air Raid Police.

Q Since when were you attached to the Air Raid Police?

A The first of September, 1939.

Q Are you married, Mr. Hammann?

A Yes.

Q Have you children?

A Yes.

Q How many?

A One son.

Q How old?

A 27 years.

Q Where were you stationed in February, 1945?

A Bierbrauer Weg.

Q Do you remember the 22nd of February, 1945?

A Yes.

Q Did you have a definite assignment at that time?

A I was Sergeant of the Guard at Bierbrauer Weg.

Q What were the duties of the Sergeant of the Guard at Bierbrauer Weg?

A He was in charge of order in the area on the fire brigade.

Q Do you mean the entire area around the felsenkeller?

A Yes, the entire area--the barracks, garage and whatever else was belonging to it.

Q Was Jaeger one of your guards at that time?

A Yes.

Q Zahn, too?

A Yes.

Q When did you hear for the first time about the American flier this evening?

A After he was dead.

Q Did you have anything to do with this man before?

A No, before I had nothing to do with the flier.

Q Did you hear any yells or shots?

A Yes.

Q Where were you at that time when you heard it?

A When the shots were fired, I was in my room.

Q Was this the same room in which Nahrgang lived?

A No, it was another room.

Q Is that the same room which is called a guard room here in Court?

A It is in the same room, but it is separated from it.

Q What was the reason for you to leave this room?

A When the shots were fired, and the yelling started, I ran out of my room to check why the shots had been fired.

Q What kind of yells did you hear?

A When I came out of the door, I heard the call, "He is running down the stairs," and then furthermore, "cut off his way."

Q Before you left the room and came through the door, did you hear calls already?

A Yes.

Q Do you know what they said?

A No, I couldn't distinguish that.

Q That means the shots were the main reason why you left the room?

A Yes, I came out on account of the shots.

Q Now, let's continue. After you came out of the door, what happened then?

A With the call, "cut off his way," I could visualize that if someone runs down the stairs and keeps on running, there's only one place where he can come out again, if he didn't hide on the way out or if he didn't go through some half-finished buildings on the side.

Q Where was the spot where he had to come out again?

A Otherwise he could come out only at the Bierbrauer Weg.

Q You said there was only one way which he could come out again. Whom did you understand was "he"?

A I supposed--I assumed the man that was escaping.

Q Did you know who was the one who tried to escape?

A No, I didn't know that.

Q Did you have any doubts about the person of this man?

A I could think only if somebody is shooting or somebody else is shooting at somebody he might have committed some crime, because in this area we never were used to any excitement. It was always very quiet there.

Q When you left your room, you were armed?

A No.

Q What did you do after you had come out of the door and had heard the calls, etc., about which you have testified before?

A I ran down the stairs out of the gate. When I came in front of the gate, I saw the guard Jaeger standing on the Bierbrauer Weg.

Q One moment, Mr. Hammann, you mentioned before

that you ran down the stairs. Are you referring to the stairs leading to the air raid shelter?

A No.

Q Which stairs are you referring to?

A There was another stair from the yard to the Bierbrauer Weg.

Q Please show on Prosecution's Exhibit 127 the place where these stairs are located.

A From up here, four or five steps up to the Bierbrauer Weg--each of the steps is approximately one meter wide. (Indicating).

DR. AHRENS: Let the record show that the witness showed the stairs as being in the neighborhood of the letter "p" on Prosecution's Exhibit 127.

Q You went to the guard Jaeger, and what did you do then?

A Since I didn't know whether the man who had escaped was armed, I took Jaeger's carbine.

Q What did you do then?

A I kept on running to the exit from the air raid shelters to the Bierbrauer Weg. Then I was approximately 10, might be less or a little bit more, meters from this exit, and men came running from this exit, and on the Bierbrauer Weg I turned north. I called a loud "halt", then once more or even twice, but the man didn't bother about it and kept on running. According to my guard regulations, at that time I was supposed to make use of my weapon, but I didn't do it because I thought I could catch up with the man. I ran after him approximately 80 meters--might have been a hundred--but the distance between me and the man who tried to escape

got larger and larger.

End ta 246,
ijh fols

[illegible]

[illegible]

[illegible]

Q Did you call anything to the man?

A On the road I called at least four or five times, "halt."

Q Did the man do anything about it?

A No, he didn't bother.

Q Continue.

A After I had run after him for about eighty to one hundred meters, there came another call, "halt" from the other direction. According to the voice, it could have been only Fabian. He was an officer of our Air Raid Protection Police. But the man didn't care about the call. He kept on running. If I wanted to prevent the escape any longer I had no other choice but to make use of my weapon. I fired one shot at the man, who was 40 or 50, it might have been a little bit more meters away from me, but even then he didn't stop, but it makes the impression on me that he only turned to the right to escape into the woods. Then I shot twice more shortly after the other. After the last shot the man who tried to escape had disappeared.

Q When firing, did you aim exactly at the man?

A I couldn't aim because it was too dark. I only shot in the direction in which he was running.

Q Did you see the shadow of the man?

A I only saw that some human being was running.

Q And you said after the third shot he disappeared?

A Yes, I didn't know whether I had hit him or whether he had dropped to the ground by himself or whether he had escaped.

Q Did you try then to find out?

A I walked over to the spot where I had seen him last. First I wanted to reload my rifle, but there was some trouble. I couldn't reload, I couldn't get the round into the rifle. It was stuck. I stayed there to fix my rifle and in the meantime, comrades of mine passed me and found the dead man. There, for the first time I heard of what kind of man I had

shot.

Q I show you now Defense Exhibit 20, and I ask you to mark with your superior of[illegible], which [illegible] to [illegible] the police [illegible] the letter "O" the spot at which you saw the flyer for the first time. [illegible] [illegible] [illegible]

Then police director Richel told me, "Okay, make a written report to your superior office, which has to be forwarded to the police through channels." At this moment the body was being carried by us. Police director Richel followed the transport and walked next to the body.

Q Did you follow too?

A No. I stayed there for a while, because I wanted to calm down a little bit first. When I came back then, the body was lying in the yard. I went to the garden to sit down a little bit. In the meantime, Master Tardt, the headquarters of the Fire Police, had reported to First Lieutenant Reiter, what had happened, and should come to Bierbrauer Weg. But it took some time until the connection came through. I don't know whether it took twenty or thirty minutes. Anyway, he tried to make the call five, six, it might have been seven, eight times, before he got the connection. I stayed in the room until Lieutenant Rieter arrived at the Bierbrauer Weg. He called for me and I went outside and made the report to him. What happened -- otherwise, I can't remember any more. I know only that the order was given to cover the corpse with a blanket and to have guard next to the corpse. And the first guard, as far as I can remember, was Jaeger.

Q Did you look at the body yourself?

A No, I didn't look at the body.

Q Why not?

A I felt sorry for the man that he had to lose his life in such a manner.

Q When did you hear for the first time that this man who tried to escape was an American?

A When the comrades passed me running, I understood from their talks that he was an American flier.

Q Did you make a written report too?

A Yes, next morning I went to headquarters at Offenbach and made my written report.

Q Do you know what happened to this written report?

A One report, as far as I know, went to the Police, a copy stayed at our headquarters, and I got another one.

Q Please let us return once more to the spot where for the first time you saw the flier coming out of the hallway into the Bierbrauer Weg, at that time. How far away from the flier were you?

A I said before it might have been ten or twelve or eight meters.

Q Did you shoot at that time already at the flier?

A No.

Q Why not?

A At such a distance I would have hit the flier absolutely certain, one hundred percent certain. First I wanted to try to catch the flyer this way without firing at him.

Q That means that you shot at him only later after you found out that the distance wasn't getting smaller, but larger all the time?

A Only when I saw that there was no other choice I wanted to prevent the escape and then I used my weapon.

Q Did you see Wahrgang on this evening?

A I had seen Wahrgang before this incident in the early evening.

Q During the incident?

A No.

Q Did you read the charge sheet?

A Yes.

Q Did you receive any orders in regard to the treatment of enemy fliers?

A I have never received an order and never seen an order.

MR. RACHAM: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Where did you say you were when you heard the first shots fired?

A In my room in which I usually slept.

Q Put a circle at that place with a figure number 1 in it.

A (Whereupon witness did as directed.)

Q Were you asleep, awake, or what were you doing at that time?

A I don't know this any more today. Anyway, I was lying on my bed.

CAPTAIN VANCE: Let the record show I am talking about Defense Exhibit Number 20.

QUESTIONS BY CAPTAIN VANCE:

Q Where you placed a circle with the figure "1", that is where you were when you heard the shot, is that right?

A Yes.

Q I believe you stated also while you were at that place you heard some shouting?

A Yes.

Q How long did it take you to get ready to leave that building?

A That was only a moment. Then I ran out.

Q Then did you go from there to where you met a man named Jaeger?

A When I came out of here I ran into Nierbrauer Weg and here, (indicating) that's the place where Jaeger was standing as a guard.

Q Will you make a circle at that point, put the figure "2" where you stopped, where Jaeger was?

A Yes (indicating).

Q Now, will you draw a line from circle "1" to circle "2", showing your route?

A (Indicating)

Q I believe that you have already placed a circle at the place where you first saw the flier, is that right?

A Yes.

Q To identify that circle, will you put the figure "3" beside it?

A (Indicating)

Q Now, will you point out the spot where you fired your first shot and make a circle with the figure "4"?

A (Indicating)

Q I believe that the cross marked, the star is where the dead body was found, is that right?

A Yes.

Q Will you place a figure "5" beside that for identification?

A (Indicating)

Q Now, let me ask you, is this correct? If your route of travel from the time you heard the shot was from point "1" to "2" to "3" to "4" to "5", is that right?

A Yes. I didn't come up entirely to number 5.

Q Now, I am going to show you a point where Fay marked, where he fired his weapon the second time which is marked "6" on the map. Do you see that?

A Yes. The first shot must have been fired here.

Q I meant to say the second shot.

A I don't know that.

Q I said, did you see the place "6" where Fay said he fired the second shot?

A Yes.

Q Assuming that if the flier was preceding Fay, which he said he was at the time he fired at point "6", who travelled the greatest distance, you or the flier?

A From here it should have been the same distance as from here (indicating).

Q I did not understand, what was that?

A From here (indicating) up to here (indicating), it should be
[illegible] know that if someone was running down the stairs there was
approximately the same as from here up to here. (Indicating)
not but one way of escape, that is the way the flier traveled, is that right?
Q You think that is about the same distance?
[illegible] Lo. In this area there was where [illegible] tried to get away.
A It should be the same.
[illegible] area [illegible] attacks [illegible] and [illegible] were destroyed
Q You had to come out of your building, and then you stopped to get
[illegible] only required [illegible] to [illegible], to [illegible] the
the gun away from Jaeger, is that right?
[illegible] do you not now [illegible] that, [illegible] question,
A That was just a moment.
[illegible] knew there was [illegible] for you to go?
PRESIDENT: Let the record show where he was pointing when
[illegible] there was only one road to the [illegible], e.g. if somebody
he said "from here to here to here".
[illegible] wanted to hide in the [illegible] he could [illegible] around there.
CAPTAIN VANCE: Let the record show that the witness points out
[illegible] did you not know when you heard these shots up [illegible] near the
that where he says is the same distance is the distance from point "1" to
stairs that you were down at the area where Jaeger was
point "2" to point "3" in reference to the other distances from point
A No.
"3" to point "6".
[illegible] did you not know it would be physically impossible for you to
QUESTIONS BY CAPTAIN VANCE:
take the route you turned on that way and ever catch up with that flier?
Q What caused you to run out of the bunker and grab a carbine from
A I didn't want to [illegible] any [illegible].
Jaeger?
[illegible] Jaeger was running.
A I was the sergeant of the guard, and I was responsible for orders
[illegible] This path is [illegible] [illegible] the road [illegible] there.
and security. When I heard these calls and didn't know what had happened
[illegible] think you traveled [illegible] greater distance than the flier, is that
and didn't know whether the man who tried to escape was armed. I asked
right?
for Jaeger's carbine because there was no time to go inside any more and
[illegible] My route was shorter than the route [illegible] flier [illegible] the point
pick up my own weapon.
[illegible] walked over there in the [illegible]. (Indicating)
Q You have said that you heard some calls, exactly what did you
[illegible] but before you got there you had to come out of the building,
hear called?
[illegible] you not?
A Inside the room I couldn't understand what was called.
[illegible] Of course, I was in my [illegible] bed.
Q Did you ever understand?
[illegible] Colonel Day saw the [illegible] flier was running when he fired that
A Only when I came outside the door I heard the call, "He's running
[illegible] around shot, did you not?
down the stairs." Then furthermore, "Cut off his way."
Yes.
[illegible] So, the flier was clearly running to the [illegible] you were sitting on
(Hammann-Cross)
[illegible] bed in your room, that's right? 1833
[illegible] Yes, I have to see it so. If I would [illegible] there also to
[illegible] have passed [illegible] you.

(Zaucha-Cross) 1834

I am referring to the point that you marked there you first saw the flier, do you know who were pursuing at that time

Q You knew that if someone was running down the stairs there was not but one way of escape, that is the way the flier traveled, is that right?

A No. In this area there were other possibilities to get away.

There had been air raid attacks before and some buildings were destroyed and entirely repaired yet, no doors, no windows, nothing in them.

Q Did you not say on direct examination, in answer to a question, "I know there was only one way for the men to go"?

A There was only one road to the Bierbrauer Weg. If somebody wanted to hide in the field he could hide around there.

Q Did you not know when you heard those shouts up there near the stairs that you were down at the gate where Jeeper was?

A No.

Q Did you not know it would be physically impossible for you to take the route you marked on that map and ever catch up with that flier?

A I didn't want to catch any flier.

Q Whoever was running?

A This path is much shorter then the road back there.

Q You think you traveled a smaller distance then the flier, is that right?

A My route was shorter than the route of the flier from the point "D", as marked over there on the map. (Indicating)

Q But before you got there you had to come out of the building, did you not?

A Of course, I was in my room on my bed.

Q You heard Fay say that the flyer was running when he fired that second shot, did you not?

A Yes.

Q So, the flier was already running at the time you were sitting on your bed in your room, that's right, is it not?

A Yes, I have to assume so. If I would have been there before he wouldn't have passed this spot.

Q I am referring to the point that you marked where you first saw the flier, do you know who were pursuing at that time? escape?

A A No, I didn't know them. I was pursuing. [illegible] down the stairs and [illegible]

Q Why did you not [illegible] running down the stairs, then I have to ask you.

A Because I didn't know anything about a flier and hadn't seen the flier before. I believe, you said that the American prisoner was running faster. You just decided you were going to shoot at whoever it was running, is that right?

A [illegible] to find out about that during the time I was running.

Q No, I didn't decide that. I wanted to catch him running and bring him back this way. In spite of air he was running faster than you, but I will ask you if you did shoot at whoever it was running without knowing who it was?

A A According to my guard regulations, I had to prevent the escape. For this reason I was a soldier and I had to fulfill my duties as a soldier.

Q You were shooting at, did you?

Q A You never did hear anybody holler, "Somebody was escaping," did you? Q If that had been Adolf Hitler himself running down that road [illegible] you didn't hear that, didn't you?

A Then I was on duty, and I was on duty, and I didn't know how, even there I would have shot him.

Q Now, did you see a man fr[illegible] that night?

A I saw him later on when everything was over.

Q You remember Erich Fabian testifying before this court, don't you?

A Yes.

Q You remember [illegible] saying, "At the time the flyer was shot I said to Hermann, 'How could you shoot?' and Hermann said, 'I saw you coming.'" Did you see him coming?

(Hermann-Cross) [illegible] say that anymore today. As far as I can remember [illegible] was anybody else in [illegible] of us but the man who tried to escape.

(Hermann-Cross)

Q Well, how did you know about this man trying to escape?

A If shots are fired and a man is running down the stairs and called on me "He is running down the stairs", then I have to assume that he is running away.

Q I believe you said that the American prisoner was running faster than you were, that is right, isn't it?

A Yes. I had to find out about that during the time I was running after him.

Q After you got sight of him he was running faster than you but before you got sight of him he was running slower than you, is that right?

A I don't know that.

Q Now when you shot this American prisoner, you didn't know who you were shooting at, did you?

A No.

Q If that had been Adolf Hitler himself running down that road you would have shot him, wouldn't you?

A When I was on duty, and I was on duty, and I didn't know him, even there I would have shot him.

Q Now, did you see a man Frits Fabian that night?

A I saw him later on when everything was over.

Q You remember Frits Fabian testifying before this court, don't you?

A Yes.

Q You remember him saying, "At the time the flyer was shot I said to Hammann, 'How could you shoot!' and Hammann said, 'I saw you coming.'". Did you see him coming?

A I can't say that anymore today. As far as I can remember I didn't see anybody else in front of me but the man who tried to escape.

Q You think that Fritz Fabian was mistaken in his testimony, is that right?

A I have to assume so.

Q How far could you see that night?

A I said before the man who tried to escape, on a distance of forty or fifty meters you could see only the shadow that somebody was running.

Q When you fired the first shot you said the escaping man was forty or fifty meters away, is that right?

A Yes.

Q And I believe you said that after you fired the first shot that he started out in the woods, is that right?

A Whether he wanted to go into the woods, I don't know. He turned to the right and so I assumed it.

Q Well what made you assume that he wanted to go into the woods?

A When he found out -- when he noticed that people were firing after him, he tried to get away.

Q Well you marked the point where the dead body fell didn't you and it was right in the middle of the road?

A No, it is to the right of the street on a meadow.

Q Well, you made the marking on a map for your lawyer, didn't you?

A No. I made the marking where it belongs, where the dead body was lying.

Q Well, you made it in the middle of the street, didn't you?

A No, I didn't say that.

A No, to the right of the street on the meadows the dead man was lying. I was a good shot.

Q Is that where the cross, where the figure "g" is -- is that where the body was found?

A Yes. I don't know anything. I was never told anything about flyer. Q. When you fired the first shot did the flyer stop running or did he continue? Now at the time of this killing that American flyer -- whether he stopped or right away turned to the right I couldn't say. I couldn't find out at this distance.

Q Did you stop running? that you knew that the police were -- standing behind another two or three meters and then I fired for the second time. That was I heard in Remagen when I was arrested.

Q Did you stop to fire the second time or were you still running? That was in June, July, 1945.

A I didn't say that anymore today. I killed a man -- I said if the flyer was forty or fifty meters away from you when you fired the first time and I believe you said the distance kept getting greater, he must have been further away when you fired the second shot that -- everything secret from you around there?

A No. That is not correct. The flyer made a right angle and for this reason the distance remained the same, enough.

Q Well, would you say that he was still forty or fifty meters away when you shot at him and struck him?

A It might have been three, four or five meters less for the second and third shots.

Q And you don't remember whether you were running or standing still when you fired those shots?

A No, I can't say that.

Q You are a pretty good shot with a rifle, are you?

A I was a good shot.

Q You were familiar with the treatment to be given to captured flyers, were you not?

A No, I didn't know anything. I was never told anything about flyers.

Q Didn't you know at the time of this killing that American flyers were being killed by the police all over Germany?

A No, I didn't know that.

Q When is the first time that you knew that the police were executing American flyers?

A The first case I heard in Hersbruck when I was arrested.

Q When was that?

A That was in June, July, 1945.

Q Well, you knew that Moller over at Bieber killed a man the same day you killed this one, didn't you?

A No, I didn't know that. I heard about this only through Moller at Hersbruck.

Q Did they keep everything secret from you around there?

DEFENSE COUNSEL: Objection. I pray the Court's judgment. I believe that kind of examination has gone far enough.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q Did you know policeman Schneider?

A No.

Q Did you know policeman Michel?

(Hahmann - Cross) 1839

A No.

[illegible]: Are there any questions by the court?

Q You remember those two policemen testifying before this Court?

[illegible]

A Yes.

[illegible]

Q And you talked to those two policeman that night, didn't you?

[illegible] what was it that Bichel said to you when you

you?

[illegible] the record that the flyer had been shot. Just exactly what

A No.

[illegible] did he say.

Q You and these two policeman and Fay had a discussion before

[illegible] Bichul said to you, "O.K., [illegible] to your question"

this flyer was killed, didn't you?

[illegible] headquarters and your headquarters would forward the report to the

DEFENSE COUNSEL: The defense objects.

police through channels".

PRESIDENT: Objection overruled.

LAW MEMBER: I want to ask the interpreter if he said "O.K."

THE WITNESS: No.

or if he said "Good".

QUESTIONS BY CAPTAIN VANCE:

INTERPRETER: He said "Good".

Q You heard Schneider say they were supposed to kill the

LAW MEMBER: Then why did you interpret it as "O.K."?

flyer but they didn't want to do it, didn't you?

INTERPRETER: That means "O.K." in German what he said.

A I heard it here in court.

LAW MEMBER: "Good" is the same meaning as "O.K."?

Q I am talking about that night?

INTERPRETER: Yes sir.

A At that time I didn't hear anything.

QUESTIONS BY THE LAW MEMBER:

Q And you and Fay worked out a plan whereby Fay would take

[illegible] when you fired the last shot while running, could you see

the man up the steps, drive him down the steps and you would be

the man that you fired at?

waiting to shoot him when he came down the Bierbrauer Weg, didn't you?

A I saw the man until the last shot.

A No, I didn't work out any plan. I did my duty and nothing

[illegible] when you got to the body or the place where the flyer was

else.

[illegible], was there anyone there ahead of you?

Q After you ran out of the bunkers, you didn't stop to inquire

A Several persons were there ahead of me. I didn't walk all

of anyone about the direction the flyer was going in, did you?

[illegible] way on to the body.

A No, I didn't stop at all.

[illegible] She was there ahead of you.

Q You just grabbed a gun, started running and ran right to

A I couldn't say that.

the place where you met the flyer?

A I tried to hold the man at the exit to the Bierbrauer Weg

if I would still have time to do it.

CAPTAIN VANCE: Nothing further.

MR. RACHAEL: Are there any questions by the court?

EXAMINATION BY THE COURT

QUESTIONS BY LAW MEMBER:

Q Mr. Hamann, what was it that Eichel said to you when you made the report that the flyer had been shot. Just exactly what words did he use?

A Eichel said to me, "O.K., make a report to your superior headquarters and your headquarters shall forward the report to the police through channels."

LAW MEMBER: I want to ask the interpreter if he said "O.K." or if he said "Good"?

INTERPRETER: He said "Good".

LAW MEMBER: Then why did you interpret it as "O.K."?

INTERPRETER: That means "O.K." in German what he said.

LAW MEMBER: "Good" is the same meaning as "O.K."?

INTERPRETER: Yes sir.

QUESTIONS BY THE LAW MEMBER:

Q When you fired the last shot while running, could you see the man that you fired at?

A I saw the man until the last shot.

Q When you got to the body or the place where the flyer was lying, was there anyone there ahead of you?

A Several persons were there ahead of me. I didn't walk all the way up to the body.

Q Who was there ahead of you?

A I couldn't say that.

(Hamann - Court)

(Hamann - Court)

A I can't remember this. Whether he said anything, I don't know.

Q Was Guenther there?

A I don't know.

Q Could you see if the flyer was lying on the ground when you got there or was he on his knees? What was his position?

A No, I couldn't see that.

Q Could you see whether he was lying on his back or his stomach?

A No.

Q Could you see in what part of the body he had been hit by the bullet?

A No, I heard this only here. I didn't know it before.

Q Did you hear Guenther's testimony by this court? Karl Guenther?

A Yes.

Q Did you hear him testify that "Hammann shot and then I wanted to go over to the flyer and Hammann shot once more and then I told him, 'Philipp stop it' and then Hammann said he couldn't see any man suffer."

A No, Guenther didn't say anything to me. He couldn't say anything because the shots were fired one shot shortly after the other.

Q Do you deny that what Guenther testified to as to what you said is not true?

A I can't remember that I talked even one word to anybody during the entire incident. The one I recognised was Police Director Eichel and the guard Jaeger.

Q Do you want us to understand that you don't remember talking to Guenther or do you want us to understand that what Guenther said when he quoted you is not true?

A I can't remember this. Whether he said anything; I don't know. I had the fourth shot because the bullet stuck. When firing this third shot the fourth shot stuck too and then I cleared the lock with the end of my hand so another shot could be fired, but

Q Well, then you are not saying that you deny it, you are simply saying that you don't remember what you said, is that correct?

A I have a very good memory. I certainly would remember there if somebody told me something like that, one through I don't remember anymore.

Q. You haven't quite made it clear to me whether you are denying that you said that or whether you simply are saying that you don't remember whether you said it.

A I deny that I said it. testified that he said to Hammann

Q What kind of a carbine did you use when you fired at this fleeing man?

A that could be possible but I can't state it definitely anymore today.

A An Italian carbine.

Q And how many shots does it carry in the magazine? , "I saw you firing six shots on the magazine.

A Did you fire six shots while you were pursuing this man?

Q Did you see Fabian at the place where the flyer was?

A No, I fired three shots. heard later on that he helped to carry back

Q Did you testify a little earlier that you had stopped to reload the rifle? see Guenther there?

A After the third shot. This is not an automatic rifle and after each shot you have to load again. You have to push the round through again. After each shot you have to open the lock and close it again. are at the spot after the flyer was shot?

Q Was the magazine filled with six shots? entire evening I have id

A The magazine was filled with six shots, and the guard locked.

Q And when you finished firing, did you count to see how many you had left? Court!

1944

A No, I didn't count them. I had fired three shots. I
QUESTIONS BY THE PRESIDENT:
couldn't load the fourth shot because the bullet stuck. When fixing
Q Did you fire a shot after the man who [illegible]
this trouble through pulling back the trigger, I threw out the fourth
the ground?
shot. The fifth shot went in approximately one centimeter deep but
A As I said before, [illegible]
this got stuck too and then I closed the lock with the end of my hand
another shot came out and went into the ground in front of me in the ground. There
so another shot came out and went in front of me in the ground. There
was one shot left. Whether I loaded this one through I don't remember
in front of me.
anymore.
Q How far were you from the [illegible] took place?
Q Do you remember hearing the testimony of Fabian?
A I can't say that any more, whether it was two or three
A Yes, partly.
meters, it wasn't near him.
Q Do you recall that he testified that he said to Hannann
QUESTIONS BY LAW MEMBER:
"How could you shoot?" and that you answered, "I saw you coming."?
Q Did you go any closer to the man [illegible]
A That could be possible but I can't state it definitely
A No. I didn't go any closer because in the meantime my
anymore today.
comrades had picked up the body and were carrying it away.
Q Could you explain what is meant by that expression, "I saw
Q You mean they picked up the body immediately after that
you coming."?
shot was fired?
A I couldn't explain that.
A Whether it was immediately or [illegible]
Q Did you see Fabian at the place where the flyer was?
more today.
A I didn't see him but I heard later on that he helped to
QUESTIONS BY LT. COL. WALTER:
carry back the flyer.
Q Hannann, do you recall any conversation which you and
Q Did you see Guenther there?
Jaeger and Rehrgang were engaged in [illegible]
A The same. I didn't see him but I heard later on that he
you something in regard to shooting the flyer and you refused and
helped to carry back the body.
said, "No"?
Q Do you know any particular person that you remember seeing
A No, I never had a conversation.
right there at the spot after the flyer was shot?
PRESIDENT: Any more questions by the [illegible] further
A I said before in my testimony that the entire evening I
questions by the prosecution?
have identified only the Police Director Nichel and the guard Jaeger.
CAPTAIN VANCE: No sir.

PRESIDENT: The witness is excused and will take his place.
(Hannann - Court)
(Thereupon the witness [illegible] excused and resumed his seat in the
prisoners' box.)

MR. MACHT: The defense will call as its next witness
QUESTIONS BY THE PRESIDENT:
the accused PAUL MAHRGANG.
Q Did you fire a shot after the man who was running fell to
Do you desire to be sworn?
the ground?
THE WITNESS: Yes.
A As I said before, when I tried to fix up my rifle again
PAUL MAHRGANG, an accused, was duly sworn as a witness and testified through the interpreter
as follows:
another shot came out and went into the ground in front of me, but
this shot was not fired at the flyer but went straight in the ground
DIRECT EXAMINATION
in front of me.
QUESTIONED BY MR. ARNOLD:
Q How far were you from the fallen man when that took place?
Please give the court your full name.
A I can't say that any more, whether it was two or three
Paul Mahrgang.
meters, it wasn't near him.
How old are you?
QUESTIONS BY LAW MEMBER:
A Forty-six years.
Q Did you go any closer to the man that after?
Are you married?
A No. I didn't go any closer because in the meantime my
Yes.
comrades had picked up the body and were carrying it away.
Do you have children?
Q You mean they picked up the body immediately after that
A No.
shot was fired?
What is your present status?
A Whether it was immediately afterwards I can't say any-
A Prisoner in Dachau.
more today.
Q Since when are you a prisoner?
QUESTIONS BY LT. COL. WALKER:
A Since the sixth of December, 1945.
Q Mahrgang, do you recall any conversation which you and
What is your profession?
Jaeger and Mahrgang were present, in which Mahrgang presumed to ask
A I am a locksmith. Then for twelve years I was a professional
you something in regard to shooting this flyer and you refused and
soldier and then I became an official of the Nazi Party for twelve years.
said, "No"?
From when?
A No, I never had a conversation.
A First of May 1933.
PRESIDENT: Any more questions by the Court. Further
Until when?
questions by the prosecution?
A Until the end.
CAPTAIN VANCE: No sir.
What was your rank in the Waffen SS on January 1945?
PRESIDENT: The witness is excused and will take his place.

(Whereupon the witness was excused and resumed his seat in the prisoners' dock.)

(Mahrgang - Direct)

T-Saha-Mag-6-30/3/3-wfj-11

A MR. RACHAEL: The defense will call as its next witness [illegible] Sergeant of the Fire Protection Police, the accused PAUL HAHNGANG.

Q [illegible] you stationed at that time?

A PRESIDENT: Do you desire to be sworn?

Q [illegible] stationed at Blankenburger Weg.

Q THE WITNESS: Yes. [illegible] which city?

PAUL HAHNGANG, an accused, voluntarily took the stand in his own behalf and being first duly sworn, testified through an interpreter as follows:

Q [illegible] happened on this morning?

DIRECT EXAMINATION

A I was in my room.

QUESTIONS BY DR. AUBINER:

PRESIDENT: Before we go into that, we will recess for [illegible] minutes.

Q Please give the court your full name.

A Paul Hahngang.

(Whereupon at this hour the court recessed until 1530 hours.)

Q How old are you?

A Forty-six years.

Q Are you married?

A Yes.

Q Do you have children?

A No.

Q What is your present status?

A Prisoner in Dachau.

Q Since when are you a prisoner?

A Since the sixth of December, 1945.

Q What is your profession?

A I am a locksmith. Then for twelve years I was a professional soldier and then I became an official of the Fire Protection Police.

Q From when?

A First of May 1935.

Q Until when?

A Until the end.

Q What was your rank on the twenty second of February, 1945?

(Recess was taken at 1500 hours.)

A I was Master Sergeant of the Fire Protection Police.

Q Where were you stationed at that time?

A I was stationed at Dietzbrunner Weg.

Q In which city?

A Offenbach, Main.

Q What happened on this evening?

A I was in my room.

MARSHAL PRESIDENT: Before we go into that, we will recess for thirty minutes. [illegible] You are reminded that you are still under oath.

(Thereupon at 1500 hours the court recessed until 1530 hours.)

(Thereupon at 1530 hours the court reassembled and the witness resumed the stand and testified further as follows:)

ERICH KARL AHLEMANN, continued

DIRECT EXAMINATION BY Mr. ABRAHAMS:

Q Mr. Ahlemann, on the 22nd of February, how did you find out that a prisoner was being taken to Dietzbrunner Weg?

A In the later evening hours of this 22nd day of February, during an air raid, a sergeant of the Protective Police appeared and a guard of our quarters. This sergeant said that he was trying to get cover from the shrapnel. I said that I was not the sergeant of the guard and that I could act in nothing for the prisoner. Therefore I called Hemmes who was the sergeant of the guard. In this connection Hahn told us that the policeman was supposed to shoot this prisoner and that they were not doing it. As we were having this conversation Jay came in or else he was standing under the doorway. I don't know exactly how it happened. He said, "What is the matter?" I told him that they had a prisoner and they were to take him to the air raid shelter, and that the policeman had this prisoner and had orders to shoot him, but they were not doing it and so Jay said, "I will

(Mr. Langendorf)

(Thereupon the court reconvened at 1530 hours.)

PRESIDENT: The court will come to order.

DR. SEIDL: May it please the court, let the record show that all the members of the court are present, all the members of the prosecution, all the members of the defense except Dr. Trost, who is absent sick, all of the accused except the accused Trummler, number two who is temporarily absent in conference with defense counsel, the reporter and the interpreter are present.

MR. MACHAEL: At the close of the session I believe the defendant Mahrgang was on the stand.

PRESIDENT: You are reminded that you are still under oath.

PAUL MAHRGANG, an accused, being reminded that he was still under oath, resumed the stand and testified further through an interpreter in his own behalf as follows:

DIRECT EXAMINATION, continued

QUESTIONS BY DR. AHRENS:

Q Mr. Mahrgang, on the 22nd of February, how did you find out that a prisoner was being taken to Bierbrauer Weg?

A In the later evening hours of this 22nd day of February, during an air raid, a sergeant of the Protective Police appeared and a guard of our quarters. This sergeant said that he was trying to get cover from the shrapnel. I said that I was not the sergeant of the guard and that I could not do anything for the prisoner. Therefore I called Hammam who was the sergeant of the guard. In this conversation Zahn told me that the policeman was supposed to shoot this prisoner and that they were not doing it. As we were having this conversation Fay came in or else he was standing under the doorway. I don't know exactly how it happened. He said, "What is the matter?" I told him that they had a prisoner and they wanted to get him in the air raid shelter, and that the policeman had this prisoner and had orders to shoot him, but they were not doing it and so Fay said, "I will

be going over to see what the matter is. I didn't see any prisoner nor did I see Unger. All I saw was Fay and the policeman. All of a sudden I heard Fay and the policeman say, "Hey, oh!" and they said, "He is taking off towards the police." Did Fay leave the station in the yard towards the Bahnhofstrasse and

A A short time after this Fay went out at the gangway. It seemed

Q Did you go out then? said the

A How far did you get on your way back?

Q What did you do? What did you see when the dead man was lying.

A I picked up my coat and put on my boots. I wanted to go out too, to see what was going on and a short time afterwards I heard calls, "Halt! Halt! Halt!" and a short time after that a shot, and started running in the direction that he ought to take care of it, and we actually did call Hausmann, but from that direction came that way and he didn't always get up right away when a shot was in the direction of this waiting room.

Q By that do you mean the waiting room described as Head Sketch on prosecution exhibit 1577 in?

A Yes.

Q What happened there? differently. Did you see Hausmann when you left? A After a while I heard one of the policemen say, "He hit me on the chest," or "He pushed me on the chest.", so I, of course, moved over to the left to the thing there. They were saying that he had run away across the entrance. I and Unger is the only one who could have been there.

Q Who said that? You went over to the spot where the dead flyer was lying? A I don't know whether Fay or the policeman said that anymore.

Q Who did you see when you approached the vicinity of this wooden waiting room? Did you see Hausmann at all later on that evening?

A I couldn't determine who these men were exactly because they only appeared as dark shadows. The only way I had of recognizing were their voices. All I heard was Fay calling that he took off over the stairway.

Q What did you do then?

(Mahrgang-direct)

A I went over to the left and looked down over this yard in the direction of the air-raid shelter because I heard another shot there had [illegible] I asked "What is going on?" and they said, "He is taking off towards the hollow path." So I went through the yard towards the Bierbrauer Weg and [illegible] there all I heard was Hammann fired at this [illegible]. It seemed to me as if the guard-dog-er said that.

Q How far did you get on your way back? went off.

A I went up to the spot where the dead man was lying.

Q Had you seen Hammann before that? do with the body. It was on the side. A I had not seen Hammann before that nor had I talked to him. All I had done was to tell the guard Zahn that Hammann is the sergeant of the guard and that he ought to take care of [illegible] but Hammann was a clever sort of a guy and he didn't always get his right away when you called him around once.

Q What you just applied to the beginning of the incident when Zahn and the guard [illegible] differ.

A Does [illegible] any part in taking the body back?

Q My question was meant differently. Did you see Hammann when you left the wood shack and went towards Bierbrauer Weg and back down Bierbrauer Weg? A The body was carried by myself, [illegible] my statement I said that No, I didn't see Hammann and I have said that I found this out back through the guard-dog-er is the only one who could have been there. I'll probably [illegible] said that you went over to the spot where the dead flyer was lying. Did you see Hammann at that time? [illegible]

A I did not see Hammann [illegible] today.

Q When did you see Hammann at all later on that evening?

A I saw Hammann in the quarters after the incident that evening.

Q You didn't see him at all on the way from the shelter to the place where the dead man was lying and then on the way back?

(Fahrgang-direct)

A No.

Q When you came to the spot where the dead man was lying, what did you observe?

A I observed several of our men in the place where the dead man was lying, Gunther and one other policeman whose name I didn't know.

Q Did you look at the body?

A It was dark. That moment another shot went off.

Q Where did that shot come from?

A That shot didn't have anything to do with the body. It was on the side.

Q How far away?

A That was in the immediate vicinity--four or five or six meters.

Q Didn't you get interested in where this shot was coming from?

A I turned around once.

Q Did you see anything?

A I saw nothing whatever.

Q Did you take any part in taking the body back?

A Yes.

Q Who carried the body back?

A The body was carried by myself, Gunther and Fay. In my statement I said that Hammann carried it, the body, back but I want to take this back at this point because I assumed that Hammann did the firing so he will probably carry the body back too.

Q Did you carry the body all the way back to the Police Station?

A Well I can't say exactly today.

Q Where was the body put down?

A The body was laid down in a garden next to a tree.

Q Did you have a look at the body at that time?

A No. There was an officer there from the protective police whom
A No.
I did not know either. He told us to take the identification tag with us.
Q You know exactly what happened and can remember it can you?
I looked through all his pockets and didn't find them and opened his jacket
A Well, I don't remember exactly. It has been ten years.
and whatever he was wearing and didn't find it around his neck either. Later
As a matter of fact Hamann did help carry the body to the place
on a Master Sergeant of the police brought a jacket and we went through it
there it was that broke up and put it in the garden, didn't he?
all the way and we did find the identification tag in there.
No, Hamann didn't come along.
Q Was any sort of a report made to your superior headquarters on that
Q Why did you put that in your statement?
matter?
A I wrote that in there because in that interrogation at Offenbach
A I wasn't the superior that evening Hamman was the superior. He was
all these things were put into my mouth. I was told that Hamman carried
the sergeant of the guard.
the body back.
Q I didn't ask whether a report was made to you. I asked you whether
Q That was before you heard Hamann testify to that is that right?
a report was made to your higher headquarters?
A What was that question?
A Yes, the report was made right away by telephone by Master Sergeant
You made that statement unless you had an opportunity to hear Hamann
Tart of the Fire Police.
testify?
Q Was the written report also made?
A No, I didn't.
A No. I don't know.
Q How you remembered that being wrong and said you wanted to correct
Q Didn't you have anything to do with that matter?
it. What about the rest of that statement?
A No.
A In Offenbach I was told that after all Hamann did carry back the
Q Did you find out anything about superior orders concerning the
body didn't he. I said, "No" so they said, "Why sure Hamann did carry back
treatment of enemy flyers?
the body."
A I never heard of any such orders.
Q I am not talking about Offenbach, I am talking about a statement you
When you came to the spot where the body was lying how was the body
made here in Dachau.
lying on its back or its belly?
A I didn't make any statement at all in Dachau. In Dachau all I got
A I really wouldn't be able to say today even if I had to.
was a gadget submitted to me and I was supposed to sign it the day we were
MR. RACHAEL: Your witness.
served the charges.

CROSS EXAMINATION

Q That gadget that was handed you was read by you was corrected in at
QUESTIONS BY CAPTAIN VANCE:
least three places and initialed by you was it not?
Q Mahrgang, you are a little bit confused about what happened out
Yes, I did.
there on that night aren't you?
(Mahrgang-cross)

(Interpreter)

1015

A [illegible] I did.

Q [illegible] that you were assisted by you was in no way

[illegible] and [illegible] that you were assisted by you and

[illegible] Q [illegible] that you were assisted by you and I was supposed to sit up to the day we were

[illegible] Q I'll [illegible] Dachau. In Dachau all I got

[illegible] A [illegible] Dachau, [illegible] way afterward, as I was supposed to sit up to the day we were

[illegible] Q I'm not talking about [illegible] I'm talking about your

[illegible] Q I'm not talking about [illegible] I'm talking about your

[illegible] A [illegible] Dachau, [illegible] way afterward, as I was supposed to sit up to the day we were

[illegible] Q I'll [illegible] Dachau. In Dachau all I got

[illegible] A [illegible] I did.

[illegible] Q [illegible] that you were assisted by you was in no way

[illegible] and [illegible] that you were assisted by you and

(Interpreter)

1015

A [illegible] I did.

Q [illegible] that you were assisted by you was in no way

[illegible] and [illegible] that you were assisted by you and

[illegible] Q [illegible] that you were assisted by you and I was supposed to sit up to the day we were

[illegible] Q I'll [illegible] Dachau. In Dachau all I got

[illegible] A [illegible] Dachau, [illegible] way afterward, as I was supposed to sit up to the day we were

[illegible] Q I'm not talking about [illegible] I'm talking about your

[illegible] Q I'm not talking about [illegible] I'm talking about your

[illegible] A [illegible] Dachau, [illegible] way afterward, as I was supposed to sit up to the day we were

[illegible] Q I'll [illegible] Dachau. In Dachau all I got

[illegible] A [illegible] I did.

[illegible] Q [illegible] that you were assisted by you was in no way

[illegible] and [illegible] that you were assisted by you and

A No.

Q You knew exactly what happened and can remember it can you?

A Well, I don't remember exactly. It has been two years.

Q As a matter of fact Hammann did help carry the body to the place where he was shot back up and put it in the garden, didn't he?

A No, Hammann didn't come along.

Q Why did you put that in your statement?

A I wrote that in there because in that interrogation at Offenbach all these things were put into my mouth. I was told that Hammann carried the body back.

Q That was before you heard Hammann testify to that is that right?

A What was that question?

Q You made that answer before you had an opportunity to hear Hammann

Fay: "All right," said, "I am going out and see what is the matter."

Did I thought this was sort of a charge sheet. I had never been before a court before in my life and I was sort of astounded when I read it.

Q Let us see if you can answer my questions now. When did you first know that they had an American flyer there? Did you say something or not when he said, "I only found that out when he was dead." Answer it in any way you want to.

Q Didn't Zahn come to you and say, "We have a flyer in custody and we need some help," say something to you, and what did you say or did something to him. A That wasn't Zahn who said that. That was a policeman who asked for protection. (The witness read the question.)

Q (The witness Zahn's reporter read the last question as directed.)

A That was a man from the air raid police.

Q Do you remember putting that in your statement, "All right," said, "I am going out and see what is the matter." after he heard about a flyer being there?

Q After you found out about the flyer then you went to Hammann and told him about the flyer being there didn't you?

A I testified before the court already today that I didn't talk to Hammann that evening, so I have.

Q A You have answer my question. Did you or did you not tell Hammann that there was a flyer there? Say about it but you only you told Hammann is that right? DEFENSE COUNSEL: I pray the court's judgement.

A PRESIDENT: The objection overruled. Answer yes or no.

THE WITNESS: I do not know whether you did or did not, don't you?

QUESTIONS BY CAPTAIN VANOS:

Q Then Fay came in and you turned around and told him about it and Fay said, "I am going out and see what is going on.", is that right?

A I think that was curiosity on the part of Fay.

Q I didn't ask you about that. I asked you if you told Fay there was

(Redirect-cross)

a flyer there and he said, "I am going out and see what is the matter." Then Did he say that or not? [illegible] A. He said, "I didn't say that."

CAPTAIN VANCE: If it please the court, I think this witness can understand my questions. I asked him if Fay said something or not and he said, "I didn't say it." He can answer my questions if he wants to.

DEFENSE COUNSEL: I am not so sure but I think the question was whether he didn't say something to Fay, not whether Fay said something to him.

PRESIDENT: Read the question.

(Thereupon the reporter read the last question as directed.)

QUESTIONS BY CAPTAIN VANCE:

Q Did Fay tell you, "I am going out and see what is the matter." after he heard about a flyer being there?

A Well I was still waiting for Fay's answer.

Q Did he tell you that?

A He said, "I will be going out to see what is the matter."

Q Then did he leave?

A Fay went out. I didn't see him anymore after that.

Q You admit you told Fay about it but you deny you told Hammann is that right?

A I don't know whether I told Fay or not.

Q Well you either know whether you did or did not, don't you?

A I don't remember that I told Fay anything that evening.

Q You put in your statement that you told both of them, didn't you?

A I didn't put in that I said anything to Hammann. All I said was I called Hammann because he was a sergeant of the guard. Hammann didn't show up.

Q I think I am going to let you read your statement which is written in German and signed by you, and which is prosecutions exhibit 134. When you finish reading it let me know.

[illegible] have you read your statement

THE PRESIDENT: We will recess in place while he is reading.

(Thereupon the court recessed in place.)

[illegible]

Q On [illegible] I told Englert [illegible] exactly [illegible] and I said no that I was [illegible] yesterday, and I will now [illegible] exactly right. In other [illegible] that is not [illegible] and I have my name below it.

Now, what portion [illegible] is that the people who [illegible] within, at the [illegible] to [illegible] this article [illegible]?

A Yes.

Q I want you to [illegible] about [illegible] statement.

A At the first place, I didn't notify Kaufmann. I merely called Hamann. Nor did I to [illegible] there were an American prisoner there, nor [illegible] I was [illegible] away from there the shots were fired. That was not in his presence. When the first [illegible] were fired, I was thirty yards away from it, [illegible] my position to that point. That is what I said in my [illegible].

Q Did you read that statement [illegible], all of it and swore to it?

A Yes, but I did object to it, and [illegible] these words were [illegible].

Did you not, however, [illegible] it [illegible] identifying and initial [illegible] my statement?

Q Yes, I did.

Q You did, [illegible]?

A Yes. There is a [illegible] here which I had to [illegible].

Q [illegible]

1000

A Yes. [illegible] here.

Q You were [illegible] the first [illegible] prisoner [illegible]

PRESIDENT: Court will come to order.

QUESTIONS BY CAPTAIN VANCE:

Q Now, during the recess, Nahrgang, have you read your statement over thoroughly?

A Yes.

Q Does it refresh your memory any?

A On the 17th of December, I told Captain Ehlgut that this matter wasn't exactly right, and he told me that those were excerpts from my testimony, so I told him those weren't exactly right. He said that wouldn't be so bad, that is not dangerous, so I put my name below it.

Q Now, this Captain Ehlgut you refer to -- is that the young man who has been sitting at the prosecution table during this entire trial?

A Yes.

Q I want you to tell the court what is wrong about that statement.

A In the first place, I didn't notify Hamann. I merely called Hamann. Nor did I tell Hamann that there was an American prisoner there, and that I was five meters away from where the shots were fired. That was out in the garden. When the first shots were fired, I was thirty yards away from it, from my shelter to that point. That is what it should say here.

Q Did you read that statement before you signed it and swore to it?

A Yes, but I did object to it, and I was told that those were excerpts.

Q Did you make certain corrections in it in your own handwriting and initial those corrections?

A Yes, I did.

Q How many places?

A Two. There is a whole thing here which I had to change.

Q Two or three?

A Two. Three here.

Q You knew that the flier was going to be executed, didn't you?

(NAHRGANG-Cross)

A No.

Q Weren't you told that by the two policemen that brought him there?

A I didn't see any two policemen. I only saw one policeman call this corporal at our place. These two were in our place without the prisoner.

Q Exactly what did they tell you?

A The policeman was telling me that he was looking for cover from the shrapnel. Zahn just on the side sort of told me that the two policemen were to bump that flier off but they didn't do it. The policeman didn't say a word about such matters like shooting or anything.

Q Zahn told you about it instead of the policeman, is that right?

A He just about whispered it in my ear. I didn't take the matter seriously. I didn't ask you anything about it at all. [illegible]

Q What did you think he meant by "be bumped off?" That is not a serious matter to you? [illegible] question was ruled by the court reporter.)

DEFENSE COUNSEL: That is a double question. I object to it, may it please the court.

THE WITNESS: They were looking for cover from the air raid alarm.

QUESTIONS BY CAPTAIN VANCE: [illegible] remark next [illegible] at that time.

Q Do you consider killing a man a serious matter? [illegible]. They

A There was no intention of killing a man in our place, nor did we ever do that. I didn't [illegible] are.

Q Did you consider killing a human being a serious matter?

A There was no intention of killing a human being. There was no

Q Can you answer my question? [illegible] about this question

A We weren't authorized to kill a person. [illegible] the

Q I didn't ask you that. Do you know what I asked you?

A We had no intention of doing any harm to any person, or killing him or mistreat him. We didn't know about it. [illegible] was mentioning

Q Do you remember the question that I asked you? [illegible] did

A Whether killing a person would be a serious matter?

Q Answer it. [illegible]

MR. BACHAUS: Just a moment, if the court please. There is no evidence to the effect that this witness had anything to do with a killing of a man, and the question put to this witness is hypothetical and calls for an opinion. [illegible]

PRESIDENT: The objection is overruled. The witness will answer the question. [illegible]

THE WITNESS: Of course, it is a serious matter to kill a person.

QUESTIONS BY CAPTAIN VANCE: [illegible]

Q Did you consider it a serious matter to kill an American? [illegible]

A You don't do that kind of thing five minutes before twelve. [illegible]

Q I didn't ask you anything about 12 o'clock.

PRESIDENT: Repeat the question. [illegible]

(Whereupon the last question was read by the court reporter.) [illegible]

PRESIDENT: The witness will answer.

THE WITNESS: Yes. [illegible]

QUESTIONS BY CAPTAIN VANCE: [illegible]

Q Why didn't you take that remark seriously at that time?

A They didn't come over to us asking us to kill that man. They were looking for protection. What they wanted to do was to take the man some other place. I didn't ask them where.

Q Why did you direct Fay to take any part in it?

DEFENSE COUNSEL: I pray the court's judgment. There was no testimony that he did, and I want to protest again about this practice of putting into the witness' mouth things he never by any stretch of the imagination said. I don't think it is proper cross examination. [illegible]

PRESIDENT: Objection sustained. [illegible]

CAPTAIN VANCE: May it please the court, this is cross examination of the accused. I have a right to ask him what I want to. He can deny it if he didn't do it. I ask the court to reconsider its ruling.

DEFENSE COUNSEL: Those are not proper questions, just that there was

PRESIDENT: The court has ruled.

QUESTIONS BY CAPTAIN ZANGE: [illegible] not there. He arrived about 7am being there Q. Do you know why Fay went out and took charge of this prisoner

A. As far as I found out later on, the prisoner was still in the hands of the protective police at this time. I think all Fay did was go out there out of curiosity and go after him. I gave him no order to go out, nor did I tell him to participate in the matter. The only reason he could have gone out there was because of his curiosity, because he wanted to have a look at the man. If I had seen the prisoner -- but I didn't see the prisoner. The prisoner was still out in the street while the guards and the policemen were at my place. I never did see one that night.

Q At that time, were you Fay's superior?

A I was a Technical Sgt. of the Fire Police, and Fay was in the other fire extinguishing platoon.

Q Who held the highest rank, you or Fay?

A There is regular in the Fire Police and Fay was in the Air Raid Police.

Q Who held the highest rank, you or Fay?

A I didn't help bring the body from on the Herbrumer Weg up into the -- Q. Then Fay didn't even know there was a flier out there until you went in and told him, did he? A. Herr Weg, yes, I carried him on in.

Q Fay, nobody knows in the courtroom

Q Fay was asleep in his bed until you woke him up and told him, wasn't he? Do you know a Johann Zang? Do you know him?

A I would like to put one thing ahead of this. Always when there was an air raid alarm and somebody was sleeping in those beds, I did as I was supposed to. As Sergeant of the guard, it was his duty to do that. I went along and woke up everybody. So it might have been that same evening that I woke up Fay. I admit that easily, but it was not for that purpose.

Q Yes.

(NAHRGANG-Cross)

(NAHRGANG-Cross)

Q: But you did have some discussion with him about the fact that there was a flier there?

A: That there was a prisoner out there. He asked about Zahn being there and what the matter was, and I explained it to him briefly. He said he would be going out to see what the matter is. That was all he said.

Q: How long after Fay left was it that you heard some pistol shots?

A: That was only a matter of seconds.

Q: Was Fay on guard duty that night?

A: I can't say that any more.

Q: Where was the first time you saw the American flier?

A: I never saw any American prisoner.

Q: You never did see one that night?

A: Only after he was dead I saw him.

Q: You didn't see a prisoner, but you saw the corpse of one, is that what you mean?

A: Yes, the corpse.

Q: Mahrgang, you know you saw that flier before he was dead, don't you?

A: No, I didn't see him.

Q: Did you help bring the body from the Blockwarter Weg up into the garden?

A: From the Blockwarter Weg, yes, I carried him on in.

Q: You laid him down in the garden?

A: Yes.

Q: Do you know a Johann Zahn? Do you know him?

A: Yes.

Q: You know that after the flier was laid down on the ground in the yard that he was still groaning and that you kicked him in the face and broke his right cheek bone, don't you?

A: I was supposed to have kicked the flier in the garden?

Q: Yes.

(MAHRGANG-Cross)

A MR. MACHAN: If the court please, I object to this line of cross-examination as to what you kicked him?

Q I didn't kick anybody. I have enough piety for that and after three years of praying I am ashamed not to kick a body. I certainly wouldn't do that.

Thereupon the last question was read by the court reporter as follows:

"Q Nahrgang, you told Fay to take the flier up in the neighborhood of the steps and fire some shots so he would run, didn't you?"

Q Who kicked him?

A He wasn't kicked at all.

Objection overruled.

Q Did you hear the doctor's autopsy report on this body that was read into evidence?

A Yes.

Q You told Hammann to go down on the Bierbrauer flag and wait for the flier to show himself and shoot him down in case of, didn't you?

A I didn't do anything to anybody. I certainly wouldn't. I have enough religion for that.

Objection overruled.

Q If the witness Zang says you did it, he will be lying, will he?

A Zang wasn't in our quarters. He was never in our place. These are rumors.

That is the way it happened, wasn't it, whether you told them or not?

Q How many ways were there of getting out of this yard which surrounded your headquarters?

I didn't make any agreement with Hammann, nor did I with Fay, he will say.

A There is the front entrance, B; E, the gate that was locked and the owner had the key.

You were Sergeant of the guard, were you?

Q There were just two ways to get out of that yard, were there?

I wasn't Sergeant of the guard. Hammann was the Sergeant of the guard.

A Out there where it says, "house," there was a house there which was still under construction, and it had received a direct hit by a bomb. You could get out towards the wood that way.

All I had to do according to was to be in charge of these construction men and to supervise the people who were working there. Later that Dy, Trumpler, accused No. 2, has resumed his seat in the box.

CAPTAIN VANCE: May it please the court, let the record show the sister of them.

QUESTIONS BY CAPTAIN VANCE:

Q Nahrgang, you told Fay to take the flier up in the neighborhood of the steps and to fire some shots so he would run, didn't you?

I don't know why that explained to you that they had the

(HAHRGANG-Cross)

MR. RACHAEL: If the court please, I object to that line of cross examination. There is absolutely no testimony in the record to that effect.

PRESIDENT: Repeat the question.

(Whereupon the last question was read by the court reporter as follows:
"Q Nahrgang, you told Fay to take the flier up in the neighborhood of the steps and fire some shots so he would run, didn't you?")

PRESIDENT: Objection overruled.

THE WITNESS: No.

QUESTIONS BY CAPTAIN VANCE:

Q You told Hammann to go down on the Bierbrauer Weg and wait for the flier to come along and shoot him when he came by, didn't you?

MR. RACHAEL: Same objection.

PRESIDENT: Objection overruled.

THE WITNESS: No.

QUESTIONS BY CAPTAIN VANCE:

Q That is the way it happened, wasn't it, whether you told them or not?

A I didn't make any agreement with Hammann, nor did I with Fay, to kill anybody.

Q You were sergeant of the guard, were you?

A I wasn't sergeant of the guard. Hammann was the sergeant of the guard.

Q What were your duties at night?

A All I had to do actually was to be in charge of these construction sites up there and to supervise the people who were working there. Master Sergeant of the Fire Police actually was the superior of them.

Q Do you know why they first explained it to you that they had the flier?

A He was looking for the superior there, and I said, "Well, I am not

the sergeant of the guard," and I called Hammann and Hammann got up. I called Hammann, but Hammann didn't get up. He didn't get there.

Q Which was it? Did he get up or didn't he get up?

A No, he didn't get up.

Q How do you know? Did you go in his room?

A No. I went to get my coat and put on my boots, and as I went outside the door, I heard, "Halt, halt," and I also saw some vague shadows in the back and then the shot was fired.

Q What was the approximate length of time from the time you told Fay there was a flier there until the time the flier was killed?

A I didn't say anything to Fay.

Q You didn't?

A I didn't tell Fay anything. I didn't give him any order, either. He just said on his own, "I will be going out there to see what is the matter."

Q How did Fay lie in his bed asleep even though there was a flier out there?

A I might have woke him up at the time when the air raid alarm started, but in this case, I did not call Fay.

Q You don't remember what you have just finished testifying at all, do you?

A Yes, I remember.

Q You can't remember telling the court five minutes ago that you did talk to Fay, can you?

A Fay was inside and he asked, "What is the matter?" and I told him in a low tone of voice. I didn't tell him to get out.

Q Now, did you see Hammann take the leather vest off the flier?

MR. RACHAEL: The defense objects, moves that the answer be stricken out, objects to the question on the ground there is no such testimony.

PRESIDENT: Objection overruled.

(Hammann-Cross)

Ta 250-pp-80-3/3-9

THE WITNESS: No.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY MR. BACHAEL:

Q Mr. Mahrgang, you read Prosecution Exhibit P-134 which you signed on December 14, 1956, did you not?

A Yes.

Q Will you tell the court the circumstances under which you signed that statement?

A We had been here a short time before that to have our pictures taken and we were told that within the next few days we would receive our charge sheet. All the men here were sitting in the waiting room expecting for things to start happening. Shortly before 12 o'clock, I was called into a room. Captain Mahlgut was standing in front of me and said, "I will be swearing you in," and that is what he did. And then he said, "Read over this one time," and I said, "This whole thing isn't right." I was a bit shaken that day, I was rather nervous when I read over it, and I said, "All this isn't right," and he said, "Well, those are excerpts from your testimony." So I thought to myself, "Is that supposed to be the charge sheet, perhaps?" I had never seen any such thing as a charge sheet before, so I signed it. That was the whole thing that I signed.

End ta 250
cc fols

Q Were you interrogated?

A No, never here in Dachau.

Q No questions were ever put to you and you never made any answers?

A No.

Q You say you were sworn in just before 12:00 o'clock — what time did you sign the statement?

A That was 12:00 o'clock.

Q What time were you served with the charge sheet?

A Might have been 12:15.

Q So you were sworn in five minutes to 12:00, you signed the paper and a quarter after 12:00 you were served?

A Yes, just about that time.

MR. RACHAEL: No further questions.

EXAMINATION BY THE COURT

QUESTIONS BY LAW MEMBER:

Q Why did you put on your coat and boots that night after the policeman reported there?

A I had been feeling slightly sick that evening and I had taken my boots off and laid out on a couch and when Fay went out to see what was going on I wanted to see too.

Q When Zahn came and spoke to you about the flyer and the policeman, did he whisper the entire conversation?

A Zahn really whispered in my ear, only the policeman I don't think knew what was being said. There was no prisoner there.

Q Did Zahn whisper everything he said to you?

A Zahn was whispering in my ear and the policeman said they were looking for cover.

Q Just what did Zahn say to you?

A The first thing that happened is that the policeman told me they were looking for cover from the shrapnel and as he was walking by me, whispered in my ear they are going to shoot him and they are not supposed to do it. All these things were happening so fast, I don't know, because I had orders from my chief not to get mixed up in the business of the protective police.

Q Did he specify the kind of business?

A All things in general, anything that came up, he wanted to know about it.

Q Now, again, I want to get this clear. Zahn and the policeman came into the guardhouse, is that right?

A They were in front of the guardroom under the doorway and they were asking for the sergeant of the guard.

Q Now, when he asked for the sergeant of the guard, did he speak in a normal tone?

A The policeman?

Q Yes.

A The policeman — I really couldn't get much out of the policeman at all, as a matter of fact the man was shaking.

Q I thought someone — which one asked for shelter, Zahn or the policeman?

A The policeman.

Q Did he whisper that in a normal tone of voice?

A In a normal tone of voice.

Q Then when Zahn spoke to you did he tell you they were supposed to shoot the flyer?

A Zahn didn't say at all we were supposed to bump off or kill the flyer, all he said was the policeman was going to do it, and —

Q I'll ask the question again. When Zahn told you that the policeman had a flyer out there that the policeman was supposed to shoot or bump off, did Zahn whisper that to you quietly?

A Yes, that was in a whispering tone of voice.

Q Was there any other conversation that was whispered?

A No. [illegible] court will come to order.

Q Did you know of any reason why Zahn would whisper that part of the conversation? [illegible] (Cont'd).

A I don't know. Mr. Michel's [illegible] with reference to the

Q Now, I believe in the direct testimony you said you told Fay something in a low tone of voice. What was that you told Fay in a low tone of voice? [illegible], but during the air raid [illegible]

A I was a little bit curious and said "What is the matter," and he said, "They are looking for protection, for cover," and then he said something else and then I said in a low tone of voice, in a quiet tone, "They are supposed to bump him off," and Fay said, "Who gave the order to do that," and I shrugged my shoulders. That was all there was to that conversation. [illegible]

Q Was there any reason why that would be whispered in a low tone of voice? [illegible] after go through the vehicle [illegible]

A I don't know, the prisoner wasn't there, the only man who was there was Zahn and the policeman. I wouldn't know of any reason, [illegible]

Q When Zahn whispered that to you, did you take it seriously or did you not take it seriously? [illegible] whether Zahn was just

A No. [illegible]

Q No what? [illegible] any instructions of your [illegible]

A I did not take that matter seriously or believe that the man was actually going to be shot.

Q Why did you not take that seriously?

A Because we don't know of any such orders or any such thing [illegible] that a prisoner would be shot.

LAW MEMBER: No further questions.

[illegible] 1868

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

EXAMINATION BY THE COURT

QUESTIONS BY LAW MEMBER (Cont'd):

Q Where was Mr. Eichel's headquarters with reference to the guardhouse?

A Police headquarters were located in the machine gun caserne Bierbrauer Strasse, but during the air raid alarm it would be in the SP shelter in Bierbrauer, only after 1944.

Q How far was it in meters to your guardhouse?

A It was about forty or forty-five meters. You had to go down this stairway, this thing here.

Q How did the police director go to his shelter? Did he go through the garden, through the gate marked "B"?

A The police director would frequently go through the garden, on the other hand he would often go through the vehicle road, I don't think he used the staircase at night.

Q When he went through the garden, he passed near your guardhouse, is that correct?

A I didn't often see the police director when he went along because I would be in the SP shelter.

Q Did the police director make any inspections of your guardhouse?

A No.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q When you were talking to Zahn and the two policemen, Schneider

and Michel, you said the flyer was not present?

MR. RACHAEL: Just a moment. The defense objects. There is no such testimony by the witness.

PRESIDENT: Objection overruled.

A The flyer wasn't present, that's right. I talked to them.

Q Now, who was guarding the flyer at that time?

A I don't know.

Q It couldn't be the two policemen who brought him there and it couldn't be Zahn?

A I don't know, I didn't see the flyer come in.

Q You know none of these three people were guarding him, then?

A There was only Zahn and the policeman.

Q Only one? One or two?

A Only one.

Q The court asked you a question -- did Zahn whisper, "They are going to shoot the flyer?" and you answered "But they will not shoot him, they will take him home." What do you mean by that?

A That was what Zahn told me and the policeman told me they were looking for owner.

Q What do you mean by "home"?

A MR. RACHAEL: Just a minute. The defense objects.

PRESIDENT: Objection overruled.

A Where they had come from.

Q And that is what you called the flyer's home -- where they came from?

MR. RACHAEL: The defense objects. The witness has not testified to anything of that sort.

PRESIDENT: Objection sustained. No further questions by the court. The witness will take his place in the balcony.

(Hahrgang - Recess)

(Whereupon the accused was excused and resumed his seat in the dock.)

PRESIDENT: The court will adjourn until 0900 tomorrow morning.

(Whereupon the court adjourned until 0900 hours, 4 March 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden. By Order
Im Auftrage von

.....

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....

(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

court (27)

MILITARY GOVERNMENT COURT

CASE RECORD.

Pages 1872 - 1962

Case No. Superior Orders

~~*Summary~~
~~*Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 4 MARCH 194 7

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Herbert E. Rosenstock

Reporter Patricia Stewart, Irving Hayett, Sally Rose Hayett, Peter DiCurti, Evelyn Cohen

~~Members of Court~~

WITNESSES:

HANS EICHEL	JOSEF KIWITT	WILHELM HOEHLER
LUDWIG GRUENHETT	JULIUS LASSAK	JURGEN STROOP
ROSEL SCHWAB	HEINRICH MICHELY	
PETER BRAUWEILER	ERWIN GOSS	
MIA BRAUWEILER	GEORG BEST	

Accused JURGEN STROOP, et al

Address Sex Age

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term
  - Beginning 194
- Fine
  - Amount
  - To be paid before 194
  - or in case of default of payment to serve a *further term of imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY Beginning 10 JANUARY 1947

4 MARCH 1947 Pages 1871 - 1962

TESTIMONY

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	COURT
Hans Eichel (recalled)			1873	1878	1889
Ludwig Gruenheit	1889	1892	1896	1897	1897
Resel Schwab (recalled)			1898	1899	
Peter Brauweiler	1901	1902			
Mia Brauweiler	1904	1906			
Josef Kiwitt (recalled)			1906 1918	1910	1918
Julius Lassak			1922		
Heinrich Matthias Michely			1923	1924	
Erwin Goss			1924	1930	
Georg Best			1932	1934	
Wilhelm Hoehler			1935 1942	1935	
Jurgen Stroop			1946		

EXHIBITS

NUMBER	DESCRIPTION	MARKED	RECEIVED IN EVIDENCE
P-146	Statement of Wilhelm Hoehler	1937	1937
P-146A	English Translation of P-146	1937	1937

CAMP DACHAU, GERMANY

4 MARCH 1947

MORNING SESSION

(Whereupon court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Before announcing those present, prosecution desires to ask the defense whether Dr. Trost will be marked absent continually or whether there has been a clarification with respect to her present status.

DEFENSE COUNSEL: As far as the defense knows, the situation remains unchanged. Perhaps I should have called the doctor, but I will put in a call sometime during the course of the day. In the meantime, I ask the situation be continued.

PROSECUTION: Let the record show that all the members of the court, all the members of the prosecution, all the members of the defense except Dr. Trost, who is absent sick, all the accused, the reporter and interpreter are present.

MR. PACHTER: The defense will call as its next witness the defendant Eichel.

HANS EICHEL, an accused, having been previously duly sworn, voluntarily resumed the stand in his own behalf and testified further through an interpreter as follows:

MR. PACHTER: Direct examination will be conducted by Dr. Becker.

PRESIDENT: You are reminded you are still under oath.

ACCUSED EICHEL: Yes.

REDIRECT EXAMINATION

QUESTIONS by DR. WACKER:

Q Mr. Michel, are you the accused number 6 who has testified here before?

A Yes.

Q Mr. Michel, when I will ask you about the flier, I will always be talking about the flier that was shot at Bierbrauer Weg. When did you first find out this flier had been captured?

A When he was dead.

Q Yesterday and Friday last week did you hear the testimony of the two policemen, Michel and Schneider?

A Yes.

Q Did you have anything to do with the orders which these policemen received?

A No.

Q Did you in fact give no orders at all to these policemen?

A No.

Q Regarding the treatment of captured fliers, did you issue any order of a general nature to your subordinates?

A No.

Q Mr. Michel, where were you on the evening of 22 February 1945?

A In my command post on Bierbrauer Weg.

Q When did you go to that command post?

A After the preliminary alarm started I went there at eight P.M.

Q Where were you coming from?

A From the caserne.

Q How long had you been in this caserne before that?

A Beginning about seven o'clock.

Q In this caserne had you received any reports or information concerning that flier?

A No.

Q At that time when you entered that shelter at about seven o'clock, did you then have no identity at all about this flier?

A No.

Q Will you please tell us how your attention was drawn to that incident which later happened?

A I was in my command post at Bierbrauer Weg and about eight o'clock a policeman rushed into the door.

Q Who was this sergeant?

A A certain Adam.

Q What was his rank?

A I don't know whether he was a police technical or staff sergeant. At any rate, he was a reservist.

Q Who else was in this air raid shelter with you?

A There was one Mr. Rupp, my deputy government counselor Grunhardt, the director Brauweiler and his wife, my secretary, one Mrs. Blum with her son. That just about covers it.

Q What did this policeman Adam say?

A Adam rushed into the door and shouted "parachutist."

Q Did he say anything else?

A No.

Q What did you do?

A At the same time several shots were fired too.

Q What did you do upon that?

A At the same time several shots were fired and you could hear a wild chase going on down that stairway starting at the point "E" and running down to the command post.

(Lichel-Redirect)

Q Do you mean point "C" on Prosecution Exhibit Number 127?

A Yes.

Q Continue please.

Q You could clearly hear a wild chase going on down the stairway.

Q What did you do upon that, Mr. Richel?

A Now, after these shots were being fired and this sergeant yelled "parachutist" I, as the local chief of the air raid protection, couldn't well stay in the shelter.

Q What did you do, Mr. Richel?

A I jumped on out and as I came to the exit of my command post another shot was fired. May I explain that with the chart, please?

Q Mr. Richel, will you please explain on this chart how you went to your command post and where you went?

A This was my command post, this is the exit (indicating). After the shot fell I ran over this way. Now, since a large number of civilians were also streaming along that path, having come out of the public air raid shelter located in this house, on account of that, I went along until this point "C". (Indicating)

PRESIDENT: Let the record show where he is pointing.

DR. WACKER: Let the record show that the witness Richel identified as his air raid shelter the point identified by the words "Shelter Richel Command Post" and that he further indicated that he went along the dotted line up to point "C".

QUESTIONS BY DR. WACKER:

Q What did you meet at point "C"?

A Here I met three or four men carrying a dead body.

Q Who was that?

A I didn't recognize these people.

Q What kind of a dead body were they carrying?

A That was not known at that time either.

DEFENSE COUNSEL: The prosecution has kindly called our attention to the fact that the indications that were given by Dr. Wecker should refer to Prosecution Exhibit Number 127 and that the witness indicated the line marked "Flier chased along this road" on that exhibit number.

QUESTIONS BY DR. WACKER:

Q Did you talk to anybody when this body was being carried?

A At point "G" I saw one man carrying a rifle walking along next to the body.

Q Did you know him?

A No, I didn't recognize him that evening. All I saw was that he was a tall man.

Q Did you talk to him?

A This man walked over to me and told me, "Mr. Police Director, I just fired at an escaped parachutist." Before that I had asked the question, "What's going on here anyway?"

Q What did you say upon that?

A "All right, take the flier over to the garden outside and primarily get the civilians out of here."

Q Did you issue any further instructions?

A No.

Q Do you know today who that man was?

A I do know it today.

Q Who was it?

A That was the accused Hammann.

Q How many shots did you hear in all?

A I can't say that exactly today any more. There were two series of shots.

Q What did you do when you had completed this conversation with

Hasmann?

A I went along with three or four men, -- I don't know exactly whether there were three or four -- up to point "D" and there the dead man was put down in the garden.

Q Did you return to your air raid shelter?

A No, not at that time. Then at first somebody flashed a flashlight and that was the first time that one could find out that it was a soldier. So I asked, "How did this man get here?" And somebody in the crowd answered, "Well, he was taken over here from Bieber."

Q Did you not know that before that?

A No.

Q Did any other conversation ensue?

A I then gave the order to have the property on the flier taken away from him. I don't know any more whether it was First Lieutenant Pieter or First Lieutenant Alt to whom I gave the order.

Q Did you take anything yourself belonging to the flier?

A No.

Q What did you do then?

A After that I went back -- after that I wanted to go back to my command post and upon arriving at the top of the staircase at point "H" I noticed a dark object on the ground.

Q What was that?

A I lifted it up and found it to be a fur jacket.

Q What did you do with the fur jacket?

A I took the fur jacket along to my command post and we observed it was an American piece of equipment or piece of clothing and I turned that over to the fire police later on.

Q Did you have anything else to do with the flier?

A No.

(Eichel-Redirect)

Q Mr. Eichel, please try to explain to the court one more time when it was that you heard the shots and where you were located when you heard them and please indicate on the chart where you heard each of the shots.

A When the first shots were fired I was in my command post. (Indicating)

DR. WACKER: Let the record show that the witness Eichel is pointing to the place "Shelter Eichel Command Post" on Prosecution Exhibit Number 127.

A After the first shots I went all out and I first started thinking -- what could that be? The last few days I had been continuously hearing talk that Airborne troops would be landing in our area.

Q Mr. Eichel, where did you hear the next shots?

A I was still in the shelter then.

Q And then?

A Then I went out.

Q Where did the next shots happen?

A When I went out of the bunker another shot or two were fired.

DR. WACKER: Let the record show that the accused number 6 is pointing to a point on Prosecution Exhibit 127 located between the words "Shelter Eichel Command post" and the word "flier."

QUESTIONS BY DR. WACKER:

Q Where did you hear the next shots?

A I didn't hear any more shots.

DR. WACKER: No further questions.

MR. RACHAEL: Your witness.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Eichel, is your command post beneath the ground or on top of the ground?

A That was a former wine cellar which had its top about ten meters above the ground and it wasn't far down into the ground.

Q How far below the ground were you when you first heard the shot?

A We were sitting about six meters away from the door.

Q I did not ask you that. I asked you how deep in the ground you were.

A I have already explained that the shelter is about ten meters below the ground.

Q You were down there?

A Yes.

Q What is the distance from your bunker to the stair steps marked "g"?

A The lowest step on that staircase is about two meters away from the entrance to my shelter.

Q You tell this court that while you were sitting ten meters below the ground you could hear people chasing down those steps, is that correct?

A Yes, because we weren't sitting right under the ground. The door was only six meters away from where we were.

Q Did you hear that running before or after Adam came in to tell you about the parachutist?

A Yes.

Q Yes, what? Before or after?

A That was after Adam was there.

Q Adam was already in there and he told you about a parachutist and then you heard some people chasing down some steps, is that correct?

A Adam was living in the vicinity and apparently was coming from his house so I guess he must have lived through it all.

Q I did not ask you where Adam lives or where he came from. Will you please answer the question? Can you understand my question?

A I would like to have the question repeated.

(Eichel-Recross)

(Whereupon the question was read by the reporter as follows:

"Adam was already in there and he told you about a parachutist and then you heard some people chasing down some steps, is that correct?")

THE ACCUSED RICHEL: No, when Adam was coming in, we already heard this wild chase down the stairs.

QUESTIONS BY CAPTAIN VANCE:

Q Did you go out when you heard the wild chase or did you remain there to hear what Adam had to tell you?

A I still waited for a while.

Q What did Adam tell you exactly?

A All Adam said was "parachutist."

Q That one word "parachutist" and said nothing else?

A He didn't say anything else. He didn't have any reason to tell us anything else, just "parachutist."

Q That is the only thing he said, you are sure?

A Yes.

Q Did you hear anybody holler "halt"?

A No.

Q What else did you hear besides a chase going on down the steps? What else did you hear from the outside?

A I heard nothing else.

Q What do you mean by you heard a "chase"?

A You could very easily hear a crowd of people, or at any rate, several people rush down the stairs.

Q But you did not hear anything shouted or anything said?

A I didn't hear that.

Q Then you rushed out of the bunker, I believe you said, and went in the direction towards the Bierbrauer Weg, is that correct?

A Yes.

Q How did you know to go in that direction?

A Because all these people who were in the public air raid shelter, all the civilians, were speeding towards point "C". Upon that I assumed that something must have been going on there.

Q Which way did you say the civilians were going?

A To point "C" or "CG", to the exit towards Bierbrauer Weg.

Q You heard Fay say that there were a bunch of civilians going in the opposite direction to the air raid shelter, did you not?

A In the other direction could be the air raid shelter?

Q Yes.

A I don't understand that.

Q Did you hear him say that there were lots of civilians going towards the air raid shelter?

A I don't remember that. I don't know how you mean that, air raid shelter.

Q Towards your bunker?

A To my bunker, no civilians can go there. No civilians are permitted in there.

Q There is a place there for civilians to go when there is an air raid alarm, is there not?

A No other civilians could get into my command post.

Q Next to your command post?

A Next to it 20 or 25 meters away was the nearest public air raid shelter.

Q It was a big place, it held two thousand people, did it not?

A In the whole shelter?

Q Yes.

(Eichel-Recross)

A Yes, but it wasn't used because it was quite damp. There were about 100 or 150 men in the cellar, maybe.

Q You say, Eichel, this is the first time that you knew there was a flier there, is that correct?

A Yes.

Q You went there to the caserne about seven o'clock that night, is that correct?

A Yes, -- no, that is not right, -- eight o'clock.

Q Eight o'clock?

A I came to my command post at eight o'clock.

Q You had no idea they were going to bring an American flier there?

A No.

Q It is just a coincidence that every time you were around there was an American flier who got killed?

DEFENSE COUNSEL: We object to that question.

PRESIDENT: Objection overruled.

ACCUSED EICHEL: That's no coincidence. That's the truth.

QUESTIONS BY CAPTAIN VANCE:

Q So it is the truth that every time you were around an American flier was present and he got killed?

A I don't have to repeat that I said the truth, do I?

Q That happened twice on the same day?

A Two accidents the same day.

Q Two accidents! The man that died at the hands of Moller, was that an accident?

A Yes.

(Eichel-Recross)

Q You testified that when you got down to the Bierhrauer Weg that you saw some people carrying a body, is that right?

A Yes.

Q Who was carrying the body?

A I don't know.

Q Was that 'merican flier dead or alive at that time?

A He was dead.

Q Were you present when they carried the body up in the garden and laid it down on the ground?

A Yes.

Q Did you see Nahrgang when he kicked this flier in the face?

A No.

MR. SACHAKL: If the court please, the defense moves to strike the answer on the ground that there is no testimony whatever that Nahrgang kicked the flier.

PRESIDENT: Objection overruled.

A Well —

(Recess.)

(Richel-Recross)

QUESTIONS BY CAPTAIN VANOS: [illegible]

Q I believe you testified that at the time the flyer was killed [illegible] that, in Bieber when you were there, you were very angry, is that right? [illegible] to [illegible]

A While the flyer was being killed in Bieber I am supposed to have been excited? I do not understand. [illegible] dead. I want by that Q [illegible] While you were in the presence of the flyer at Bieber, [illegible] for [illegible]

MR. RACHAEL: If the Court please, the Defense objects to that. That matter has already been testified to. This is repetitious. [illegible] was pro[illegible]

PRESIDENT: The objection is overruled.

Q ACCUSED EICHEL: It was quite impossible that I ever was with the flyer at Bieber, [illegible] Nigish deal.

QUESTIONS BY CAPTAIN VANOS:

Q You testified before this Court that you saw him smoking a cigarette, so we know that you were in his presence.

A YES, but not the dead flyer.

Q I did not ask you about a dead flyer, merely, while you were in the presence of a flyer in Beiber you were mad, were you not?

A What right did you have to [illegible] man's personal property?

A DEFENSE COUNSEL: There is evidence, may it please the Court, that there were two flyers there. I think the Prosecution ought to denominate which one they are talking about, [illegible] ground I would have to give the order for the [illegible]

CAPTAIN VANOS: I am talking about the flyer you saw smoking the cigarette. I take a dead body to the morgue with his personal effects, don you?

Q ACCUSED EICHEL: Yes.

QUESTIONS BY CAPTAIN VANOS: The Prosecution and the witness are both [illegible] Q When you were in the presence of the flyer, that night, the one smoking the cigarette -- the flyer who was laying on the ground in the garden, you were mad, were you not?

A NO. I had no reason for that. [illegible] I [illegible] by or this flyer?

A That was my duty.

(Eichel-recross)

Q Why did you call him a son of a bitch? I got it?

A I don't know that. That is impossible. I had no reason to do that. However, I would like to say how this word got out. When Kammann reported to me that he had been shooting at a man who escaped, I want to emphasize this word, a man who escaped, I said, "That is a pigpish deal". I meant by that that it was a sort of unpleasant matter. It is always unpleasant for a man who is in charge for something like that to happen. He is responsible and has to report to higher headquarters and the word "Schweinerei" was probably justified.

Q [illegible] "Proper authorities"? Yourself?

Q What the hell word? Will you put it in English? I will only give [illegible] directs me to.

INTERPRETER: Pigpish deal.

QUESTIONS BY CAPTAIN VENUS: [illegible] deciding whether you answer the questions or not.

Q You were mad or you wouldn't be using that kind of language, would you?

[COUNSEL NICOLL]: Well—

A No, I wasn't mad at all. [illegible] record I would like to object to any further [illegible]

Q You ordered the dead man's property taken from him, did you not?

[illegible] the ground that the witness is not being charged with the improper disposition of anybody [illegible]

Q By what right did you have to take this man's personal property? [illegible] case which [illegible]

A Captain, that is a question you could answer just as well. [illegible] or of course

Q I am asking the questions and you do the answering.

A If there is a dead man lying around I would have to give the order for the personal effects to be taken away from the man because, after all, you cannot take a dead body to the morgue with his personal effects, can you?

Q Why can't you? [illegible] that has to do with the things that happen to

DEFENSE COUNSEL: The Prosecution and the witness are both arguing with each other and I ask the Court to tell them both to stop.

PRESIDENT: The arguing will stop.

QUESTIONS BY CAPTAIN VENUS: We pray the Court's indulgence.

Q What right did you have to take the personal property of this flyer?

A That was my duty. [illegible] was read by the interpreter.)

(Eichel-recross)

Q What did you do with the watch after you got it?

MR. RACHAEL: The Defense objects. There is no evidence in the record with regard to a watch.

CAPTAIN VANCE: I will be glad to read the record ——

PRESIDENT: The objection is overruled.

ACCUSED KICHEL: The entire utensils on the flyer were turned over to the proper authorities.

QUESTIONS BY CAPTAIN VANCE:

Q When do you call "Proper authorities"? Yourself?

A General, I will not answer that shameless question. I will only give an answer if the General directs me to.

PRESIDENT: You are not deciding whether you answer the questions or not. You will answer the question.

A ACCUSED KICHEL: Well—

DEFENSE COUNSEL: For the record I would like to object to any further interrogation as to the disposition of the personal belongings on the ground that the witness is not being charged with the improper disposition of anybody's property. This has nothing to do with what took place in this case which is a charge of murder. I would like a ruling from the Court on that objection.

CAPTAIN VANCE: All the accused in Charge I are accused and charged with cruelties, mistreatments, killings, beatings, tortures, abuses and indignities.

DEFENSE COUNSEL: What has that got to do with the things that happen to a man's personal effects?

CAPTAIN VANCE: We contend that stealing from a dead man is an indignity.

DEFENSE COUNSEL: We pray the Court's judgment.

PRESIDENT: Will the reporter please read the question?

(Whereupon the question was read by the reporter.)

PRESIDENT: Objection overruled.

ACCUSED NICHEL: No.

QUESTIONS BY CAPTAIN VANCE:

Q What did you do with that man's wrist watch— the one you took from him?

A All his property including the wrist watch was turned over to 1st Lt. Reiter or 1st Lt. Alt.

Q Why did you not leave that man's property with the body?

A Because it is common usage, it is regulations to take the private property on a dead body away from him. So they wouldn't get into unauthorized hands.

Q Nichel, you knew when you were arrested by the Americans you were wearing this American's watch, do you not?

A That is also. I was not arrested by any Americans. I was captured as a prisoner of war and my wrist watch was taken away from me. I never was wearing an American wrist watch.

Q You found an fur jacket that belonged to this flyer and you took it to your command post, did you not?

A Yes.

Q You wore that jacket, did you not?

A If Captain Vance would check his records correctly he would find out that the accused Kemmen stated that he was wearing this jacket when taken into custody.

Q I am asking you if you did not wear it too?

A No.

Q Is Kohrgang a subordinate of yours?

A No.

Q Kemmen?

A No.

[illegible] Hamburg.

Q Fay?

A No.

Q Under whose command were they?

A Under the command of the Reichsstatthalter.

Q So were you, were you not?

A No, that is not right, Captain. Mahrgang, Hammann and Fay were under the command of Captain Bauts.

Q Who was the next superior to Captain Bauts?

A The immediate superior of Captain Bauts was the Chief Mayor.

Q You, as police director, was chief of all of them, were you not?

A No.

Q Why did you have your command post out there at the same place that Mahrgang and Fay were?

A The command post had been there for a long time. Had always been there.

Q Is that another coincidence?

A That is not a coincidence, that is a fact.

Q You have heard the witnesses testify that Captain Kiwitt ordered this particular flyer be executed, did you not?

A Yes.

Q You know that you had instructed Kiwitt and all the other members of your command that all captured flyers would be executed, don't you?

A No. Never.

Q Captain Kiwitt was present that day at Bieber when you talked to Lt. Albrecht about the flyer being bumped off, was he not?

A No. Nobody said that the flyer was to be bumped off.

Q Was Captain Kiwitt present in Bieber on that day when you did discuss the flyer with Lt. Albrecht?

A Yes, he was present in Wieber.

Q So Captain Kiwitt knew what your desires were with regard to the treatment of flyers?

A No. I did not have any desires concerning the treatment of flyers.

CAPTAIN VANCE: I have nothing further.

MR. RACHAEL: Are there any questions by the Court?

EXAMINATION BY THE COURT

QUESTIONS BY LT. COL. WALKER:

Q You made a statement"I had nothing to do with the orders given the policemen" which policemen are you referring to?

A In general. Particularly those two who took the flyer to the Bierbrauer Weg.

PRESIDENT: There are no further questions. The witness will resume his seat in the dock.

(Whereupon the witness was excused and resumed his seat in the dock.)

MR. RACHAEL: The Defense calls Ludwig Gruenheit.

LUDWIG GRUENHEIT, called as a witness for the Defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q State your full name?

A Ludwig Gruenheit, 60 years old, married.

Q Where do you live?

A In Giessen.

Q On the 22nd of February 1945 what was your occupation?

A Government counselor in the Police Headquarters Offenbach.

Q Was that the place where Michel was Police Director?

A Yes.

Q What was your occupational relationship with Michel?

A You mean position?

Q That is correct.

A I was the legal advisor of the police director.

Q Will you look around the courtroom and see if you recognize Eichel?

A Yes, No. 6.

MR. RACHAEL: Let the record show that the witness identified the accused, Eichel, wearing placard No. 6.

QUESTIONS BY MR. RACHAEL:

Q In your position in that office, can you tell whether Eichel ever issued any orders concerning treatment toward captured fliers?

A I wouldn't remember anymore.

Q On the 22nd of February 1945 in the evening, where were you?

A As far as I can remember I was in the Felsenkeller.

Q What time did you go there?

A About eight o'clock.

Q Why did you go there?

A There was an air raid alarm.

Q Did you see Eichel there?

A Yes.

Q Where was Eichel?

A If I didn't go there with him, he was there already and was sitting at the table.

Q Is that in the air raid shelter at the Felsenkeller?

A Yes.

Q Can you tell the court what happened while you were in the air raid shelter?

A A while after -- I had been there a while, a man rushed in and he said that some firing had gone on and that it probably was a parachutist or a flier.

Q Then what happened?

A Police Director Eichel upon that went on out and after a while he came back in.

Q How long a period of time elapsed between the time he went out and the time he came back?

A I would estimate it ten minutes to fifteen minutes.

Q When he came back did he have anything with him?

A I can't say exactly whether he himself brought in a flying jacket or whether anybody else carried it in together with him.

Q What time did you leave the air raid shelter finally?

A I believe about ten.

Q Was Eichel there at that time?

A Yes. Usually we would leave together. I think it was the same that day.

Q So that all the time between eight o'clock and ten o'clock, except for a period of between ten and fifteen minutes, Eichel was in the air raid shelter on the 22nd of February 1945?

A Yes.

QUESTIONS BY DR. WACKER:

Q Who was Eichel's deputy?

A I was Eichel's deputy in Police Headquarters, and in the District Police, Protective Police, the Major would be the deputy.

Q Were you together with Eichel throughout the day of the 22nd of February 1945?

A Probably, because I live in the Caserne and had my office there.

Q If Eichel had given anybody an order concerning the treatment of Allied prisoners that day, would you have known about it?

A I would not have had to know about that.

Q After the 22nd of February or at any time, did Eichel wear an American wrist watch?

A I don't know.

DR. WACKER: No further questions.

QUESTIONS BY MR. RACHAEL:

Q Was the air raid shelter in which you were that evening in the area of the Felsenkeller?

A Yes.

Q The Felsenkeller?

A Part of it.

Q The Felsenkeller refers to that group of houses in that particular vicinity?

A What? I don't understand that.

Q I will withdraw the question. What did the name "Felsenkeller" mean?

A They are all old cellars as far as I know, and used to be used to store beer, later on wine.

MR. RACHAEL: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q I believe you said that you were the legal advisor to Eichel, is that correct?

A Yes.

Q Are you a lawyer?

A No, I am an official.

DR. AHRENS: Objection to the translation. The question was "Are you a lawyer" and it was translated "Are you a Rechtsanwalt?" and that is wrong. In this case the question should have been, "Are you a jurist?"

CAPTAIN VANCE: Will you repeat the question to him in whatever way it should be asked?

INTERPRETER: I don't believe it is a correct translation. I think mine is a right one.

QUESTIONS BY CAPTAIN VANCE:

Q Are you a jurist?

A Yes.

Q Were you a jurist at the time you were the legal advisor for Mr. Michel?

A Yes.

Q Now, you say about eight o'clock on the night 22 February, you went into the bunker and were present with Michel, is that right?

A Yes, about that time.

Q Now, about how long had you been in the bunker with Michel before the man came in and said there was a parachutist out there?

A I think about half an hour to forty-five minutes.

Q Had you heard anything from the surface before that man came in and told Michel there was a parachutist?

A You mean shooting?

Q Any kind of noise?

A No.

Q As a matter of fact, down in that bunker, ten meters below the ground, you could not hear what was going on upstairs, could you?

A Yes, that's about right.

Q You could not hear people walking up and down the steps, upstairs when you were down in the bunker, could you?

A The air raid shelter which we were in was behind another air raid shelter.

Q How far is that from the bottom of the steps?

A About five or seven meters.

Q When you were down in the bunker, you could not hear people going up and down those steps, could you?

A Probably not.

(Gruenheit-cross)

Q At least on that night you did not hear anything upstairs until this man came down and reported there was a parachutist, did you?

A No.

Q Do you remember what the man said when he came down and reported to Eichel?

A "There has been some firing going on. It must have been a parachutist or a flier." He said something like that.

Q Do you remember anything else he said?

A No.

Q I believe you said after this conversation took place that Eichel left, is that correct?

A Yes.

Q Did you leave or did you remain in the bunker?

A I myself went up several paces to the front stairway leading out of the cellar but it was too dark for me so I went back on in.

Q I believe you said Eichel was gone about fifteen minutes?

A Ten or fifteen minutes.

Q What did Eichel say when he came back?

A I don't know that any more. He took this jacket, examined it and took a file out of it. There wasn't much talking going on.

Q Do you know Nahrgang, Hammann and Fay, who are accused persons in this trial?

A No.

Q Did you ever hear of those people; do you know them by name?

A I don't know the names but only within this last period.

Q Do you know whether they were subordinates of Eichel?

A Yes, as members of the fire police.

Q They were under Eichel's command?

A Yes.

(Gruenbeit-Cross)

Q In your capacity as a jurist, I want to ask you for an opinion. Do you consider an order to shoot an unarmed surrendered prisoner of war to be a legal order?

MR. RACHAEL: Defense objects to this question.

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: I think the question should state the source of orders. May it please the court, before an opinion could be properly asked, he should be asked, is an order from so-and-so or a man occupying such-and-such a position, to somebody beneath him a legal order?

PRESIDENT: Read the question.

(Whereupon the question was read by the reporter.)

CAPTAIN VANCE: (Continuing) When that order is given from one person of higher rank to another person of lower rank?

MR. RACHAEL: Defense still objects to that question.

PRESIDENT: Objection overruled.

THE WITNESS: That's a question for an expert.

QUESTIONS BY CAPTAIN VANCE:

Q I want to know if you consider such an order to be a legal one?

A Might I ask for the phrasing exactly one more time, please?

MR. WACKER: I want to object to the question on the ground that this witness has been called by the defense purely as to facts. The question exceeds the scope of direct examination and if the prosecution wants to make this witness their own expert, they can call him to the stand in their own behalf.

PRESIDENT: The court will recess for twenty minutes.

(Whereupon at 1015 hours the court recessed.)

(Gruenheit-Cross

(Thereupon the court reassembled at 1030 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense, except Dr. Trost, who is absent sick; all of the accused except the accused Streop, who is temporarily absent conferring with counsel; the reporter and interpreter are present.

MR. RACHAEL: If the court please, I believe at the close of the session the witness Grunsheit was on the stand.

PRESIDENT: The objection to the last question before we recessed is sustained.

LEIBEL GRUNSHEIT, called as a witness by the defense, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

CAPTAIN VANCE: Nothing further, may it please the court.

REDIRECT EXAMINATION

BY [illegible]

QUESTIONS BY DR. WACKER:

Q Mr. Grunsheit, upon a question of the prosecution, you stated that the fire protection police was under Eichel. The question I want to ask you is as follows: Was the fire protection police under Eichel personally, or were they under him only in case they were used in action since he was the air raid protection chief?

CAPTAIN VANCE: We object on the ground the question is repetitious. The question has already been answered very definitely by this witness.

DEFENSE COUNSEL: I deny the court's judgment. It is certainly a thing that requires clarification.

PRESIDENT: The objection is overruled.

THE WITNESS: May I have the question again?

(Whereupon the last question was read by the court reporter.)

THE WITNESS: Only in case of action.

DR. WACKER: No further questions.

(GRUNSHEIT-Redirect)

REDIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Were you having action at the time around the 22nd of February, 1945?

A Fire protection action? I don't know. I do not think so.

Q Weren't you having air raids and having fires at that time?

A I can't say whether Offenbach was attacked that day. I do not think so.

Q You think there was no air raid in Offenbach or Bieber on that day, is that correct?

A I don't know of any.

CAPTAIN VANCE: Nothing further.

MR. MACHAN: Any question by any member of the court?

Yes.

EXAMINATION BY THE COURT

QUESTIONS BY LAW MEMBER:

Q What do you mean by the statement, "only in action"?

A When there was an air raid alarm and when fires would occur.

QUESTIONS BY LIEUTENANT COLONEL WALKER:

Q I would like to ask one question in regard to a defense exhibit with which you may be familiar. On that chart, it shows under Berman, HSSAP -- come down to Police Director No. 2. Underneath that is commander of the SCHUPO. Below that is fire police and regular police. Is that the correct line of command to your knowledge?

A May I have the last part of the question again?

(Thereupon the last question was read by the court reporter as follows:
"Q On that chart, it shows under Berman, HSSAP -- come down to Police Director No. 2. Underneath that is ——— ")

DEFENSE COUNSEL: May I help?

LIEUTENANT COLONEL WALKER: Right there, police director. Underneath that is the commander of the local police, and below that -- bring it down to the fire police. Is that the correct regular channel of command?

(CONTINUED-Court)

THE WITNESS: Yes.

PRESIDENT: No further questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MR. RACHAEL: Defense calls as its next witness Rosel Schwab.

ROSEL SCHWAB, recalled as a witness by the defense, resumed the stand and being reminded that she was still under oath, testified further through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q You are the Rosel Schwab who testified previously in this case?

A Yes.

Q You stated that you were secretary to Police Director Eichel, did you not?

A Yes.

Q On the 22nd of February, 1945, in the evening at about 8 o'clock, where were you?

A Well, I was in the cellar at Bierbrauer Weg.

Q What time did you go there?

A When the alarm started.

Q About what time was that?

A That was about 8 o'clock, I think.

Q Was Police Director Eichel there at that time?

A Yes.

Q How long did you remain in that cellar?

A Until the end of the air raid alarm.

Q About what time was that?

A It might have been about 10 o'clock, or it might also have been 10:30.

Q Was Police Director Eichel there at all times between 8 and 10?

A Yes. He left the air raid shelter, though, at the time one

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Mr. Adam came in and said, "There is a parachutist flier out there trying to escape," and in fact some firing was going on already. At that time, Police Director Kichel left the cellar and he returned to the cellar five or possibly ten minutes later.

Q When he returned, did he have anything with him?

A No, I don't remember anything.

Q Did you leave the cellar?

A No.

Q Where were you prior to 8 o'clock?

A I was with the Police Director in his room.

Q Where was that?

A In the Casserne.

Q How long were you in that room in the Casserne with the Police Director?

A Until the alarm started.

Q What time did you go to that room?

A After office hours I remained there because I had more work to do.

Q And was Kichel there all the time?

A Yes.

Q After Kichel got back to the cellar, did you notice whether or not he was wearing an American wrist watch?

A No, he wasn't wearing one.

Q Did you notice whether or not he had a flier's jacket with him?

A Yes, a flying jacket was taken into the cellar. I don't know whether Mr. Kichel took it in or somebody else. I don't know exactly who brought it in, but it was brought in.

MR. RACHAEL: Your witness.

REDIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

(SCHRAB-Recross)

Q When Mr. Adam came into the cellar, tell me everything that Mr. Adam said, as best you remember, and everything Mr. Eichel said.

A Mr. Eichel left subsequent to that.

Q I know he left, but tell me what Adam said to Mr. Eichel when he came in.

A He didn't say anything.

Q Didn't you just finish saying that he came in and said there was a flier out there who was trying to escape?

A Yes, Mr. Adam said that.

Q That is what I am asking you. Tell the court everything Mr. Adam said.

A Yes, Mr. Adam came in and he said, "There is something the matter out there. There is some firing going on. A parachutist is about to escape."

Q Do you remember anything else he said?

A No.

Q After Adam said this to Eichel, then what did Eichel say?

A Eichel didn't say anything after that. He went out then.

Q Did you leave the shelter?

A No.

Q Are you familiar with the steps that lead down toward the shelter?

A Yes. They go down to the cellar directly from this yard.

Q What is the depth of the cellar?

A I can't say.

Q It is about 10 meters deep, isn't it?

A It might be so.

Q Tell me what you heard, if anything, prior to the time that Mr. Adam came into the cellar.

A I didn't hear a thing.

CAPTAIN VANCE: Nothing further.

(SCHMAB-Recross)

MR. RACHAEL: Any question by any member of the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MR. RACHAEL: Defense will call as its next witness Peter Braunsiler.

PETER BRAUNSILER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Will you state your full name?

A Peter Braunsiler.

Q Where do you live?

A Offenbach on the Main.

Q How old are you?

A 53 years.

Q On the 22nd of February, 1945, at approximately 8 o'clock in the evening, where were you?

A In the air raid shelter.

Q Where?

A Bleichstrasse Weg, Offenbach.

Q Is that the air raid shelter where the defendant Eichel had his command post?

A That was a private shelter.

Q Was the Police Director Eichel there at the time you were there?

A Police Director Eichel was there.

Q Will you look around the courtroom and see if you can tell the court if Police Director Eichel is present?

A Yes, Police Director Eichel is here.

Q Will you point him out?

A No. 6 over there (indicating).

Re 25-pp-90-3/5-7

MR. RACHAEL: Let the record show that the witness identifies the defendant Richal, wearing Placard No. 6.

QUESTIONS BY MR. RACHAEL:

Q When did you leave the shelter?

A After the alarm was over.

Q What time was that?

A About 2200 hours.

Q Between 8 o'clock in the evening and 2200 hours, was Police Director Richal in the shelter?

A Yes.

Q Did he leave there at any time between those hours?

A Yes.

Q How long was he gone?

A Five to ten minutes.

Q And then he returned?

A Yes.

Q When he returned, was he wearing an American wrist watch?

A No.

Q When he returned, did he have a leather jacket with him?

A There was a leather jacket that was taken into the cellar. I don't know whether Police Director Richal was wearing it.

MR. RACHAEL: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANEK:

Q Was this place where you were the command post of Richal?

A An emergency command post.

Q Did he have a regularly maintained office at that place?

A No.

Q Why were you and why was Richal down in this cellar?

A I was a civilian and since my air raid shelter in my apartment wasn't safe enough, I went over to Hirtenmesse Weg to get better protection.

Q Was there an air raid going on?

A Not in Offenbach.

Q Was there an air raid going on where this shelter was?

A Not as long as I was there.

Q Do you know why the air raid alarm had been sounded?

A There was airplanes passing over Offenbach.

Q This cellar is in Offenbach or in the near vicinity, isn't it?

A Yes.

Q I am not clear. Was there an air raid or was there not an air raid?

A Not in Offenbach.

Q What were you doing down in the cellar then?

A There was an alarm.

Q There was an alarm, but there was no air raid, is that correct?

A Yes.

Q Did you hear anybody talking that the alarm was sounded to get the people off the streets?

A No.

Q Every time the alarm sounded, people would go into the cellars, wouldn't they, and clear off the streets?

A Yes.

Q And on this occasion, the alarm sounded and the people did go into the cellars and clear the streets?

A Yes.

Q And while all the civilians and people were in the cellars, there was an American flier got killed. That is right, isn't it?

A Yes.

Q Now, you said that Eichel wasn't wearing an American wrist watch. How do you know that, Mr. Brauweiler?

(P. BRAUWEILER-Cross) 1983.

A I didn't see one.

Q But you aren't going to tell this court he wasn't wearing one, are you?

A He didn't have one in his hands.

Q You don't know whether he had one on his wrist or not, do you?

A I didn't see one.

CAPTAIN VANCE: Nothing further.

MR. RACHAEL: Any questions by any member of the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MR. RACHAEL: If the court please, I would like to enter into a stipulation with the prosecution that if Mia Braunsiler assumed the witness stand, she would testify as her husband did, Peter Braunsiler.

CAPTAIN VANCE: We don't feel that we should stipulate to the testimony of any witness who is sitting out here in the hall. If the witness was not available, we might consider doing so.

PRESIDENT: If the witness is present, the witness will testify.

MIA BRAUNSILER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Will you state your name?

A Mia Braunsiler.

Q Where do you live?

A In Offenbach on the Main.

Q How old are you?

A 42 years.

Q On the 22nd of February, 1945, at approximately 8 P.M., where were you?

A I was in the Felsenkeller. An air raid alarm was going on.

Q Were you with your husband at that time?

A Yes.

Q Is that Peter Brauweiler?

A Yes.

Q Were you in the air raid shelter of Police Director Eichel?

A Yes, that was a private cellar.

Q What time did the air alarm end?

A It was over about 10 o'clock.

Q Did you leave at that time?

A Yes.

Q During the time between 8 o'clock and approximately 10 o'clock, did you see Police Director Eichel in that shelter?

A Yes.

Q Did he leave at any time?

A Yes.

Q About what time was that?

A Shortly before 9.

Q About how long was he gone?

A Five to ten minutes.

Q Then did he return?

A Yes.

Q What was the occasion for Police Director Eichel leaving?

A There was a man who came in the cellar reporting that a parachuted flier had run past the shelter and that he had run past the shelter and that some shooting had gone on.

Q When Police Director Eichel returned to the shelter, was he wearing an American wrist watch, if you know?

A No, I don't know.

Q Did you see a leather jacket brought into the cellar?

A No leather jacket, a jacket made out of cloth.

MR. RACHAEL: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Did you hear any shooting before this man came downstairs to tell Michel about it?

A No.

Q Is your hearing good?

A Yes.

CAPTAIN VANCE: Nothing further.

MR. RACHAEL: Any questions by any member of the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MR. RACHAEL: Defense calls as its next witness the defendant Josef Kwitt.

JOSEF KWITT, an accused, resumed the stand in his own behalf, and being reminded that he was still under oath, testified further through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Mr. Kwitt, you are a defendant in this case?

A Yes.

Q You have previously testified?

A I testified.

Q I call your attention to the 22nd of February, 1945. Do you recall two policemen coming with a rifle to the police station in Offenbach?

A Yes.

Q Were those two policemen the witness Schneider and Michel who testified in this case?

A Yes, that is them.

Q About what time of the day did they come to your office?

A About 1930 or 2000 hours, the way I remember it. I can't give the exact time.

Q Will you tell the court what happened? What was said in the office?

A I was sitting in my room on the ground floor when Lt. Alt, the officer of the day, came in and said, "Captain, will you please come up and help me some?" I asked, "Why, what is going on?" He said, "A flier has been brought in." So I went on up. When I got up to the office up there, 1st Lt. Trautmann was there. There was two enlisted men and the flier. Lt. Trautmann wanted to talk to the flier and did a lot of gestures. He couldn't make himself understood. I told him to get out. I reprimanded these corporals, Michel and Schneider, for taking the flier to the protective police headquarters and for not having turned him over to the anti-aircraft outfit in Rehlingen also for not having turned him over to the police jail in Kaiserstuhl. And after reprimanding him, I told the policeman Michel and Schneider to take him to the police jail and turn him over there. Lt. Alt got in the conversation and he said, "Captain, you can't do that. A major has already issued the order to get this flier bumped off." Upon that, I said, "Well, if a major gave an order, I can't change it. I guess you will have to bump him off then."

Q Was there anything else said?

A Well, upon that, one of the two officials, I don't know which one it was, said, "Well, Captain, we can't do that. We will take him back to Bisher." So I said, "See that you get out of here. Get out," so they got out.

Q You heard the witness Schneider testify that he understood your language to be an order, and you heard the witness Michel testify that he understood your language not to be an order. Just what is the language which you used to the policeman?

A I said, "Well, if the major gave an order, then I can't change it. You will have to bump him off, I guess." I didn't say anything else.

Q After that conversation, you say you drove them out of the office?

A Yes. I said, "See that you get out. Get out of here."

Q Was the flier there at that time?

A Yes, they took him along.

Q Did the flier overhear, if you know, the conversation between you and Michel and Schneider and Alt?

A If he had understood German, he would have been able to hear it, but he didn't understand German. I found that out when 1st Lt. Trautmann was trying to talk to him.

Q Who was Lt. Alt?

A 2nd Lt. Alt was the OD that evening.

Q And who was Major Kuhlenbeck?

A Major Kuhlenbeck was the commanding officer of the protective police of Offenbach.

Q Was Major Kuhlenbeck the superior of Lt. Alt?

A Yes.

Q How about you? Was he your superior?

A He was my superior.

Q What were you doing in the office at that time?

A In my office on the ground floor, I was doing some work there. I had received an order from Major Kuhlenbeck to prepare a defense for the town of Offenbach and that work took up all my time. I wasn't doing anything else. I had been in Offenbach for only 12 weeks when that happened.

Q After Schneider and Michel and the flier left, did you send anybody out after them?

A Yes, one or two of them had gone out. I went to the telephone and I called up the major to ask him whether that was right about his order, and the major said, "Yes, that is correct. These men shouldn't act so stupid." That is exactly what he said. He used that expression. "Send Lt. Alt along." In that conversation, I twice requested to have the flier taken to a police

jail. The major got enraged or annoyed — I heard that from the way he talked — and then he hung up.

Q Did you send Lt. Alt after Schneider, Michel and the flier?

A Yes, I sent Lt. Alt after them, and the last word I told Lt. Alt was, "Go past the police jail on your way and if he is in there, call up the army right away and have him picked up." Those were my last words to Alt.

Q Did Lt. Alt return to the office later?

A I don't know whether I saw him next the same evening or the next morning. I don't remember exactly.

Q Did Lt. Alt tell you that he had seen Michel, Schneider and the flier?

A Yes, he told me.

Q Where had he seen them?

A I don't know. I don't know Offenbach so well. Maybe he named the street, but I don't remember.

Q When did you find out that this flier had been shot and killed?

A I found out through Lt. Alt.

Q Was that the next morning?

A It might have been the next morning; I can't make any precise statement. I don't know.

Q You say you had been attached to that office for about 12 weeks prior to that time, is that right?

A Yes, that is right. I got there about the 22nd of November.

Q Do you know whether any orders existed concerning the shooting of fliers?

A No such order existed in the headquarters of the protective police in Offenbach. If any such order had existed, I would have found out about it without any question.

Q Can you tell me what was the relationship between Police Director

Michel and Major Kuhlenbeck?

A The relation or the connection?

Q The connection.

A The relations between Major Kuhlenbeck and the Police Director were extremely strained. They didn't get along so well.

MR. RACHAFL: Your witness.

RE CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q When Michel and Schneider came to your office, they told you that they had been sent there by Goehrendt, didn't they?

A No, they didn't say anything about that.

Q You heard both of them testify about that, didn't you?

A Michel and Schneider, yes. I heard that here, and in fact it was only here that I found out that Michel and Schneider had received instructions from Goehrendt. I didn't know that.

Q They told you they came from Goehrendt and they brought you a note from Goehrendt, didn't they?

A No, I didn't receive any note from Goehrendt. When I went upstairs to the office of the OD, the flier was up there already and Lt. Alt, as the OD, had taken care of the whole matter and I suppose he also received a note, but I didn't.

Q You say Alt had taken care of the whole matter?

A I said that up in the room where the flier was, Lt. Alt was present as the OD and he received whatever there was to receive, I don't know what it was.

Q What was the occasion of your reprimanding Michel and Schneider?

A Because they had not taken the flier to Muhlheim, which is only about two kilometers walk from Offenbach, and taken him there, and because they had walked right past the police jail and not turned him in there.

Q Kiwitt, you know you reprimanded them because they didn't bump

the man off before they got there, didn't you?

A No, I did not do that.

Q When you and Alt and Michel and Schneider talked about bumping the flier off, the American flier was present and could hear the conversation, wasn't he?

A There wasn't any conversation about the flier being bumped off, and if Alt said, "The major gave an order; the flier got to be bumped off," the flier was standing perhaps three meters to my left at the door into the office of Lt. Alt.

[illegible]

JUDGE'S OR CAPTAIN'S [illegible]

[illegible]

(Adjourned)

Q Did the flyer hear what was said?

A I don't know whether he heard it. I don't know whether he understood German.

Q You said a while ago on direct examination that the American did not understand German.

A First Lieutenant Troutmann had been trying to talk to him and it didn't work out so I assumed the flyer doesn't understand German.

Q Do you understand English?

A I don't understand English, no.

Q If two people were discussing killing you, in English, don't you think you would get some idea what they were talking about?

DEFENSE COUNSEL: I pray the court's judgement. I object to that.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q After Lieutenant Alt told you that Major Kuhlenbeck had said that this flyer and all flyers should be bumped off then you agreed that that was what should be done to this one.

DEFENSE COUNSEL: I pray the court's judgement to that phrase that was added to it. I have been objecting, may it please the court, to the slipping in of language on testimony that never came before the court. I don't object to him saying, "After he discussed bumping off this flyer.", but this business of bumping off all flyers, that we object to.

CAPTAIN VANCE: I am not bound by what they prove. I can ask this man any question that I want to.

DEFENSE COUNSEL: You are bound by the rules of decent cross examination.

CAPTAIN VANCE: I take exception to that remark.

PRESIDENT: There will be no more argument.

(Kiwitt-cross)

What was the last question?

(Thereupon the reporter repeated the last question as follows:

"After Lieutenant Alt told you that Major Kuhlenbeck had said that this flyer and all flyers should be bumped off then you agreed that that was what should be done to this one?")

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: I would like to state to the court that I meant no reflection on the prosecution by the use of the word "decent". I meant proper cross examination.

THE WITNESS: Would you repeat this question one more time. I didn't quite catch it.

QUESTIONS BY CAPTAIN VANCE:

Q After Lieutenant Alt stated that Major Kuhlenbeck had instructed that this flyer be bumped off and all other flyers should be bumped off--when you heard him say that then you agreed to it didn't you?

A No, not at all. Nothing of that sort had said. Either Lieutenant Alt said the Major has given orders that this flyer is to be bumped off and not a word was said about anybody else.

Q What did you say after Alt made that remark?

A "I don't change it. You will have to bump him off then I guess."

Q You have already testified that you and Alt were both subordinates to Major Kuhlenbeck, is that right?

A I was a subordinate and Lieutenant Alt was a subordinate of Major Kuhlenbeck. That was right.

Q You were a Captain and Alt was a lieutenant, that is right isn't it?

A Yes, I was Captain Kiwitt and this was Lieutenant Alt.

Q You had authority to give Alt orders, didn't you?

A In that case I had no authority to give Alt orders. Alt was the OD. (Kiwitt-cross)

Q Kiwitt, you were out in the neighborhood of the Bierbrauer Weg on the afternoon of the 22nd about two o'clock before this flyer was killed that night, weren't you?

A I had been at Bierbrauer Weg, that is at the CP there, about noon on that 22nd day of February, 1945.

Q Tell the court what you said about the American flyers at that time when you were talking to the witness Jaeger?

A I wasn't talking to the witness Jaeger. He was entirely unknown to me.

Q Whom did you talk to on that occasion about noon?

A I don't remember that anymore, who I talked to about that time, but certainly not to the guard. He was supposed to be standing guard there just like I said.

Q With whom did you discuss flyers and what did you say?

A I didn't say anything. I don't know what I said.

Q You can't remember?

A Certainly not.

Q You heard Jaeger testify as to what happened at about two o'clock that afternoon, didn't you?

A Jaeger testified? I don't remember his words. If I remember properly, that everybody was supposed to be beaten to death.

Q You made that remark didn't you?

A No. I didn't make that remark.

Q I want to show you a document here that bears a signature and ask you if that is your signature?

A That is my signature, yes. When was that? Oh yes, that is all right.

Q Did the chief of police ever order you to shoot any American prisoners?

(Kiwitt-cross)

A No. My chief never at any time gave me any such order.

Q Do you remember being interrogated on the 22rd Day of October, 1946 at Dachau, Germany and making a sworn statement?

A Yes I was interrogated once. It might have been on the 22rd of October here in Dachau.

Q Do you remember the same identical question, word for word, propounded to you that I have just propounded?

A I don't know that anymore.

Q Didn't you answer that question, "He gave a general order that no flyers should be saved."?

A I never said any such order ever existed and when this question was brought up I told the interpreter twice, "Miss, that is not right what you are translating here." I told her, "Don't you understand me?" I never said that and then it was translated to me correctly and that is what I signed and now I got it back in my hands again through my defense counsel and I observe it was entirely different there. It might be a typographical error. It might say there might be a letter "k" missing and that would mean the difference between an order and no order.

Q All right. Now I will ask you another question. This second American flyer that you have mentioned--who ordered him shot?

A Which second American flyer?

Q You know that there were two executed on the same day don't you?

DEFENSE COUNSEL: I object to the language, may it please the court. I object to the word executed.

CAPTAIN VANCE: I will change it to "kill" them.

THE WITNESS: Yes, two flyers.

Q Who ordered the second flyer shot?

A I have already said that Lieutenant Alt said, "Captain you can't do that. The Major has given an order for the flyer to be bumped off.

(Kimitt-cross)

Consequently Lieutenant Alt as the OD must have received the order from Major Kuhlenbeck. I hadn't known a word of this before.

Q What were your instructions if an American aviator parachuted down? What were you to do if you caught him?

A The only order I knew was the non-interference order and I got to know about it when I was sent to Offenbach and I worked my way through all the secret files in order to find out about it. Among those I found the non-interference orders but nothing whatever of any other nature.

Q Do you remember that question being asked you by Colonel Chelin when he examined you?

A What question?

Q What were your instructions if an American aviator or an Allied aviator parachuted down? What would you do if you caught them?

A I don't remember this question being asked of me.

Q Do you remember answering it this way? "All captured flyers were delivered to the Anti-aircraft Battalion at Mulheim. If that man's papers were to be taken to the police jail until the chief of police, Hans Biehel, gave the order to shoot them" Do you remember that?

A I remember that approximately. I might not have understood the Captain's question properly. I made some comments upon where the flyers were to be taken and I then said that as far as I knew they were sent to Mulheim or to the police jail respectively and that happened until the day when this case in Bieber took place. That is what I said.

Q What do you mean, that they were held until Hans Biehel gave the order to shoot them?

A No, I didn't say that. I didn't say that.

Q Let me ask you if you remember this: "After the order was given by the chief of police that captured flyers were to be shot what was done with them?" and you answered, "The flyers were not delivered to the Anti-

(Recross)

aircraft anymore, but were turned over to Eichel and shot." Do you remember that?

A I don't remember that.

Q You can't say whether that was the questions answered by you or not?

A I don't remember giving this answer and all we ever had were these two flyers.

DEFENSE COUNSEL: We would like to know, may it please the court, if the prosecution is reading from an exhibit or from some other paper that hasn't been produced in evidence. If it is we would like a copy and a chance to see it.

CAPTAIN VANCE: This paper has never been introduced in evidence, no.

DEFENSE COUNSEL: Then I think that if he is examining on a paper we have never seen we are entitled to see it before it is used as a basis for examination.

CAPTAIN VANCE: I am impeaching the credibility of this witness to tell the truth. I have a right to use this document. If the defense desires to introduce it we will be glad to deliver it to you.

DEFENSE COUNSEL: I ask the judgement of the court.

PRESIDENT: This is the statement that he identified is it not? Proceed with the examination. The objection is overruled.

QUESTIONS BY CAPTAIN VANCE:

Q Kiwitt, on the first copy you knew that Lieutenant Albrecht got the direct order from Eichel the police chief to shoot that flyer, didn't you?

A I heard and I have already testified to that here. That Police Director Eichel told Albrecht that this flyer is going to be finished off or something to that effect, but I also testified here that my hearing is not good and I have poor hearing and that I didn't catch everything that was said. When this statement was prepared here in Dachau I told the interpreter

(Kiwitt-cross)

Q Do you want to say by that that you didn't make those statements at that time?

A No, I didn't make those statements.

THE COURT: No further questions. [illegible]

A THE WITNESS: I told the girl, "I don't hear very well so will you please be considerate?" That was written in english and she translated it to me and I guessed I didn't catch it all, but I had confidence in everything being done properly and that is why I signed it. I have no reason to lie.

THE MARSHAL: Any questions by any member of the court? [illegible] to his apartment. [illegible] was EXAMINATION BY THE COURT [illegible] QUESTIONS BY THE LAW MEMBER:

Q Where is Major Kuhlenbeck? [illegible]

A I don't know where Major Kuhlenbeck is. I am hearing over here there is a rumor that he is dead. [illegible]

Q [illegible] there be Lieutenant Alt? [illegible]

A I don't know that either. I asked for him as a defense witness. He ought to be sitting here with the number seven around his neck and not

(Kiwith-redirect-court)

"Mick, will you please show some consideration to the fact that my hearing is poor?" and I had confidence, great confidence in this being done properly and completed eight signatures. I signed my name eight different places.

CAPTAIN VANCE: Nothing further.

I haven't been able to REDIRECT EXAMINATION, but QUESTIONS BY THE WARDEN:

Q I have one question on behalf of Nichol and I am referring to this statement that was just read to you. Before these two figure, the one at Bieber and the one at Niederauer, you were any figure turned over to Nichol? A No, I never found out about any.

Q How do you explain the fact that this statement says that Spaigion would be ordered from Nichol as to what was to be done with these figures? A I didn't understand that in order to have two figures turned off."

I if you want to determine his guilt.

Q Where is Lieutenant Trautmann?

A Lieutenant Trautmann? I don't know that either.

Q Have you tried to locate them to be called as witnesses?

A I haven't been able to do any such things because I am in jail, but I told my defense counsel, "By all means get Lieutenant Alt over here. He has got to be over here." I was told by my defense counsel, "We can't find him."

Q When did Lieutenant Alt say that Major Kuhlenbeck gave him this order that you could not revoke?

A He said that when I told Schneider and Michel, "Go take him on out of here and put him in jail." That is when Alt told me, "You can't do that. Major Kuhlenbeck gave another order to have the flyer bumped off."

Q When did Major Kuhlenbeck give that order to Lieutenant Alt? Did he say?

A I can't say that. I don't know.

Q Was any effort made to locate Major Kuhlenbeck that night?

A I personally talked to him over the telephone. I wanted to make sure that was right. I couldn't understand it.

Q What time did Major Kuhlenbeck leave his headquarters in the [illegible] that day?

A Our office hours usually ended about 6 o'clock and then he went to his apartment that was in a hotel. He was always in contact by telephone with the OD on duty.

PRESIDENT: No further questions by the court.

MR. HACHAEL: That is all.

PRESIDENT: The witness will take his place in the dock.

(Whereupon the accused was excused and resumed his seat in the dock.)

DEFENSE COUNSEL: In view , may it please the court, of the way

the evidence is going I would like to make a reference to Alt and Kuhlenbeck. If I am not mistaken there has been a statement put into the record with respect to those two people, or something was said at least by the prosecution with respect to Alt. The man is supposed to be a suicide, is that right?

PROSECUTION: I didn't say he was supposed to be a suicide. I did say that War Crimes Headquarters had been trying to apprehend him for many months and they are of the opinion, although not sure, that he is dead.

DEFENSE COUNSEL: Could you add something with respect to what War Crimes has tried to do regarding Kuhlenbeck?

PROSECUTION: I have a statement in my files written by Mr. Rupper who said he saw Kuhlenbeck killed in an automobile accident.

DR. WACKER: In that case might one ask a question as to how the prosecution obtained this statement from Alt. He was still alive at that time wasn't he?

DEFENSE COUNSEL: I am not so much concerned, may it please the court, I am just trying to show a reasonable explanation to the court why Alt is not here today.

PROSECUTION: I am sure that counsel for the defense didn't realize the implications of his remark but I will say again, and I will quote War Crimes Headquarters, that Alt is believed to be dead. I don't know whether he committed suicide recently or not. I am not sure, but at one time a statement was taken from him and subsequently he disappeared. I have before me the case analysis that came down here and Alt's name is mentioned as a desired perpetrator.

DEFENSE COUNSEL: We are not questioning you here colonel. I am---

PRESIDENT: This court is personally satisfied with the explanation.

DEFENSE COUNSEL: That rests the evidence with respect to cases three up to ten inclusive for the time being. At least we now come to the point where we are going to put on the three principle accused. There are

still one or two questions of the order of procedence which I should like to settle between now and 1:30. May I ask for a recess now despite the fact that is still lacks 15 minutes of twelve.

PRESIDENT: The court will recess until 1:30.

(Thereupon at 1145 hours the court recessed.)

1921

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show all the members of the court, all the members of the prosecution, all the members of the defense with the exception of Dr. Trost, who is sick, all the accused with the exception of Number 1, the accused Streep, are present.

DEFENSE COUNSEL: May it please the court, just before 12:00 o'clock, I asked for a fifteen minute break to decide the order in which the accused would take the stand, and because some difference arose, decided they would take the stand in the order in which they are numbered. I would like to put on the five accused who were not sworn. As Streep is not ready, we will put on a witness not in the order we have planned. The first accused will be Lassak who will be examined by Major Saxon.

MAJOR SAXON: If it please the court, this accused desires to be sworn.

PRESIDENT: Do you desire to be sworn?

ACCUSED LASSAK: Yes.

JULIUS LASSAK, an accused voluntarily took the stand in his own behalf and after being duly sworn testified through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q You are the accused, Julius Lassak?

A Yes.

Q And you have heretofore testified before this court?

A Yes.

Q Was the testimony you heretofore gave the truth, the whole truth and nothing but the truth?

A Yes.

Q Do you now desire this court to consider your former testimony as though you had given it under oath?

A Yes.

MAJOR SAXON: Your witness.

CAPTAIN VANCL: No questions.

DEFENSE COUNSEL: Any questions by the court?

PRESIDENT: No questions by the court. The witness may resume his seat in the balcony.

(Whereupon the accused was excused and resumed his seat in the dock.)

DEFENSE COUNSEL: The next witness is the accused Michely who will be examined by Major Saxon.

MAJOR SAXON: If it please the court, this accused desires to be sworn.

PRESIDENT: Do you desire to be sworn?

ACCUSED MICHELY: Yes.

HEINRICH MATTHIAS MICHELY, an accused voluntarily took the stand in his own behalf and after being duly sworn, testified through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q You are the accused Heinrich Matthias Michely who has heretofore testified before this court?

A Yes.

Q Was the testimony you heretofore gave before this court the truth, the whole truth and nothing but the truth?

A Yes.

Q Do you now desire this court to consider this testimony as having been given under oath?

A Yes.

MAJOR SAXON: Your witness.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Would you tell a falsehood when not under oath that you wouldn't when you were under oath?

A Not in this case.

Q What do you mean by this case?

A Not in such an important matter; I don't want to say I never said a lie in my life.

Q You mean you would tell the truth not under oath, and also under oath?

A Yes.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Any questions by the court?

PRESIDENT: No questions by the court. The witness will take his place in the dock.

(Whereupon the accused was excused and resumed his seat in the dock.)

DEFENSE COUNSEL: The next accused, Erwin Goss will be examined by Major Saxon.

PRESIDENT: Do you desire to be sworn?

ACCUSED GOSS: Yes.

ERWIN GOSS, an accused voluntarily took the stand in his own behalf and after being duly sworn, testified through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q Your name is Erwin Goss and you are one of the accused here?

A Yes.

Q You have heretofore testified before this court?

A Yes.

Q I mean in this case?

A Yes.

Q Now, is the testimony you have heretofore given the truth, the whole truth and nothing but the truth, with the exception of certain mistakes and errors you have called to my attention?

A Yes.

Q Have you gone over the transcript of your evidence in this case with your counsel?

A Yes.

Q And if so, during it, you called to my attention certain errors which crept into this testimony which you think are mistakes on your own part as far as the answers here are concerned?

A Yes.

Q Do you desire to correct those answers at this time under oath?

A Yes.

Q With that in mind, I call your attention to page 982 of the transcript, line 6, and ask you if this question was asked you and you made this answer: "And what was this school known as?" And the answer: "The name was Werewolf."

A Yes, that is a mistake.

Q What is the mistake?

A The name of the school at that time wasn't Werewolf; it was N-12.

Q Is that what you intended to answer?

A I made this mistake, yes.

Q I call your attention to page 983, line 24 and ask you if you made this answer to the following question: "Was it still at Tiefenthal

(Cross - Redirect)

or was it then at Hallrabenstein?" And the answer, "The school remained in Tiefenthal until the 13th of January 1945 the day in which we were bombed out completely," and ask you if that answer is correct.

A Probably I answered the question in this manner, but it was a mistake, it should be 13th of February, not 13th of January.

Q I now call your attention to page 987 of the transcript, line 15 in which these questions were asked and these answers made: "Who fired these shots you heard?" And the answer, "I can't say that — I really don't know. Anyway, the flier wasn't injured and nothing had happened to him." Question: "All right, continue." Answer: "The flier was taken to the school upon my orders and taken into the first building of that school where we had arranged one room to be a mess hall," and the sentence continues.

A It should say the second building of that school.

Q Now, page 988, line 23, the question was, "Go ahead," and the answer, "I couldn't get Major Best, because he wasn't there, and I left a message that I would be at this appointed place called Unter dem Linden — that I would be at this particular place," and then it continues. Was that the answer you intended to give?

A It should say Unter dem Eichen (Under the Oaks.)

Q Now, I call your attention to page 989, line 14 thereof and call your attention to this question: "What happened next concerning this flier?" And the answer: "I met Major Best at Unter dem Linden and Major Best transmitted to me the order that the flier was to be shot." Was this correct or not?

A Here too it should say "Unter dem Eichen."

Q Lieutenant Goss, I now call your attention to page 990 of the transcript in which this question was asked of you and this answer given, line 25. Question: "Continue telling the court what next transpired."

Answer: "Buhlmann then received the order to take this flier to Bayerbach ..." Was this the correct spelling of this particular town?

A No, it should be spelled Bauerbach.

Q Lieutenant Goss, I next call your attention to page 991 of this transcript -- I am in error, 990 and 991 containing this answer, "and to shoot him on the way. Buhlmann left with the flier and returned after about three quarters of an hour to one hour and reported that he had not been able to carry out his instructions because some civilians had always butted in." In that connection you used the word "instructions," intending to give there.

A No, it shouldn't say "instructions" it should say "order".

Q I next call your attention to page 991, line 12, question: "Did you transmit to these two men exactly the instructions you had received from General Steyer about disposing of the flier by shooting him?" I want to ask you, Lieutenant Goss, did you understand the word "instructions" was used when the question was put to you, or did you understand the word "order" was used?

A I assume the word "order" was used, at least it should say "order" instead of instructions.

Q Lieutenant Goss, do "instructions" and "orders" have a great deal of difference in their meaning?

A Yes. Instructions to a German means to inform somebody of something and not always is an order included in such information. The order is the direct instruction to somebody to carry out the order.

Q I will ask you if you did not also call to my attention page 991 that the word Bauerbach was misspelled?

A Yes. It should be B-a-u-e-r-b-a-c-h.

Q Lieutenant Goss, I refer you now to page 991 and 992 of the transcript and to this question and answer: "How did you expect to avoid punishment yourself for not having carried out the order given

(Direct-Redirect)

you by General Streep?" Answer: "I did carry out General Streep's orders which I had received by way of Rost by ordering Buhlmann to take the flier to Hoerstech and shoot him on the way, and I had then received the report from Buhlmann to the effect it was impossible to carry out this order because civilians were around all the time, and even more new civilians would be around and would be following the flier around if for no other reason than to find out what would be happening to him. I therefore had a good reason for exonerating Buhlmann and keeping him out of trouble as well as myself; since he could see that I had done everything to carry out the order." I will ask you whether or not that is the full answer you intended to give there.

[illegible] Instead of "since he" it should say "since Streep could see," etc.

[illegible] I now refer you also to page 998 of the transcript, line 27, which reads, "The enemy was pushing from both directions as well as from Oberwesa where I had crossed the Rhine near Oppenheim . . . " Did you intend to use the word "I" or "he"? [illegible] Streep [illegible] I wanted to use "he" instead of "I".

[illegible] Lieutenant Goss, I must call your attention to this part of the transcript, pages 1000 and 1001, "Tell the court what message was conveyed to you from Streep regarding that." This is your answer: "Major Rost told me that he had transmitted the report to Streep, and he had also made clear to him the reason why this flier had not been shot. Major Streep had been quite outraged at this report and Rost said that he told Rost, 'It is a bad symptom for these men if they appear to become weak. If they do, I consider it duties to talk a few serious words to them.' I want to ask you whether or not, Lieutenant Goss, you did not inform me also that a part of the quote you intended to testify, continuing Streep's answer, "If

answer?

A It shouldn't say "instructions" but "orders" of General Stroop and then he was supposed to transmit the orders of General Stroop because Major Bast couldn't give me any orders.

Q The sum and substance is that you want "orders" placed in place of "instructions" and you want General Stroop's name for Major Bast's?

A Yes.

Q Now, I call your attention to page 1014 of the transcript, line 8 in which this question was propounded: "So on this occasion the civilians protected the flier from the police, instead of the police protecting the flier from the civilians, is that correct?" And the answer: "I would like to state here that we had nothing whatever to do with the police. We were an SS organization under the direct command of General Stroop and had no authority of police or Security Police."

(Goes - Redirect)

the next opportunity this would be brought out."

A Yes, Best told me so.

Q That is what Best told you?

A Yes.

Q I next call your attention to page 1010, line 2 in which the word "instructions" is used and ask you whether or not you intended the word "order" should be used?

A Yes, it should say "orders" instead of "instructions".

Q Referring you then to page 1011, line 18 of the transcript and will read you these questions and answers and ask you what corrections you desire made: "You did meet Major Best and talk to him, is that correct?" Answer: "I left a message to tell Major Best to find out what the instructions of General Stroop would be and them in the afternoon have the orders of Major Best transmitted to me by meeting him in this place." What corrections should be made in that question and

A It should say "we were a unit of the Waffen SS," instead of "an SS organization"[illegible]

Q Now I call your attention to page 1017 of the transcript, line 19 in which this question was asked you by me and ask you whether or not that was the way you understood the question. "Lieutenant Goss, did you make application to General Stroop to be transferred from this assignment in the German school to some other assignment?" What is incorrect in this question the way you understood it?

A It shouldn't say "German school" it should read "Worewolf school".

Q Lieutenant Goss, were those corrections that you have given in the transcript of the testimony formerly given by you in the evidence the truth the whole truth and nothing but the truth?

A Yes, but in my opinion there are two more corrections on page 1036, line 18 it should say "from the" school, of orders.

Q I will ask you whether or not in line 19 where it say "I couldn't be present because Goss couldn't call from a school," it should say "from the school"?

A It should say from the school instead of "a" because we had only telephone in our school, but that is Micholy's testimony -- that's all right.

Q Are there any other corrections in this testimony you think should be made, Lieutenant Goss? Any questions by the court of this witness?

A No. [illegible] No questions by the court. The witness will take

Q Do you desire the court then to consider your testimony you have givenhere with these corrections as having been given under oath? the dock)

A Yes.

[illegible] the accused seat and will

MAJOR SAXON: Your witness.

[illegible]

RECROSS EXAMINATION

[illegible] returned Stroop)

QUESTIONS BY CAPTAIN VANCE:

[illegible] place [illegible].

Q You read and understand English, don't you, Goss?

A .I learned English now, before I hardly know any English.

Q Well, you understand English today, don't you?

A I can't say "understand" anyway more than I did before.

Q Well, you read that transcript of the record of trial and picked out those errors in it?

A No.

Q Who did that?

A We did this together, Michely and Major Saxon.

Q Who read the English into German for you?

A Michely.

Q And after discussing it with Michely, you desired everywhere "instructions" appeared it should be "orders"?

A Yes.

A No, I can understand this mistake, only in this way. This was a mistake in translation, since I always spoke of orders.

Q But if you tell the truth about a thing not under oath, you would tell the truth under oath, and if you lie not under oath, you would lie under oath?

A I have to repudiate this very definitely because this testimony is much too serious to play around with the truth.

Q Yes.

CAPTAIN VANCE: No further questions.

DEFENSE COUNSEL: Any questions by the court of this witness?

PRESIDENT: No questions by the court. The witness will take his place.

(Whereupon the accused was excused and resumed his seat in the dock.)

DEFENSE COUNSEL: The next witness is the accused Boet who will also be examined by Major Saxon.

PROSECUTION: Let the record show that the accused Stroop resumed his place in the dock.

PRESIDENT: Do you desire to be sworn with the men".

ACCUSED BEST: Yes. [illegible] page 1057, I will read

GEORG BEST, an accused voluntarily took the stand in his own behalf and after being duly sworn, testified through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q You are the accused Best who has heretofore testified before this court?

AA Yes.

Q And you have heretofore testified and have since that time had a chance to examine the written transcript of your testimony, is that right, Major?

A Yes.

Q Is that testimony the truth, the whole truth, with the exception of certain corrections you wish to make in that testimony?

A Yes.

Q Now, have you gone over those corrections with your defense attorney and some of your co-defendants and determined you wish to make corrections in some of the testimony?

A Yes.

Q In that connection I call your attention to page 1056 and 1057 in which this question was asked you and you made the following answer, which I will read in part. The question: "The Werewolf, as a matter of fact, never got into training . . ." And this is your answer in part, "Unfortunately we had no communication, that is I didn't with the men in action so I don't know what did happen. I had instructions from General Pruetzmann to live together with a man at the front constantly in order to remain informed . . ." Will you tell the court what is incorrect in that answer and what you want corrected?

A It shouldn't say "with a man," but "with the men".

Q Now, calling your attention further to page 1057, I will read the question: "Did you have any command functions at all under General Stroop?" Answer: "Yes". Is that answer correct or incorrect?

A It should say "no" instead of "yes", because against the orders received from Berlin, General Stroop left all the command to themselves in Werewold matters . . . had reserved to himself all command and Werewolf matters.

Q I now refer you to page 1070 in which this question was asked you and ask you whether or not it is correct? "Now, I believe he already made a date at a certain time to meet Goss under the cake to tell him what should be done with the flier, is that correct?"

A It shouldn't say "he" it should say "I".

Q I refer you to page 1071, line 3 in which this question was asked you, "When is the next time you heard anything in reference to this flier?" And the answer, "One day later on the 17th of March."

A It should say the 16th of March.

Q I refer you to page 1071 of the transcript, line 4 thereof. This question was asked you and the answer is given as follows: [illegible] the accused in his own behalf and testified through an interpreter as follows:

"Q When is the next time you heard anything in reference to this flier?" [illegible]

The answer is given in the transcript:

"A One day later on the 17th of March[illegible]

Is that answer correct or incorrect?

A It should say on the 16th of March.

Q With these corrections that you have just given to the court here under oath, do you desire that the court consider the testimony heretofore given by you, including these corrections, as having been given by you under oath before this court? Consider the evidence you have not [illegible] having been given under oath?

MAJOR SAXON: Your witness, Captain.

Q Do you [illegible] under CROSS EXAMINATION of what you previously QUESTIONED BY CAPTAIN VANCE: ?

Q Which co-accused did you discuss your testimony with since you last testified? [illegible]: Your witness.

A With the accused Michely. [illegible]

Q Anybody else? [illegible]:

A Now Mehler, you attach importance to taking an oath, do you not?

CAPTAIN VANCE: That is all.

MAJOR SAXON: Does the court have any questions?

PRESIDENT: No questions by the court. The witness will take his place in the dock. [illegible] at this document I am holding in my hand [illegible] DEFENSE COUNSEL: The last accused who has testified not yet under oath is Koehler. We will now call him. He desires to be sworn.

PRESIDENT: Do you desire to be sworn?

(Post-Recross) Right, you may [illegible] it.

A (Resuming testimony) 1934

[illegible] while the accused is reading that, may I ask

(Mehler Recross)

ACCUSED HOEHLER: Yes.

WILHELM HOEHLER, an accused, being first duly sworn, resumed the stand in his own behalf and testified through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q You have previously testified in your own behalf not under oath?

A Yes.

Q Was the evidence you gave to the court the truth and the whole truth and nothing but the truth?

A Yes.

Q Do you desire the court to consider the evidence you gave not under oath as having been given under oath?

A Yes.

Q Do you now under oath affirm the truth of what you previously testified before this court?

A Yes.

DEFENSE COUNSEL: Your witness.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Hoehler, you attach importance to taking an oath, do you not?

A Yes.

Q You would not swear to a falsehood, would you?

A No.

Q I want you to look at this document I am holding in my hand and tell the court if it is written in your own handwriting and sworn to?

A Yes. May I read it?

Q All right, you may read it.

A (Reading document)

DEFENSE COUNSEL: While the accused is reading that, may I ask

the prosecution if that thing he has in his hand is an exhibit before this court?

CAPTAIN VANCE: It is not.

ACCUSED HOEHLER: I read it.

QUESTIONS BY CAPTAIN VANCE:

Q This statement of yours, written in your own handwriting, was sworn to as being the whole truth, was it?

A Did I swear to this too? Did I swear to one or both of them?

Q You have to answer the question.

A I put my signature after I wrote down the statement. I didn't sign any oath.

Q Does this statement contain the truth or does it contain false testimony?

A No, that's the truth.

Q This is the truth?

A Yes,

Q It in no wise stacks up and compares with the story you have told this court from the witness stand, does it?

DEFENSE COUNSEL: I pray the court's judgment. The thing is to speaks for itself.

CAPTAIN VANCE: In view of that statement I will offer this document in evidence --

DEFENSE COUNSEL: I would like to see it.

CAPTAIN VANCE:-- and ask that it be received as part of the record and be given the number Prosecution Exhibit 146.

DEFENSE COUNSEL: We will let the court rule on that without stating whether we object or not.

PRESIDENT: Prosecution Exhibit Number 146 will be received in

(Hoehler-Emerson)

evidence and made a part of the record.

(The document referred to was marked Prosecution Exhibit 146, was received in evidence as Prosecution Exhibit 146, is attached hereto and made a part of the record.)

CAPTAIN VANCE: If it please the court, prosecution also introduces as Prosecution Exhibit 146-A, an English translation of the statement and ask that it be received in evidence.

PRESIDENT: Prosecution Exhibit Number 146-A will be received in evidence and made a part of the record.

(The document referred to was marked Prosecution Exhibit 146-A, was received in evidence as Prosecution Exhibit 146-A, is attached hereto, and made a part of the record.)

CAPTAIN VANCE: I ask permission of the court at this time to read this statement.

PRESIDENT: Permission is granted.

(Whereupon Captain Vance read Prosecution Exhibit 146-A, followed by a reading of Prosecution Exhibit 146 in the German language by the interpreter.)

QUESTIONS BY CAPTAIN VANCE:

Q Now, Koehler, which story is the truth, the one you told to the court here in court or the story you have written here in your own handwriting?

A Both of them because they are not contradictory.

Q Well, let us see if they are contradictory or not. Do you remember testifying that Fuehr was on one side of the car and Freundt was on the other side and that Freundt shot the flier? Do you remember that?

A (No response)

Q In this statement you say that both shot the flier. Which is the truth?

A In my first interrogation I said Fuehr was on the left door of the car and Freundt on the right door of the car. When the flier left the car, while he was leaving the car, I saw both of them on the lefthand side of the car respectively, but the moment he had left the right door of the car, several shots were fired. At the time the shots were fired I didn't see any more that Fuehr was on the left door of the car and Freundt on the right door of thecar.

Q Did Fuehr shoot this flier as well as Freundt?

A I said already in my first interrogation, as well as

Q I am not asking you about your interrogation. I am asking you the question now.

A I can't answer this question only if I am allowed to explain it.

DEFENSE COUNSEL: And I ask that he be allowed to do so.

CAPTAIN VANCE: He doesn't need an explanation. He can answer it "yes" or "no" without an explanation.

PRESIDENT: The question will be answered without detailed explanation.

ACCUSED HOEHLER: I didn't see that Fuehr was shooting.

QUESTIONS BY CAPTAIN VANCE:

Q Then you were lying in this sworn statement, is that right?

DEFENSE COUNSEL: I pray the court's judgment. Whether he is or is not is obvious or can be determined by the court from a reading of that statement. There is nothing in that statement in which he says that Fuehr did any shooting.

PRESIDENT: Read that.

CAPTAIN VANCE: (Reading) "Freundt and Fuehr started shooting after him immediately, whereupon the flier was hit and fell to the ground after taking only a few paces."

THE ACCUSED HOEHLER: That is a report.

DEFENSE COUNSEL: Read down here too (indicating); read the whole thing.

(Hoehler-Recross)

CAPTAIN VANCE: Colonel, you can read any part you want to when I finish my cross examination.

DEFENSE COUNSEL: I have an objection. In order to pass on it, the court should have the entire document.

PRESIDENT: Read the balance.

CAPTAIN VANCE (Continuing reading): "It is possible, that by the reading of the above, the unvoluntarily arising question why I had not shot myself, was answered by me from the first by the following sentence: 'Even before I had left the car the prisoner turned to escape.' In my case the report made it clear and distinct that Freundt and Fuehr were the ones who had fired the shots, even though, as I have already stated, I did not see that besides Freundt, Fuehr also fired at the prisoner --"

DEFENSE COUNSEL: This is the way it should be read. (Reading): "Even though, as I have already stated, I did not see that besides Freund, Fuehr also fired at the prisoner."

There is a comma. That makes all the difference in the world. That is a distinct qualification that he did not see Fuehr do any shooting.

PRESIDENT: The court will give that necessary consideration.

QUESTIONS BY CAPTAIN VANCE: (The answer was read by the reporter.)

Q When you left with this flier, was it planned that you were going to stop on the way and the flier was going to be shot or did the flier ask you to stop so that he could relieve himself? Which is the truth?

A I said already in my first interrogation --

CAPTAIN VANCE: I object, if it please the court. This witness can answer my questions. He is evading them and talking about everything but answering my questions.

PRESIDENT: Answer the question. It is the truth that you [illegible]

ACCUSED MUEHLER: Already on my why from our headquarters to SS Colonel Trummler I heard from Freundt that the flier was to be shot.

CAPTAIN VANCE: If the court please, I wish the court would instruct this witness to answer my question.

(Muehler-Recross)

QUESTIONS BY CAPTAIN VANCE:

Q Which is the truth? Did the flier ask you to stop so that he could relieve himself or was it planned that he was going to be killed?

A It was planned right from the beginning. What is said in this statement is only the report which we made.

DEFENSE COUNSEL: Is the prosecution still objecting to that answer?

CAPTAIN VANCE: I do not think he has answered it.

DEFENSE COUNSEL: He said, "It was planned from the beginning. What is said in that statement was only the report."

CAPTAIN VANCE: I want him to answer the question, if he will.

DEFENSE COUNSEL: I submit that he has answered it.

PRESIDENT: Read the question and answer.

(Whereupon the question and answer were read by the reporter.)

PRESIDENT: The court does not thoroughly understand the answer. Will you repeat the question and have it answered in such a manner that the court can understand what he means?

(Whereupon the question was read by the reporter.)

DEFENSE COUNSEL: Please answer "yes" or "no."

ACCUSED HOEHLER: I have to make a short explanation to that. There is a misunderstanding here.

PRESIDENT: A short explanation is satisfactory to the court.

ACCUSED HOEHLER: What I said first is the truth the way it happened. What is said in the second statement here is a report which is not according to the truth, a report which I made on instructions of Fruendt. The next day I made a report which was dictated to me by

Freundt which is not in accordance with the instructions by Freundt, on orders of SS Colonel Trummler.

Q Now, with that explanation will you tell me whether it was the plan to take the man out to kill him or on the trip did the flier ask you to stop the car so that he could relieve himself?

A No, it was decided that the car should stop and the flier did not request us to stop so that he could relieve himself. That was only in the report.

Q Do you remember testifying that Freundt ordered the flier to get out of the car?

A Yes.

Q And immediately after that the shooting started?

A The moment he left the door the shots were fired, that's correct.

Q What about this statement that they stopped to load their weapons after they got out of the car, in other words, only shortly before they made use of them. I could hear the cocking procedure in the car distinctly, and was sure that this did not escape the attention of the prisoner either, who was still sitting next to me."

A I thought that I heard this, that outside they were loading the pistols.

Q That is the truth, is it not?

A That I heard this? Yes, but I didn't see it.

Q By that you mean both Freundt and Fuchr?

A Yes.

Q You did not make that report to Dr. Trummler, did you? That was not part of your report?

A No.

Q You said you were quite angry about the fact that they both

loaded the weapons after they got out. Exactly what were you angry about?

A Freundt had told me already before that up there the flier was to be shot. So I said to myself, "Why didn't they load the weapons before? Why did they wait for this spot? Why did Freundt have to load his pistol where the flier had to hear it?"

Q That is what made you angry?

A Yes, because it was no pleasure to be present there. I knew that the man who was sitting next to me would be a corpse the next minute.

Q Koehler, you have told one story to the court which you want them to consider as being under oath on the witness stand and you have told a different story in a sworn written statement. Which story do you want the court to believe?

A Altogether is the truth whatever is said. There is no contradiction. It is just as true as what I testified to here in court.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Koehler, what was this statement Prosecution Exhibit 146-A intended to be?

CAPTAIN VANCE: We object to the question as to what it was intended to be. The accused wrote it himself voluntarily. It speaks for itself, the meaning of it.

PRESIDENT: Objection overruled.

ACCUSED KOEHLER: I was told that I put down in writing the report which was mentioned already during my first interrogation.

QUESTIONS BY DEFENSE COUNSEL:

Q What report?

A The report I made to SS Colonel Trummler.

Q Is there anything in this statement Prosecution Exhibit

116-A in addition to your summary or statement or what your report to Trummler was?

A I don't understand you.

Q Well, you said that this statement Prosecution Exhibit 116-A was intended to be a summary or a report or a statement descriptive of the report which you wrote out which went to Trummler about this killing. Is that correct?

A No, it is a supplement to the first interrogation, to my first interrogation. I had one first interrogation and afterwards I supplemented it through this statement. And the supplement was this report which I had mentioned already in my first interrogation.

Q Is this statement dealing exclusively with the report or does it contain additional matter?

A I was supposed to write down only the report for Trummler and whatever else I wrote down later on were things which came in my mind later on, as far as I remember.

Q Mark on this paper with parenthesis that part of it which deals with the report to Trummler.

CAPTAIN VANCE: I object to this witness marking up prosecution exhibits.

DEFENSE COUNSEL: I am asking him purely to put parenthesis around a certain part.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q I call your attention to Prosecution Exhibit 116 and ask you to read into the record that part of it which pertains to Trummler's report, -- just the part that deals with the Trummler report. Leave everything else out.

A (Reading) "During the trip the American flyer indicated to us that he desired to get out because he had to relieve himself. For that reason we stopped the car after passing the 'Wandersmann.' After the Criminal employee Fuehr and the Criminal Oberassistant Fraundt had gotten out of the car, the prisoner left the car also. Just as he had reached the righthand side door of the car, he turned to escape.

Freundt and Fuehr started shooting after him immediately, whereupon the flier was hit and fell to the ground after taking only a few paces."

DEFENSE COUNSEL: So far he has read paragraphs 1 and 2 of Prosecution Exhibit 146-A verbatim.

INTERPRETER: No, sir, only paragraph 2.

DEFENSE COUNSEL: Paragraph 2 verbatim.

ACCUSED HOEHLER: Furthermore, I have -- there is a little addition which was part of the report.

DEFENSE COUNSEL: Read it.

ACCUSED HOEHLER: It was said, "Even before I had left the car the flier started to escape."

QUESTIONS BY DEFENSE COUNSEL:

Q That is the part of it which deals with the report to Trummler?

A Yes.

Q If I am correct, you read as part of the report, one sentence of the third paragraph which is in quotation marks, is that correct?

A Yes, in the third paragraph.

Q The rest of it was matter which you added?

A Yes.

Q In your testimony before this court did you seek to make a distinction by testifying as to the things you saw and heard yourself, leaving out suppositions and hypotheses?

A (Physically stricken from the record.)

CAPTAIN VANCE: We object, if it please the court, and move the answer be stricken. Colonel Berman is putting words in the mouth of the witness. It also invades the province of this court. The court will decide these issues, and not this witness.

PRESIDENT: Objection sustained.

CAPTAIN VANCE: I move the answer be stricken. It was answered before the court ruled.

PRESIDENT: Motion to strike granted. The question will be

physically stricken from the record.

DEFENSE COUNSEL: Nothing further from me, may it please the court, unless some of the German counsel have some questions.

CAPTAIN VANCE: Nothing further from the prosecution.

DEFENSE COUNSEL: Does the court have any questions?

PRESIDENT: No questions by the court. The witness will take his place in the dock.

DEFENSE COUNSEL: May it please the court, the defense is now ready to proceed with the first of its three principal accused. Does the court desire that we start now or after the recess?

PRESIDENT: Court will recess until three-thirty.

(Whereupon at 1500 hours the court recessed.)

(Thereupon at 1530 hours the Court reconvened.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all the members of the Prosecution, all the members of the Defense except Dr. Trost, who is sick, are present. That all the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: May it please the Court, the accused Stroop will now take the stand in his own behalf and will be examined by his German defense counsel, Dr. Rau. He desires to be sworn.

PRESIDENT: Do you desire to be sworn?

ACCUSED STROOP: Yes.

JURGEN STROOP, an accused, being first duly sworn, voluntarily took the stand in his own behalf and testified through an interpreter as follows:

DIR CT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Jurgen Stroop.

Q Are you an accused in this trial?

A Yes.

Q When and where were you born?

A I was born on the 26th day of September 1895 at Detmold in Lippe.

Q Are you now a prisoner?

A I am a prisoner of war in Dachau.

Q Since when are you a prisoner?

A I was taken prisoner on the 8th of May 1945.

Q What is your family status?

A I am married and had three children of whom a daughter 18 years old and a son 11 years old are still alive.

Q What was your rank?

A At the end I was Lt. General of the SS as well as of the Police.

Q What was your last duty assignment?

A At the end I was Higher SS and Police Leader, at Rhein-Westmark.

Q Since when?

A I became Higher SS and Police Leader, Rhein-Westmark, with headquarters at Wiesbaden on 9 November 1943.

Q When did you come to the SS?

A I entered the Allgemeine SS on 1 July 1932.

Q When did you become a member of the Police?

A I became a Colonel of the Police force in October or November 1939.

Q When did you become a member of the Waffen SS?

A I was transferred through the SS Personnel Main Office to the Waffen SS but I cannot give you the exact dates.

Q Approximately?

A I was an officer of the Wehrmacht in 1936 and I think at the same time I was also taken over into the Waffen SS as an officer of the Waffen SS.

Q Were you a member of the NSDAP?

A Yes. I was a party member.

Q Since when?

A I entered the party on the first of September 1932.

Q Did you participate in the First World War on the front?

A On the 4th of August 1941-- pardon me, 1914, I volunteered and I participated in the entire First World War with the active Infantry Regiment 55 and Reserve Infantry Regiment 256. I was wounded three times.

Q Did you serve on the front during the second World War?

A On my special request the Reichsfuehrer of the SS Himmler gave permission that I participate in the second World War as a 1st Lt. and Ordnance Officer, being relieved from all my other duties and all my

other ranks. It was as an Ordnance Officer of a battalion in the first front line, it was on the eastern front, beginning with the break through of the so-called Stalin line, and I participated in this campaign up to the so-called trap of Demiansk.

Q As a Higher SS and Police Leader do you have a staff?

A Yes, I have a staff.

Q How many men were in this staff?

A My staff at Wiesbaden at the end consisted of approximately seventy to eighty people.

Q How many men were under your command, if you had such a command?

A In my area I had approximately ten thousand men or Order Police. I had more forces according to the defense plan.

Q How many men were in that?

A In the defense plan were involved approximately 126,000 men.

Q Please describe a little more in detail your duties as Higher SS and Police Leader, starting in 1944.

A I had four main duties. I should like to tell to the court in full what my duties were but part of these events happened already three years back. Furthermore, I had to suffer a lot for thirteen and a half months I was under solitary confinement and I ask the court, therefore, that I be permitted to use a few notes which I have made in order to refresh my memory.

PRESIDENT: Permission granted.

Q Please continue.

A First of all, I was leader of the main section, Rhein-Westmark. That means I was the first in charge of the Allgemeine SS in my area. As such I had to inspect the various SS regiments continually. As it was shown on the large map, there existed ten SS regiments. Mainly, it was the control of the welfare measures. We took care of the widows

(Stroop-direct)

and orphans of the SS men who had died in action. They received pensions. That was a very big job if you can remember that in peacetimes this main section, Rhein-Westmark, had between 15,000 and 17,000 SS men. Out of these, by the end of the war, about 3,000 were still left. These 3,000 men did volunteer duty in addition to their regular profession, mainly on Sundays because otherwise they had no time. It was my duty, therefore, to control and check this volunteer service and to keep up the SS contact with these men. That was my job as Leader of the main section, Rhein-Westmark.

Now I come to my duties as Higher SS and Police Leader. As such I was Lieutenant General of the Police and as such I was especially responsible for the internal security of my district. In other words,

to be able to take care of the situation I made out a special so-
called defense plan. The strength of the forces was mentioned here before.
I divided my area into so called Defense commands. I had to keep up
continuous contact with these defense commanders. This defense plan was
supposed to become active at the moment of internal revolt. In view of the
many foreign laborers and foreigners, etc., it was necessary to be prepared
for such an eventuality. Each commander of a defense command had such a
defense plan. It was my special job to bring to the attention of the defense
commanders to make certain that the forces were always up to date so that
you wouldn't operate later on only with figures. Furthermore, in order to
extend the police we had also the city and rural guard, men, civilians who had
volunteered for this assignment. The inspection of these city and rural
guards was one of my jobs. Furthermore, as Higher SS and Police Leader I too
was responsible for the armament of the people's guard which was formed out
of the city and rural guards. Furthermore, I had to make inspections with
the 13 police presidents and police directors assigned in this area.

(Stroop-direct)

Furthermore, it was my assignment to check all air raid precautions and the distribution of all the necessary equipment, ladders, etc. of the air raid and fire protection police, regarding the dangers which existed to these areas through the air warfare. Furthermore, I had to keep in contact continuously with the three Gauleiters. These were Gauleiter Ruerckel for Westmark, Gauleiter Sprenger for Hesse-Nassau and Gauleiter Simon for Moselland. These Gauleiters, at the same time, were Reichsstattshalters and Reichscommissioners for the defense. I had to accept orders from these Gauleiters, Reichsstattshalters and Reichscommissioners for the defense. I had to check and distribute the police measures in these three Gaue. Furthermore, as a representative of the police and SS I had to participate at the conferences and meetings from time to time held by these Gauleiters. Here I had to accept their desires or wishes and had to represent the interests of the police. Furthermore, I was responsible for the evacuation of areas which were immediately threatened by the enemy. Here especially the bringing back of the civilian population. During the war in a certain distance from the front, a so called police cordon had become necessary. This so called police cordon was determined , in agreement with the various commanders of the Wehrmacht. It was moveable.

Q What was the purpose?

A This police cordon had two purposes. One was to prevent that in case the civilian population was brought back with them spies and saboteurs who could return to the front area again. The second purpose was that deserters without any difficulty could go back to the Reich. Furthermore, as Higher SS and Police Leader I had to keep in personal contact with the commands of the Wehrkreis 12. For this purpose we had continuous meetings and conferences. Furthermore, I had to have personal contact with the army units and army corps which were on duty on the western border of my area, for instance, to help them with the welfare measures for soldiers in the back areas. Furthermore, I had made up a so-called SS and police motorized unit, No. 12 and I had

(Stroop-direct)

assigned them with the Thirteenth Armored Corps. The inspection of this motorized SS and police unit was another of my assignments. In other words, to do everything possible to hamper the unbearable air warfare I organized two police alarm anti-aircraft batteries which were carried on railroad cars. These police alarm anti-aircraft batteries shot down between fifty-six and fifty-eight enemy airplanes. For the same purpose I had organized, on the Rhein, a so-called anti-aircraft boat unit. These boats had to be built and equipped. The Higher SS and Police Leader was also responsible for the water protection police of the River Rhein as far as it is running through German territory. Furthermore, I had built a so-called trap for attack fliers, a so-called Jabo. This Jabo trap I want to explain, was a truck which ran over the roads like any other truck but during an attack through a low flying plane, had two guns to repel the attack and, furthermore, was completely armored. When I was in my headquarters at Wiesbaden I had to hear the reports of my technical advisors and experts. Since I was of the opinion that it wasn't of much use to stay in the office I was outside of my office every week at least for three or four days. The technical advisors followed, one after the other, in my office. Furthermore, as representative of the Reichs Commissioner for the strengthening of the German nation had to inspect and look over the camps of the Volksdeutsch settlers in my area. I had to see whether the settlers had been used in a proper manner and I had to make check ups from time to time on the farms where these men were being used. Furthermore, it was my job to keep in constant contact with the leaders of the Hitler Youth. From time to time I had to give speeches and lectures there which had the purpose of gaining new members for the Waffen SS.

Now I come to my duties as appointing and reviewing authority for the Higher SS and police courts. Here I had to receive the reports

of the judges and the interrogating officers. I had to agree to the start of investigations and I had to confirm or to refuse to confirm the sentences of the courts.

Now I come to my duties as Higher Commander of the prisoners of war. Here I received continued instructions through the Commander of the prisoners of war, Major General of the Army, Dr. Hoertmann, who was a member of my staff. In fundamental matters I had to sign papers. Furthermore, I had to inspect camps for prisoners of war. These were my duties.

Q Did you receive directly any [illegible] orders in regard to the treatment of [illegible]

A Yes.

Q [illegible]

A In written form.

Q Did you receive also [illegible]

A I might say so.

Q From whom did you receive these [illegible]

A The orders which I received in this respect I received either directly from the Fuehrer Headquarters or through the main office of the [illegible]

Q [illegible]

A The [illegible] was the chief of staff. The chief of staff received the mail and presented it to me. [illegible] the chief of staff [illegible]

on my own part gave orders and instructions accordingly.

Q Did you receive directly from your superior officers orders in regard to the treatment of Allied fliers?

A Yes.

Q In which form did you receive these orders?

A In written form.

Q Did you receive also oral orders?

A I might say no.

Q From whom did you receive these written orders?

A The orders which I received in this respect I received either directly from the Reichsfuehrer SS or through the main office of the Order Police.

Q How did these orders reach you? Who brought these orders to you directly?

A The incoming mail went to the chief of staff. The chief of staff opened the mail and presented it to me. When I was absent from Hirschberg, the chief of staff took care, all by himself, of matters which were not too

(STROOP-Direct)

Q What were your special duties in regard to the police?

A The Reichsführer SS, at the time when he appointed the higher SS and police leaders, he specially used -- I might say he practically always used -- the leaders of the main sections of the SS. The position of these higher SS and police leaders had no legal or any other foundation. The direct channel of command from the higher SS and police leaders to the commander of the Order Police developed only gradually and later on.

Q Did you receive combined reports from the inspectors or the commander of the Order Police in your district?

A In accordance with the requirements, I had so-called staff meetings at my headquarters. In these meetings usually participated the commander of the Order Police and the commander or the inspector respectively of the Security Police. During these meetings, I got information and I

important. Important, fundamental orders the chief of staff held back until I returned.

Q In addition to orders through these channels, did you receive orders in any other way?

A No.

Q What kind of orders did you receive in regard to the treatment of enemy fliers?

A Regarding the treatment of parachuted enemy fliers, first of all there was the order that all arrested fliers had to be handed over to the Wehrmacht.

Q Who gave this order?

A I can't say that any more today.

Q When did this order come in?

A I am referring now to orders which came in 1944.

Q Please continue.

A Then an order was received that all parachuted fliers taken prisoner had to be handed over to the Security Police. Approximately the end of July or beginning of August, 1944, the so-called non-interference order was received. A general order that all fliers were to be shot I did not receive.

Q Do you know the purpose of the order that the fliers should not be handed over to the Wehrmacht any more but to the Security Police?

A Under the parachuted fliers were many Commando troops. That means men who were equipped with signal instruments, codes, etc. To make certain whether the fliers were men of this type, the fliers had to be handed over to the Security Police.

Q The orders you received were directed to you as the man who received the order, or not?

A These orders, especially when they were secret, came to my address.

Q Were you mentioned as the man who received this order, or were any other officers mentioned as such?

A One has to make a distinction between orders which were directly only for me or orders which I received for information, in which case some other office had received the order.

Q In which cases were you mentioned as the office which received the order?

A As far as the orders are concerned which I just mentioned, probably me.

Q Did you order these orders to be transmitted?

A As was a matter of course that all orders which I received from higher headquarters, I transmitted to my subordinate officers.

Q How was this done in your offices?

A If it could be recognized that this order had come only to me, for instance, the order was transmitted to the Commander of the Order Police, but the rule was that orders which I received at the same time were dispatched through the various main offices to the other commands.

Q In which form were these orders transmitted?

A The chief of staff received the order to transmit these orders accordingly.

Q What do you mean, "accordingly"?

A In writing or orally, I mean in written form. In addition to the chief of staff, I like to mention that also the Department I-A which was attached to my headquarters transmitted orders. It was impossible that all matters were handled only through the chief of staff, and for this reason I had various technical advisers and experts who took care of their departments independently. I mean, for instance, the racial and settlement leader and other departments which are shown here on this map.

Q And which one of your experts had to do with these fliers?

A The chief of staff and the Department I-A took care of the transmittal of these orders. It was my custom to have these technical advisers and experts participate in all these matters, because I was of the opinion that it was of no use if I alone knew about all these matters. I could be absent through air raid attacks or motor car accidents, as it has happened, and then nobody would know what to do.

Q When did you take especially into your confidence for this matter?

A I would like to answer the chief of staff, then I-A, and also my secretary.

Q What was the name of your chief of staff?

A My chief of staff was Colonel Zehlaus.

Q What was the name of your I-A?

A It was SS Captain Dunther.

Q What was the name of your secretary?

A I have the name on my tongue but I forgot it. Miss Koechne.

Q When you were absent from your office, you were alone, or was somebody else with you?

A On all my duty trips -- I like to say practically all trips I made use of my headquarters, my police adjutant, the captain of the Order Police Kalenke was accompanying me.

Q Did he have special instructions from you?

A I don't like to write. My adjutant was a very good stenographer. Even against the wishes of the gauleiter, during meetings I enforced that Captain Kalenke participated in these meetings in order that he could make the necessary notes. He put down all important matters on my duty trips in shorthand and he had my orders to make the necessary file notations after our return. For this reason, in spite of the various things which I had to deal with, I was always in a position to make certain where I was and what I had done.

(STROOP-Direct)

Ta 259-pe-50-3/4-5

Q Did you give the same instructions in regard to the time you spent at your headquarters in Wiesbaden?

A Whenever I had conferences, my secretary, Miss Noecker, had the same order.

Q Did she make notations in regard to these conferences?

A I was very much interested that I had reports on all such conferences.

Q Did you yourself issue orders in regard to the treatment of enemy fliers?

A Out of my own initiative, I gave one order in regard to the treatment of enemy fliers.

Q When was that?

A That was after the death of SS Major Link.

Q Can you give us the exact date?

A I think it was in February, 1945.

Q In which form did you issue an order at that time?

A SS Major Link had participated in the arrest of a parachuted enemy flier. This Allied flier was armed--I testified to this in accordance with the report which I received -- and resisted his arrest. Supposedly, SS Major Link was already pretty close to him and the Allied flier shot him to death. The flier then used the body of the SS Major as cover and after he had finished all the munition of his pistol, continued to fire with the loaded pistol of the SS major. That was the reason for an order in which I explained that during the arrest of parachuted enemy fliers the men who were trying to arrest them should approach them only with the loaded weapon in their hands.

Q Was, in this report, anything said about when the men were supposed to shoot?

A I don't say the exact wording but I was of the opinion if I approached somebody with weapon ready to shoot, if necessary, I would be

Ta 299-ps-CO-3/4-7

Ta 299-ps-CO-3/4-6

the first one to shoot. [illegible] were to take care of all criminal

Q Was, in this report, anything said about whether the fliers have to be taken prisoner or not? [illegible]

A This was an order which had to obeyed during the arrest of parachuted enemy fliers. [illegible]

Q If I understand you right, this order expected your subordinates to take the enemy fliers prisoner and to make use of their weapon only if and when necessary? [illegible] disciplinary actions. The

A Yes. [illegible] which I could have ordered. Disciplinary punishments

Q When did you issue this order? [illegible] major up to never come to me.

A As far as I can remember, in February, 1945.

Q In which form, in writing or orally? [illegible] only the sentences

A Written. for in the case for disciplinary actions, as far as

Q To whom was this order issued?

A Probably to the commander of the Order Police, the commander of the Security Police, and for information also to the leaders of the SS [illegible] regiments.

Q In addition to this order, did you issue any other order?

A No.

Q What were your authorities and rights as higher SS and police leader?

A I said before under my duties that I was responsible for the internal security and order of my district. In case of internal revolt, I would have combined the entire SS and police force under my command.

Q During other times, did you have special authority of command, too?

A For instance, I could order the protection of certain objects.

Q Did you have the right to order the shooting of certain individuals?

A I was the higher appointing and reviewing authority of the SS and police court, and for this purpose I had the SS and police court.

Q What were the duties of the SS and police court?

A The duties of the SS and police court in my area, just as well as

the duties of all SS and police courts, were to take care of all criminal acts by members of the SS and police as far as they couldn't be taken care of through disciplinary action by their immediate superiors.

Q How far went your disciplinary rights?

A As far as my staff is concerned

Q In regard to all of your subordinates

A As higher appointing and reviewing authority of the SS and police court, I was also their superior judge in disciplinary matters. The disciplinary measures which I could take varied. Disciplinary punishments which could be taken care of by some SS or police major would never come to me.

Q Which sentences could you pronounce yourself?

A In the disciplinary way, I could pronounce only the sentences which were provided for in the code for disciplinary actions, as far as my staff is concerned.

Q Please tell us which sentences could you pronounce in cases like this against the members of your staff. Could you pronounce a death sentence?

A No.

A

End to 259 pld fols

Q

Q

(STROOP-Direct)

Q Could you pronounce the sentence for hard labor?

A That depended on the decision of the SS Police Corps.

Q I mean only in your position as disciplinary superior officer?

A I was subscribed exactly in accordance with the rank which the disciplinary superior officer could punish and how far.

Q Could you pronounce a prison sentence without sentence by the court?

A No.

Q From summer 1944 until the end of the war were any enemy flyers, who had parachuted, taken prisoner by the police in your district?

A As far as I can remember from summer 1944 until the end several thousands of parachuted enemy flyers were taken prisoner.

Q What happened to these flyers at that time according to the

knowledge you had at that time?

A The flyers were handed over to the Order Police for a check up and especially were taken to the camp at Oberursel.

Q What kind of a camp was this?

A The camp Oberursel in which I was a prisoner myself for three and a half months was formerly a camp of the German Air Force.

Q When did you hear that such parachuted flyers had been killed?

A Perhaps once in a while on my trips, but especially through information by Colonel Frummler. I heard that, for instance, in his area and through headquarters in his area in three or four cases allied flyers had been shot by trying to escape.

Q In addition to this did you hear anything more?

A No.

Q Did you ever receive from Himmler any special authority in 1944 or 1945?

A At the beginning of the invasion on the coast of the channel the (Stroop-direct)

German front became a little bit weak. From the back areas, especially from the rear areas of France several hundred thousand soldiers were flooding back. The Reichsfuehrer SS Himmler came to Saarbruecken and ordered to a meeting the Wehrkreis Commanders of Wehrkreis' 5, 9 and 12. Furthermore the respective Gauleiters and Reichsstatthalters, furthermore the three Gauleiters from my district and the two higher SS and police leaders from Wurttenburg Baden at Stuttgart and myself.

On this occasion the Reichsfuehrer SS demanded that this flooding back should be stopped and furthermore that appropriate action should be taken. In order that the people present would have authority against people of higher ranks the individuals present received authority which approximately read as follows: I give you this authority now as far as my memory can bring it back. "The Lieutenant General of the Waffen SS, Jurgen Stroop has from me all authority. His orders have to be obeyed. Signed Himmler." This authority which he gave at the same time as commander of the reserve army.

Q Was this general authority given for any special purpose or did it affect everything?

A The Reichsfuehrer SS explained that this certificate or this authority respectively was to be used for the purposes for which he called us there.

Q Did you ever make use of this authority?

A I didn't have to.

Q Please give us also a short report about the conditions which were created in your area through the air warfare, not only as far as the civilian population was concerned but also in regard to the government departments.

A The air warfare in my district surpassed everything which had happened so far. Over my district all bombers squadrons flew to Germany, also when they went to the inner parts of Germany and the same way it was on the return trip. In the area Rhein-Westmark we had air raid alarms every night and I,

who was on the road most of the time, could notice from my car again and again that at day and at night, in snow and in rain, and in cold and in heat, hundreds of thousands of women and children were on the road to the air raid shelters and back again. Since we had to drive through all the time, otherwise we wouldn't have reached our destination, we could notice, always, from this migration of the civilian population which never stopped, whether an air raid was going on or not. Often we saw mothers with little children who in the middle of the night in snow and ice were on the way to their homes, and before they reached them had to turn back again and go back to the cold air raid shelter. In the morning at eight o'clock there was another air raid alarm. Since, as I said before, the bombers were often flying across my district or came there for an attack. In between the large bomber units always squadrons of low flying units came, as we called them, "Terror Flyers". When the people thought that it was quiet then these "Terror Flyers" came and shot even the smallest community where there was no military objects at all. On the left side of the Rhine this condition was simply unbearable. The people were supposed to work hard and they were willing to work hard but they didn't find peace and quiet in order to get ready again for their work and regain their strength.

On numerous occasions I saw that low flying planes were flying alongside the road and even the byroads and strafed the people there.

CAPTAIN VANCE: If it please the court, I would like to interpose an objection here. I think this has been raised once before but I don't want the court to get an idea that we agree to this testimony. We object on the ground that it is not a matter of defense.

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: I don't know how much longer this is going to be. Does the court want to finish it or shall we break now?

PRESIDENT: The court will recess until tomorrow morning at [illegible]

(Whereupon at 1645 hours the court recessed.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

28

Pages 1963 - 2028

Case No. Superior Orders

*Summary
*Intermediate Military Court.
*General

Place DACHAU, GERMANY

Date 5 March 194 7

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Herbert B. Rosenstock

Interpreter Rudolph Nathansen

Reporter Patricia Stewart, Imogene Butler, Sally R. Hayett, Evelyn Cohen, Peter D. Curti, Irving Hayett

~~Members of Court~~ WITNESSES

JURGE: STROOP

Accused JURGEN STROOP, et al

Address Sex Age

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term
  - Beginning 194
- Fine
  - Amount
  - To be paid before 194
    or in case of default of payment to serve a *further term of imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY Beginning 10 JANUARY 1947

5 MARCH 1947 Pages 1963 - 2028

TESTIMONY

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	COURT
JURGEN STROOP	1964		2017		
	1970	1979	2024	2026	

Dachau, Germany
5 March 1947

MORNING SESSION

(Whereupon the Court reconvened at 0900 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all the members of the Prosecution, all the members of the Defense, except Dr. Trost, who is absent sick, all of the accused except the accused Number 4, Fuehr, and the accused Number 5, Hoehler, who are absent sick, the reporter and interpretor are present.

DEFENSE COUNSEL: I have talked--at least my secretary has talked, to Wiesbaden, may it please the Court, and Dr. Trost is still unable because of her health to come here, but she states that if she were able to travel to Dachau it would be too late for her to have any effective part in this case because of the late date; so I ask that hereafter she be reported as absent, or perhaps more correctly that she has withdrawn. I would like to make one more brief statement as a matter of record; although I don't know if it's going to be germane. Sometime in January, we put in a "hold" in the Security Section here on two witnesses--one, Dr. Hans Krieger, who, I believe was Somann's adjutant, and a fellow named Wiebens, an intermediate commander between Somann and Trummler; and, through a mistake in Headquarters, both men were shipped away--Krieger to Prague and Wiebens to somewhere in the British Zone. It happens that I examined them before they went; and, through courtesy of the Prosecution we have agreed on a stipulation taking

care of Krieger, but have been unable to agree on Wiebens. They may still be produced, but as a matter of protection for my clients, I want it stated in the record what the situation was. We think he is a very important witness.

At the end of yesterday's session, the accused Stroop was on the stand.

PRESIDENT: You are reminded that you are still under oath.

ACCUSED JURGEN STROOP: Yes.

JURGEN STROOP, an accused, voluntarily took the stand in his own behalf, and, being reminded that he was still under oath, testified further through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q For the information of the Court, you yesterday gave a description of the effects of air warfare in Wehrkreis 12. Did you finish, or would you like to add something?

A I would like to add a few more sentences.

Q Continue, please.

A In my opinion, and in the opinion of all the comrades of mine in any authority, the air war had overstepped its limits to a great extent ever since 1944. It was completely out of the question to describe the behavior of these fliers, and particularly the low-flying fliers, in accordance with international law.

Q What was the psychological result therefrom, particularly with respect to the propaganda of the German government?

CAPTAIN VANCE: We object, may it please the Court, to his testifying about the propaganda of the German government.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: I would like to state that it was the Prosecution that brought that in when they introduced Gobbels' order and talked about radio speeches, etc., and I pray for reconsideration of the ruling. We are not asking him to describe the propaganda. The question was, what was the effect of it on the people in Wehrkreis 12, which, of course, includes these accused. What was the effect was the question, I am sure.

CAPTAIN VANCE: May it please the Court, if I remember correctly, when this type of evidence came in, the Prosecution objected to it. The Court went into closed session to determine what type of evidence along this line would be admitted, and the Court announced that it would not go into propaganda that was spread around Germany at that time, but would permit the Defense to show actual violations, and the Court would give it what consideration it desires to do, but it said it would not let propaganda about the American Air Force come before this Court.

DEFENSE COUNSEL: I subscribe to that mostly, but there have been no questions about that, and we didn't intend that, but the effect of it on the minds of the people--that's different.

CAPTAIN VANCE: May it please the Court, if that's the idea, then General Stroop would be in a position what was in his mind, but certainly not what was in the minds of

other people.

PRESIDENT: The Court stands by its decision.

DR. RAU: According to your observation, what was the psychological situation resulting from this air warfare?

CAPTAIN VANCE: Object on the same ground.

DEFENSE COUNSEL: I pray the Court's judgment.

PRESIDENT: Objection sustained.

DR. RAU: Did you make any observation as to the attitude and the opinion of the population?

CAPTAIN VANCE: Same objection, may it please the Court.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: I ask a ruling from the Court at this time, or rather I am going to make a proof at this time. May it please the Court, we are attempting now to prove through this witness that the effect of this air warfare on the German population, including the accused in this case, with particular reference to Wehrkreis 12, was actually demoralising physically and mentally, affecting their judgments and their capacities to think and to reason, and I ask a ruling of the Court as to whether evidence to that effect will be received or not.

PRESIDENT: The Court will recess.

(Whereupon at 0915 hours, the Court recessed.)

(Whereupon court reconvened at 1020 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, except Dr. Trost, who has withdrawn as defense counsel and no further reference will be made to Dr. Trost in this case, all of the accused, the reporter and interpreter are present.

PRESIDENT: The court rules that evidence of the effect of air warfare desired to be introduced by the defense may be admitted to show effect upon the accused only, and provided such effect on any of the accused comes within the personal knowledge of the witness. Attention is called to prior ruling. The court already has common knowledge of the propaganda that was disseminated generally by the German government, and further evidence of this nature is deemed unnecessary.

DEFENSE COUNSEL: I take it, may it please the court, that the effect of this ruling is to rule out the offer of proof I made prior to the recess. That offer of proof was to show the general effect of air warfare on the people of Rhein-Westmark, including the accused. According to this ruling, such evidence is admissible only if the potential witness personally knows of the direct effect on one special accused, so that the possibility of the accused knowing of the general traditions in the community are ruled out of evidence. Am I correct? I do not mean to be contentious, but if my understanding is correct, it was our complete plan of defense and I would rather make certain now than continually offer matters that would be subject to exception as coming outside this rule. In other words, if I may presume on the patience of the court, if we cannot produce a witness who of personal knowledge can testify to the effect of air warfare on a particular defendant named there, then the evidence is inadmissible?

PRESIDENT: That is correct.

DEFENSE COUNSEL: I would like to make it plain that in my presentation I intended to discuss only the actual effect produced by air warfare on the inhabitants of the Rhein-Westmark area, including the effect on the accused either directly or, of course, indirectly, to form what they say that took place around them. But all that evidence is inadmissible according to this ruling unless the witness can show, for instance, that as the result of a particular bombardment the home of a particular accused was affected, or some relative was affected, or he was personally directly affected. Anything which goes beyond that limited scope is inadmissible. May I ask if that restatement is correct?

PRESIDENT: You have gone a little bit beyond what the court had in mind.

DEFENSE COUNSEL: If I am taking up too much time I hope to be told. I do not want to trespass, but we have come to the crucial point of the rest of the case right now.

PRESIDENT: Proceed with your case. The ruling has been made.

DR. RAU: I, on my part, would like to ask the court for a ruling on another question. The Italian teacher of criminal law, Lombroso, many years ago already pointed out the disadvantageous influence of the surroundings on criminal actions. Especially, he pointed out that a mass hypnosis creates better conditions for criminal actions without the perpetrator knowing it. The defense would like to have the court decide whether the accused were acting under such a mass hypnosis or mass suggestion and mass influence. For this reason, the defense would like to prove to the court that such a mass hypnosis and mass influence, mass suggestion really existed in the service command 12. I ask, therefore, the court for a ruling whether I am allowed to ask questions which should prove the existence of such a mass hypnosis or mass influence.

PRESIDENT: Court will recess in place. t, but I personall

(Whereupon the court recessed in place.) ut. I

(Whereupon the court reconvened.) of the ruling. I

PRESIDENT: Court will come to order. if he knew the

The answer to Dr. Rau's question is yes, provided the witness has personal knowledge of the effect of any one of the accused. The court has common knowledge of the effect of air warfare on the populace generally, as well as on the accused individually. The court feels that its ruling is clear. By the language, "the court [illegible]".

DEFENSE COUNSEL: Will Stroop take the stand again? [illegible]

JUERGEN STROOP, an accused, having been previously duly sworn, resumed the stand in his own behalf and testified further through an interpreter as follows: [illegible]

PRESIDENT: You are reminded you are still under oath. [illegible]

ACCUSED STROOP: Yes.

DIRECT EXAMINATION [illegible]

QUESTIONS BY DEFENSE COUNSEL: [illegible]

Q Herr Stroop, you testified that in the course of your duties you travelled continuously throughout the entire Rhein-Westmark area in the years 1944 to the end of the war in 1945, is that correct?

A Yes, [illegible] of this air warfare on the accused

Q Did you as the result of your travels in the course of your official duties have an opportunity to observe and to experience the effect of the air warfare on the population in Rhein-Westmark in general, on the accused in particular, and upon yourself as one of the accused?

CAPTAIN VANCE: May it please the court, I object to that part, "on the general population." That violates the court's rule. I do not want to be contentious but I think I understand the court's rule.

DEFENSE COUNSEL: I have the utmost respect for the ruling [illegible]

of the court and the fullest desire to conform to it, but I personally am not sure how far I can go. I am trying to find out. Frankly, I am trying to get the evidence in within the purview of the ruling. I asked a question by asking the effect on the accused, if he knew the effect on the accused.

PRESIDENT: The effect on the accused and on the individuals, — that part of it is all right, — on the mass population, the court is not interested.

DEFENSE COUNSEL: By the language, "the court is not interested", I take it to mean that the court rules that such evidence is not admissible or will not be received?

PRESIDENT: The court does not care to hear it — on the mass population. We want the effect on the individual accused. Rephrase your question.

DEFENSE COUNSEL: I understand that the objection to the question has been sustained and I am to rephrase my question?

PRESIDENT: Yes.

QUESTIONS BY DEFENSE COUNSEL:

Q As the result of your travels, did you have an opportunity to observe and to note the effect of this air warfare on the accused generally, and upon yourself in particular, from the point of view of on your general well being or their general well being, their morale and their susceptibility to mass suggestion or influences from outside their own judgment?

A I can answer this question with yes.

Q Tell the court what that effect was.

A My former command area was an area over which planes came in and came out from Germany. I can state most sincerely there was

not a single minute during the day or night when there weren't enemy planes flying overhead or were even bombing our district. It didn't make any difference whether I started early in the morning, in the forenoon, or in the late afternoon. I hardly can remember a trip where I hadn't to drive through smoking ruins, where I didn't see dead women and children, where I didn't see that attempts were made to dig out people who were covered with ground and were yelling for help. During a clear time and there was good visibility, at noontime, forenoon, afternoon, it didn't make any difference, it was impossible to drive on the autobahn or any other main roads. One needed extremely strong nerves to be able to look daily at the suffering of the women and children and every day one needed new energy to go back to the daily routine work.

I am an old front soldier and I would like to talk only about myself. I participated during the first world war for four and a half years in the front lines and I participated during this war in the first lines. I was of the opinion that it was easier to take in the front lines than back at home. I spoke with my officers and enlisted men who were on furlough and they always confirmed my opinion. I didn't see only places where military objectives were located. I am thinking now mainly about the many little villages and the taunaus which were only of agricultural importance, where the women whose men were fighting on the front, were picking up their last belongings, where children were looking for their mothers.

I remember an attack during the daytime in the neighborhood of Wiesbaden in which a so-called labor settlement was hit. Here, not only regular bombs had been dropped which destroyed certain objectives during a certain period of time, but later on, delayed action bombs

were used, so whenever one thought that the air attack was over and one could start moving again in a few minutes intervals these bombs exploded. I remember especially that in this settlement was a settlement of children with seventy to eighty children. This home for children was levelled to the ground by bombs. Most of the children were dead or even their bodies couldn't be recovered any more. And the children which were still running around looking for their mothers were now hit by the delayed action bombs and were covered by ground or killed. In this connection I don't have to remind you at all of the large scale attacks in Darmstadt and other large cities. Anyway, the effect on me and on other people I knew was such, that the nerves couldn't quiet down any more at all and that some of my comrades were completely unable to do anything out of their own initiative. Not to mention that the men who were fighting on the front or were working in their places in the factory had to expect from minute to minute that their wives and children would be hit by bombs.

Since I was mostly on trips I would like to mention that I hardly ever was with my family when air attacks occurred. It was a very happy accident that I just happened to be home with my family during the large scale attack on Wiesbaden on the 2nd of February. My boy, who is now eleven years old, named Olaf, didn't sleep at home any more in his bed. For months already he slept in a cellar which we had worked over as an air raid shelter and I still see my entire family, but especially this little boy of mine when he was shaking or when the house was terribly shaking through the bombs. When I said good-bye to my family before leaving on official mission, I never knew whether I would see them again either, I would be killed or my family would be killed. These were the impressions I had myself and these were the impressions under which all the people lived.

QUESTIONS BY DR. RAU: [illegible] and it was customary that the Kreisleiters

Q You heard that some of your subordinates killed parachuted fliers on orders. Which position did you take as their superior officer in these cases? [illegible] reported yesterday that parachuted enemy fliers killed on

A I am proud that through my anti-aircraft batteries on railroad cars which I originated I was able to shoot down approximately eighty enemy planes. With these men I cannot be proud that Allied fliers were shot in my area, as it came out during this trial, but my comrades who are sitting here with me in the dock, especially my comrades of lower rank acting in good faith because they received an order and they had to carry out these orders, all of them were standing under the same impressions as I just had a chance to describe them to this high court. On account of the conditions in which they were, they had no possibility to see the legality of the order which they had received, they were soldiers and they had to carry out orders. For this reason I ask this high court not to make these, my comrades of the lower ranks responsible, but to put the blame and responsibility on me, although I have to state that I on my own part have definitely not given any orders for the execution of fliers.

Q As you have testified, during your duties, you had to deal also with party officers. Did you gain knowledge of influence which party organizations had on police organizations or police officers?

A When I became the higher SS and police leader Rhein-Westmark the condition was such that each gauleiter intended to defend his gau all by himself; each kreisleiter thought that for his county (kreis) he could have his own army in order to put a stop to this situation. I made up the defense plan which has been discussed here. I had a chance to explain before already when I explained this map that the party was the state and the state was the party and the party didn't stop in trying to make decisions in every respect all by itself, that has been testified to also in this court, in which manner the kreisleiter of Offenbach acted--

it happened again and again and it was customary that the kreisleiters who sought to be the representatives for the Reich commission for defense tried to assume police powers.

Q You reported yesterday that parachuted enemy fliers killed an SS Major named Link. When did that happen?

A As far as I can remember in February 1945.

Q When did you issue the order according to which people should approach parachuted fliers only with a loaded weapon in their hand?

A I issued this order probably during the second half of February 1945.

Q Did you ever receive an inquiry about the relationship of your order to approach parachuted fliers only with the loaded weapon in their hands to the order which had to do with the killing of enemy

fliers?

A No.

Q Was it brought to your attention at any time that there were really two contradictory orders?

A I didn't talk to anybody about that.

Q You have heard that the accused Lasak testified here as a witness that he had received a written order according to which enemy fliers should be killed if they were enemy agents, spies or saboteurs.

A The SS colonel Lasak must be mistaken. I transmitted a few orders for the information of the SS colonels in charge of SS regiments. Since he was wearing the official title of an SS colonel in charge of regiments, it is possible that he received an order in this manner, but this order did not contain the general killing order, but this was an order referring only to the treatment of commando troops.

Q Which order is it to which you are now referring?

A I am referring to the order according to which the Wehrmacht had to kill commando troops without delay.

Q Who had issued this order? [illegible] when you did not mention

A As far as I can remember, this order came from the supreme high command, [illegible] because I was only here in Dachau.

Q And to whom was this order directed? You had enumerated before this.

A This order was directed to the Wehrmacht.

Q Was it directed also to the police?

A It was received by the police for information only because the commitments were made by both organisations. By this I want to express that the police was used to reinforce the Wehrmacht and vice versa, in carrying out certain actions. We all expressed our anger and we also said [illegible]

Q Did this order say anything about what has to be understood as commando troops? In our homes, wives and children, really all should [illegible]

A This was referring to such groups which were only for the purpose of committing sabotage or espionage. [illegible] person as an official.

Q Once again let's return to the case Link. Where was Link killed?

A Link was shot in the neighborhood of the so-called monastery of Tiefenthal. [illegible] which reason did you [illegible] member of the SS?

Q Was the Werewolf school there at that time? [illegible]

A Main-Yes, [illegible] a military life. When there was a public meeting in [illegible]

Q Where did you hear for the first time that an Allied flier had been killed by members of the Werewolf school? [illegible]

A As far as I can remember I didn't hear anything about it as long as I was on duty during the war, the excellent [illegible] went out.

Q How many of the accused did you know during the period of time from August 1944 until the end of the war? [illegible], asked me to [illegible] Number 2, Colonel Trumpler and Number 3, Colonel Sumann, Number 6 Police Director Eichel; furthermore Number 20 Hellenbreich and Number 19 Girke, Number 18 SS Colonel Lassak, Number 16 Michely, Number 15 First Lieutenant Oess and Number 14 Major Best.

Q During your [illegible] were you [illegible] with any criminal [illegible]

Q Did you ever talk to the accused when you did not mention now?

A The other comrades I met only here in Dachau.

Q Did you discuss with the accused when you had enumerated before the question that Allied fliers should be killed?

A No.

Q During these opportunities, didn't you make some private remarks in regard to the treatment of Allied fliers?

A In view of the impressions which I have testified to before it was a matter of course that we all expressed our anger and we also said and heard it expressed by others that these fliers had brought so much suffering and misery to our homes, wives and children, really all should be shot.

Q Should this be considered by any reasonable person as an official order?

A Such an utterance in my opinion can never be considered an order.

Q For which reason did you become a member of the SS?

A From my parents' home I was educated in a military manner and I always enjoyed a military life. When there was a public meeting in 1932 on the Hermann's Monument in my home town, Detmold, and the old General Heitzmann spoke for National Socialism in my home town for the first time, the SS made an appearance, I had pleasure from these tall and well picked men and enjoyed the excellent impressions these men made. The men of the party organizations at Detmold, who since Detmold at that time only had fourteen thousand inhabitants know me personally, asked me to become a member of the SS on account of my military background, in order to help organize the SS battalion which was supposed to be established there, and furthermore, later from January 1st 1933, to be in charge of it myself.

Q During your membership in the SS did you become acquainted with any criminal intentions or actions of this organization?

A No.

Q Didn't you know anything about concentration camps?

A I was once in the concentration camp that was here in Dachau in January and February 1938. At that time a number of SS colonels in charge of regiments were called here for training and instruction. These members of the training class were shown through Dachau for I think an hour. Right now since I am in Dachau again I try to remember some of the things, but it was impossible, but I remember exactly since I have a very good memory for matters of such character that we were shown a number of barracks. I especially remember that in every closet that was opened the toothbrush, the spoon, writing paper all there lying on the same spot. I remember especially that the barracks were kept clean and in good order and especially excellent sanitary conditions existed. As I look over my situation today, I would like to be quartered in a barracks like this one I saw. For many weeks I am washing myself now in the toilet bowl; the toilet bowl is my lavatory, my sink and toilet and my only facility to sit down.

Q Do you remember charge 3 where the accused Lassak is charged to be responsible for the killing of a flier?

A Yes, I remember to have read this charge.

Q Did you have any connection even the slightest with this case?

A I know this case only from here during the trial.

Q How is it about charge 4 in which the accused Moehler and Fuehr are charged with committing a crime?

A I have to give the same answer.

Q How is it with charge 5 and especially the accused Fuehr is incriminated?

A The same.

(Stroop - Direct) 1977

Q How is it with charge 6 and especially the accused Cirke, Hellembroich, Stattmann and Raaf?

A This case too I know only here from Dachau.

Q And how is it with charge 7 in which especially the accused Eichel, Kiwitt, Albrecht, Meller and Geehrendt are incriminated?

A The same; I heard about it only from here.

Q And how about charge 8, in which especially the accused Eichel, Kiwitt, Hahrgang, Hammann and Fay are incriminated?

A My answer is the same.

Q And how about charge 9 in which mainly the accused Best, Geos and Michely are incriminated?

A Everything I know about this case I heard only here in Dachau.

Q And how about charge 10 in which mainly the accused Cirke, Hellembroich, Stattmann and Raaf are incriminated?

A This case too was unknown to me until the beginning of this trial.

Q Did you ever talk to any of these accused about the fact that Allied fliers had been shot or did these cases come to your knowledge in any other way, and I mean to your knowledge until the end of the war?

A With nobody but Colonel Trumbler. Colonel Trumbler as I testified before informed me twice or three times that through Headquarters or individuals of his command, fliers had been shot while trying to escape.

Q How many cases of this character did he mention?

A I said three or four times.

Q Did this seem to be something extraordinary to you since several thousand fliers had been delivered in your area?

A This didn't draw my special attention since at the same time I was also commander of prisoners of war and it was a matter of course that one shot a man trying to escape if they didn't stop at the call "Halt!"

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Did you know CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q General Berch, when did you assume the position of Higher SS and Police Fuehrer for the Rhein-Westmark area? Police Leader, Rhein-Westmark and even A For I became Higher SS and Police Leader Rhein Westmark on the 9th of November, 1940, to Wiesbaden, I believe, didn't he in a special train and you hQ e I believe you held this position continuously until the end of the war, is that right? e and testified to as questioned by my defense counsel, the Reichsfuehrer SS had ordered several individuals to ear rusekon. For this Q ps While you were Higher SS Police Fuehrer did you know the General Obermeyer? l train. The men who had been ordered by him received special orders A fr Ko Ho the chief in charge of the Main office Order Police. or dQtr Did you ever have conferences with General Obermeyer? When I re A General Obermeyer came to Wiesbaden for an inspection during the second half of 1940, it was a matter of course, also, for him, as a comrade of mine, to pay me a visit, in order to stay there overnight.

Q Tell the court what you and General Obermeyer discussed on that visit in regards to allied flyers. bout the meetings where the air raids that were A in Nothing was discussed. Only on an official trip which we took together to the Westmark General Obermeyer asked me whether the so-called non-interference order had come through to which question I said, Yes. We long as Q s Did he ask you if it was being enforced or if it was being carried out? that the SS Reichsfuehrer came to Wiesbaden and I was not in Wiesbaden.

A No. I think, I assume he discussed this with the commander of the by Order Police. forces was discussed?

Q As a matter of fact, the non-interference order that came down from higher headquarters came from General Obermeyer, is that correct?

A No. The non-interference order was signed by the Reichsfuehrer SS Heinrich Himmler as I found out here during the trial. Whether this order went through channels over the main office of the Order Police I can't determine anymore.

Q Did you know Heinrich Himmler?

A Yes.

Q Did you ever have any conferences with him?

A As long as I was higher SS und Police Leader, Rhein-Westmark and even before that time I was in his headquarters on several occasions.

Q He came to Wiesbaden, I believe, didn't he in a special train and you had a conference?

A As I said before and testified to as questioned by my defense counsel, the Reichsfuehrer SS had ordered several individuals to Saarbruecken. For this purpose the Reichsfuehrer SS came in the neighborhood of Saarbruecken with a special train. The men who had been ordered by him received special orders from the Reichsfuehrer, an order which bound them to certain areas or districts. I would like to say my orders kept me back in Westmark. When I returned from this official trip which lasted for several days the report was made to me at my headquarters that the Reichsfuehrer SS with a special train had also come to Wiesbaden in order to stay there overnight.

Q General I didn't have any reference to this particular meeting. I was talking about other meetings. About the meetings where the air raids that were being inflicted by the allied air forces were discussed.

A Captain Vance had just asked me whether the Reichsfuehrer SS had come to Wiesbaden with a special train and this question I answered. As long as I was the Higher SS and Police Leader Rhein-Westmark that was the only time that the SS Reichsfuehrer came to Wiesbaden and I was not in Wiesbaden.

Q Did you attend any conferences at his headquarters where bombings by the allied air forces was discussed?

A The bombardments through the allied air forces, yes.

Q What treatments were discussed in those conferences?

A The treatment of allied flyers was not discussed by the Reichsfuehrer

(Stroop-cross)

gs during this meeting to which I am referring now. This meeting had to do mainly with the steps necessary in order to repair the war damages and the necessary report of technical nature on this question was made by the [illegible] General, [illegible] Commander of the SD, Secretary of State Ganzenmueller.

Q Well General at any conference that you had with Reichsfuehrer Himmler did you discuss the allied air forces?

A For instance during this meeting?

Q What was said by Himmler?

A I just mentioned that in this meeting were shown the large disastrous damages done through the air warfare. With this meeting the Reichsfuehrer SS intended--during this meeting were present also the Reichscommissioners for the defense and important people of the German Railroad, the German Postal Service, etc.--to prevent that the men in charge would weaken on account of these deep impressions which they received, for instance when railroad tracks had been destroyed five times a day it is to be repaired five times a day. In any way the supply lines for the army and for the people had to be kept open and the purpose of this conference was to find the necessary means and ways to do so.

Q What did he say should be done with captured allied flyers?

A The Reichsfuehrer SS never talked to me about this.

Q Did you know a man named Kaltenbrunner?

A Yes.

Q Who was he?

A Kaltenbrunner was in charge of the Reich Main Security Office with whom I have talked for the last time in Nuernberg in September of last year.

Q Did you ever attend any conferences in his headquarters or in your headquarters with Kaltenbrunner?

A I was once at Kaltenbrunner's office.

Q Did you discuss with him the treatment to be given to allied flyers?

(Streep-gross)

Police Leader was not determined through any regulations or law, but between
A No.
the commander of the Order Police and the Higher SS and Police Leader. Closer
Q What was your relationship, General, with the Commander of the SD,
channel of command developed while times went on.
Rhein-Westmark?
Q I still don't know whether you say you were General Hille's commanding
A In an official way, you mean? The official relations?
officer or whether you were not. Will you please state which one way or the
Q Yes.
other?
A The Commander of the Security Police, Rhein-Westmark had been ordered
A In a certain way, yes.
to keep me informed of all important matters, but it was up to the commander
Q After General Hille left, and in October, 1944, when Himmler
to make the decision about which matters he wanted to inform me or not. On
Klemann took command of the Order Police for the Rhein-Westmark were you his
the map is shown that between the higher SS and Police Leader and the
commanding officer?
commanders of the security police and the security service was an extraordinary
A In certain respects, yes.
channel of command. I would have made use of my command powers over this
Q Did you hold conferences in your office at various times and call
command of the Security Police for instance in case of an internal revolt.
in the commanding officer of the Order Police on these conferences?
Q I will ask you this question. When Colonel Schamm was inspector
A Yes. From time to time I had so-called chief meetings at my
of the Security Police for Rhein-Westmark were you his commanding officer?
headquarters. For these meetings were called the commander of the Order
I think you can answer that yes or no.
Police and the commander of the Security Police or their representatives.
A No, I was not his direct superior. He was immediately under the
Q Why would the commander of the Security Police come to your
Reich Security Main Office.
conferences?
Q At the time that Dr. Trummler was the commanding officer of the
A It was always my opinion that if I wanted to get a good job only
Security Police for Rhein-Westmark area were you his commanding officer?
one section of the police should know about certain matters and another section
A Here I have to give the same answers as for Colonel Schamm.
should not, but that it was necessary, for the improvement of the general
Q That is, you say, you were not Dr. Trummler's commanding officer?
duties of the police, that the commander of the Security Police knew about
A No, because it was like this: That the commander of the Security
matters which were of interest only to the commander of the Order Police and
Police received his orders directly from the Reich Security Main Office. I
vice versa.
would have been his immediate superior in case of an emergency. This, of
Q Did you know a man named Martin Bormann?
course, does not exclude that by rank I was his superior officer.
A By name, yes.
Q Now General, when General Hille was the commanding officer of the
Q Did you ever attend any conference of Martin Bormann?
Order Police for Rhein-Westmark were you his commanding officer?
A No.
A Here I have to say the following: The position of the Higher SS and
(Stroop-cross)
(Stroop-cross)

Police Leader was not determined through any regulations or law, but between the commander of the Order Police and the Higher SS and Police Leader. Closer channel of command developed while times went on.

Q I still don't know whether you say you were General Hille's commanding officer or whether you were not. Will you please state which one way or the other?

A In a certain way, yes.

Q After General Hille left, and in October, 1944 when Colonel Niemann took command of the Order Police for the Rhein-Westmark were you his commanding officer?

A In certain respects, yes.

Q Did you hold conferences in your office at various times and call in the commanding officer of the Order Police on these conferences?

A Yes. From time to time I had so-called chief meetings at my headquarters. For these meetings were called the commander of the Order Police and the commander of the Security Police or their representatives.

Q Why would the commander of the Security Police come into these conferences?

A It was always my opinion that if I wanted to do a good job not only one section of the police should know about certain matters and another section should not, but that it was necessary, for the improvement of the general duties of the police, that the commander of the Security Police knew about matters which were of interest only to the commander of the Order Police and vice versa.

Q Did you know a man named Martin Bormann?

A By name, yes.

Q Did you ever attend any conference of Martin Bormann?

A No.

(Stroop-cross)

[illegible] thought about this question now, but I can't give you any [illegible] but I forgot it.

Q What about a man named Keitel, did you know him?

A Yes, through pictures and by name, but not personally.

[illegible] The Court will recess now [illegible].

Q What about Adolf Hitler, did you know him personally?

[illegible] hours the [illegible].

A The Fuehrer Adolf Hitler I knew. That means he knew me as an SS Colonel in charge of a regiment, especially while I was in charge of the SS at Hamburg. I got certain areas for police measures attached to me. Usually part of this area was the railroad station at Hamburg and the shipbuilding yards at Blohm and Voss, where, in the presence of Adolf Hitler ships were launched. During these occasions I had to report to Adolf Hitler as SS Colonel on duty. Furthermore I had to report, in order to make this complete I have to tell you that in the so-called election campaign of Lippe in January, 1933 in the same position as Major in charge of an SS Battalion.

Q General, I believe you told us yesterday that there were about ten thousand men in the Order Police, is that right?

A Yes.

Q About what time do you fix that in 1944 or in 1945 or when?

A That was an average number for the defense plan which you can apply for the years 1943 and 1944.

Q About how many Security Police were there in the Rhein-Westmark area?

A I can't answer this question definitely because I don't know exactly.

Q Do you have any idea, any judgement?

A No. I don't like to mention any figures because I don't know it.

Q I believe you said that you had about 126 thousand men in your defense plan, is that correct?

A Yes.

Q Do you have any idea or judgement about the population of Rhein-Westmark?

A I thought about this question too, but I can't give you any figure. I knew but I forgot it.

PRESIDENT: The court will recess until 1:30.

("hereupon at 1200 hours the court recessed.)

(Thereupon at 1330 hours the court reconvened.) its official name--was

PRESIDENT: The court will come to order. SS and police. As

PROSECUTION: May it please the court, let the record show that all the members of the court are present, all the members of the prosecution, all the members of the defense, all the accused, the reporter and the interpreter are present.

DEFENSE COUNSEL: At the end of the last recess the accused Stroop was on the stand being cross-examined. this SS and police court.

PRESIDENT: You are reminded that you are still under oath.

JURGEN STROOP, an accused, being reminded that he was still under oath, resumed the stand and testified further in his own behalf through an interpreter as follows:

CROSS EXAMINATION, continued.

QUESTIONS BY CAPTAIN VANCE:

Q. General Stroop, yesterday you outlined to the court your main duties in Rhein-Westmark. I believe that you said one of your duties was that you were chief of the Allgemeine SS, is that correct? all about the powers of

A Yes. personal disciplinary powers. Did you,

Q Was your principle duty as the leader of the police force in that area?

A My main tasks were the four tasks I enumerated yesterday and there was no difference in the importance of these tasks. in view of the

Q I believe that you stated that one of your duties was as appointing and reviewing authority for SS courts in the Rhein-Westmark area, is that right?

A Yes.

Q Did you appoint those courts yourself?

A When I came to Wiesbaden the SS and Police court already existed.

Q What type of persons did that court have jurisdiction to try?

(Stroop-cross)

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(Stroop-cross)

A The SS and Police Court Number 14--that was its official name--was to take care of all cases, all criminal cases with any SS and police. As far as these cases, due to their severe violations involved, could not be treated disciplinarily.

Q In other words the German civilian population would not be brought before those courts, is that correct?

A No, it was the members of the SS and police who were not supposed to get before civilian courts but rather this SS and police court.

Q After this court tried a case and pronounced a sentence upon a person being tried and the case came to you for review to either approve or disapprove--that is correct isn't it?

A Yes. In the first place I had to determine whether any trial at all would be held and when the trial was finished I had to either approve or disapprove the sentence. But in the case of any sentence pronounced against an SS officer it had to be transmitted to the Reichsfuehrer of the SS.

Q You were asked by your attorney yesterday all about the powers of this court and then about your own personal disciplinary powers. Could you, yourself, decree a death penalty for a member of your organization?

A Well, in practice that case did not crop up in my area, but if a quick sentence was to be desired I could have called up a Standgericht--summary court, but I certainly could have pronounced such a sentence in view of the enemy.

Q I know you say you could call a court. I am talking about what powers you personally had as an individual officer.

A I just said if it was a case occuring in the face of the enemy, cowardice before the enemy for instance, and the case was clear and no investigation appeared necessary, I could have ordered the death sentence.

Q I am going to ask you this question. Did you ever order a death sentence for any member of the police force of Rhein-Westmark for failure to execute a captured allied flyer?

A No.

Q Was any member of the police forces of Rhein-Westmark ever sentenced to death by an SS court fo failure to execute a surrendered allied flyer?

A I don't remember any such case.

Q If there would have been such a case it would have come to you for review and you would have had knowledge of it is that not a fact?

A All sentences of the SS and Police court were submitted to me during the time I was the High SS and Police Leader in Rhein-Westmark.

Q I believe you stated that you received all of your orders or maybe most of your orders in written form from your higher headquarters, is that correct?

A Yes.

Q From which source did you receive your orders? By that I mean from whom above you?

A I either received my orders from the Reichsfuehrer directly or through the hands of the main offices.

Q What do you mean by main offices?

A The main offices, the SS main offices which are represented on the chart in the box below the one Reichsfuehrer SS, Reichsminister of the Interior.

Q By that being from Himmler's headquarters, is that right?

A In the first place it was possible that the Reichsfuehrer of the SS would send orders directly to me circumventing the main offices but as a rule the Reichsfuehrer would give his instructions to the chiefs of those main offices and they would then make out these instructions in the form of orders or regulations and transmit them.

Q With the exception of the Reichsfuehrer's office did you receive orders from any other source?

A Well from these main offices.

Q I am not sure that I understand you so I am pointing to Defense Exhibit Number two. Are these the main offices(indicating) you are speaking of?

(Stroop-cross)

A Yes, these are the main offices including the main offices of the regular police which is somewhat to the side.

Q (indicating).

A Yes, that is the office which was headed by General Daumenberg.

CAPTAIN VANCE: For the purposes of the record, may it please the court, I have been referring to the defense exhibit number two, to the boxes which appear immediately under Reichsfuehrer SS and to the box on the left side marked Hauptamt Ordnungs Polizei--ORPO.

Q Did you receive orders from any other source whatsoever?

A Well, I have to [illegible] exactly I would have to say

Q What about from the political setup of Himmler and his staff?

A Yes, I was just about to make one correction, one supplement. I meant the office of the gauleiter in his capacity as Reichsstatthalter or Reichscommissioner. The high SS and police leaders in a certain respect were attached to the gauleiters. For instance the heading on the stationery of the High SS and Police leaders would read as follows: The Higher SS and Police leaders with the gauleiters so and so and so and so, whatever their names might be. That is Moselland, Hessen-Nassau etc.

Q Did you ever receive any orders from the main office of the Security Police which was headed by Kaltenbrunner?

A I sometimes received information copies of orders issued from the Reich Main Security Office of the Security Police. The orders of the Reich Main Security Office would go to the commanding officer of the Security Police or the inspector of the police through direct postal channels.

Q General Stroop, did you pass on those orders which you received and were instructed to pass on to your subordinates?

A I transmitted all orders that I received from above as far as that was necessary.

Q Have you ever seen or heard of an order issued from Berlin on the

(Stoop-cross)

4th of August, 1942 signed by the chief of the high command of the armed forces Keitel referring to the procedure to be used in the case of captured paradutists?

A What is the date please?

Q Four August, 1942.

A No, I don't think I know ofthat order. I didn't have the job of a High SS and Police leader in 1942. I might have read it sometime later. I don't remember what the contents of it are anyway.

Q It refers to the procedure to be used when you captured parashutists.

A Well, if I have to stick to the truth exactly I would have to say yes. If that is an order I once saw from the prosecution and on the other time with the defense--a photostatic copy of it.

Q What I mean is did you know about it back at the time of its issuance. I don't mean today.

A In 1942 I am sure I didn't.

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(Time: recess)

Q Did you ever see or hear of the decree made on 18 October 1942 by Adolf Hitler which said that all commando operations in Europe or Africa and all enemies attacked by German troops, whether they landed by sea or air or dropped by parachute would be annihilated and that individual commandos must be handed over to the Security Police and that any custody under civil protection was strictly forbidden?

A Yes, I am sure I knew of this order at the time, in a very general nature, but it's hard to answer whether I had actually read this order at the time because now that I am familiarized with the exact wording of it, I remember exactly that I read a photostatic copy of it during the trial.

Q General, did you do anything to carry out the spirit of that order?

DEFENSE COUNSEL: I pray the Court's judgment of the use of the word "spirit".

PRESIDENT: Objection overruled.

WITNESS: Well, the answer I can give to that is that there was no need of us in Rhein-Westmark combating any airborne troops .

QUESTIONS BY CAPTAIN VANCE:

Q I mean that part that stated they should be turned over to the Security Police.

A Well, it was a fact that parachuted fliers or allied commandos would be turned over to the Security Service.

Q Did you issue those orders that any of these captured commando troops would be turned over to the Security Service?

A No, because that order had been issued a long

Ta 266, 3/5/47, idb-2
SO
Ta 266, 3/5/47, id b-3
SO

time before that, and there was no reason for me to issue an old order, after the order was passed on to your subordinates, did you? Q Did you ever see or hear of an order issued in August 1944 by Himmler to the effect that it is not the duty of the police to interfere in clashes between civilians in and allied and American terror fliers that had bailed out over Germany? I by a translator.

A Yes, this order quoted "it is not the duty of the police", etc., I received that order dated 1945 in June or July, 1944. Until this trial started, my opinion was our that the date of this order was 1944. It is only now that I saw from this photostatic copy that it said 1945--at any rate, it was sent to me anew again. know you made one.

Q What steps did you take to carry out the spirit and of that order?

A This order came with a letter of transmittal signed by SS Colonel Brandt to the effect that it was to be transmitted orally only, and I did transmit this order in about so-called meeting of the chiefs of the organizations, to the Commander of the Regular Police, and to the Commander, or probably Inspector at that time, of the Security Police, as to go Q Now, who was in charge of the Security Police at that time? discuss this with us.

A If it was in August, then probably Colonel Somann had left already. His place was taken by the SS Lieutenant Colonel Wiebens, but it's possible that Colonel Somann was personally present. I can't say that exactly. e question.

Q At that meeting, did you read the order?

A Yes. recall the occasion in late summer of 1944-- in Q Did you discuss the order? e in Buselenw'n killed

A Yes.

six American flyers on the street?

Q After the order was passed on to your subordinates, did you follow up that order to see if it was being carried out? [illegible] memorandum from the Fuehrer's Headquarters dated 30 May, 194[illegible]

A Yes, I had an opportunity to point that out in two different cases. In each case that was a result of a telephone call by a Gauleiter, [illegible] in which he mentioned that no pol[illegible]

Q Now, can you recall after this order was issued any clashes between the civilian population and allied flyers where the civilian population lynched the fliers in your district? Yes, I am familiar with the [illegible] of Bormann-- with this

DEFENSE COUNSEL: I withdraw the objection[illegible]ng the trial; upon

CAPTAIN VANCE: I didn't know you made one[illegible] of this order

DEFENSE COUNSEL: I was going to object to the word "lynch", as Commander of Rhein-Westmark, would come into that catego[illegible]

WITNESS: I don't remember any flyers being lynched in my area--at any rate I never got to know of such case.

Q CAPTAIN VANCE: General, did you ever hear about the six American flyers who were killed by the civilian population on the streets of Russelsheim? [illegible]-down enemy fliers by the [illegible]

DEFENSE COUNSEL: I pray the court's judgment as to going into evidence not charged in the case, even for the purpose of discrediting a witness[illegible]; even if this is the same incid[illegible]

PRESIDENT: Objection overruled; couldn't have possibly [illegible]

WITNESS: Might I hear this question again, please? That civilians were lynched? [illegible]re under the direct jurisdiction of Colonel [illegible]

CAPTAIN VANCE: No, I will repeat the question.

QUESTIONS BY CAPTAIN VANCE: [illegible] you stated that when your office [illegible]

Q Do you recall the occasion in late summer of 1944--in August or September--when the civilians in Russelsheim killed

six American flyers on the street?

A No.

Q General, have you ever seen or heard the contents of the memorandum from the Fuehrer's Headquarters dated 30 May 1944 signed by Martin Bormann in which he mentioned that many innocent men, women and children have been killed by low-flying, strafing allied planes, and in which he mentioned that no police measures, in criminal proceedings, would be instituted against civilians participating in these lynchings of American flyers who had been apprehended?

A Yes, I am familiar with the letter of Bormann--with this contents. Yes, and as I found out here during the trial, upon seeing a copy, I saw that the distribution of this order was to all Gauleiters and major commanders; and, since I, as Commander of Rhein-Westmark, would come into that category of major commanders, I also received a copy of this order.

Q Now, have you ever seen or heard of a document dated 21 April 1944, signed by Colonel Somann at Wiesbaden in which he discussed the handling of shot-down enemy fliers by the German police or the German civilians?

A Yes, and I think I also saw that letter in the recent period of time while captured; and, if this is the same document that I am thinking of, then I couldn't have possibly had knowledge of it at that time, because it was a letter directed to Headquarters under the direct jurisdiction of Colonel Somann.

Q General, I believe you stated that when your official mail came to your Headquarters in Wiesbaden, that your Chief of Staff would get it first and then deliver it

to you, is that correct? [illegible] it as exactly as [illegible] At, Yes. [illegible] consist of making [illegible]

Q And your Chief of Staff was Colonel Schlums, is that correct? [illegible] rder of Berlin.

A Yes. [illegible] Stroop, tell the Court as best you can [illegible]

Q Is that the same Colonel Schlums that has testified for the Prosecution in this case? [illegible] just talking about.

A Yes.

Q Then Colonel Schlums was in a position to know about the orders that he testified about, is that right?

A Yes, as far as he opened them up he was [illegible]

Q Now, on direct examination you stated that in the beginning that your orders were to deliver captured fliers to the Wehrmacht, is that right? [illegible] to state any numbers. The [illegible]

A Yes. [illegible]n't do that is what I was not informed every time [illegible]

Q Then, later on, you said some orders came down that the flyers must be delivered to the Security Police, is that right? [illegible] several conversations I had with Security Police [illegible]

A Yes. [illegible]--for instance, Gauleiter Sprenger of [illegible]

Q Now, for what purpose were they to go to the Security Police? [illegible] frequently. I participated in some meetings to a [illegible] Commando details kept coming down, parachuting for down all the time, with radio equipment, etc., and it would be the duty of the Security Police to determine whether the captured men were that sort of people or not.

Q Do you recall in these orders that they must be delivered to the Security Police for special treatment? [illegible] correct?

(Stroop-Cross)

[illegible] I [illegible] couldn't do any point of speaking

(Pt. [illegible])

A I don't remember the wording of it as exactly as all that, but this special treatment was to consist of making use of these details in the service of Germany by the Security Police by order of Berlin.

Q General Stroop, tell the Court as best you can what you think the wording "special treatment" means.

A This was special treatment I was just talking about.

Q And you don't think it has any other meaning?

A No, not in that connection.

Q How many allied fliers captured in the Rhein-Westmark area during the time you were there were turned over to the Security Police for special treatment?

A Well, I can't commit myself to state any numbers. The reason I can't do that is that I was not informed every time an allied flier parachuted down; and, if I am supposed to give any testimony about this here at all, I can do it only based upon several conversations I had with Security Police officials--for instance, Gauleiter Sprenger of Hessen-Nassau had a habit of scheduling meetings of his officials rather frequently. I participated in these meetings to a large extent, and there I frequently would meet SS Major Breder of the State Police Frankfurt, and once or twice I would have a talk with him about Camp Oberursel--that is what my knowledge derives from.

Q In other words, you have no judgment and would not want to express an opinion as to how many, is that correct?

A No, there really wouldn't be any point of cooking

up a number here. I think, in that connection, I told my Defense Counsel there were several thousand, and I wouldn't say one or two thousand flyers were turned over to Oberursel in all.

Q I wasn't speaking of Oberursel. My question was to the Security Police?

A Yes, the Security Police turned those fliers on over to Oberursel.

Q General, you know that all of them didn't get away from the Security Police and get to Oberursel, don't you?

A Well, I don't know about that, and I would say that there would be an investigation before they would be re-transferred to Oberursel.

Q Captain Kaleske was more or less your right-hand man in your Headquarters, was he not?

A The Protective Police Captain Kaleske was my adjutant and almost always accompanied me on all official trips.

Q Captain Kaleske is in a position to know what he is talking about as to what happened in your Headquarters, is he not?

A He had a chance to see a lot.

Q And the same thing is true as to your secretary, Miss Hoecker, is it not?

A Yes, but she didn't have as much insight into files as Captain Kaleske. She merely worked in the office.

Q General, did you ever issue any orders to the Security Police?

A No.

(Stroop-Cross)

Q Well, I may have misunderstood you earlier in the trial, but I understood you to say after a Major Link had been killed that you issued some orders to the effect that a person in capturing an allied flier must have his gun in readiness and this order went to the Security Police. Am I correct?

A Yes, I was just about to correct my answer, and it didn't occur to me fast enough. I was just thinking about this order, which I actually did transmit to the Security Police, and I was also thinking of this order concerning the closing-off, which I had to carry out with the Security Police also. I worked out this order direct with the Commanding Officer of Wehrkreis 18.

Q I was asking you about the number of fliers that were captured and turned over to the Security Police. I will now ask you if on direct examination you didn't say there were several thousand?

A Yes, I think I said that. I think I said several thousand. As to whether that means one thousand or two thousand--that's a special phrase of my own; and, for reasons which I have stated already, I cannot give a definite number, really; that is because I got my information merely from an employee of the Security Police.

Q Now the Gestapo is part of the Security Police. That's correct, isn't it?

A Yes.

Q And the Gestapo is the branch of the Security Police that the fliers were delivered to, is that right?

A Yes, probably.

(Stroop-Cross)

Q Now, do you know what the duties and functions were supposed to be of the Gestapo of Germany?

A The Gestapo had the job of combatting the enemy.

Q Will you elaborate on that a little?

A When I said to combat the enemies or to combat the opponents of National Socialism, and with that the opponents of the form of state under Adolf Hitler.

Q What did they have to do with prisoners of war?

A The Secret State Police?

Q The Gestapo.

A Yes, nothing.

Q But yet a thousand or so flyers were delivered into their hands--that is correct, isn't it?

A Yes, for examination. Those were only a special group of prisoners of war, not in general. I thought this question was meant a different way.

Q Now, I believe you testified when the invasion started in France, the German front got a little weak, is that correct?

A Yes, a while later the front started shifting around somewhat after the invasion, for the reason that the supply units moved back.

Q Is that the time when Heinrich Himmler called his meeting that you attended?

A Yes, since Saarbruecken.

Q And is that the time when your powers were increased by Himmler?

A For that job, yes; and, if I might add this here--that was not an increase in my job or responsibilities, but

rather a means for the authorized persons to get their way possibly against a higher rank. I was a Lieutenant General of the Waffen SS, in that capacity an officer of the armed forces, and through that rank I could have my way anyway.

Q After this meeting with Himmler, you were then in 6, the chief of the Rhine-Westmark area, isn't that correct?

A Hardly.

Q Didn't you run Rhine-Westmark and control it and have full power and authority over it after this meeting with Himmler?

A The three Gauleiters wouldn't have stood for that.

Q Well, if your power and authority was increased as a result of that meeting, in what respect was it increased?

End tr 266, ps follo

A I have already said that these men who were ordered to this meeting by Himmler were instructed to stop this moving back of the outfits by all means within their power. For that reason we all stayed in our area for a short time and after a few days actually succeeded in stopping everything.

Q I am not clear as to what you mean by coming back and what you stopped.

A In occupied France there was a very large number of troops stationed who had jobs to do in the rear areas. They were primarily ground personnel of the Air Corps, and they kept coming back--they more or less retreated from the enemy, you might say; and these men, as they didn't have any assignment with the front anyway, would be formed into new battalions and sent up front again, or else they would be incorporated in weakened but still existing outfits.

Q Well, as I understand you, your power increased

as to these returning soldiers that were coming back into Germany, is that correct?

A Well, how should I express it--with respect to that which had started to tremble was stabilised again.

Q In other words, as a result of the Himmler meeting, it did not change your relationship with the police force, did it?

A No.

Q That was the change between you and the armed forces?

A Yes.

End tr 266,
ps fols

Q General Stroop, you started discussing air warfare in the Rhein-Westmark area and I believe that you made this statement, that the enemy air force overstepped proper air warfare. Did you make that statement?

A Yes, I probably expressed it in some such way.

Q You meant by that, I assume, by bombing civilian cities, is that correct?

A Yes, such cities which had neither military importance nor any importance as far as war economy was concerned.

Q I want to ask you this. When the German air force bombed, strafed and burned England, and in particular Coventry, do you think that they overstepped proper air warfare?

A I wasn't able to experience this with my own eyes as I was able to experience this here in my area.

Q I will ask you this question. If the German air forces strafed, bombed and burned non-military objectives all over England, did the German air force by doing that overstep proper air warfare?

DEFENSE COUNSEL: This is opening wide the door, may it please the court, and I object to interrogation of this type.

CAPTAIN VANCE: The witness testified to this himself on direct examination about one air force. I have a right to ask him about his own air force, I think.

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: The objection is overruled.

THE WITNESS: Well, if militarily and economically and completely unimportant farm villages had been hit in that very same manner, the answer would be yes, but I can't pass judgment on that.

QUESTIONS BY CAPTAIN VANCE:

Q Do you know who started this aerial warfare first?

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection overruled.

THE WITNESS: I, in my opinion -- according to my conviction, it was the opponent. There is supposed to be a white book in existence entitled, "Who Threw The First Bomb" but I unfortunately don't know. It might be to the point to read up on that. Maybe you could get the book.

QUESTIONS BY CAPTAIN VANCE:

Q Do you remember when the German army invaded Poland?

A Yes.

Q Do you remember when they invaded Czechslovakia?

A Yes.

Q At that time, had any bombs been dropped on Germany?

A I do think so.

Q Do you know?

A No. I don't want to state positively at this moment. I would have to think about it.

Q Do you still want to stick to your answer that you think the opponents dropped the first bomb?

A According to what I heard, yes, I would stick to it.

Q I am not asking you, General, what you heard. I am asking you what you think.

DEFENSE COUNSEL: I would like to say that so far as the defense is concerned, we think this opens the door wide to the question of reprisals.

QUESTIONS BY CAPTAIN VANCE:

A Who dropped the first bomb?

Q Yes.

A I think it was the enemy.

Q General, I believe you made a statement that a person needed strong nerves to bear up under the conditions that existed in your area during the war, the latter part of the war, is that correct?

A Yes.

Ta [illegible]

Q By that remark, did you mean to say that the German police did not have the necessary strong nerves to stand this?

A I wasn't trying to say that this morning. I was asked for my own opinion; consequently, I expressed my own opinion only. But I can say the following concerning the police. The regular policeman, the best men we had, were outside in the front or somewhere else on the outside, and the only men who would remain back in the Zone of Interior and then be drafted as so-called reserve policemen would be men who were not fit for front-line service. And I suppose it is obvious enough that these men who now suddenly found themselves as police officials could not be considered as on the same level with the regular energetic policeman who were out on the front. The police officers and non-coms who remained behind had great difficulties performing the jobs which they were supposed to do with that sort of men, and I would be glad to say that on top of all this these conditions required some special energy for the men who remained behind in order to carry out their tasks.

Q What about yourself and the other higher ranking officials?

A Concerning the nerves?

Q Yes.

A Well, I had to have the nerves all right, and I, at any rate, attempted to have the nerves to do everything that was in my power to do my job and serve my country. I left nothing untried, and for instance I myself, on my own setup, the organization of the police anti-aircraft battalions, the police drivers battalions, etc., simply because it was my opinion that any German and particularly one who had achieved the position as I had would have to do everything within his power to serve his country. I didn't know any limits in the way I carried out my job. I hardly ever was at home and there was no such thing as office hours for myself.

Q General, on direct examination, you went into some detail to describe the men, women and children and dead bodies which you saw in your area and painted a very horrible picture. Have you seen service in foreign

countries during the present war?

A Yes.

Q Did you see horrible conditions in other countries?

DEFENSE COUNSEL: I pray the court's judgment. I understood the evidence of this sort of thing was coming into this court for the purpose of mitigation or extenuation or explanation only. I didn't think we were going to put in evidence to say who was doing the worst job or who had the worst time, and I submit to the court that all this evidence of what was true in Poland or England is purely extraneous to the issues of this case and should not be gone into.

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q I believe you stated that in the Rhein-Westmark area conditions were such that every time you left on a trip and told your family goodbye that you never would know whether you would return or not, is that correct?

A That is the way it was.

Q The same thing was true as to me or any other soldier while there was a war going on, wasn't it?

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: The objection is overruled.

THE WITNESS: Could I hear the question again?

(Whereupon the last question was read by the court reporter.)

THE WITNESS: I was at the front in both wars and I know exactly what it means to be at the front, and I also know what it means to die or to get out of this world, but it is something entirely different when I am living in a beautiful country like Wiesbaden with the Rhine and the Moselle and all the other rivers around it and have to say farewell to my family under those conditions.

QUESTIONS BY CAPTAIN VANCE:

Q General, I believe you stated that you were proud of the fact

that your anti-aircraft guns shot down enemy planes, but that you were not proud of the fact that some American fliers were killed by the police force, is that correct?

A That is what I said this morning.

Q As a matter of fact, today you are ashamed of the fact that people were killed at the hands of the police force, aren't you?

A Well, I continued on by saying that these men who are sitting in the dock with me, in the first place, were acting in good faith, that they were acting as soldiers and had to carry out an order and that under the conditions which they were operating on they could not without difficulty decide whether the orders they were issued were lawful or unlawful ones. I think those are about the words I used this morning.

Q Now, I want to ask you this. What if anything did you do to stop these killings?

A I did nothing, but I will say this much. If I ever had received an order to have all fliers killed, I would have transmitted that order and would have seen that it was executed, just like I transmitted and saw that all other orders were executed, since the Government and my superiors would have it much easier to investigate the legality and military necessity of such an order than I did and since it was our duty to do that.

Q Did you ever issue any orders that Allied fliers would be shot?

A No.

Q You said that you had made a statement that all enemy fliers should be shot, but that you did not consider that as an order, is that correct?

A No. What I said this morning was that I expressed my bad humor which everybody was suffering from including myself due to the conditions we were living under by saying that the best thing would be to shoot all these fliers who were bringing misery upon the heads of our families.

Q You said that to Mr. Trummler in one of these conferences, didn't you?

A That statement?

Q Yes.

A I don't think I said that. It is possible, I don't know. It is possible, because we talked about the air warfare constantly towards the end of the time 1944 while we were still at home. Do what you may, we couldn't get rid of this air warfare. It was around us all the time and the hum of the motors was around us constantly.

Q General, were you the type of an officer, in a conference, to kid about serious matters to your subordinates?

A About important matters? I don't know. I was an officer who was uncompromising in the carrying out of one's duty with myself, and I was equally uncompromising in seeing that orders issued were carried out, and I don't think because of any officials conference I could have been kidding about anything.

Q So you were not kidding when you made the remark that all enemy fliers should be shot, were you?

A I wasn't kidding, no.

Q General, about this Allgemeine SS, you were the chief for the Rhein-Westmark area, were you not?

A Yes. I was the leader of the SS main sector Rhein-Westmark. I think it says so over here.

Q I believe on direct examination you said that you didn't know anything about the criminal activities of that organization, is that correct?

A I knew nothing about criminal activities of the SS. In fact, nobody joined the SS, or rather, nobody would have joined the SS if you would have told a good German, "You are joining a criminal organization." That surely is out of the question. On the contrary, not every man was admitted into the SS. They had to appear before an entrance commission and take an entrance examination, and even though physical size might have been

part of this, the most important part was the person's character.

Q He had to have a suitable character to get in, is that right?

A Yes. This investigation commission would put certain previously tested questions to the applicant, from which questions conclusions could be drawn as to the suitability and character of the applicant. And might I say one more thing? It is important in this connection. A further requirement was to put the name of two references, of respected citizens of one's own home town on this application form. These references did not have to be Party members or anything. They merely had to have a reputation for honesty in their community.

Q I believe you stated that at one time you came to Dachau for some training, is that right?

A Yes.

Q And you found Camp Dachau to be a very splendid clean place, is that correct?

A I found clean and not objectionable barracks. I found excellent order here, as I said this morning, and I found sanitary conditions prevailing so that I could make that statement.

Q Whose barracks are you talking about, the SS barracks or the prisoners' barracks?

A No, of course, I am speaking of the barracks of the prisoners. That is what I was asked this morning and that is where I was only once, in 1938. It goes without saying that the barracks of the SS were clean.

Q Were you ever in Camp Dachau after 1938?

A No.

Q So you are not in a position to testify about those conditions after that?

A No, that was the only time I ever was in the concentration camp.

Q General, you don't know about any criminal activities of the SS in your area? Did you ever hear of a town called Hadamar?

A Yes. I know Hadamar because a prisoner of war camp was located there, a British prisoner of war camp for officers.

Q Was that in your area?

A That was my area. I was in this place Hadamar once. There were — I am sure I am not making a mistake — 288 British officers there, including some generals, and I had some conversation with these gentlemen. The generals had their own rooms, possibly two, and they had their own orderlies, as did the colonels, too. Beginning with a lieutenant colonel, there were three to one room, and a little bit more as the ranks decreased but they all had good rooms. They had a good football stadium there and on account of the word of honor parole which they would give as officers, they would take a walk for two or three hours together with three home guards.

Q I didn't have in mind this British camp when I asked you about Hadamar. Are you familiar with the insane asylum in Hadamar?

A I know what Captain Vance was driving at. I knew, Captain, that you were driving at what I read in the newspapers now. I read about this Wiesbaden trial in the papers here. I would like to state that I didn't know about these matters before. I was surprised about this and I expected for sure to be asked about this once because I was in Hadamar once.

PRESIDENT: Court will recess for twenty minutes.

(Whereupon the court recessed at 1500 hours.)

End ta 267
srh fols

(Whereupon court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all of the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: The accused Stroop was on the stand subject to cross-examination at the last recess.

JURGEN STROOP, an accused, having been previously duly sworn, voluntarily resumed the stand in his own behalf and testified further through an interpreter as follows:

PRESIDENT: The witness is reminded he is still under oath.

ACCUSED STROOP: Yes.

CROSS EXAMINATION (Continued)

QUESTIONS BY CAPTAIN VANCE:

Q General Stroop, I believe the last thing you said was that you read about the Hadamar Institute in the newspaper, is that right?

A Yes.

Q You knew of its existence before the end of the war, did you not?

A No.

Q You never heard of it?

A No, it was entirely unknown to me.

Q Without going into the Hadamar Institute, -- I mean its function and what happened there, -- state whether or not SS guards worked there.

A I was the higher SS and police leader, the leader of the SS main sector Rhein-Westmark. I can state here that I did not have the

slightest idea that the SS had anything to do with this home. As I noticed in the papers, this was an institute for mentally insane people, and the SS had nothing to do with the state hospital or institution like this. If SS men or other guards or guards would have been there I would have known about it.

Q Did you have any concentration camps located in the 12th Wehrkreis?

A No. In Wehrkreis 12 there were none.

Q You are sure about that?

A Yes. There were no concentration camps.

Q What about Natzweiler?

A Natzweiler was not in my district.

Q What about the Orbach-Bensheim concentration camp?

DEFENSE COUNSEL: If the court please, I can understand that the running of concentration camps is a war crime if the accused is charged directly with having run a concentration camp, but the only charge of war crimes is the general charge of conspiracy, in which nobody else except Stroop had any possible connection, and I think this goes far beyond the bounds of proper cross examination.

CAPTAIN VANCE: The accused Stroop testified that he was the chief of the SS in that area and that he knew of no criminal activity. I now ask him if there were any concentration camps in his area and if he said yes, my next question would be, "Did not your men guard those camps?" I have no intention whatsoever of going into a concentration camp case, just like I have stayed away from going into the Hadamar case.

PRESIDENT: Objection overruled.

ACCUSED STROOP: I don't know a concentration camp Orbach-Bensheim.

Bensheim.

Q You do not know about any concentration camps and you never heard of Hadamar until you read about it in the paper, is that correct?

A I never heard about this last mentioned so-called concentration camp. About the happenings at Hadamar, I heard only during my imprisonment through the newspapers because I read about the trial at Wiesbaden.

Q General, you have learned more about what was going on in the 12th Wehrkreis since you have been a prisoner than you knew before, is that correct?

A I didn't say that.

Q How many American fliers were shot and killed by the police of the Rhein-Westmark area, if you know?

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection overruled.

ACCUSED STROOP: I know only positively about the cases mentioned here in this trial.

QUESTIONS BY CAPTAIN VANCE:

Q Do you have any judgment as to the number?

A No, I didn't receive any reports as to this fact.

Q Wait a minute. Did not Dr. Trummler report on several occasions that some had been shot by his men?

A I testified about the three, four incidents this morning already.

Q Did you not get reports on other killings while the fliers were trying to escape?

A No.

Q Can you explain what was the occasion for Dr. Trummler notifying you about these two or three cases?

A No.

Q Did you know they were going to be shot ahead of time?

A No, Colonel Trummler reported to me that these fliers had been shot in his command by his men while trying to escape.

Q I believe you stated you were not Colonel Trummler's commanding officer, so why did he make that report to you?

A It was customary that Colonel Trummler informed me about various matters and during this occasion he also informed me of this.

Q He wanted to let you know that the orders that had been received and posted down were being carried out, is that not correct?

A No.

Q Well, he thought you would be interested in knowing about this, is that correct?

A Yes, perhaps he thought so.

Q You were interested in knowing about these things, were you not?

A Yes, every morning I received a report about the damages to buildings, the dead, the wounded, and in this connection, of course, I was also interested whether allied fliers had been captured.

Q Generál, I am going to ask you a question and I am going to ask you please, if you will listen carefully and answer this question directly. I am going to ask you if you will answer it "yes" or "no", as I think you can do so easily. This is the question: Was the Gestapo of Germany in its entirety ever made a part of the German Wehrmacht?

A Yes.

Q When?

A The end of 1944.

Q General, are you just as sure of that testimony as you are of anything you have testified to before this court?

A Yes, I even have to state that as far as I remember, it was started with this measure already in 1943. I think this was taken care of step by step in accordance with the nearness of the front lines.

Q When did this happen?

A I think starting the end of 1943.

Q The end of 1943, where was the nearness of any lines?

A It was like this: Wherever the front approached the old German border lines, the necessary steps were prepared so that the men who had to stay there when the front came to their area could present themselves as soldiers, as members of the German Wehrmacht. As far as I can remember, this plan was already worked out and was supposed to be carried out step by step for the Security Police.

Q You remember my question: "Was the Gestapo --" and the Gestapo is what we are talking about.

A The Gestapo is part of the Security Police.

Q If I bring another general officer who is a higher SS and police fuehrer before this court and he says that the Gestapo was never a part of the German Wehrmacht, then you or I, one or the other is lying about this?

DEFENSE COUNSEL: I object.

CAPTAIN VANCE: I will withdraw the question.

QUESTIONS BY CAPTAIN VANCE:

Q You started to explain the gradual change-over. Do you mean

by that that they were gradually taken into the army or were they all taken in at one time?

A No, I wanted to say gradually, step by step.

Q I know it is possible if a man in the Gestapo wanted to make an application and go in the army he could do so, but I am talking about the entire Gestapo -- was it blanketed into the German Wehrmacht?

A Yes, it was taken into the Wehrmacht. If I speak about Wehrmacht I am reffering to the Waffen SS. The Waffen SS is an organization of the Wehrmacht.

Q This morning you were asked if you were familiar with Charge III and you said you were and you knew nothing about it. Is that correct?

A Yes.

Q That you were asked about Charges IV and V and you said, "My answer is the same." Is that correct?

A Yes.

Q You do remember since testifying that Dr. Trummler did let you know about the flier that was killed in Charge IV, is that right?

A No, I couldn't know that.

Q Did Dr. Trummler notify you like the testimony states or did he not?

A Of these special incidents, the incidents which are on trial here?

Q Yes.

A No. I can't answer this question today because no name, et cetera, was given to me at that time.

Q

(Stroop-Cross)

ta 269 IJE 2

ta 269 IJE 1

ACCUSED STROOP: I cannot say anything in this respect.

Q I will try to refresh your memory a little bit. Do you remember Arthur Fuchr's statement being read into evidence in which he testified that after the killing he reported back to Dr. Trumler and Dr. Trumler picked up the phone and called you and reported it to you, do you remember that?

A I don't remember now that Fuchr said so here. I was interrogated already about this matter and I have testified that I do not know anything about my being called by someone. I remember especially this interrogation because there I expressed that I definitely did not know anything. This "definitely" is an expression which is used in Westphalia and I am from Westphalia. The investigating officer said, "You want to say you remember approximately and not definitely?" and I said, "I don't know anything about it". That is what I can say to this question only that I don't know.

Q General, I am not asking you about your interrogation, I am asking you about now. The statement is in evidence and Fuchr says that Dr. Trumler called you. Do you admit or deny that?

A I then have to say that I do not know anything about that.

Q So as to charge IV, you said your answer was the same, is that right?

A There I said that everything I know about Charge IV I heard only here in Dachau.

Q You were shocked to hear about these things, were you not?

Q Do you remember Major Rost's testimony before this Court?

A Yes.

Q Did you hear what he said about giving orders? That you gave the orders to have the flyer shot?

A Yes.

Q Is that the truth? [illegible] to talk [illegible] the 88 men of the

A No.

Q Is Major Rost lying about this?

DEFENSE COUNSEL: I pray, the Court's judgment.

PRESIDENT: Objection overruled.

(Stroop-cross)

A ACCUSED STROOP: I cannot say anything in this respect.

QUESTIONS BY CAPTAIN VANCE:

Q You can state whether Major Best is telling a lie or telling the truth because you heard his testimony.

A I said that I heard about this case only here and the first thing about this case that I heard was by Major Best himself.

Q General Stroop, I am going to ask you if this is not a fact: That in the year 1944 and 1945 approximately 400 Allied flyers were executed at the hands of the Police in your area?

A DEFENSE COUNSEL: I pray the Court's judgment. This goes far beyond the purview of any of the charges in this case, even including Charge I.

A PRESIDENT: Objection overruled.

Q ACCUSED STROOP: I can say to this question only that I don't know anything about the number 400 -- that is unknown to me. I have to say that I hear this here for the first time.

QUESTIONS BY CAPTAIN VANCE:

Q During these proceedings you have been shocked to know that the police were killing these flyers, is that right?

A During the trial I heard for the first time about these things.

Q I asked: You were shocked to hear about these things, were you not?

A I explained this morning my position to these things.

CAPTAIN VANCE: Nothing further.

DR. WACKER: I am examining on behalf of the accused Fuchs.

REDIRECT EXAMINATION

QUESTIONS BY DR. WACKER:

Q General Stroop, did you have an opportunity to talk to the SS men of the lower ranks about the air warfare?

A Yes. I talked about these matters with SS men too.

Q What was the influence of the air warfare upon the men of the lower ranks?

(Stroop-redirect)

A These SS men were shocked and depressed just as much as I was and
A I have a bad memory for names but I have a good memory for persons
all the other people too.
and incidents and I can remember them well. For this reason I have answered
DR. WACKER: Since I am not allowed to ask the influence of it on
the question with re-
the population I have to finish my examination.
You testified about the authority which you received from the
DEFENSE COUNSEL: Dr. Buerger is going to cross examine for the
Reichsfuehrer SS Himmler. Were these authorities limited to the purpose for
accused Best, Goss and Michely.
which you testified here before this Court?
QUESTIONS BY DR. BUERGER:
A The authority was written on a letter head. On this letter head it
Q General Stroop, you testified that you never received and gave
said, "Reichsfuehrer SS, Commander in Chief of the Reserve Army". This
a direct order for the shooting of flyers, is that correct?
shows clearly that we have this order as the Commander in Chief of the Reserve
A That is correct.
Army in order to give special orders with regard to the Reserve Army orders
Q Do you still remember the testimony of the accused Dr. Goss?
which were necessary at that time.
A Yes.
Q But it said on this letter head "Reichsfuehrer SS"?
Q Was Dr. Goss with you alone?
A Yes. That was customary. There are other letter heads. For instance,
A I had the possibility to testify before this Court about all my
ones which said, "Reichsstatthalter" and on the next line "Commander of the
various duties. It happened unfortunately that men who intended to report
Order Police". The lower line is the important one.
to me or wanted to willingly talk to me, something or other, sometimes had to
Q Could it be recognized from the wording of the authority and not
wait for two or three days. After two or three years I am absolutely incapable
from the letter head, that the authority was given only for this one purpose?
of stating whether 1st Lt. Goss was with me alone when he was there or was
A I was SS General of the Waffen SS and the Police and on account of
together with other people at my office.
my position I had the possibility to know how the Reichsfuehrer SS meant this.
Q There is the possibility that Goss had been at your headquarters?
The Reichsfuehrer SS did not make out any general powers for all times and
A Many people came to me. It is possible that 1st Lt. Goss came to
all possibilities.
me too.
Q Did your subordinates know too that these authorities were given
Q Do you still remember your visits at the "W" school, Werewolf school,
only for this purpose?
at Tiefenthal or Wallrabenstein?
A I don't know that but I had no reason to tell my subordinates or
A Yes.
officers and men about the kind of authority I had.
Q Do you still remember whether the accused 1st Lt. Goss, during one
Q How do you explain then, General Stroop, that 1st Lt. Goss reported
of such visits, reported to you the killing of a flyer?
the wording of this affidavit before the Court?
A No.
A We sometimes knew that I had such a certificate of higher authority
Q Do you admit the possibility that such a report might have been made?
and either I personally talked about it with the [illegible] I showed this
authority once. I [illegible] it in the [illegible] of the events
(Stroop-redirect)
were [illegible] [illegible] [illegible]

A I have a bad memory for names but I have a good memory for persons and incidents and I can remember them well. For this reason I have answered the question with no.

Q You testified about the authority which you received from the Reichsfuehrer SS Himmler. Were these authorities limited to the purpose for which you testified here before this Court?

A The authority was written on a letter head. On this letter head it said, "Reichsfuehrer SS, Commander in Chief of the Reserve Army". This shows clearly that he gave this order as the commander in chief of the Reserve Army inorder to give special orders with regard to the Reserve Army orders which were necessary at that time.

Q But it said on this letter head "Reichsfuehrer SS"?

A Yes. That was customary. There are other letter heads. For instance, ones which said, "Reichsstatthalter" and on the next line "Commander of the Order Police". The lower line is the important one.

Q Could it be recognised from the wording of the authority and not from the letter head, that the authority was given only for this one purpose?

A I was SS General of the Waffen SS and the Police and on account of my position I had the possibility to know how the Reichsfuehrer SS meant this.

Q Was it not so that when this authority was brought to your knowledge The Reichsfuehrer SS did not make out any general powers for all times and all possibilities.

A No. Among my staff and the SS this certificate was of no importance. because as I said before it was a matter of course that my orders which I only for this purpose? issued had to be obeyed.

A I don't know that but I had no reason to tell my subordinates or officers and men what kind of authority I had.

Q How do you explain then, General Stroop, that 1st Lt. Goss repeated the warning of this authority before the Court?

A My secretary knew that I had such a certificate of better authority and either my secretary talked about it or it is possible that I showed this authority once. I might have shown it at the time we discussed the events which were happening when these troops were really flooding back. Certainly

we have talked about this matter quite frequently because this was the beginning of what happened later on. I mean that the enemy could advance faster and faster.

Q There you admit the possibility that you talked to your subordinates about this authority?

A I cannot say that anymore today. Why shouldn't I admit it. I said in which connection it could have happened.

Q Wasn't a special stress put on the last sentence that absolute obedience had to be given to your orders?

A I explained that this certificate was given only for this purpose. The Reichsfuehrer SS would have had miserable men if he would have needed to certify that their orders had to be obeyed. That was a matter of course.

Q General Stroop, if I remember correctly you yourself testified today that in this order it was said that absolute obedience has to be given to your orders?

A The Reichsfuehrer SS had given this certificate only so that we and the Gauleiter and Commander of the Order Police and the Commander of the Service Command could enforce their orders even against higher ranking officers.

Q Was it not so that when this authority was brought to the knowledge of subordinate officers it meant that orders had to be obeyed especially strict?

A No. Among my staff and the SS this certificate was of no importance, because as I said before it was a matter of course that my orders which I issued had to be obeyed.

Q You could give orders to Goss?

A Goss voluntarily asked for a transfer to my staff. I did not know him before. On his wishes, I got from General Herff, who was in charge of the Personnel Main office, that Dr. Goss -- permission that 1st Lt. Goss was transferred as 1st Lt of the Waffen SS to be attached to me as adjutant. At his personal request I gave him the assignment of leading the Werewolf school.

It was not as he testified here recently, if I have to mention this again. It is not correct that he became leader of this school in view of a misunderstanding which existed between a certain Captain Grieshaim and myself. I cannot imagine a misunderstanding between -- a disagreement between an SS Captain and a General. I now have to say it was like this: That I decided because he was the older man whom I knew longer that he was put in charge of the school, as my adjutant. Of course, I could give orders.

Q Could you give him orders as the commander of the school?

A Yes, I could; [illegible] it is absolutely clear.

Q Do you remember that you said to SS Major Best, the accused, that this incident in Wallrabenstein was a bad sign for the men? [illegible] of the

A No, I don't remember that. I don't know anything about it.

Q Do you want to say that Best, as well as Goss took their testimony out of the blue sky? [illegible] out for the [illegible] of [illegible]

A I cannot say anything about that.

Q Furthermore, you said you were not the superior officer of the [illegible] commanders of the order police and the security police.

A I did not say that, I was not the superior officer of the commander of the order police but I said that I was his superior in certain matters.

Q How about emergency times? [illegible] or October 1944 approached your

A I have to explain this to the higher court so that it becomes absolutely clear. When I am the superior officer of other officers and enlisted men that means that I can give them unlimited orders and I could to the [illegible] commander of the security police and also in many respects to the commander of the order police give orders only when ever these orders were not [illegible] contradicting the orders which came from the two main offices. Whenever I gave an order to one of the commanders this commander also had the possibility to get in touch with his main office to get the authority to carry out the orders too.

(Streep-redirect)

A Literally expressed the expression was as I said before. You call

Q I think you testified today that in emergency times you would have the area to the left of the Rhein as an emergency area. combined all police forces in your hands, is that correct?

Through this, according to your own testimony, automatically you

A If the Defense plan would have been put in use I would have taken over the command of all SS and Police troops in your area, is that not over the power of command and all authority for the police and the Waffen SS correct? in my area.

A That is not correct in this definite form.

Q Had the Defense plan been put into use?

MR. GERECHT: That is all. Thank you!

A No.

Q Why not?

A I would further more like to state so that it is absolutely clear, in this case when this Defense plan would have been put into use, I was the representative of the Wehrkreis Commander. On my orders all units of the Wehrmacht could have been committed if I would have thought it necessary.

Q Why wasn't the Defense plan put into use?

A Because it was made and worked out for the case of internal revolt and there was no internal revolt.

Q Didn't the defense plan also have certain connections with the enemy with regard to air warfare and land warfare?

A I said before that I had organized police anti aircraft batteries in so far the defense plan had connections with the air warfare.

Q And when the front, in September or October 1944 approached your area more and more and even invaded your area already, was that not a case of emergency?

A In military matters there was a distinction made between operational areas and back areas. The area to the left of the Rhein was operational area until the end of 1944 I think. The area to the right of the Rhein was back area and was under the command of the commander of the back area.

Q That did not answer my question. I asked you whether your area during the approach of the front lines was not to be considered as under an emergency?

A Militarily expressed the expression was as I said before. You call the area to the left of the Rhein as an emergency area.

Q Through this, according to your own testimony, automatically you were the commander of all SS and Police troops in your area, is that not correct?

A This is not correct in this definite form.

DR. BURGER: That is all. Thank you!

Q You said under direct examination that before you were brought all cases which would [illegible] or internal discipline by action?

A Yes.

Q If a soldier would [illegible] or any other, would this be taken care of [illegible], or would it have to be brought before the police court?

A [illegible] I was Higher S. and Police Leader, disobedience of orders had never to be punished through disciplinary action.

Q To Charge 3 and 10, did you hear the accused Steinmann testify before this court in his own behalf?

A Yes.

Q Do you know that he would be reprimanded or arrest for the execution of a Jew?

A Yes.

Q If Steinmann would have refused to carry out this order, would he then be charged by you for insubordination before your SS and Police court?

A He could [illegible] court, without any doubt.

Q And which punishment could you have expected to be pronounced by you in the police court?

A [illegible] in accordance with the general stamp of punishment in disciplinary [illegible] and [illegible] as it was.

(Stamp - deliberately)

DR. AUKIMER: This is cross examination fey the accused witnesses Hellenbreich and Stattmann. situations.

CAPTAIN VANCE: REDIRECT EXAMINATION testified that no one was DIRECTIONS BY DR. AUKIMER: or executed or put in prison for failure to carry out

Q You said that you were the appointing and reviewing authority of the SS and police court of Wehrkreis 122.

A Yes.

Q General Streep, did you know of other cases before other SS and police

Q You said under cross examination that before this court were brought all cases which could not be taken care of through disciplinary action?

A Yes.

Q If a member of the police force refused to obey an order, could this be taken care of through disciplinary action, or would it have to be brought before the police court? intervales.

A During the time I was higher SS and police leader, disobedience of orders was never to be punished through disciplinary action.

Q In charge 6 and 10, did you hear the accused Stattmann testify before this court in his own behalf? before publication and this office

A Yes. and the so-called chief judges of the SS and police courts

Q So you know that he said he received an order for the execution of a flier? further more in order to maintain in the Reich a certain uniformity

A Yes. ces and for this reason I received reports on these sentences

Q If Stattmann would have refused to carry out this order, would he then be ordered to go for investigation before your SS and police court?

A In such important cases, without any doubt. ered to carry out the

Q And which sentence would you have expected to be pronounced by your SS and police court? of disobedience to orders happened in my large

area qu CAPTAIN VANCE: No object, unless General Streep is going to testify he directed his courts and told them what to do. police court all

their criminal cas

DEFENSE COUNSEL: I think he might testify as to what sentences were handed down in similar situations, such for disobedience of orders, the most com- CAPTAIN VANCE: General Stroop already testified that no one was ever punished by this court, or executed or put in prison for failure to carry out an order to kill a flier, [illegible] we have an objection to disobedience of orders. PRESIDENT: Objection sustained, which if they are discovered carry the Q - General Stroop, did you know of other cases before other SS and police courts which were referred for disobedience of orders?

CAPTAIN VANCE: We object. It is irrelevant, immaterial and incompetent, you know that in cases at the front or near areas especially strict- ful DEFENSE COUNSEL: This is cross examination and we therefore have much more latitude.

PRESIDENT: Objection overruled, if necessary, their orders had to be A- It is like this, for approximately four or five SS and police courts there was a higher headquarters office. This office, on orders of the main office SS and police courts had the duty to check the reasons given for sentences by these courts before publication and this office always notified the so-called chief judges of the SS and police courts of other sentences, some for information of these chief judges and other judges and furthermore in order to achieve in the Reich a certain uniformity of sentences and for this reason I received reports on these sentences from my chief judge and I answered this question this morning with "no" only because the question was aimed like this: Whether through my SS and police court men have been sentenced because they refused to carry out the order to kill punishment enemy fliers. I answered this question with "no" but that other incidents of disobedience to orders happened in my large area quite often is a matter of course, especially since all units which were billeted in my district had to transfer to my SS and police court all their criminal cases.

[illegible] what type of orders were [illegible]

Q Through the report of your chief judge which you have mentioned before, did you hear of any cases in which for disobedience of orders, the death sentence was pronounced? [illegible] one case. It is a little bit unclear but I am [illegible]

CAPTAIN VANCE: We object. If he will say disobedience of an order to execute prisoners of war, then we have no objection to "disobedience of orders." We have orders in our own army which if they are disobeyed carry the death penalty, but this court is interested in orders relating to the killing of fliers. [illegible] requested several times to carry out the order.

[illegible] PRESIDENT: Objection overruled. [illegible], was sentenced to death

Q Did you know that in cases at the front or near areas especially strict rulings existed which were binding especially for the lower ranking organizations?

A It was known to all commanders that if necessary, their orders had to be enforced with their weapons.

CAPTAIN VANCE: I would like to ask a question.

PRESIDENT: Granted. RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE: [illegible] I did not receive an order to shoot prisoners.

Q General, was the death sentence ever given anyone who disobeyed orders in the 12th Wehrkreis? [illegible] that I was to interrogate many prisoners.

A Yes, sir, especially during the last war.

Q Now, what kind of orders are you talking about? [illegible] what it is?

A That is very difficult to say but I know that I had to approve the sentences of men and I know it because I sometimes felt sorry because they were young, decent men who through sometimes change of mind refused to obey an order which they had received. For instance it happened, if I may talk about it that men received certain guard assignments, since the front was already in the home countries, the men for instance went to the girls or to some inn, then came before the SS and police court and were sentenced to death. [illegible] carry out [illegible].

Q Well, we have the same law in our own army, but I want to ask what type of orders were people executed for failure to carry out?

A That is very difficult for me to reconstruct.

Q Well, do you remember any cases?

A Yes, I think I remember one case. It is a little bit unclear but I think it was like this: A policeman received an order from a captain of the rural police to carry out some order behind the front lines. I think it was in this connection he took the road to some people who were hiding in caves and some ditches since this area was under enemy fire and he was requested several times to carry out the order. I think this man, that is the case I remember, was sentenced to death for disobedience to order. I think as a proof I can say that, because later on I myself was in one of those caves and I think it was near the Saar.

Q General Stroop, you wouldn't shoot an unarmed prisoner of war, would you?

DR. RAU: I object to the question.

PRESIDENT: Objection overruled.

A I have testified that I did not receive an order to shoot prisoners of war and furthermore I would like you to consider that I participated in both world wars and that I had to interrogate many prisoners of war, especially during the last war.

Q Now can you answer my question? Can you remember what it is?

A I think it was if I would shoot a prisoner of war.

Q Well, would you, yes or no?

A I have no reason to shoot a prisoner of war without any special reason.

Q And no German policeman would be punished if he refused to shoot an unarmed surrendered prisoner of war, would he?

A It is not a question of the killing. If the policeman received an order to, he had to carry out the order.

GOVERNMENT COURT
MILITARGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Q Well, I asked you early in my cross examination if any police-

No. man had been punished by you or one of your courts for failure to carry
Name des Angeklagten

out an order to shoot a surrendered, unarmed prisoner of war and you
is hereby charged with the following offence:
wird hiermit folgender Verbrechen angeklagt:

answered they had not. Do you still want that answer to stand?

First Charge: A Yes, I repeat I don't know of any incidents that a policeman

was punished for disobedience to orders and that the order was to shoot

the prisoner of war.

Particulars: PRESIDENT: Court will adjourn until 0900 tomorrow.

(Whereupon at 1900 hours the court adjourned until 0900 hours, 6 March 1947.)

Second Charge:

Particulars:

The above charges are referred for trial to the *Summary / Intermediate Military Court / *General

Die Verhandlung wird vor dem *Einfachen / *Mittleren Militärgericht / Obersten

or
in (Address of Court)
*Anschrift des Gerichtes

or
in der Stadt/den

von

*Strike out words not applicable
*Nicht zutreffendes ist durchzustreichen.

Copy of above charges served on accused
Abschrift obiger Anklageschrift zugestellt am

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

Pages 2029 - 2115

Case No. Superior Orders

*~~Summary~~ *~~Intermediate~~ Military Court. *General

Place DACHAU, GERMANY

Date 6 March 1947

~~Members of Court~~ WITNESSES

JURGEN STROOP
FRIEDRICH KARL von EBERSTEIN
ALFRED WUNNENBERG

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Herbert Rosenstock

Interpreter Rudolph Nathanson

Reporter Patricia Stewart, Imogene Butler, Sally R. Hayett, Evelyn Cohen, Peter DiCurti, Irving Hayett John McDonald

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning 194
- Fine
  - Amount .....
  - To be paid before 194
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

6 MARCH 1947 Pages 2029 - 2115

TESTIMONY

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	COURT
JURGEN STROOP			2038	2029 2043	
FRIEDRICH KARL von EBERSTEIN	2048	2061			
ALFRED WURNBERG	2078				
FRIEDRICH SCHLUNS			2088 2101	2101	
PHILIP BUNSMAN	2109				
HANS GUNTHER			2106	2112	
REINHARDT BREDER	2113				

EXHIBITS

NUMBER	DESCRIPTION	MARKED	RECEIVED IN EVIDENCE
P-147	Silver Trophy Cup	2034	

Ya 271-po-80-3/6-1

Camp Dachau, Germany

6 March 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense; all of the accused; the reporter and interpreter are present.

PRESIDENT: Let the record show that Colonel Ackerman has advised the president of the court that he has read all the testimony which transpired in court on Wednesday, Thursday and Friday, February 26, 27 and 28, on which days he was properly absent from court.

DEFENSE COUNSEL: At the close of yesterday's session, the accused Stroop, No. 1, was on the stand. Will you please take the stand again?

JURGEN STROOP, an accused, voluntarily resumed the stand in his own behalf and being reminded that he was still under oath, testified further through an interpreter as follows:

DEFENSE COUNSEL: Were you through with your cross examination?

CAPTAIN VANCE: I would like to ask a few more questions.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q General Stroop, I believe that during your direct testimony and then again during your cross examination that you stated that the low-ranking members of the police force were acting under orders which they had to obey and that you are willing to take the responsibility for those actions under these orders. Is that what you said?

A Yes, I said so, with the addition although I myself have not given any orders for the killing of fliers.

(STROOP-Recross)

Ta 271-ps-CO-1/6-2

Q Now, tell the court what orders you are talking about in connection with these low running numbers.

A In this case, I only can construct something about which I was thinking during the trial. I explained here before the pressure of the Party. During the trial and before the trial I have seen a few photostatic copies of documents which were made up by the Foreign Office and the Chief of Staff of the Wehrmacht. I assume now that based on these documents the intention existed to issue some kind of an order but they did not have the courage to issue this order in general and openly, and certainly they did not want to give this order to the Order Police because as we have seen here the Order Police had at its disposal mostly older men, unskilled, and one couldn't have the same confidence that they would keep an order secret with these auxiliary policemen as one could have with the regular policemen. For this reason, I assume today -- and I always stress the point that I come to this knowledge and conclusion only now -- I assume therefore that the way through the Party was chosen, and in view of the large influence which the gauleiters and the kreisleiters had, this was explained on several occasions during the trial, too, there was always a way through some reliable commander to enforce such an intention or such an order. And so I think that through this way, if it came out in this trial that policemen shot a flier on orders, this man really in this manner received an order. That is the only reply I can give you.

Q General Stroop, you alone could not run the police system of the Rhein-Westmark area, could you?

A No.

Q It took cooperation between all branches; that is correct, isn't it?

A Yes.

Q Now, let's take a case, for instance, where Major Girke says that he gave an order to Major Hollenbreich and Major Hollenbreich passed that

(STROOP-Recross)

order to Staatsmm and Rauf to execute a flier. How do you feel about your responsibility in that instance?

A I have testified that I did not receive a general order to kill fliers. The comrades just mentioned by the prosecutor have testified here that they had received an order. If officers here state that they received an order, I have no doubt that they received it.

Q Well, now, after hearing this trial progress, you have no doubt that orders were issued and carried out to execute unarmed prisoners of war, is that correct?

DEFENSE COUNSEL: I pray the court's judgment. That is the very issue in this case, and that is for determination by the court. Whether any particular accused has the opinion that other people are guilty of something is not for him to say.

PRESIDENT: Objection is overruled.

THE WITNESS: I did not deny that such orders had been issued, but I have testified that I, as the higher SS and police leader, did not receive such an order and did not pass it down.

QUESTIONS BY CAPTAIN VANCE:

Q Let's forget for the time being the higher ups, the headquarters above you, Himmler, etc., and get down to the Rhein-Westmark area. Who do you think disseminated these orders to your command?

A I can't give you any information about this, because I don't know about any orders.

Q Is it possible that these orders came to your headquarters without your knowledge?

A Orders of such importance would have come to my knowledge.

Q Someone had to issue them down to these lesser headquarters, didn't they?

A Yes. If the majors Dirks and Hallenbreich testified here that they

(STROOP-Recross)

received an order from Colonel Trumaler, and if Colonel Trumaler testified here that ———

DEFENSE COUNCEL: I think he said that if they testified they got the order from Cirke and Cirke testified, etc. Ask him to say it over again.

THE WITNESS: If the Majors Hellenbroich and Cirke testify to have received such an order from Colonel Trumaler, and Colonel Trumaler testifies that he received an order from his superior headquarters, then, as I said before, I think the chain of command is clear, especially considering the immediate direct channel of command from the Reich Security Main Office to the commander of the Security Police. Of course, it is entirely open whether this order was given in writing or orally. I don't know anything about it.

QUESTIONS BY CAPTAIN VANCE:

Q Orders that came down from Kaltenbrunner to Trumbler — it is true that you got copies of those orders, is it not?

A Not all of them. I can say the following there. Captain Vance tried to bring to my attention yesterday that I, as the higher SS and police leader of Rhein-Westmark, learned more about the activities in my district during the time I was arrested here than before. To yesterday's questions and to today's questions, I can answer together that there was an order from the Fuehrer about keeping orders secret. This order of the Fuehrer's said that about actions mentioned in secret orders only those people should be informed who directly had anything to do with the carrying out of such orders. Since the SS under my command had nothing to do with the so-called Nadamar incident, I was not informed. Since in the case about which we are talking now it definitely was a secret order and it seems that it was intentioned not to involve me in any way, I was not informed.

Q What you mean to say is that some police matters were kept secret from the higher SS and police fuehrer, is that correct?

A Whenever the higher SS and police leader was not participating on

the execution of any of such orders, I didn't have to know about them. If I am sitting here as the former higher SS and police leader, it makes perhaps a funny impression that sometimes I don't know about certain orders which happened in the Reich, but this order was obeyed to very strictly and even the death penalty was threatened for disobedience to this order. Only those people were informed who had anything directly to do with the carrying out of such secret orders.

Q General, wasn't it your principal function and one of your main duties as higher SS and police leader to check up and see that the police were enforcing orders issued from higher above?

A That wasn't my main duty. That was especially not my main duty in regard to the Security Police, because we heard here already Colonel Somma right in the beginning that he was inspector and he had to inspect and he had to report to Berlin whether the orders were carried out or not.

Q Was that one of your duties, then?

A Of course, I took the interest that orders were carried out, but when I executed such a control at all it was over the sector of the Order Police. How little I checked the sector of the Security Police one can see from the fact that I was on all the various headquarters of the Security Police only once during the entire time because they were located in my area. For instance, I knew Major Girke and Major Hallenbreich only from a very short presentation to me at some occasion.

Q Now, General, how could you tell whether the police were carrying out orders and enforcing them unless you knew what the orders were?

A I didn't have knowledge of all orders. In order that I was informed at least a little bit, I ordered these chief meetings at my headquarters from time to time, and during these meetings, these two commanders informed me about important matters.

Q Did they inform you about shooting the fliers?

A No.

CAPTAIN VANCE: I hand the reporter an object and request that it be marked for identification.

(The object referred to was marked Prosecution Exhibit 147 for identification.)

QUESTIONS BY CAPTAIN VANCE:

Q General, I show you a silver trophy cup which has been marked Prosecution Exhibit 147 for identification and ask you if you can tell the court what that is.

A Yes. For the first time, I am holding such a trophy in my hands. I never saw it before, but if I am asked what it is supposed to be, it is very clear from the printing on it. It shows oak leaves, then two eagles fighting. That is a picture of the air warfare. If I might explain, the one on the bottom is the enemy and non-German and the one on top of him is the German flier. On the back is a reproduction of the Iron Cross for this World War from 1939, and at the bottom the words are used, "For Special Achievement in the Air Warfare." I assume -- and I heard so before, I think -- that something like this existed, that well-deserving fighter fliers of the German air force received such a trophy, but I think a former comrade of mine will be a witness here afterwards, the general of the air force Von Harlinghausen. This general of the air force probably will be in a position much better than I am to explain the value and meaning of this trophy. I always was an infantryman and lived on the ground and was flying only from time to time when my duties made it necessary.

Q From looking at that trophy, can you say what date that trophy was issued?

A Yes, I can see it. Yes, it says there, "Lt. Barczykowski, on the 13th of June, 1941." That certainly must have been a flier.

Q Were there any bombs dropped in the Rhein-Westmark area by the Allied air force in 1941?

A Yes, as far as I heard, yes. I wasn't there yet.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: I would like to re-examine the accused briefly on redirect examination.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Yesterday, you testified that while you knew of no order to shoot captured Allied fliers, but if you had received such an order from your superiors you would have passed it down and would have enforced its challenge. Is that a correct statement?

A Yes, that is correct.

Q And you also said in connection with that that there would be no occasion for you to question the legality of orders issued by your Government. Is that a correct statement?

CAPTAIN VANCE: May it please the court, I object to that as leading. I don't think that statement can be found in this record.

DEFENSE COUNSEL: I am certain that it was, and I have asked him if he said that and he says it was.

PRESIDENT: Objection overruled.

THE WITNESS: Yes, I made this remark.

QUESTIONS BY DEFENSE COUNSEL:

Q General Streng, what was the government of Germany during the war? What did it consist of?

A The government of the German Reich consisted of the Fuehrer, Adolf Hitler, the Reichs Cabinet and the Reichstag.

Q Are you somewhat familiar with the American government?

A Yes, in general.

Q Without making a comparison between the government of the United States and the government of Germany, who would you say was the opposite number in the German government to the President of the United States?

CAPTAIN VANCE: I object to that question. It is improper. I don't

think there is anything in the German government that compares with the President of the United States.

DEFENSE COUNSEL: I said without making a comparison, may it please the court. I just asked on the basis of the government, who would be the opposite number to the president. I certainly don't intend to make a comparison between our forms of government.

LAW MEMBER: What is the materiality of this question?

DEFENSE COUNSEL: This case is being called a superior orders case. We intend to show that it is not a superior orders case. It is not a question of Girke's order or Trumler's order. What these people were obeying was the order of their government, and I have a right to show what the government was, and I can't see how making a comparison with who President Roosevelt's opposite number was could be considered at all disrespectful to my own country. I am laying a foundation, that is what I am doing.

PRESIDENT: Objection overruled.

THE WITNESS: As the President of the United States is leading the government of the United States, so Adolf Hitler was the leader of the German government.

QUESTIONS BY DEFENSE COUNSEL:

Q And who in the German system of government could be said to be the opposite numbers of the cabinet of the United States?

A The Reichs Cabinet.

Q And again without making a comparison between the two, what body in the German government can be said to be the opposite number to the Congress of the United States?

A The German Reichstag.

Q Now there has been talk in this case about Bormann. Do you know what position Bormann played in the German government? Was he or was he not a part of the Government; and, if he was, what was his position in the Government?

A He was Reichsleiter and he was a member of the Reichs cabinet.

DEFENSE COUNSEL: What's "Reichsleiter"?

INTERPRETER: Reichs Leader.

QUESTIONS BY THE DEFENSE COUNSEL:

Q And the same question with respect to Himmler.

A I can give the same answer for the Reichsfuehrer Himmler. He, too, was a member of the Reichs cabinet.

Q Now, this so-called Bormann decree that has been introduced into this Court, or Bormann order, or whatever name you want to give it--whose order or decree was that?

A Whenever Bormann issued an order and signed it, in my opinion he signed it in the name of the Government.

Q Now, this so-called "non-interference" order--what part did Himmler play in that order, so far as you know?

A Himmler signs the order, but even the Reichsfuehrer SS could issue such an order only in agreement and by orders of the German Government.

Q Now, General Stroop, there has been evidence in this case of a Kaltenbrunner order--an order to turn the fliers over to the Gestapo--several and sundry orders with respect to the treatment of allied fliers. Whose orders were they, if you know?

CAPTAIN VANCE: I object on the ground that General Stroop has testified he knows nothing and heard

nothing and has no knowledge of such order.

DEFENSE COUNSEL: He has denied only knowledge only. of the order to kill and has said nothing about any other orders, and I asked him to state if he knows.

CAPTAIN VANCE: I would like a ruling of the Court.

PRESIDENT: Objection overruled.

WITNESS: I assume in this case an order has been issued by General Kaltenbrunner. General Kaltenbrunner was Chief of the Reichs Security Main Office. One might say he was responsible for the administration of the Security Police. Whenever General Kaltenbrunner issued an order [illegible], in this capacity he issued the order in agreement with to Heinrich Himmler, but Himmler would give his okay to this order only and give an order like this only when he was certain that he was in agreement with the Reichs Government.

DEFENSE COUNSEL: I am not talking about this order--that particular order--but about the other orders.

CAPTAIN VANCE: May it please the Court, I move that that answer be stricken from the record. The General started off with "assuming". He is testifying as to an assumption, and not to what he knows about. For that reason, we move that it be physically stricken from the record.

DEFENSE COUNSEL: I would like to say briefly that he is talking about an order about which he said he had no knowledge, but which has been testified to in this case as coming down from Kaltenbrunner. Now, he is testifying that if such an order came down from Kaltenbrunner it must have [illegible].

(Stroop-Redirect)

been issued by Kaltenbrunner, coming down from higher authority. It is perfectly germane.

CAPTAIN VANCE: May it please the Court, the question was "if you know", and then he says, "I assume", etc.

DEFENSE COUNSEL: Would you mind asking again if he used the word "I assume" or "I thought".

CAPTAIN VANCE: I object to that. The Court knows what he said.

DEFENSE COUNSEL: We are questioning the translation, may it please the Court. I should have asked the Court to ask him. I pray the Court's pardon.

PRESIDENT: Will you ask the witness if the first part of that answer was correct, "I assume"?

INTERPRETER: I take as a basis that General Kaltenbrunner, etc.

DEFENSE COUNSEL: I submit that it's perfectly proper.

PRESIDENT: The motion to strike is denied.

DEFENSE COUNSEL: Now these other orders that you testified that you knew about or testified about in this case other than the order to kill--let's leave that out, you talked about that--these other orders or any order- any and every order that had to do with the treatment of allied fliers, whose orders were they in the first instance?

CAPTAIN VANCE: We object to that because the orders are in evidence. They show whose orders they were because they are signed orders.

PRESIDENT: Objection sustained.

(Stroop-Redirect)

DEFENSE COUNSEL: What I want to prove by this question, may it please the Court, irrespective of the name signed to the order, that the order was an order of the German Government and the signature was merely the voice of the Government. That's what I offered to prove by the question I just asked. May I ask for a ruling of the Court if such evidence is admissible.

PRESIDENT: The ruling stands.

DEFENSE COUNSEL: These orders signed by Bormann and Himmler, or by whomever they were signed, can you tell the Court for whom these orders were signed?

CAPTAIN VANCE: Same objection, may it please the Court.

DEFENSE COUNSEL: I pray the Court's judgment.

CAPTAIN VANCE: The documents speak for themselves.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: According to the German system of Government, could orders be issued by Bormann or Himmler unless--could orders be issued by Bormann and Himmler other than as part and representative of the German Government?

CAPTAIN VANCE: We object. The question is leading; he is putting the answer into the mouth of the witness. This is not cross examination; he is conducting a redirect examination of this accused.

DEFENSE COUNSEL: I agree.

CAPTAIN VANCE: He is leading.

DEFENSE COUNSEL: I will try to correct it, may it please the Court. I didn't mean to lead.

By what authority did Himmler and Bormann issue the orders referred to in this case?

CAPTAIN VANCE: Same objection, may it please the Court.

DEFENSE COUNSEL: I pray the Court's judgment.

PRESIDENT: Objection overruled.

WITNESS: By authority of the Government and the Chief of the German Reich, Adolf Hitler.

DEFENSE COUNSEL: Now, coming down to Stattman and Raaf in this case, and the order they got from Girke, and which Girke says he got from Trumler. Whose orders were Stattman and Raaf obeying?

CAPTAIN VANCE: We object, may it please the Court. That testimony is before this Court as to who they were obeying. It's clear who they got it from--who they obeyed. Girke and Hellenbroich testified they gave it, and General Stroop was not there; so how could he know?

PRESIDENT: Objection sustained.

QUESTIONS BY THE DEFENSE COUNSEL:

Q Could Girke have issued such an order on his own authority?

A Never.

Q From whom would he have to get his authority?

A He had to receive his authority from his next higher superior officer--that was Colonel Trumler.

Q Could Trumler issue such an order on his own authority?

A No, not even Trumler; not even Kaltenbrunner. These were orders of such importance that they could be issued only in agreement with the highest commander of the German Reich, the Fuehrer. Such decisions even General Kaltenbrunner

or even any subordinate officer of the Security Police could not issue.

Q About the non-interference order, Could Sommann originate such an order?

A No, it's exactly the same with the non-interference order.

Q You got the non-interference order, didn't you, and you passed it down?

A Yes.

Q Could you originate such an order?

A I couldn't have done so, even if I had had the necessary authority, because I was only the higher SS and Police Leader for a small sector of Germany.

Q Where did the order come from?

A The order came from Himmler in agreement with the Government.

Q Yesterday you were asked by the Prosecution what your command jurisdiction was over the Security Police, and you testified, as I remember it, that the orders to the Inspector and the Commander of--and you testified that the orders to the Security Police in Rhine-Westmark came from the Main Office of the Security Police. Do you remember saying that?

A That's correct.

Q Now, if you know, can you tell the Court how orders from the Reichssicherheitshauptamt were issued to the lower echelons, the Sipo and Kripo and SD in the smaller cities?

A I know about it in general. As long as there was still an Inspector as Chief of the Security police in

my district, a large part of the orders went through the lower Headquarters and avoided the Inspector of the Order Police. That was especially true for the time while Colonel Scmann was Inspector of the Security Police in Rhine-Westmark. Sometimes he heard about things only later on through his subordinate Headquarters; or only a few matters--I don't want to say definitely--but I think personal matters and some other things, went directly to his Headquarters. As I said before, all the other orders, instructions and letters went, you might say, around him, right to the leaders of the various Headquarters. This condition even existed for some time after Colonel Trummler had become Colonel Scmann's successor, until such time as he had reorganized the various Headquarters; so that later on he was in a position to receive all the orders and to pass them down all by himself.

DEFENSE COUNSEL: Does the Prosecution have anything further?

CAPTAIN VANCE: Yes, sir.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q General Stroop, do you remember when you testified before this Court about three weeks ago?

A Yes.

Q Do you remember my asking you about the chain of command to the Security Police and you answered, "I don't know anything about the Security Police"?

A I remember exactly what I said. I didn't say that I didn't know anything; I said only here I am not informed in all details. It was a question of explaining to this

high Court the whole organisation and the channel of command. Why should I appear here before the Court as a man who knows and make explanations about matters with which I am not familiar in all the smallest details? For this reason, I considered it better that these explanations should be given here to the Court by the Inspector of the Security Police or the Commander of the Security Police--explanations which then were correct in every respect. That I know about the things to which I testified I think is obvious.

PRESIDENT: Court will recess for twenty minutes.

(Whereupon the Court recessed at 1000 hours.)

End ta 262,
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(Whereupon court reconvened at 1020 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: The accused Stroop was on the stand undergoing cross examination.

JURGEN STROOP, an accused, having been previously duly sworn, resumed the stand in his own behalf and testified further through an interpreter as follows:

PRESIDENT: You are reminded you are still under oath.

ACCUSED STROOP: Yes.

RECROSS EXAMINATION (Continued)

QUESTIONS BY CAPTAIN VANCE:

Q General Stroop, when you were testifying on the 7th day of February 1947 before this court, do you remember my questioning you about Defense Exhibit Number 2, which is the large chart in evidence? Do you recall that?

A I remember the question, yes.

Q Do you remember saying in regard to the Security Police, "I don't know whether it is correct or not as I don't know anything about the Security Police"?

DEFENSE COUNSEL: I pray the court's judgment. That is repititious. It was inquired into just before the recess.

PRESIDENT: Objection overruled.

ACCUSED STROOP: What I said was that I wasn't familiar with the organization of the Security Police down to the last detail, and that since the only purpose of the examination was the examination of the

chart, I considered it proper that the Inspector of the Security Police or the Commander of the Security Police should give that explanation.

Q When answering Colonel Dorman's question about the Security Police, were you testifying as to some actual knowledge you had or were you testifying about what you have learned during this trial?

A No. I was, of course, informed about the organization of the Security Police in general. One particular reason why I did not give the explanation on this chart was because it also indicates several branch offices about whose existence I don't know much of anything. At any rate, I certainly would not have been able to enumerate them.

Q You know I did not ask you anything about the branch offices. I asked you about the positions occupied by Ehrman and Trumler? Do you not remember that?

A The position?

Q Yes.

A I did quite a bit of testifying about that here.

Q I am talking about when I was questioning you. I realize you have when Colonel Dorman was questioning.

A Well, Captain, the reason why I refrained from explaining this was that I thought there was no point in my doing this when there were some men sitting here who knew much better about it than I. The purpose of these two big charts here was to present a clear picture to the court here. If I had forgotten the smallest detail or had perhaps unwillingly testified wrongly, the picture wouldn't have gotten any clearer.

Q You had made certain comparisons with positions held in German government and the American government. That is right, is it not?

A Yes. Might I say one more thing to the last question, Captain? After all, I never was a member of the Reich Security Main Office. I still remember this last question now and the answer was yes.

(Stroop-Recess)

Q Was Bormann a politician.

A Yes.

Q Would he compare to a ward heeler?

DEFENSE COUNSEL: I pray the court's judgment. It is entirely improper cross examination. There is no evidence that he knows what a ward heeler is.

CAPTAIN VANCE: He said he is familiar with our American system.

DEFENSE COUNSEL: I object.

PRESIDENT: Objection overruled.

ACCUSED STROOP: No.

QUESTIONS BY CAPTAIN VANCE:

Q Do you know what a ward heeler is?

INTERPRETER: Captain, I don't think the term "ward heeler" can be translated into proper German.

CAPTAIN VANCE: If it cannot be translated I withdraw it. That is all.

ACCUSED STROOP: And if I might add, Bormann was a Reich Minister, so he couldn't have been a small scale politician.

DEFENSE COUNSEL: Anything further from the prosecution?

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Any questions by the court?

PRESIDENT: No questions by the court. Take your place in the dock.

(Thereupon the accused resumed his seat in the dock.)

DEFENSE COUNSEL: The next witness is Baron von Eberstein.

(Stroop-Recross)

FRIEDRICH KARL FREIHERR von EBERSTEIN, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DEFENS' COUNSEL: The witness will be examined by Dr. Rau.

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name, please?

A Friedrich Karl Freiherr von Eberstein.

Q How old are you?

A 55 years.

Q Are you a prisoner at this time?

A I have been discharged from my status as prisoner of war.

Q Are you still in custody?

A Yes.

Q What was your rank?

A My last rank was that of a full general of the Waffen SS and the police.

Q What was your official position?

A My last position was the higher SS and police leader and the higher commanding officer of the prisoners of war in Wehrkreis Number 7 in Munich.

Q From when until when did you hold this position?

A The position of higher SS and police leader from the beginning of the war until the 20th of April 1945 and the position of higher commander of prisoners of war from the first of October 1944 until 20 April 1945 also.

Q Was the war over for you on the 20th of April 1945 or were you relieved from your job before the end of the war?

A I was relieved from my jobs on the 20th of April 1945 because I had refused to obey orders from the Gauleiter Giesler in Munich several times.

Q In what respect did you refuse to obey orders? What did he want you to do?

CAPTAIN VANCE: I object. It is entirely irrelevant, immaterial and incompetent about this man in Munich and his refusing to obey his orders.

DR. RAU: I should like to demonstrate to the court the influence of the Party on the higher SS and police leaders.

DEFENSE COUNSEL: It is still germane according to the chart, which is officially before the court.

PRESIDENT: Objection overruled.

THE WITNESS: There were several conditions jointly effective. It started as early as 20 July 1944, when the attempted assassination of Hitler took place. He demanded of me to arrest a colonel of the general staff corps, of the staff of headquarters 7 and I refused to do that. In the beginning of March 1945 he called me over and demanded of me to influence the commanding officer of the Dachau concentration camp to the effect that the prisoners present in that camp at the time of the approach of the Americans should be shot. I declined to do that. About the middle of April the gauleiter called a conference and expressed himself to the effect that Munich should be defended in spite of the fact no troops were left there and the commanding officer of Wehrkreis Number 7, Kriegel, also stated that it was absurd to try to defend the town and finally the gauleiter and Reich Defense Commissar demanded that the police leave Munich in order to build up a line of defense around the Danube. That was in contradiction to an order

of Himmler to the effect that police presidents were not permitted to leave their cities. Thus, within 48 hours I was relieved from every one of my jobs. Application for this action started with the Reich Defense Commissar and went through Bormann down to Himmler, and I was relieved of my job.

Q Were you examined in the Nuernberg trial as a witness against Goering and others?

A Yes, but only as a witness for the SS.

Q Did you there testify about the position of the higher SS and police leader in the police organization?

A Yes.

Q Will you please repeat what you stated there?

CAPTAIN FANCE: No objection, may it please the court. It is not the best evidence. The record of the Nuernberg trial will reflect his testimony.

PRESIDENT: What is the point of your question?

DR. [illegible]: To present to the court from some third party what the duties of the higher SS and police leaders were.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. [illegible]:

Q What was the job of the higher SS and police leader?

A His jobs in a general outline were about the following: In the first place, the higher SS and police leader was the representative of the Reichsfuehrer SS and chief of the German police in the wehrkreis where he was active. As such he had to take the place of the Reichsfuehrer SS at large scale matters, such as at Party or government conferences. In the second place, it was his job to see to service liaison between the government offices and the Party offices

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in the area, thus making for a smooth working together of all the offices under Himmler in this particular area; that would include orientation of the particular headquarters located there. In the third place, the higher S. and police leader was to use jointly the whole powers of the SS and the police in the working out of large scale closing up of projects. For instance, in the course of natural emergencies, in the case of large scale meetings in the presence of Hitler. Further, he had to take the position of the reviewing authority of the SS and police court located in that Wehrkreis. The reason for that was not as it was in the army, that is, authority was under our command, but rather, that higher SS and police officer, in his discretion, was the highest ranking officer in the SS or the police there. Finally, in the case of internal disturbances, in that case, and only in that case, he was issued the power of command over the whole SS and police in his area, but in my area that case never arose. But even in that case, the final decision would be up to the Reich Defense Commissioner.

Q What was the normal authority of the command of a higher SS and police leader?

A I can testify only as to the position of the higher SS and police leader in the German zone of interior. I have no knowledge of the authority of the higher SS and police leader in the occupied territories since I was used inside Germany throughout. The organization of the headquarters of the higher SS and police leader was first published by a regulation of the Reich Minister of the Interior, Dr. Frick. This regulation appeared in the winter of '38 or spring of '38, I can't say exactly which. Its phrasing was rather scanty and it didn't consist of more than one typewritten page. The main point stated therein was that, as I have mentioned before, the higher SS and police leader were the representatives of the Reichsfuehrer of the SS and the chief of the German police. The technical representatives of the

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Reichsfuehrer SS, however, remained the chief of the main office of the regular police and of the security police. They made use of their own channels of command and the offices of the higher SS and police leaders were located outside these channels of command. The higher SS and police leaders were not permitted any interference in police activities. They had no power of command, either over Waffen SS or the police, nor did they have any disciplinary powers over the SS or the police. In fact, no appropriation, no financial backing existed at all for the position of the higher SS and police leader in the German government setup. It was only in 1941 when the higher SS and police leaders became generals of the police that they did receive appropriated funds from the main office of the regular police. For that reason, in accordance with the German interpretation of the civil service regulations, that did not constitute a state authority. The only explanation we can give for this peculiar situation is that Himmler had a project for the future in his mind, namely, a state protective corps, to consist and to be formed after the war, of the SS and the police.

Q Did you yourself have any disciplinary powers to the members of your staff or did you not?

A The members of the staff were detailed to it; an actual staff per se did not really exist. The only person, who, according to later regulation, was actually put under the discipline of the higher SS and police leader was the chief of staff for the Allgemeine SS. And, in accordance with this regulation from the Reich Minister of the Interior, I think that is where this was started. He had attached to himself the chief of the regular police and the commanding officer of the Security Police, who were his technical advisers in a certain sense.

Q By what way would the police receive its instructions from the highest headquarters?

main office for the SD, to the SD chief sectors and SD sectors, and the only thing that the higher SS and police leader would have to do with those orders would be occasional but not consistent information copies only.

Q What was the authority of the commanding officer or inspector of the police in the area of a higher SS and police leader?

A As the title itself indicates, the inspectors had the primary task of inspecting or officially supervising

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[illegible] the order for the police to [illegible]

[illegible] from the police, from the [illegible] of the police [illegible] the ordinance police, regular police, [illegible] the ordinance police, [illegible] the police [illegible] the police [illegible] the police

Q And the commanding officer?

A With the regular police it was exactly the same and up to today and it is incomprehensible to me why they used the term "commanding officer" in the case of the regular police inside Germany. I would like to refer -- I don't know whether it is permissible -- to the affidavit of the General Von Bomhard, who is present in camp and who has described this very closely. He used to work in the main headquarters of the regular police for a long time.

Q Did the higher SS and Police leader have any authority or command over the commanding officer of the regular police, on one hand and the commanding officers of the security police on the other?

A We didn't have any authority of command. Regulations expressly stated that the Higher SS and Police leaders would have the authority to make suggestions only, to perform inspections and to quote Himmler, "It would depend entirely on the Higher S and Police leaders concerned what he could make of his position". In other words it was a question of temperament whether a man would stick to the regulations or whether he would take action on his own initiative.

Q Was he by that, authorized to issue orders which by themselves had been limited to the main office of the regular police or the Reichs main security office?

A In my opinion he was not.

Q What would have happened if he had issued such orders?

A He would have to figure that these orders would be rescinded from above.

Q Did you, as Higher S and Police leader, yourself issue any orders concerning the treatment of parachuted allied flyers?

CAPTAIN VANCE: I think this witness should be advised of his rights against self-incrimination before he answers that question. I believe it is the duty of the Court to afford him some protection. He is a prisoner of war. I am not making an objection, merely stating that I think it is the duty of the Court to do so.

PRESIDENT: You are advised that you do not have to answer any question that will tend to incriminate you.

THE WITNESS: Yes, sir.

PRESIDENT: Was there an objection to that last question?

THE WITNESS: I have already testified about this voluntarily.

MR. WACKER: I did not wish to register an objection but merely to mention just what the Prosecution has already mentioned.

A MR. RAU: I am just informed that there was a mistake in the translation by the interpreter. I asked the question "Did you receive any orders --" and it was translated "Did you issue any orders --".

QUESTIONS BY MR. RAU:

Q Did you receive any such orders? Do you want to talk about that?

A Yes. I received several orders, among them this so-called intervention order, if I may use this term here.

Q I think this concept is clear to our minds and there is no need to elaborate any further. Might I ask if the Court is of the same opinion?

Q PRESIDENT: Yes.

QUESTIONS BY MR. RAU:

Q What further orders did you receive?

A Concerning the treatment of Allied flyers only this order and it was received simultaneously from the Reichsfuehrer Himmler, from the chief of the regular police as well as, if I am not mistaken, the Reichs Main Security Office. I might admit, however, here that the orders coming out from the Reichs Main Security Office did not confine itself merely to the treatment of parachuted Allied flyers but also discussed, among other things, the treatment of parachutists who had come down in civilian clothes and the treatment of such parachuted flyers who would still offer resistance with a weapon after coming down. This order was signed by Dr. Kaltenbrunner and this order came down to the office of the Higher SS and Police Leader but only in the form of information copies. In the German Civil Service

System that means that no action was to be taken on them and action was only to be taken by the office to which the order was directly issued. Later on another regulation came down from the Chief of the Main Party Office, Bormann, and this regulation from the Party Chancellery stated that any person which might use physical force against parachuted flyers should not be subjected to prosecution.

Q Have you now described everything, all the orders?

A These are all the orders which came to our knowledge.

Q Did you ever find out whether the commanding officers or commanding officers of the regular police on the one hand and the security police on the other hand did receive any further orders?

A No. I never found out about any such orders. I am thoroughly convinced that neither one of these two gentlemen did receive any such orders at any time because with the good personal feeling that existed between men— between me and them I am sure they would have informed me if they had received such orders.

Q Did your office — did you yourself make any observations as to what the effect of the air warfare was on the population?

CAPTAIN VANCE: I am going to object to that. That is something that happened down in the Munich area and we are getting far away from Wehrkreis 12.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: Dr. Aschner will cross examine this witness on behalf of the accused Hallenbreich, Girke, Stattmann and so on.

QUESTIONS BY DR. ASCHNER:

Q General, you just mentioned an order from the Reichs Main Security Office which you received an information copy of and which arrived together with the so called non-interference order and you said that this order discussed parachuted flyers who were not armed with a weapon in their hands, what did this order state was to be done with such parachuted flyers?

A I think, sir, you made a mistake here. I did not say "Found with a weapon in their hands" but rather, "Persons who were found resisting after parachuting with a weapon" that is something else again.

Q All right. What was supposed to happen to these persons?

A As far as I remember they were supposed to be bumped off.

Q Did this order pertain to parachuted enemy flyers?

A Well, I do think it did.

DEFENSE COUNSEL: I would like to take exception, may it please the Court, to the translation of every German word that means "kill" as "bumped off". I would like the Court to ask the interpreter whether the word used by the witness meant "killed" or "bumped off"?

INTERPRETER ROSENSTOCK: It meant "bumped off", sir.

DEFENSE COUNSEL: Is there any other translation more consistent with idomatic English and is a fair translation of the language used?

INTERPRETER ROSENSTOCK: None that I know of, sir.

LAW MEMBER: What was the German word used?

INTERPRETER ROSENSTOCK: "Niedergemacht".

LAW MEMBER: What is the German word for kill?

INTERPRETER ROSENSTOCK: "Getotet".

DEFENSE COUNSEL: What does "Erledigt" mean?

LAW MEMBER: What does the term "bumped off" mean as used in the German language?

INTERPRETER ROSENSTOCK: It means killed, except that it seems to be a slang expression, sir.

DEFENSE COUNSEL: The witness is on the stand. May I ask that he be asked to explain?

PRESIDENT: What word did he use?

INTERPRETER ROSENSTOCK: The witness used "Niedergemacht".

PRESIDENT: Will you ask him to explain what that means?

THE WITNESS: Yes. I wanted to say just now that this word, just happened to be the word I was thinking of at the moment because I did not remember the wording of the order. What I meant was "killed".

CAPTAIN VANCE: May it please the Court, the witness himself says that he used the terminology that was translated here in this record. Of course, he can change his mind after hearing the speeches by Defense counsel. We think it ought to stay in the record as it is.

PRESIDENT: The whole conversation will stay in the record. Proceed.

QUESTIONS BY DR. AHLMER:

Q General, do you mean the same thing by "Niedergemacht" as by "Ungelegt"?

A "Ungelegt" is not really a nice word and I do not think it was used in the decree. If I may ask, I think the Defense has a copy of this order and they might submit it here.

Q General, is it not common usage of the word "Niedergemacht" to refer to something that is done in a legal manner and in an open manner and "Ungelegt" means something that is done in a back way?

A I might define it in the following way perhaps: By "Niedergemacht" I understand as a perfectly legal combat action between soldiers and by "Ungelegt" I mean an illegal act.

Q When was this order that you were just talking about issued? Do you remember?

A As far as I remember all these orders came down in the winter half of the years 1943-44.

Q You also mentioned a decree of Bormann's to the effect that certain persons were to be exempt from prosecution -- were not to be prosecuted. Was Bormann a member of the Reichsleitung?

A Well, in the first place, in my opinion he was.

DR. AHLMER: Nothing further.

THE WITNESS: (continuing) and that was fixed by the Reichs legal bulletin also and these publications of the Chief of the Party Chancellery

were published just like laws were and transmitted to the proper offices.

Q All right, did you get any little while are that the carrying The regulations of Seraana, for all practical purposes, knocked the weapon out of the duties of SS and Police Leader depended to a great extent out of the hands of the police.

upon the character and record of the man holding the job?

DEFENSE COUNSEL: Dr. Buerger will cross examine for Major Best.

Yes. Yes that is what I said and that was Himmler's opinion.

QUESTIONS BY DR. BUERGER:

Q If a Higher SS and Police Leader takes upon a man and attaches

General, I draw your attention to this big chart on the wall, Defense Exhibit 2 and ask you whether, from your position you are able

to the [illegible] and this person reports himself to a late certain [illegible] regulations and would pursue him

to discern a square with the lettering "Higher SS and Police Leader, General Streop" in it?

May I will be permitted to explain. If a man was a member of

the Allgemeine SS, I as Higher SS and Police Leader was permitted to punish

A Yes.

him personally. If the man concerned was a man or officer of the re-

Q Are you able to discern several small squares or boxes around that

police and then his disciplinary superior of the regular police would have large box with the lettering "Adjutant", "Verwalt" and "Nachrichtenfuehrer"

disciplinary powers over him and if a man was a member of the disciplinary etc. in it?

police the one in turn who was his superior in the disciplinary police

A Yes.

would have the power to do it.

Q These smaller boxes represent the staff of the Higher SS and

would the Higher SS and Police Leader in his capacity as Chief Police Leader?

of the Chief Sector of the Allgemeine SS issue orders to any members of the

A Yes. I did not have such a staff.

allgemeine SS in his command?

Q You said before that that the only persons disciplinarily under the

He did have power of command over the members of the Allgemeine SS.

control of the Higher SS and Police Leader was the Chief of Staff. If such a staff as we have here were actually formed under whose disciplinary authority would the chiefs of these offices come?

A To my knowledge of this matter, the Higher SS and Police Leader as Chief of the SS Chief Sector had the power of command over these men as members of the Allgemeine SS.

Q If such Higher SS and Police Leader did form such a staff for himself under whose disciplinary authority would these men be?

A In my opinion you can get authority only according to existing regulations and I can't be assuming for myself disciplinary powers over astaff which I from — formed for myself out of persons which are not under my disciplinary power.

Q All right, did you not say alittle while ago that the carrying out of the duties of SS and Police Leader depended to a great extent upon the character and energy of the man holding the job?

A Yes, Yes that is what I said and that was Himmler's opinion.

Q If a Higher SS and Police Leader takes such a man and attaches him to the staff and this person permits himself to violate certain minor regulations who would punish him?

A Maybe I will be permitted to explain. If a man was a member of the Allgemeine SS, I as Higher SS and Police Leader was permitted to punish him personally. If the man concerned was a man or officer of the regular police and then his disciplinary superior of the regular police would have disciplinary powers over him and if a man was a member of the disciplinary police the one in turn who was his superior in the disciplinary police would have the power to do so.

Q Could the Higher SS and Police Leader in his capacity as Chief of the Chief Sector of the Allgemeine SS issue orders to any members of the Allgemeine SS in his command?

A He did have power of command over the members of the Allgemeine SS.

DEFENSE COUNSEL: You may cross examine.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q General, when you were the higher SS and police leader of Wehrkreis 7, where were your headquarters located?

A In Munich.

Q When did you say you were relieved from your command?

A April 20, 1945.

Q Now you said on the 20th of June 1944 you received an order to arrest some colonel, but I didn't understand from whom you got that order. Will you tell me, please?

A That was Colonel Grosser, the G-3 of the deputy command of court area Number 7.

Q What I mean is who gave you the order to arrest him.

A The Reich defense commissioner Colonel Giesler.

Q You refused to obey this order?

A Yes.

Q Now, I believe you were told to use your influence to have the prisoners confined at Camp Dachau shot, is that correct?

A Yes.

Q Did you refuse to obey that order?

A Yes.

Q About when did you receive that order?

A The beginning of March, the first days of March 1945.

Q Did you consider that an illegal order — to execute these prisoners in Dachau?

A Certainly.

Q And for that reason you refused to carry it out, is that correct?

A Yes.

Q Now, I believe you said you had another run-in, a dispute with the gauleiter about the camp of Buchau. When did that happen?

A About the 12th of April, no, it must have been a little before that, beginning of April. I can't give you an exact date any more, I am sorry.

Q That was in 1945 shortly before the war ended?

A Yes.

Q And I believe you said on that occasion you did not follow the gauleiter's instructions, is that correct?

A Yes.

Q As a result of having failed to obey these various orders of the gauleiter you were relieved from duty?

A Yes, the telegram of Himmler's to that effect is in the hands of the American investigators.

Q And you received no punishment other than being disciplined for your failure to obey these orders, is that correct?

A Well, I was lucky since it was all over eight or ten days later.

Q Well, the war wasn't over on the 20th of June 1944, was it?

A No.

Q That was the year before the war ended.

A Yes, three-quarters of a year.

Q Now, you have described the duties of a higher SS and police leader. I want to know if you were describing your duties or is that a general picture for all higher SS and police leaders.

A In general, and a whole string of changes came in later on. I would again like to refer to the statement of General Berndorff who worked in the main office of the general police at one time.

Q General, I want to ask you some questions about this position

of higher SS and police fuehrer, and if you will, keep in mind I am talking about the latter part of the year 1944 and the early part of the year 1945.

A All right.

Q Now, the main job of the higher SS and police fuehrer was to run the police system in his wehrkreis, is that right?

A The forces of the regular police were run by the commanding officer of the regular police. That is the only place where you can talk about running it because there was an outfit there to run and the smaller individual units of the security police would receive their orders from the offices pertaining to them located in the Reich main security office; however, I probably should add here that in cases where conditions of combat arose, special orders from the army command or perhaps special orders from Himmler might have been issued. As to my area, it was in a condition of complete peace and quiet until the very last few weeks.

Q Now, what about the 12th Wehrkreis. Was it a front line area?

A Yes, I do think so, but I can't say now, without having any papers, it became a front line area, but you could assume it did become that.

Q All right, now you said that orders that came from the head of the order police came down from the head of the order police to that certain Wehrkreis, is that correct?

A From the main office of the regular police it went down to the commanding officer of the regular police of that Wehrkreis.

Q And the higher SS and police officer got a copy?

A Yes.

Q Now, why did he get a copy?

A He would know what would be going on in his area.

Q Why would he be interested, if he wasn't running it?

A He would have to be interested in it for the reason that he was legally bound to inform the state government or Reich defense commissioner of what was going on in the police sector of that area.

Q Was it his duty to check up and see what was going on?

A According to the letter of the law it was not his duty. The law stated that he was authorized to do so, and as a man conscious of his duty, he would do that.

Q So, unless he got a copy of all the orders, he wouldn't know whether the police were carrying them out, would he?

A No, he couldn't have known.

Q Now, let's go over to the other side -- the security police.

WITNESS VON EBERSTEIN: I beg your pardon, might I say something?

CAPTAIN VANCE: Answer my question. When I get through I will let you say anything you want to.

WITNESS VON EBERSTEIN: I beg your pardon.

Q Now, orders came down to the security police from Kaltenbrunner, down to the chief of the security police in a certain Wehrkreis. Did they come direct?

A Well, as I have said before, they would go from the office Number 3 to the SD chief sector, from office 4 to the state police sector, from office 5 to the criminal police, and information copies to the higher SS and police leaders and inspector of security police. I might say that in the zone of interior, there was no such thing as commanding officers of security police, but rather inspectors. I ask for permission to tell the prosecuter one more thing.

Q General, will you please answer my question. If you please, did they come down direct?

A Directly from the office to the head pertaining thereto.

Q All right, now why does the higher SS and police fuehrer get informational copies of those orders?

A For the same reason, because it was his job to keep the superior state governmental offices informed.

Q Informed about what the security police were doing, that is correct, isn't it?

A Yes.

Q Now, you have stated that the higher SS and police leader doesn't have any powers of command, is that correct?

A Yes.

Q Now, if a subordinate refused to obey orders and the higher SS and police leader didn't like it, what would he do about it?

A If this man had been a member of the regular police, he would have gone to the commanding officer of the regular police and told him this man refused to obey and had charges preferred against him. If a man was a member of the security police, he would do the same thing, going to the inspector.

Q I believe you said if a man was a member of the SS he would go before one of these SS courts in the district, is that right?

A Well, the procedure would be as follows: The particular superior officer of the regular police or security police would give a statement of facts of the case and that file would be forwarded to the SS and police court.

Q Well, now the SS and police fuehrer has appointing authority and reviewing authority to these courts. He would first determine whether that case would go to trial, would he not?

A Yes, the chief justice would investigate the matter and report the result of his investigation to the higher SS and police leaders and they would subsequently be brought to trial, if it was a case of a serious nature, serious enough to warrant trial, or else if it was not, it would be transmitted to the disciplinary superior of the command for disciplinary sentence.

Q General, how long do you know General Stroop?

A I have seen General Stroop twice in my life; the first time when he was removing himself into my area as American troops were advancing he saw me and told me something at that time and I saw him one other time later on a few days before the collapse in the SS OCS in Bad Tols.

Q Now, I believe you stated in substance that the higher SS and police fuehrer had no power of command, he was more of an inspector, is that correct?

A Yes.

Q And it is his duty to inspect and see that the order police and security police were functioning and carrying out orders, is that correct?

A Yes.

Q And if they are not following orders, then he sees they do follow them, is that right?

A Yes, he would have had to turn to the proper superior high head in Berlin and report that.

Q Now, I believe you stated, General, that the man himself by his own temperamentwould govern the position of the higher SS and police leaders, is that correct?

A Yes, in fact one time I myself had a conversation with Himmler, approached him in 1938 sometime on account of the fact that the regulations which had come out were so scanty and in places almost contradictory, and asked him if he could not issue or have issued through Reich minister of interior a more closely defined explanation of higher SS and police leaders and he became quite annoyed, called me a Bummmerat and said the position of higher SS and police leaders would become whatever the incumbents will make it.

Q General, you described the orders which you had received while holding the position of higher SS and police leader. Did you pass those

orders to your subordinates or use your influence to have them enforced? Now, you don't have to answer that question because the answer might tend to incriminate you.

A I am willing to answer it. The only order which I was required to pass on to my subordinates or any subordinates was the only order issued to me by Himmler directly. That was the so-called "non-interference" order. All other ones as I have already explained I received only information copies of either from the Reich main security office or main office of regular police and there was no action I was supposed to take on account of them, and this order issued to me had a note on it that it was to be transmitted verbally only. I considered the substance of this note questionable because the scope of this order might be exceeded if it was given verbally, so showed copies of this order I received to the commanding officer of the order police and inspector of security police in Bad Wiessee. We agreed at that meeting that there was no need for any action and the Major General Mahr who was the commanding officer of the regular police in my district informed me because of an officers' meeting, he considered himself bound by the Geneva Convention. The order after this meeting, this publication or paper containing the order, was laid away in the office and nothing else was done. As to what the inspector of security police did, I don't know, but he was an elderly experienced professional civil servant and I feel sure he did not exceed the scope of the order in any way.

Q Now, one more question. General, was it part of the function of higher SS and police leaders to know of concentration camps in his Wehrkreis in which SS men were acting as guards?

A Yes, however I want to correct the statement. That is, SS men standing guard in the concentration camps were not the men of higher SS and police leaders. That was a special outfit under the direct command

of the inspector general of concentration camps in Berlin, Oranienburg.

Q But it was the duty of the higher SS and police leaders to know about these camps, was it not?

A Yes, it was inevitable that the higher SS and police leaders would know whether one or more concentration camps were located in his area, for this aggregation of prisoners was a factor which very materially influenced the position of the state.

PRESIDENT: Court will recess until 1:30.

ADJOURNED

(Whereupon the court recessed at 1200 hours.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1330.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all of the members of the defense, all of the accused, interpreter and reporter are present.

DEFENSE COUNSEL: The witness Eberstein was on the stand subject to cross examination at the close of the last session.

PRESIDENT: You are reminded you are still under oath.

FRIEDRICH KARL von EBERSTEIN, called as a witness by the defense, being reminded that he was still under oath, testified further through an interpreter as follows:

CROSS EXAMINATION, continued

QUESTIONS BY CAPTAIN VANCE:

Q General when I started to examine you you said you wanted to explain something and I told you if you would answer my questions you could explain it. Do you want to explain that now?

A Yes.

Q Proceed.

A I intended to add only—I think this is necessary to complete the picture. The question was in regard to orders which the order police received. If the orders would have come in writing the High SS and Police Leader would have known about them but if the orders were given orally the High SS and Police Leader would not know about them. Here I wanted to add only that, of course, the commander of the Order Police had the obligation to inform the Higher SS and Police Leader also orally.

Q Now General I want to ask you a question. I think I will phrase it in such a way that you can answer this question yes or no. I want to ask you (von Eberstein-cross)

if the Security Police, of which the Gestapo is a part, was ever, in its entirety, taken into the German Wehrmacht of Germany.

A Not in the sense of the interior.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: I would like to cross examine on behalf of all of the accused except Streop.

REDIRECT EXAMINATION

QUESTIONED BY DEFENSE COUNSEL:

Q I call your attention to the Defense Exhibit Number two which is this entire sign up here (Indicating) and particularly to the section of the exhibit under Reichssicherheitshauptamt, and to the square marked Inspector of the SIPO and the SD. Under cross examination this morning you were asked what lines or what channels of command orders issued from up top followed throughout the Security Police and the SD. Will you describe again the channels of command from the Reichssicherheitshauptamt to all the lower echelons of command with reference to Defense Exhibit Number two?

A Yes. Can I show this with a stick?

Q Yes.

A I am not informed about department one and two. From department three the channel of command went straight to the SD, Frankfurt-Main and by the same directly to the SD in Coblenz and furthermore directly to the SD at Darmstadt.

Q Now about Amt number four?

A The department number four, Secret State Police, directly and immediately to STAPO office at Frankfurt, directly to the state police office at Coblenz and directly to the STAPO headquarters at Darmstadt. Information was given in part to the Higher SS and Police Leader and also to the inspector of the Security Police.

Q Now about Amt number five-kripo?

(von Eberstein-cross)

A Exactly the same from department number five directly to kripo headquarters at Frankfurt, from department number five to criminal headquarters at Koblenz and also from department five directly to criminal headquarters at Darmstadt.

Q How about department number six?

A As far as I can recall, department six had a connection only starting in 1943 and as far as my area is concerned, this connection went to the SD in my area. In my area I had an SD chief sector but I can't see anything like this on this map here.

Q In your area did you have a commando Meldegebiet?

A Yes, this was in the personnel unit under the supervision of the man in charge of the SD chief sector.

Q All right, thank you. According to the rules or the law or the regulation, what authority did a gauleiter have to give orders to the higher SS and police leader?

A The authority was given in a decree of the Reich government published in the Reich legal bulletin. As far as I can remember, it was published in the Reich legal bulletin on the 16th of November 1942 and I think it was repeated once more later on. According to the meaning, it was said there the Reich commissioner for the defense makes use of the higher SS and police leader for all police actions.

Q That authority that the gauleiter had to give orders was based on his position as Reichsverteidigungs Kommissar, was it not?

A Yes.

Q And that authority was restricted to matters of a police nature, is that correct?

A No, in this decree it was said first of all in the one of the 16th of November, 1942 that the Reich commissioner for the defense, in all questions of national defense, was a deciding factor. In view

of the total war which existed at that time this really meant everything.

Q This order which you say you got from the gauleiter in July 1944, whose order was that?

A Pardon me, which order are you referring to?

Q The order you got in July 1944 to arrest some certain colonel.

A This was an order which the Reich commissioner for the defense, gauleiter Giesler, had given, as far as I can see, out of his own initiative. He requested me to arrest this officer at army headquarters with the reasoning that he was an enemy of the Party.

Q At any rate, that was the order which originated with the Reichsverteidigungs Kommissar himself, and not from the government of the Deutschen Reich, is that correct?

A I can't determine whether he had any instructions from the headquarters of the fuehrer to arrest certain persons.

A At any rate, you said just a moment ago that so far as you know, this order originated with the gauleiter himself.

A Yes, that was my impression.

Q Was that an order for you to arrest him or was that a request that he be arrested?

A No, it was an order. He called for me and he told me, "I request you now to drive over to army headquarters and to arrest Colonel Gresser.

Q Was this colonel in the service of the German army on regular active duty?

A Yes, he was an active colonel of the mountain troops and attached to the general staff 3-3-A.

(vonEberstein-Redirect)

Q He wanted you to arrest him solely because he did not like his political views, is that correct?

A Yes, he got the order to arrest him and to bring him before the Reich commissioner for the defense.

Q The duties of the Reichsverteidigungs Kommissar had to do with the internal defense of his area, is that correct?

A Yes, of his area, and furthermore, the entire defense organization. He had to see that the armament factories were kept going.

Q Is it not true that it was the duty of the Gestapo to supervise the political attitude of the German nationals, or perhaps the SS?

A The security service in the zone of interior was only an organization for communications. The secret state police was the political effective arm.

Q Let me put it another way. What authority did you have to arrest an army officer on active duty?

A None.

Q So that you could not have carried out the order if you wanted to, could you?

A Only in this case, that the Reichsfuehrer SS especially would have ordered me, or an order of Hitler.

Q In other words, if Himmler had said to you, "Arrest that man," you would have done it, would you not?

A No, I would have said to Himmler too, "I would like to bring to your attention the impossible consequences of such an action and furthermore, I would like to tell you as to my knowledge, this man is politically unreliable." It was impossible to talk to the reich commissioner for the defense about things like that.

(von Oberstein-Redirect)

Q Suppose you had said all these things to Himmler and Himmler said, "Yes, that's all right, arrest him just the same," what would you have done?

CAPTAIN VANCE: We object. He is arguing with the witness.

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection overruled.

QUESTIONS BY DEFENSE COUNSEL:

Q What would you have done?

PRESIDENT: Tell the witness that an answer, "I don't know" is satisfactory.

DEFENSE COUNSEL: I pray the court's judgment.

CAPTAIN VANCE: If it please the court, he is asking for speculations. He was never put in a position where he would know what he would have done.

THE WITNESS: Right now I don't know.

QUESTIONS BY DEFENSE COUNSEL:

Q What would you have done if you had got the order during the war?

CAPTAIN VANCE: Same objection, if it please the court.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q Well, on the basis of your knowledge of conditions in Germany, what would you say or what in your opinion would have happened to you if you had received some such a direct order from Himmler and had refused to obey?

CAPTAIN VANCE: Same objection, if it please the court. This witness has already testified that he defied many orders and nothing ever happened to him.

PRESIDENT: Objection sustained.

(von Oberstein-Redirect)

him, "I don't know. I have to ask the Commander of the concentration camp Dachau about the orders he had. He said to me, "I don't care about that.' The prisoners have to disappear. They have to be killed." Then I told him that was an insane idea. So he said in reply, "If these prisoners will not be shot there I will see to it that the camp will be destroyed through our own airforce."

(vonEberstein-Redirect)

QUESTIONS BY GENERAL GYNNEL:

Q At any rate, you could not have carried out this order to arrest the colonel anyway, because he was an army officer, is that correct?

A No, I couldn't.

Q Could you do the second order you got, to use your influence to have all the people in the Dachau concentration camp shot, who ordered that?

A It was like this: The Polish Commissioner called me and asked me, "What is going to be done with the prisoners at Dachau?" At that time we had approximately 25,000 prisoners here. "What is going to be done with the prisoners when the American troops arrive?" I answered that we would do away with them.

Q My question was whose order was it?

A Of the Reich commissioner for the defense.

Q Was that an order which originated in his mind, as you say the order in July originated with him?

CAPTAIN VANCE: We object to what originated in this man's mind. This witness is not a mind reader, and he cannot tell what is in that man's mind.

Q I was only quoting his own language, I think. Instead of saying "in his own mind", which originated with Giesler. Did this order with respect to shooting the inmates of the concentration camp at Dachau originate with Giesler himself, just as did the order of July to arrest this colonel?

A He himself told me. That is all I know.

Q Would you say that an order to shoot 25,000 prisoners of a concentration camp came within the authority of the Reichsverteidigungs Kommissar to defend his area?

CAPTAIN VANCE: We object, if it please the court. The witness has already stated that he did not know anything except what this man told him.

DEFENSE COUNSEL: He has testified to the authority of the Reichsverteidigungs Kommissar.

CAPTAIN VANCE: It is speculative.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q This third order which you say you disobeyed: I was not quite sure of just what it was, but you mentioned three, and I am talking about the third. Was that an order which the Reichsverteidigungs Kommissar issued on the strength of his own authority the same as order number 1 and order number 2?

A Yes. It was the principal attitude of Bormann and the headquarters of the Fuehrer to put up a defense everywhere.

DEFENSE COUNSEL: Dr. Aheimer has a question.

DR. AHEIMER: Cross examination for Girke and Hellenbroich.

QUESTIONS BY DR. AHEIMER:

Q General, you were asked before whether the security police, of which the secret state police was a part, was taken over into the Wehrmacht in its entirety. In 1945 were members of the security police in your area members of the Waffen SS?

A It is possible that some man who had no job assignment anymore, since the armies of the enemy had invaded their territory, volunteered for the Waffen SS.

Q Is it not a fact, General, that at least in 1945 the members of the security police had paybooks of the Waffen SS?

A It might be. I can't take it on my oath. I don't know.

Q That means you are not informed in detail about these events?

A I have to bring to your attention once more that it is possible that it had been arranged this way in areas close to the front.

DEFENSE COUNSEL: We have nothing further. Any questions by the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: The next witness will be General Wunnenberg. The witness will be examined by Dr. Rau.

ALFRED WUNNENBERG, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Alfred Wunnenberg.

Q How old are you?

A Fifty-five years.

Q Are you a prisoner at the present time?

A Civilian internee.

Q Where?

A Here at the bunker.

Q What was your last rank?

A General of the Police and of the Waffen SS, and Lieutenant General of the SS.

Q What was your last duty position?

A Chief of the Order Police.

Q Since when?

A Since the 31st of August, 1943.

Q How many men were under your command this way?

A Approximately three and a half million men.

Q Can you break this figure up in detail?

A Part of the Order Police were the protective police, the rural police, the local community police, the water protection police, the fire protection police, the administrative police. Furthermore, the entire air raid protection, the technical emergency organizations, the voluntary fire brigades, and the city and rural guards.

PRESIDENT: I would like to warn the witness at this time that he does not have to answer any question that will tend to incriminate him.

QUESTIONS BY DR. RAU:

Q What were the duties of the main office, Order Police?

A The main office, Order Police, had the duty to organize the Order Police, and in accordance with orders of the chief of the German police to establish units, respectively, to reorganize them. Furthermore, as police it had the job of general order and security.

Q How was the borderline towards the security police?

A Since the order police had its clear limitations through the fact that its job was order and security on the streets, the security police had mainly the criminal police, the secret state police, and the security service under their supervision. That means mainly political police.

Q What were the relations between order police and security police?

A When I started on my assignment there was, of course, a liaison officer to the security police in the person of the government councilor of the criminal police, but since he worked mainly on personal matters for my predecessor I relieved him and put him again at the disposal of the security police. Otherwise, connections existed only between Kaltenbrunner and myself, which were very light connections and mostly of a comrade nature.

Q Was there any relationship of orders between you two?

A No. It was only the usual help which has to be

given from one police headquarters to another, but this same help from one office to another was given also to all other government agencies.

Q Please explain in short the channel of command in the order police.

A The orders came from the main office, order police, or from the chief of the German police, Reichsfuehrer SS, respectively. The rule was from main office, order police, of course. The letterhead of the orders said "The Chief of the Order Police." From there the orders went to the commander of the order police, and from him to the government presidents, where the commander of the rural police and the staff officer of the protective police were located. The staff officer of the protective police was the representative of the government police organizations.

Q Please show this in short on the chart. I am referring to the Defense Exhibit 2.

(Whereupon the witness left the witness stand and assumed a position near Defense Exhibit 2.)

A Main office, order police (indicating); commander of the order police (indicating); from the commander of the order police to the government president, staff officer of the protective police (indicating); commander of the rural police. From there, from the staff officer of the protective police, channels of command went to the state police organizations, and on top of the state police organization was the police president or police director. There the protective police of the state was on duty. Then, furthermore, the channel of command to the cities. These were cities which had only a small number of inhabitants, or at least only a mediocre number of inhabitants, up to 100,000. Here the local community

police was on duty (indicating), which was under the chief mayor of the town. From the commander of the rural police the channel of command went to the Landrats, the chief magistrate of the county. Here, at the same time, were the county leaders of the rural police, and he passed down the orders to the individual posts of the rural police.

Q Did the offices under the supervision of the main office, order police, also receive orders from other government agencies?

A Not in the rule, but these were exceptions, and then they were only instructions.

Q From whom did these instructions come?

A They could come only from the ministries, from the secretary of state of the interior.

Q Could they also come from the Reichsstatthalter?

A Hardly to the chief of the order police; but, on the other hand, the Reichsstatthalter could give orders to the commander of the order police and the commander of the security police.

Q Please also show this channel of command, based on Defense Exhibit 2.

A I didn't understand your last question.

Q Based on this chart.

A Reichsstatthalter to the commander of the order police, and at the same time to the government presidents, and from there on down the regular channel of command.

(Thereupon the witness resumed the witness stand.)

Q What connections existed between the main office, order police, and the Higher SS and Police Leader?

A First, the Higher SS and Police Leaders were directly under the Reichsfuehrer SS. The chief of the order police had no authority of command over the Higher SS and Police Leader. It would have been possible--and during my term of duty it happened once or twice--that I signed as deputy for the Reichsfuehrer SS, and this order was sent to the Higher SS and Police Leaders as instructions.

Q Did the Higher SS and Police Leader have authority of command either in part or in toto over the forces under the command of the main office, order police?

A Not in the first years after the position of the Higher SS and Police Leader had been established. But later on when they became full generals of the police and lieutenant generals of the police, without any doubt they had authority of command over the order police.

Q Were these authorities limited in any way according to the matters concerned?

A Of course they could extend only as to technical questions, but otherwise, in spite of my proposals made to the Reichsfuehrer SS, no definite limitations were worked out as far as the authority of command of the Higher SS and Police Leaders was concerned. He intended to solve this question only after the war.

Q All important orders were taken care of by the Main Office of the Order Police or by the Higher SS and Police Leader?

A The fundamental orders, of course, were given by the Chief of the Main Office of the Order Police. Of course, the Chief of the Order Police could not take into consideration the local conditions.

Q Which orders now did the Main Office of the Order Police receive in regard to the treatment of parachuted enemy flyers?

A I, myself, know only of one order. I don't know when it was issued--that parachuted enemy flyers had to be handed over to the Air Force; and then, before I entered my office, another order had been issued by the Reichsfuehrer SS, the so-called "non-interference" order.

Q Did this order come to the Main Office of the Order Police?

A I saw this order for the first time in the documents in Nuernberg. It was a photostatic copy. It was not clear from this order which had been given to the Higher SS and Police Leaders for information, had been sent also to the Chief of the Order Police and the Chief of the Security Police, but it's probable.

Q Did the Main Office of the Order Police always stick to this channel of command or did it happen that orders were given to lower headquarters directly?

A I don't understand this question.

Q Did the Main Office of the Order Police always

stick to this channel of command or did it happen that the Main Office of the Order Police, by avoiding other Headquarters, transmitted orders directly to lower Headquarters and officers?

A It was a principle of the Main Office to stick to the channel of command which I outlined before.

Q Is it now so that through this channel of command the Higher SS and Police Leaders were standing aside?

A It was the duty of the Commanders of the Order Police to inform the Higher SS and Police Leaders that there were orders which we passed on to the Higher SS and Police Leader, Commander of the Order Police that came—that the Higher SS and Police Leader received already the information from this order and then transmitted it to the Commander of the Order Police.

Q Were there any rules for this method?

A No, it depended on whether this order would be of interest to the Higher SS and Police Leader or not.

Q Was the so-called order of the Fuehrer about keeping orders a secret an important rule or not?

A I can't say as a rule that all secret orders were passed on to the Commander of the Order Police.

Q So that the Higher SS and Police Leader would hear of these orders only through the Commander of the Order Police?

A Yes.

DR. RAU: Thank you.

DEFENSE COUNSEL: I would like to ask one or two questions. This is redirect examination.

(Wunnenberg-direct)

QUESTIONS BY THE DEFENSE COUNSEL:

Q Was there any channel of command between the Inspector of the Security Police over here and the HDO over here (indicating)?

A There was no channel of command, but I guess that important matters these two gentlemen informed each other.

Q Could either the Inspector or the Befehlshaber give each other orders?

A No, with the exception of the so-called help from office to office, and help which had to be given without question.

Q That help that you are talking about was that based on orders, or was that the courtesy of one service to another?

A That was a law, a very old law.

Q Then orders which came down from your office through here (indicating) necessarily go over to the Inspector?

A To the Security Police from us, no.

Q And did orders which were issued from the Security Police Headquarters for the Security Police go over to the Order Police?

A No, only in individual cases, if and when they would be of special importance for the Order Police--then, as information, they came to the Commander of the Order Police.

Q One other question, please. If an order was issued by the Reichssicherheitshauptamt to the Security Police and was of interest to the Order Police, from what office would the information copy to the Order Police go?

A First, to the Chief of the Command Office,

(Nunnenberg-direct)

first to the filing department, and then to the Chief of the Command Section.

Q I think that I perhaps wasn't clear. If Kaltenbrunner issued an order to the Security Police and that order was of interest to the Order Police, from which office of the Security Police would the information copies be sent from to reach the Order Police?

A From which department of the Reichs Security Main Office the copy would have come? That was depending on the question from which department this order was issued.

Q Where would it go to?

A It would go for information to the Main Office of the Order Police to our filing department.

Q And if it had an interest to the Order Police in toto, who would pass the order down?

A That was depending upon the importance of this order, either the Chief of the Order Police himself or the Chief of the Command Department, or the Leader of the Office Department.

Q Whichever sent it went from and to whichever sent it went to, isn't it true that it would always come from the Headquarters of Kaltenbrunner to your Headquarters?

A Yes.

DEFENSE COUNSEL: Dr. Buerger desires to cross examine the witness for Tyumler, Goss and Dest.

QUESTIONS BY DR. BUERGER:

Q General, you said before that the Higher SS and Police Leader in technical matters had authority of command in police matters in his district?

A Yes.

Q General, did the Higher SS or Police Leader, any Higher SS or Police Leader, or let's limit it to the Higher SS and Police Leader of Rhine-Westmark, 12th Wehrkreis, have authority in case of external or internal emergency to combine all police organizations in his area?

A As far as it is known to me, he received such authority directly from the Reichsfuehrer SS.

Q General, did you receive a report from the Commander of the Order Police in the 12th Wehrkreis about the fact that the Higher SS and Police Leader, General Streep, had combined the police forces in his area in such a manner?

A I can't say anything definite about this question any more. Once or twice such a similar defense plan was presented to the Chief of the Order Police, but I can't say anything more.

DR. BUERGER: Thank you.

DEFENSE COUNSEL: You may cross examine.

CAPTAIN VANCE: Are all Defense Counsels through questioning?

DEFENSE COUNSEL: I assume so.

CAPTAIN VANCE: No cross examination.

DEFENSE COUNSEL: Any questions by the Court?

CAPTAIN VANCE: I would like to ask the Defense Counsel this--that under the agreement we have had, if you are through with this witness, are we at liberty to talk with him?

DEFENSE COUNSEL: Of course.

PRESIDENT: No questions by the Court. The witness is excused.

(Thereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: The Defense recalls the witness [redacted] Schluess.

WITNESS SCHLUESS: I have been sworn already as a witness for the Defense, too.

PRESIDENT: You are reminded you are still under oath.

WITNESS SCHLUESS: Yes.

FRIEDRICH SCHLUESS, recalled as a witness by the Defense, resumed the stand and being reminded that he was still under oath, testified further through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What's your name?

A Friedrich Schluess.

Q Did you testify before in this trial?

A Yes.

Q What was your duty assignment as to General Stroop?

A I was leader of the Staff of the Allgemeine SS, and for all practical purposes I was in charge of the personnel office.

Q Please describe in short your main duties.

A For all practical purposes I was the personal expert of the General for all his duties as Higher SS and Police Leader, as Reichs Commissioner for the strengthening of the German nation, as the Leader of the main section, Rhine-Westmark, as a Higher Commander of the prisoners of war. Only for the SS and Police Court I had no particular duties.

Q Did you have anything to do with incoming and outgoing mail?

A The entire incoming mail went through my hands exclusively and, as far as it came over the teletype system and through cable it came through my hands exclusively. Correspondence, letter mail, was opened by me as long as it was addressed to the office of the Higher SS and Police Leader-- only as far as the name Jurgen Stroop was given on the envelope the mail was given to him personally.

Q Is it known to you whether any orders were addressed directly to the Higher SS and Police Leader?

A Every day there came three or four letters with the personal address of the Major General. These letters were put on the desk of the Major General either directly by me or through the Adjutant. The largest part of the letters were opened by our secretary in my presence. Part of the letters, I mean the largest part of the letters then were returned to me. Some of the letters the Major General put away in his personal file, but these were exceptions.

Q Do you know which type of letters he put in his personal file?

A There were among them letters of purely personal nature, but among them were also official letters which came either as secret matters or secret state matters.

Q Isn't it true that the letters which contained secret matters or secret state matters were registered?

A As far as these letters were addressed only to the Higher SS and Police Leader they were opened by me and then went through our filing department.

Q How do you know then that in this personal file were also matters of secret nature or secret state nature?

(Schluss-Redirect)

A Because I know definitely that certain letters which were sealed--they were sealed in the usual way on the four corners--were put on the Major General's desk and some of them were not returned to me.

Q But you don't know the contents of these sealed letters?

A No, the contents of these letters never became known to me.

Q For this reason you can't say whether the contents of these letters were secret matters or secret state matters?

A Otherwise, these letters wouldn't have come sealed.

Q How were these letters registered? Were they registered as of a certain value?

A It might have been letters which were insured for a value of over a thousand marks, or sometimes they were just registered letters with a receipt.

Q Was there a secret diary?

A Yes.

Q Who took care of the secret diary?

A We had two secret diaries, one for secret matters and one for secret state matters. The chief filing clerk for these two secret diaries was a Staff Sergeant of the Police Battalion.

Q How many orders were received in your office daily on an average?

A During my illness, my deputy commander once made a statistic, and there were approximately 160 to 170 letters.

Q In which time?

A Daily.

Q How many letters were sent out from your office

daily?

A That varied a lot--that was depending on the question whether letters were sent to everybody or only to certain individuals.

Q Can you estimate as an average?

A Perhaps 30 to 40 letters.

Q Was General Stroop present at his office at his Headquarters during the entire week or was he absent part of the week?

A General Stroop was on official trips at least half the time of each week.

Q What happened then during this time with the incoming and outgoing mail?

A The Major General, in his capacity as Higher SS and Police Leader for all practical purposes had no other deputy commander but me, because as the Higher SS and Police Leader he was the personal representative of the Reichsfuehrer SS in his district, and for this reason naturally the commander of the Order Police nor the Commander of the Security Police in this capacity were his deputy commanders, but only me.

Q Excuse me, please, but I think you misunderstood my question. I asked you what happened with the incoming and outgoing mail during Stroop's absence.

A I had to explain this before because now I have to say that in General Stroop's absence I took care of matters all by myself as far as they were not of fundamental importance.

Q And what happened with matters of fundamental importance?

A As far as they were closed letters, they were left

there until General Stroop returned. For other matters of fundamental importance which came through my hands, I had a special folder for each department in which I filed the letters of fundamental importance; and the moment the Major General returned, even if it was at one o'clock at night, he returned to his Headquarters, and these folders of fundamental importance were presented to him.

Q And what did you consider to be matters of fundamental importance?

A Of fundamental importance were orders which affected the future organisation and which made changes in present organisation and procedure.

Q Do you consider among such orders also orders which affect the treatment of allied fliers?

A Definitely.

Q Which orders of such nature were received at your office?

PRESIDENT: Is this a good time to break?

DR. RAU: Please answer this question.

WITNESS: I have testified already as a witness of the Prosecution that I know from the magazine "Das Reich" in which it said, nearly verbatim, that it is not the duty of the German Police and Wehrmacht to protect parachuted enemy fliers from the well founded fury of the German population. At the same time I admitted that I assume with a hundred per cent certainty that after the Party and the public had been informed in this matter that either from the Reichsfuehrer SS himself or from the Chief of the Order Police or from the Chief of the Security Police, in which an excerpt

of this matter would come with a short last sentence--the subordinate headquarters have to be informed of this situation.

PRESIDENT: The Court will recess for 30 minutes.

(Thereupon at 1505 hours the Court recessed.)

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(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show, that all the personnel of the court, all the members of the prosecution, all the members of the defense all of the accused the reporter and interpreter are present.

DEFENSE COUNSEL: At the beginning of the last recess the witness Schluma was on the stand.

PRESIDENT: You are reminded that you are still under oath.

FRIEDRICH SCHLUMA, recalled as a witness by the defense, being reminded that he was still under oath, resumed the stand and testified further through an interpreter as follows:

REDIRECT EXAMINATION, continued

QUESTIONS BY DR. RAU:

Q Did you ever see an order to the effect that allied flyers who had landed in emergency were to be shot?

A No.

Q Did you ever have such an order leaving your mail?

A No. However, I did not have knowledge of all the mail that was leaving.

Q Were those letters worked on by other offices?

A It would be a secretary who would type the letters, go to the secret registry office, get the proper secret number, put on my desk sealed with a seal at the secret registry office, for further processing.

Q What was the relationship between General Stroop and the members of his staff?

A I would like to put it concisely in three sentences. He forced people to respect him through his unwavering action. He also forced us to respect him by his achievement and nobody loved him as a superior.

Q Now this last fact, was that not a cause for the members of the staff getting together more closely than usual?

(Schluma-direct)

A I would like to add one more thing before answering this question. Stroop could be the very best of hosts and the most friendly of comrades if the person concerned was an old member of the SS. Now could I have the question again?

Q Did this fact that he was not loved by his subordinates have anything to do with the fact that the subordinates came together rather closely?

A Well I was the lightning rod, more or less, for the anger of both the commanding officer and the members of the staff, but I considered it my job not to increase tension by gossiping either, but to decrease tension.

Q Was there ever any talk among the members of the staff to the effect that an order concerning the shooting of allied flyers had come down from higher headquarters?

A No such talk ever took place, not even when we were talking while drinking a glass of wine.

Q Did the staff members ever have any discussion concerning the fact that General Stroop was supposed to have issued an order to have allied flyers shot?

A No such thing was ever said.

Q What was your relationship to Major Best?

A I had the very best of comradely relations with Major Best.

Q How were you getting along with Lieutenant Gose?

A I didn't know him so well since he wasn't working in our office, but our relationship was on a very friendly basis.

Q Did Best ever tell you that he had received an order to have allied flyers shot from Stroop?

DR. BERGER: I object to this question. There is no evidence whatever in this case to the effect that Best had received an order from Stroop to shoot allied flyers.

DR. RAU: I will correct my question to have one allied flyer shot.

MAJOR SAXON: That is just as objectionable. There isn't any evidence here that he had any orders, if it pleases the court. I ask that that answer be stricken.

DR. RAU: I believe that Best has claimed here that he had received orders from Stroop which he later transmitted to Goss.

MAJOR SAXON: No, that isn't the situation here. Stroop is charged with having given Goss an order to shoot a flyer and Best was the message carrier of that order, but there is no order here that Best should shoot a flyer.

DR. RAU: I will correct this question one more time to read as follows:

QUESTIONS BY DR. RAU:

Q Did Best ever tell you that he had to transmit an order to the effect that an allied flyer was to be shot?

A No.

Q In view of these very best of relationships which you have stated existed between you and Best, would it otherwise have been unusual for him to tell you about the important things coming from Stroop to him?

MAJOR SAXON: I object to that, if it please the court.

PRESIDENT: Objection sustained

QUESTIONS BY DR. RAU:

Q Did you ever hear—

MAJOR SAXON: Now wait a minute. I would like the court to instruct this witness to give his answers after the interpretation. I don't know enough German to know what is going on here.

PRESIDENT: The witness will wait until translation is made before the answer is given.

MAJOR SAXON: Now let me know what the question was.

RAU (Schlumm-direct)

INTERPRETER: No, sir, I forgot it.

QUESTION BY DR. RAU:

Q Did Goss ever tell you that he received an order from General Stroop that he was to shoot an American Flyer?

MAJOR SAXON: I object to that. That is just purely asking for information that has no bearing on the fact that Stroop gave the orders to Goss.

DR. RAU: I have demonstrated here that relations between staff members were such, that in view, particularly of their dislike for Stroop, such matters would have been discussed among the staff members had they taken place.

MAJOR SAXON: That is highly speculative, but Goss was not a staff member here. It looks like merely a negative way to try to prove something by this manner that is merely prejudicial to the statements already made by Goss. They can probably go out and ask a hundred people if Goss said that because those people wouldn't know.

PRESIDENT: Objection overruled.

DR. RAU: Answer the question whether Goss ever told you that he had received an order from Stroop to shoot an american flyer or to have an American flyer shot?

THE WITNESS: Goss never told me that.

DR. RAU: That is all.

MAJOR SAXON: I would like to cross examine this witness on behalf of the accused Goss and Best.

QUESTION BY MAJOR SAXON:

Q Did you become well acquainted with Major Best while he was there at headquarters?

A Yes.

Q Were your relations, that is between yourself and Best of a close and friendly nature?

A Yes.

(Schlumm-redirect)

Q What would you say was the general reputation of Best for the honest performance of his duties?

A I learned to know and to respect Best as the most straightforward and honest person I ever knew.

Q Colonel Schluma if Best has testified here in this court that he received a message in the form of an order to e very an order to Goss directing Goss to execute an American flyer would you believe that Best was telling the truth?

DR. RAU: I object to this question. I don't think it is the job of the witness to decide who is to be believed and who is not.

PRESIDENT: Objection overruled.

A No, I don't know that.

THE WITNESS: Whether Best is saying the truth? Best does--I consider Best as absolutely honest and truthful.

QUESTIONS BY MAJOR CAXON:

Q In your position as chief of staff for General Stroop what were Best's duties.

A Best was the man who had to make reports concerning undertaking "R".

Q From whom did he get those reports?

A He presented those to the General personally.

Q From whom did he receive those reports?

A I don't get it. What reports?

Q The reports regarding the progress of the werewolf school at Wallrabenstein.

A He got those from his own observations since he went out there frequently. Goss made reports to him that the General went out there frequently.

Q Do you happen to know, Colonel Schluma, about Best and Goss meeting each other in a place called Unter den Eichen.

A Unter den Eichen was our auxiliary headquarters. Our regular headquarters was in Cellenstrasse. Out there in Unter den Eichen was mostly

(Schluma-redirect)

Allegemeine SS.

PRESIDENT: What is Unter den Eichen?

INTERPRETER: Under the oaks.

QUESTIONS BY MAJOR WILSON:

Q Do you know whether or not Goss would meet Best under the oaks and there deliver the reports regarding the werewolf school at Wallrabenstein.

A I didn't find out about Wallrabenstein until very much later. In fact I didn't ever know they had moved from Wallrabenstein.

Q Do you know whether or not General Stroop appointed Lieutenant Goss as a sort of security commander in the Wallrabenstein area?

A No, I didn't know that at all.

Q Can you tell the court whether or not it was a general practice of General Stroop's to confer with officers from his outlying posts privately in his office without your assistance or anyone elses on various occasions?

A That happened very frequently.

Q Was it not also true that he conveyed instructions to these subordinates of his directly in those private conferences without taking you or any of the rest of the staff in on the conference?

A Yes, he did that too.

Q Do you recall the specific authority that General Stroop received directly from Heinrich Himmler sometime in September, 1944?

A Yes, General Stroop had some sort of a document to prove that.

Q Do you remember the substance of it?

A It was in such a general nature that he was completely and thoroughly the Heinrich Himmler in his area.

Q I will ask you to tell the court whether or not General Stroop was extremely proud of that authority.

A That is true. He kept showing it around frequently with great pride.

(Schluss-redirect)

Q Did he also show that arrest to fully intimidate his subordinates?

A I don't think that was necessary at all.

Q You mean they were duly intimidated anyway, is that correct?

A At any rate through his harshness he forced people to respect him as was his due.

Q What authority, if any, did he give Major Best about the [illegible] headquarters there?

A Best didn't have any authority at all in that case. General Stroop would give his orders to Best directly and Best was merely a man who carried out the orders. He had no power or authority of his own at all.

MAJOR CARON: Your witness.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q - Colonel Schlume, I believe it is your testimony that you say that Major Best is a man with a good reputation and good character, is that correct?

A Yes.

Q I might ask you one question, Colonel, and I am going to try to put it to you very simply and I want you to answer yes or no. I am speaking of the entire security police system -- was it in its entirety ever taken in as a part of the German Wehrmacht?

A No.

Q I will ask you the same question with reference to the Order Police?

A That was not anymore a part of the armed forces as the security police.

CAPTAIN VANCE: Nothing further.

MR. RACHAEL: I would like to cross examine on behalf of Girke, Hellenbreich, Stattmann and Reaf.

CAPTAIN VANCE: May it please the Court, I am going to object to that. I ask them each time if they are through and then I take my turn and what happens? They come right back again. I do not think it is fair to the Prosecution.

MR. RACHAEL: My questions are based entirely upon what the Prosecution asked.

PRESIDENT: Objection overruled.

REDIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Are you a member of the German Army?

A I myself?

Q That is right.

A Yes.

Q What part of the German Army were you in?

A Waffen SS.

Q Do you know whether or not the Gestapo members were in the

Waffen SS?

CAPTAIN VANCE: We object on the grounds that the question has been answered. This is repititious.

MR. RACHAEL: I respectfully submit that this evidence was brought out by the prosecution and was brought out on its own behalf. I am cross examining on behalf of Dirke, Hellenbroich, Stattman and Reef.

PRESIDENT: Objection overruled.

(Whereupon the question was read by the reporter.)

THE WITNESS: Members of the Gestapo were able to be drafted into the Waffen SS and at that instant were eliminated from the Gestapo and became members of the fourth part of the German armed forces.

QUESTIONS BY MR. RACHAEL:

Q Do you know whether or not members of security service were in the Waffen SS

A The same thing applies to them as to the Gestapo. They could be drafted into the Waffen SS and simultaneously eliminated from the security service and become members of the fourth part of the German armed forces.

Q So that if a member of the Gestapo was a member of the Waffen SS in December of 1941, it is your opinion that he was no longer a member of the Gestapo is that right?

A No, then he wasn't any more.

Q So that if Major Dirke received a pay book and identification and he traveled on trains by virtue of orders of the Army then he was no longer a member of the Gestapo, is that right?

CAPTAIN VANCE: We object to the question, may it please the court, unless he knows what Major Dirke's position was at that time. He is going beyond my examination. I asked him one question.

PRESIDENT: Objection sustained.

QUESTIONS BY MR. RACHAEL:

Q Do you know whether members of the Gestapo had pay books of the

(Schluss-redirect)

Kaffen SS?

A The Gestapo had pay books which had the entry in it "Training Camp Konitz".

Q What was Training Camp Konitz?

A Konitz is a town located in what used to be the corridor and inthe last phase of the combat everything was drafted into the army or Waffen SS. At that time the Gestapo men received pay books; SS pay books with the entry "Training Camp Konitz".

Q What do you consider as the last phases phasses of combat?

A From October 1944 on.

MR. RASHKIS: No further questions.

QUESTIONS BY DR. RAU:

Q You said that Major Best was a truthful man, did he them as a truthful man tell you that he transmitted an order to IA. Ossa to the effect that he was to have an American flyer shot?

MAJOR SAXON: That is repetitious and is objected to.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: We have nothing further. Are there any questions by the Court?

PRESIDENT: There are no questions by the Court, the witness is excused.

(Thereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: Call Philip Buhlmann.

PHILIP BUHLMANN, called as a witness by the Defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name:

A Philip Buhlmann.

Q Have you been examined as a witness in this case once before?

A Yes.

Q Will you please tell us what the instructions were that Gess gave you at that time when an American flyer was in the Werewolf school in Wallerabenstein in custody?

CAPTAIN VANCE: I am going to object on the ground that the question is repetitious and is identical with the question by the Prosecution and has already been answered by this witness. We are merely repeating the same thing over and over again.

DR. RAU: The exact conversation, word for word between the accused Gess and this witness was not brought out in that examination referred to. I therefore think that it is in the interest of determining the truth that this question has been put.

MAJOR SAXON: I beg the Court to permit me to say a word too. At that time Dr. Rau knew that he was especially appointed and was requested by General Stroop to represent him. He had every opportunity to cross examine this man at length at the time this witness was on the stand. He did testify as to the conversation between Lt. Gess and himself. I do not know whether in detail, word for word. I agree with the Prosecution in this instance that we are going over the same thing as we have done once before. I think the Court should preclude it.

DR. RAU: The witness is now a witness for the Defense and if, as the record will show, certain details were not brought out at that time I think it is in the interests of determing the truth that these details be brought out.

PRESIDENT: The objection is overruled and the Court desires that these matters be brought out in the shortest possible manner. We do not desire all this repetition.

(Buhlmann-dir et)

QUESTIONS BY DR. RAU:

Q Please report as nearly word for word what Gens told you, if you can.

A I had stated the whole facts in my last statement.

Q You did not answer my question. Will you please report to us as nearly as you can word for word what Gens told you concerning this American flyer.

MAJOR SAXON: I do want to object again now, this witness said that he has already told everything once before that he could tell this time.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q What was the answer you gave to Gens when he told you at that time that the flyer was to be shot on the way?

A I declined to shoot the flyer and I pointed out to him that the only man who was able to give me that order was General Streep.

Q What did Gens tell you then?

A I will have to take him there anyway.

Q Did he tell you, "I have an order from General Streep" or did he not?

A No, he did not say that.

DR. RAU: That is all.

QUESTIONS BY DR. BURGER:

Q Why, when you were making your first statement here on the stand, did you not explain that you had refused to obey the order?

A I stated that I had declined to do so.

Q Didn't you say at that time that you had taken the flyer to Bierbach?

A Yes.

Q Did you give a reason why you took him back?

A Yes.

Q Did you take the flyer to Bierbach?

A Yes.

Q Did you take him back?

A Yes.

Q What did you report to Goss at that time?

A That there was a labor camp. He refused ——

DEFENSE COUNSEL: I am informed, may it please the Court, that they are talking here about the flyer that was not shot.

PRESIDENT: Are you objecting?

DEFENSE COUNSEL: Yes.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: I think the whole conversation, all the direct examination of this man had to do with the flyer who was not shot and because it is all repetitious I move it all be stricken from the record.

DR. RAU: A flyer was in fact shot the day after that and Goss claimed to have been acting upon orders of Streop. As this witness testified he did not even tell this witness that he had orders from Streop even when the fact that only Streop was authorized to give such orders was pointed out to him. I consider it important that this particular statement be contained in the record.

PRESIDENT: The motion to strike is overruled.

DEFENSE COUNSEL: Is there any cross examination?

CAPTAIN VANCE: No cross examination.

DEFENSE COUNSEL: Are there any questions by the Court?

PRESIDENT: No questions. The witness is excused.

(Thereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: Send Hans Gunther in.

HANS GUNTHER, recalled as a witness for the Defense, being reminded that he was still under oath, resumed the stand and testified further through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Mrs. Gunther.

Q Have you been a witness before this Court before?

A Yes.

Q What was your official position on the staff of General Stroop?

A I was G-3 in General Stroop's staff.

Q. Did any orders to the effect that Allied flyers were to be shot ever go through your hands?

CAPTAIN VANCE: Object to the question on the ground that this is repetitious. This witness has testified on two different occasions about these orders.

DR. RAU: I withdraw the question.

QUESTIONS BY DR. RAU:

Q Was there any talk among the staff officers, any conversation about the fact that shot down flyers were to be shot?

A There was no conversation about any order that flyers were to be shot.

Q Was there any talk among the staff members that General Stroop ever issued an order that anyone or more flyers who made an emergency landing were to be shot?

A No. That question was discussed only at one time because of this October conference to which I have already testified.

Q In order to avoid misunderstandings will you please tell us briefly what the subject was at that time?

CAPTAIN VANCE: Object on the grounds that it is repetitious. He has already testified about the October conference.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: May it please the Court, in order to avoid any necessity of bringing this witness back for a different accused I am going to cross examine him for Sammern. I will do that now rather than bring him back later, since he is already on the stand. As long as he has been produced and is a witness for Stroop I believe I have a right to cross examine.

(Gunther-redirect)

CAPTAIN VANCE: I do not mind Defense counsel cross examining the witness on anything that was brought out on direct examination but if he goes beyond that he is not on cross examination but on direct examination.

DEFENSE COUNSEL: I will then try to make it direct examination.

QUESTIONS BY DEFENSE COUNSEL:

Q I believe you have testified that you knew the accused Sommer?

A Yes.

Q Did you identify him for the record before?

A Yes.

Q You know the time when Sommer was relieved from Wiesbaden and went somewhere else, do you not?

A In the month of August.

Q What year?

A August 1944.

Q As the A-1 or 1-A of General Streep, I think you testified previously that you and other members of the staff of General Streep used to get together and talk over different things involving Rhein Westmark?

A Yes.

Q Can you tell the Court whether or not a report would come to General Streep's office of the killing or mistreatment of the allied personnel which might have occured in the Rhein Westmark area?

A I never saw any such reports.

Q Would such a report come to his headquarters? That was my question.

A I don't get it — would such a report?

Q If there had been any killings or mistreatments of Allied flying personnel in the Rhein Westmark area would a report of such killings or mistreatments have been made to General Streep's office?

A Yes. Such reports would have had to come in.

Q Limiting my question to the time when Streep was — pardon me, when Sommer was inspector of the Security Police and the SD, had any reports of killings or mistreatments of Allied personnel in the Rhein Westmark area come to your attention?

(Gunther-redirect)

CAPTAIN VANCE: I object to the question. The witness has answered that he never knew of any reports. How can he answer as to a specific time?

DEFENSE COUNSEL: I certainly have a right.

PRESIDENT: Objection overruled.

THE WITNESS: I never heard any conversation about such reports.

QUESTIONS BY DEFENSE COUNSEL:

Q My question was: Was any report made of any killings or mistreatments of any Allied personnel in the Rhein Westmark area while Sonnenn was inspector?

A I never heard of any such reports.

Q Had you ever heard any talk or rumor or stories of mistreatments of Allied personnel?

CAPTAIN VANCE: I object without stating the grounds.

DEFENSE COUNSEL: Let me finish. In the Rhein Westmark area by any member of the Security Police and SD while Sonnenn was inspector.

CAPTAIN VANCE: We object.

DEFENSE COUNSEL: I pray the Court's judgment. We are being charged with War Crimes.

PRESIDENT: Objection overruled.

THE WITNESS: No.

QUESTIONS BY DEFENSE COUNSEL:

Q Are you familiar with or have you read the decision of the Tribunal in the Nuernberg case?

A Yes.

Q I refer particularly to that part of the decision which deals with the SD, do you know whether or not Sonnenn, in the course of his membership or working with the SD, had ever served outside Germany proper?

A No, I don't know.

A No. I don't know.

Q So far as your knowledge of him is concerned did he have anything to do with the management or conduct of concentration camps?

A No.

Q So far as your knowledge of him is concerned did he have anything to do with the handling or importation or collection of so called slave labor?

A No.

CAPTAIN VANCE: May it please the Court, that is going far beyond these charges. I have no objection except that I do not think we should waste a lot of time on something with which we are not concerned. That is the only reason for the objection.

DEFENSE COUNSEL: He is admittedly a member of the SD which was found to be a criminal organization with certain specific counts of criminality mentioned against it. I am asking about those things. A man could be a member of a criminal organization which is found guilty of running a concentration camp but I can bring out, as far as he is concerned, that he had nothing to do with the concentration camp, slave labor, etc., that is why I am asking the questions and for no other reason.

PRESIDENT: Objection overruled.

THE WITNESS: No.

QUESTIONS BY DEFENSE COUNSEL:

Q So far as your knowledge of him is concerned did he have anything to do with the organization or management of the so called emergency commandoes mentioned in the Nuernberg Tribunal?

A No.

(Gunther-redirect)

Q So far as your knowledge of him is concerned, did he have anything to do with the frontier police -- the so-called "grenz polizei"?

A I don't think so.

Q Now, as far as you know, tell the court very briefly what his duties were as you observed them?

A In my opinion, Colonel Semann's position was that of inspector in his area. That means the coordination and supervision of the individual headquarters.

Q Do you know anything about the relationship of Semann and Stroop?

A Yes, as far as my own work was concerned.

Q Well, tell the court briefly.

A General Stroop had the intention of becoming the commanding officer of the Wehrkreis, for that reason he intended to collect each unit of the regular police and security police into combat outfits.

Q Let's not describe him so much here -- but just the relationship of Semann and Stroop and Stroop and Semann.

A Colonel Semann objected to any removal of security police forces and he told me that the only object of his combat groups were to get a good reputation with the Reich Fuehrer and get the job of Wehrkreis commander so he could point to an especially large number of combat troops. Colonel Semann worked against this intent and in that respect he did not consider General Stroop as a superior. I also recall that General Stroop had Colonel Semann called up at his office at about 5:00 o'clock several times to find out whether he was still in his office. In such a case, Colonel Semann was also called out of the theater.

Q Do you know whether or not Semann ever asked to be relieved of his assignment?

A I am sure Colonel Semann asked for it just like all the other officers did.

Q Were you present at a meeting at which the non-interference order was read by Semann?

A No.

Q Were you present at any meeting at which the non-interference order was read to Semann?

A No.

Q Can you tell the court whether or not so far as Stroop was concerned, whether or not Semann as an independent individual exercised his own judgment?

A Without a doubt Semann used his own judgment and was known as being very tolerant.

Q What do you mean by "tolerant"?

A Colonel Semann was generally opposed to exaggerated measures and was of the opinion that all measures should be executed only to the extent ordered from above.

DEFENSE COUNSEL: Any questions by the court?

CAPTAIN VANCE: I have a few questions.

BY CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q I believe you said you never did see any report of killing or mistreatment that came to General Stroop's office during the time that Semann was in Wiesbaden, is that correct?

A Yes.

Q Now, at any time while Truemler was with him, you didn't see any reports, did you?

A I saw no report. I testified about this already.

Q With the exception of that one incident which you testified about before, did you ever see any more?

A No.

Q Now so far as you know, did Semann have anything to do with the Italian Embassy in Berlin?

A I don't know about it.

Q Well, that is the answer you gave to Colonel Berman on his various questions. So far as you know you are talking about only what you know so far as you know, aren't you?

A Yes.

Q But the answer to my question is you don't know whether he was connected with the Italian Embassy or not, do you?

A No.

Q You just don't have knowledge of it?

A No.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Any questions by the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew from the courtroom.)

DEFENSE COUNSEL: May we have a recess in place for a moment?

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

DEFENSE COUNSEL: Defense calls as its next witness Reinhardt Breder.

REINHARDT BREDER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Reinhardt Breder.

Q Have you been on the witness stand in this case once before?

A Yes, at the beginning of the trial as a prosecution witness.

Q What was your official position from September 1944 until the end of the war?

A I was Chief of the state police office, Frankfurt-am-Main.

Q In that capacity did you have anything to do with the prisoner of war camp of the air corps at Oberursel?

A Yes, in the beginning of January 1944, I received instructions from Berlin to interrogate prisoners of war at Oberursel about political questions in connection with the air corps and while the armed forces were occupying themselves asking questions of a military nature of the prisoners, we asked them questions of a political nature. For instance, we would ask them about morale among the troops, particularly about the opinion concerning the military situation among the higher staffs and the Allied air corps and for that reason the armed forces loaned to us several Allied British or American officers or enlisted men whom we had.

Q Can you also tell us how many prisoners of war were turned over to Oberursel from Wehrkreis 12, from September 1944 until the end of the war? Prisoners of war who were fliers?

A This number can be estimated only, but I think if you mention a number one thousand, you probably hit a number which is too low if anything.

Q By whom was this number of men turned over to Oberursel?

A These men were either turned over directly by the police if it concerned parachutists near the location of Oberursel or else by army outfits.

Q Can you name any such police outfit which had prisoners of war -- which had fliers and turned them over to Oberursel?

A Criminal police, Frankfurt, our own office once got two fliers which had been picked up within the city limits of Frankfurt and sent to us by mistake. We sent these two fliers to Oberursel.

Q When was that?

A That was probably about the middle of 1944.

Q Can you remember any prisoners of war, any captured fliers being turned over to Oberursel by police outfits after September 1944?

A I myself cannot of course give the name of any individual police station that turned the fliers over, but I do know that this would occur frequently in the immediate vicinity of Oberursel. The district chief of rural police in Bad Homburg also the protective police in Frankfurt should be able to give exact statements about that.

Q Did your office at any time receive an order according to which Allied fliers who made emergency landings were to be shot?

A No.

DEFENSE COUNSEL: It will be convenient for us to suspend, if the court so desires.

PRESIDENT: Court will adjourn until 0900 7 March 1947.

(Whereupon at 1645 hours the court adjourned until 0900 hours 7 March 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden. By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

Count 30

PAGES 2116 - 2201

Case No. Superior Orders

Prosecutor Lt Col Dwinell

~~*Summary~~
~~*Intermediate~~ Military Court.
*General

Defence Counsel Lt Col Berman
Herbert B Rosenstock

Place DACHAU, GERMANY

Interpreter s Rudolph Nathansen

Date 7 March 194 7

Reporters Paula Silverman, John D MacDonald, Imogene Butler, Peter L DiCurti, Evelyn Cohen Irving J Hayett, Pvt William F Jones

~~Members of Court~~:

WITNESSES:

Accused JURGEN STROOP, et al

Address Sex Age

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term
  - Beginning 194
- Fine
  - Amount
  - To be paid before 194
    or in case of default of payment to serve a *further term of imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

7 MARCH 1947 Pages 2116 - 2201

TESTIMONY

	DIRECT	CROSS	REDIRECT	RECROSS	COURT
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OTTO ERNST WEYRAUCH	2124				2136
WILLI STEMMLER	2126-A	2132	2132		
ELSE HOSCHER			2142	2147	
HANS TRUMMLER	2148	2190			

EXHIBITS

NONE

CAMP DACHAU, GERMANY
7 March 1947

MORNING SESSION

(Thereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense; all the accused, the reporter and interpreter, are present.

DEFENSE COUNSEL: At the end of the session yesterday the witness, Breder, was on the stand being examined by Dr. Rau. Will you send in Breder?

PRESIDENT: You are reminded you are still under oath.

RHEINHARDT BREDER, called as a witness by the defense, resumed the stand, and being reminded he was still under oath, testified further through an interpreter as follows:

DIRECT EXAMINATION (continued)

QUESTIONS BY DR. RAU:

Q Yesterday you testified that at Oberursel, during the period of time between September 1944 and the end of the war, mainly through the Wehrmacht, thousands of American fliers had been delivered and that these were fliers from the XII Wehrkreis, is this correct?

A Yes, this is an estimate.

Q On account of your investigations can you tell us how the Wehrmacht got custody of these fliers?

A The Wehrmacht received these fliers, for the major part, through the police, mainly through the Rural Police from the country.

Q How do you know that?

A I know this from the orders which the police had received at the beginning of the war and through my practical experience.

(Breder-direct)

Q To your knowledge which orders existed for the police in Wehrkreis XII in the period of time from September 1944 to the end of the war in regard to parachuted enemy fliers?

CAPTAIN VANCE: We object to that question on the grounds it is repetitious. The same question was asked this witness when he was testifying for the prosecution.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q Did the State Police participate in the delivery of such fliers?

A It really was not a job of the State Police to arrest fliers who had parachuted. This was an assignment of the Apprehension Section of the police force. If, in some individual cases, fliers were delivered to the Gestapo Headquarters, these were only exceptions.

Q Do you know what the Gestapo did with these fliers, in general?

A As far as I know, and that is the way it was taken care of at my headquarters, they were delivered to the camp at Oberursel.

Q Who was your immediate superior?

A My immediate superior in my area was Dr. Trummler.

Q Which orders did you receive from Dr. Trummler in regard to the treatment of enemy parachuted fliers?

CAPTAIN VANCE: We object on the ground the question is repetitious.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q During the time from September 1944 until the end of the war, were you at the Reichs Security Office?

A Yes, for the last time on the 3rd of December 1944.

Q When did you see there?

(Breder-direct)

A I saw various department heads of the Reich Security Main Office, and the head of Department 4, General Mueller.

Q What was General Mueller's assignment?

A General Mueller was in charge of Department 4, that means he was in charge of the entire political police of Germany.

Q What did you do at General Mueller's office?

A I reported to him in regard to our interrogations at Oberursel on the 3rd of December 1944 and, asked and received his instructions about the political questions which would be of the greatest importance to know about for the Reichs government in the future.

Q Didn't he show surprise during this discussion that the Allied fliers were not killed?

MAJOR SAXON: I object to that as leading.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q Did you discuss with General Mueller the order according to which Allied fliers were to be shot?

MAJOR SAXON: If it please the court, there is no evidence here regarding this matter, so far as the accused, Trummler, is concerned as regards the Reichs Security Main Office. It was clearly shown he took his orders from Himmler direct. Further, this witness has already testified he knew nothing of such orders.

PRESIDENT: Objection overruled.

THE WITNESS: General Mueller didn't tell me anything about such an order, not before and not afterwards. On the contrary, he knew about our different method of treating fliers. He didn't criticise it at all and was in agreement with it in all respects.

DR. RAU: Thank you.

DEFENSE COUNSEL: Dr. Buerger would like to ask one question.

Ta 288 pls

QUESTIONS BY DR. BURGER:

Q Under whose supervision were the fliers at Oberursel?

A The fliers were under the command of the Air Force. Only during the time of the interrogation the fliers were handed over to me for a few days.

Q Did this eliminate the authority of command of the Air Force over these fliers?

A Really not, but the way in which we treated the fliers was entirely up to me.

DEFENSE COUNSEL: That is all for this witness. He will be recalled later on behalf of other accused.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Breder, you were asked who was your immediate superior officer and you answered, Dr. Trummler. I will ask you if during part of the time Col. Somann wasn't your superior officer?

A Yes, until the end of July or the beginning of August 1944, Col. Somann was my immediate superior and then around the middle of September or more exactly, I think on September 20th, Col. Trummler came.

Q With the exception of the changing of the two men, Trummler for Somann, was there any difference in your connection with that headquarters?

A Are you referring to the authority of command or to the practical policies which were executed?

Q No, I am not talking about the policies, just the chain of command.

A The authority of command changed with the time Col. Trummler became commander of the Order Police and was not an Inspecteur of the Security Police anymore. For instance, Dr. Trummler came with the

message that he had received authority from Dr. Kaltenbrunner to relieve chiefs of headquarters according to his free will and to replace them.

Q Let me ask you this -- could Dr. Trummler give you orders?

A Yes.

Q Could Col. Semann give you orders?

A Yes, both of them could give me orders as long as these orders did not violate orders which had come from Berlin.

Q You have estimated that between September '44 and the end of the war approximately a thousand or more American fliers were turned in to Oberursel, is that right?

A I think that is correct.

Q I believe you said that most of these fliers were captured and turned over by the Rural Police, is that right?

A That is the way it really happened.

Q Now, you were asked a question -- when the Gestapo got a flier, what happened to him and you said, "Some went to Oberursel", was that correct?

A I think I remember that I said that whenever we get fliers at all, but the fact that we received fliers was only the exception, for instance, I can remember that my headquarters received only two fliers, because the executive officials of the Gestapo were not located in rural districts, they were all in the cities, and for this reason we didn't have a chance to apprehend parachuted fliers.

Q The two that you said your headquarters had, what disposition was made of them?

A These two fliers had been picked up during the night through the local party organization and since the headquarters of the local party organization wasn't far away from our headquarters, these men were brought over to our headquarters.

Q What disposition was made of them?

A We prepared tea for them at night, kept them there overnight, and the next morning we delivered them to Oberursel. My officials can testify to that.

Q Breder, you were the chief of the Frankfurt office, is that right?

A Yes.

Q Did your branch office have any fliers?

A I heard about the two cases while I was in prison at Wiesbaden through the interrogator, Teil. In order to prevent any mistakes I'd like to say the following -- between the time from the end of '43 and August '44 we escorted over 240 fliers from the prison at Paris to Oberursel. These were fliers who were picked up in France wearing civilian clothes. These fliers, too, went through my headquarters.

Q Let's get back to Wiesbaden -- what happened to these fliers at Wiesbaden?

A Personally, I cannot make any testimony about these two fliers. I heard about the fliers who supposedly were shot by Fuehr only during my imprisonment.

Q You had other branch offices beside Wiesbaden, is that correct?

A Yes, in Limburg and Wetzlar.

Q Did you ever have any captured fliers in these offices?

A No case is known to me there.

Q You conducted an investigation, I believe, and arrived at an estimate that about a thousand fliers were turned into Oberursel. What is your estimate of the number that was murdered by the Gestapo during that period of time?

A At that time I didn't know of any case that a flier was supposedly killed by the Gestapo.

Q At what time?

A In the time I was arrested.

Q Do you know a man by the name of Bueth who was your chief over in Wiesbaden?

A Yes, he was in charge of the office at Wiesbaden from September '45 until the end.

DEFENSE COUNSEL: I don't know whether the examination is going into areas where the witness perhaps should be warned of his own rights. I don't know, I'm suggesting the possibility.

PRESIDENT: I should like to warn the witness that he can refuse to answer any question that will tend to incriminate him.

THE WITNESS: No, I'd like to testify.

QUESTIONS BY CAPTAIN VANCE:

Q Did Bueth ever tell you what the conditions were in his office about fliers?

MR. RACHAEL: The defense objects on the ground that it goes beyond, far beyond, the scope of direct examination.

PRESIDENT: Objection overruled.

THE WITNESS: Yes. I have testified already during my first interrogation that in March of 1945 Bueth came to me and told me that he had received orders from Col. Trummler to execute captured fliers and he asked me what he should do in regard to such an order.

QUESTIONS BY CAPTAIN VANCE:

Q Breder, how long were you with the police system of Germany?

A At the beginning of the war, around the end of August 1939, I was drafted into the Security Police, first to the Security Service.

Q So you were with the police from 1939 until the end of the war, is that correct?

A Yes.

Q Now, I am going to ask you a question and put it as clearly as I can and ask you to answer the question, yes or no. Was the Security Police system of Germany, in its entirety, ever taken in as a group into the Wehrmacht?

DR. AHLMER: I object to this question. It goes beyond the scope of direct examination.

PRESIDENT: Objection overruled.

THE WITNESS: No, not in the sense of the interior.

QUESTIONS BY CAPTAIN VANCE:

Q Let me ask you the same question as to the Order Police?

A I can't testify definitely about this question but I think that the Order Police, too, was part of the internal administration of Germany, a special civil service and not a part of the Wehrmacht.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q I'd like to interrogate on behalf of the defendant, Girke. Did you ever receive written orders directing you to shoot captured American fliers?

A No, I neither received such an order nor did I hear about it from others.

Q Did you ever have a Soldbuch from the Waffen SS?

A Yes, since the Fall of '44 we had to give out Soldbuchs to all male employees and that was done, too.

Q Did you ever received identifications indicating that you were a member of the German army?

A No, we did not have an army serial number.

(Breder-cross-redirect)

Q If you travelled on German railroads did you travel under authority and on the same tickets as the Wehrmacht? I am talking about from September 1944 on.

A Yes. Of course, while travelling we had the same rights as the Wehrmacht. The same applied to the officers of the Order Police.

Q When you travelled and had to be billeted someplace, with whom were you billeted?

A If I couldn't find my own quarters I could go to the billeting office of the Wehrmacht and they would take care of my billets.

Q You can answer this one yes or no. Do you know whether or not the Sicherheitsdienst in 1944 was registered with the International Red Cross at Geneva as an integral part of the German Wehrmacht?

A I don't know anything about that.

Q If I ask you the same question about the Sicherheitspolizei what would be your answer?

A These things could not be known to me since I never worked in one of the Berlin main offices.

DR. RACHAL: No further questions.

CAPTAIN [illegible]: Nothing further.

DEFENSE COUNSEL: Anything by the court?

PRESIDENT: No questions by the court.

DEFENSE COUNSEL: I ask that the witness be excused for the time being.

PRESIDENT: Witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: The next witness will be Meyrauch.

OTTO ERNST MEYRAUCH, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Weyrauch.

Q First name?

A Otto Ernst.

Q How old are you?

A 39 years.

Q Where do you live?

A Frankfurt/Main.

Q You are not a prisoner?

A No.

Q Where were you during the time from August 1944 until the end of the war?

A I was in charge of the police anti-aircraft batteries.

Q Where were these police anti-aircraft batteries located?

A You want the definite location?

Q Yes.

A We were railroad anti-aircraft batteries.

Q Where were you stationed?

A Most of the time I was stationed at Idar-Oberstein on the Nahe.

Q In which Wehrkreis is this located?

A I think it was XII.

Q Who was your immediate superior?

A General Streop.

Q Which orders did you have at that time in regard to the treatment of parachuted enemy fliers?

A I can't recall that I had any orders in this respect.

Q Did you yourself capture any parachuted fliers, you or members of your batteries?

A No.

Q How many enemy airplanes were shot down by your battery?

A I reported 40.

Q Was there still another police anti-aircraft battery?

A Yes.

Q How many planes were shot down by this other battery?

A I don't know.

DR. RAU: Thank you.

DEFENSE COUNSEL: Your witness.

CAPTAIN WHICE: No questions.

PRESIDENT: No questions by the court. Witness is excused.

(Whereupon the witness was excused and withdrew.)

Take 204 - 80
8-7-47;JGMcD;1

DEFENSE COUNSEL: We are suspending with direct evidence at this time on behalf of the accused Stroop. The next witness is on behalf of Goss and Best, in contradiction of Stroop's testimony. He will be examined by Dr. Buerger.

WILLI STEMMLER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. BUERGER:

Q Please give the court your full name.

A Willi Stemmler.

Q How old are you?

A Forty-eight years.

Q What is your civilian profession?

A I am a merchant in electric business.

Q Are you a prisoner at Dachau at the present time?

A Yes.

Q Where is your residence?

A At Saarbruecken.

Q In 1944 until the end of the war, was your residence also at Saarbruecken?

A Yes.

Q What was your profession in Saarbruecken this time?

A I was an SS Colonel.

Q With the Allgemeine SS?

A Yes.

Q Who was your immediate superior in your capacity as SS Colonel?

A SS General Stroop.

Q Did you receive any orders in 1944 or 1945 in regard to the treatment of parachuted enemy fliers?

A Yes.

Q What kind of an order did you receive?

A To shoot all fliers.

Q By whom did you receive this order?

A Directly from General Stroop.

Q Did you receive this order orally or in writing?

A Orally.

Q Where?

A At my headquarters in Saarbruecken.

Q When?

A June or July 1944.

Q Can you remember as exactly as possible the wording of this order?

A General Stroop came to my headquarters and told me, "From now on all fliers are to be shot."

Q Was this order issued at a time when the Reichsfuehrer SS was in Saarbruecken?

A Yes. During this time the Reichsfuehrer was once at police headquarters at Saarbruecken.

PRESIDENT: I want to warn the witness that he does not have to answer any question that will tend to incriminate him.

QUESTIONS BY DR. BUSCHER:

Q Was this utterance of General Stroop a direct order?

A Yes.

Q Was this order repeated once more?

A Yes.

Q When and how?

A Yes. Through the police president of Saarbruecken, who during an execution told me, "You know, of course, the order of General Stroop."

Q Was this order repeated in September 1944?

A In September of 1944 -- yes, I think it was in September of 1944 -- at Wiesbaden during a conference at the headquarters where Stroop said, "Everybody, of course, knows the flyer order."

Q In addition to this order, did you have any other orders in regard to the treatment of enemy fliers?

A No. The Allgemeine SS didn't receive any orders.

DR. BUERGER: No more questions.

DR. RAU: Cross examination on behalf of the accused Stroop.

QUESTIONS BY DR. RAU:

Q When did Stroop arrive at your headquarters?

A He always arrived there unexpected.

Q What time of the day?

A That might have been in the afternoon. Always when he went to Metz.

Q Can you remember exactly anymore at what time of the day he was there?

A Stroop came to our town very often, and then he always visited our headquarters.

Q Who was with him?

A It was a First Lieutenant Kaleske.

Q Was Kaleske his adjutant?

A Yes. He was always with him.

Q Where were you when Stroop arrived?

A In my office at my headquarters.

Q Did Stroop come to your office?

A Yes.

Q Was he alone or was somebody else with him?

A Kaleske always entered the room with him.

Q That means Kaleske was also present when he gave you this order?

A No.

Q Where was Kaleske at that time?

A Kaleske always carried the mail over to the girls into the other offices.

Q Did he return then?

A He always came back then. He always came back and left again.

Q Did he carry out mail repeatedly?

A No, but I think, to remember very clearly, that he gave me the order on this day when he came, and he needed some crutches for his boy.

Q What else was said there?

A Official matters were discussed which were just pending.

Q Please tell us in detail what was discussed.

A You can't expect that after three years I still know every point which was discussed with Stroop at that time.

Q But after three years you still remember the exact wording used by Stroop to give you the order for the killing of fliers?

A Something like that you never can forget in your life.

Q Especially when one is involved himself in the executions of fliers?

DR. BUERGER: I object to this question. It goes beyond the scope of the direct examination.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q How often did Kaleske enter the room and leave the room again?

A Kaleske was running around all the time.

Q How many fliers were shot based on this order through you or your subordinate men?

DR. BUERGER: I object to this question for the same reason as before.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q Who was present at the meeting in Wiesbaden about which you have testified in addition to you?

A The closer staff of the SS leaders of the entire district was present.

Q Can you give us any names?

A Yes, I can.

Q Please give us the names.

A There was SS Captain Leber; then the Colonel of the SS from Wiesbaden at that time; and then the man who was in charge at Metz. There were approximately--I would guess--ten to fifteen men present.

Q Was Dietrich present?

A Dietrich didn't lose anything there, because he was a police president.

Q Was Somann present?

A Somann usually came to these meetings later on.

Q Was Schluma present?

A Schluma? I don't know whether Schluma wasn't sick at that time.

Q Was Kaleske there?

A Normally Kaleske was there always.

Q Are you a prisoner now?

DR. BUERGER: I object to this question. It is repetitious.

DR. RAU: I withdraw the question.

QUESTIONS BY DR. RAU:

Q Why are you a prisoner now?

A Because I am an SS Colonel.

Q Do you know whether you are charged with the killing of Allied fliers?

DR. BUERGER: I object to this question. It is beyond the scope of the direct examination.

CAPTAIN VANCE: I join in that objection. That is an improper question to propound to the witness.

DR. RAU: I am allowed to ask this question in order to prove the reliability of this witness.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q This meeting in Wiesbaden: What time of the year and what year do you think it took place?

A It was in 1944, and I think it was a September meeting, because we had a meeting every four weeks.

Q Do you know Trummler?

A I know him very little.

Q But I mean you know him by name, do you?

A Yes.

Q Do you know when Trummler came to Wiesbaden?

A No. I don't know that.

DEFENSE COUNSEL: I have nothing further. Do you desire to cross examine?

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Colonel, at this meeting in Wiesbaden, do you remember if SS Colonel Lassak from Wiesbaden was present?

A No. Only leaders of the Allgemeine SS were present.

Q Did you know Colonel Lassak?

A No. I had nothing to do with the officials of the police.

Q He was a colonel of the Allgemeine SS.

A Only the active leaders of the Allgemeine SS were present at these meetings.

Q Do you remember if Colonel Eichel from Offenbach was present at this meeting?

A I don't know this man.

Q What position did you hold at Saarbruecken?

A I was in charge of the 85th SS Regiment, and later on the entire welfare organization for Westmark.

CAPTAIN VANCE: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Do you know whether or not a man who was with the

Sipo could be a member of the Allgemeine SS?

A The men of the security police were not under the supervision of the Allgemeine SS. They were under the Reich Security Main Office.

Q That was not my question. Were they members or could they function with the Allgemeine SS?

A I didn't get your question.

Q Is it not true that when a man became affiliated or attached to the Sicherheitspolizei he had to leave and abandon any position he had with the Allgemeine SS?

A Yes. Systematically he was transferred from the Allgemeine SS to the Reich Security Main Office.

Q What position did Somann occupy?

A Somann was inspector of the security police, Wiesbaden.

Q Inasmuch as Somann was with the Sipo, and this was a meeting of leaders of the Allgemeine SS, having those two things in mind, will you now tell the court whether you are certain that Somann was present at this meeting in Wiesbaden in September 1944?

A Whenever there were meetings of the leaders of the Allgemeine SS, first there were conferences between the leaders of the Allgemeine SS and General Stroop, and later on we were joined by other police officials, yes, I mean the commander of the order police and the inspector of the security police, and at the end even generals of the Wehrmacht came.

Q So that if Somann did come to this meeting in Wiesbaden in September 1944 he came after the meeting between Stroop and the leaders of the Allgemeine SS. Is that true?

A Yes.

Q And after the talk about how Allied fliers were to be treated?

A Yes; that was afterwards. Only afterwards Somann arrived.

QUESTIONS BY DR. WACKER:

Q Do you know for how long Somann was an inspector of the security police?

A I think Somann left around the end of 1944.

DR. WACKER: No more questions.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Any questions by the court?

PRESIDENT: Court will recess for 20 minutes.

(Whereupon the court recessed at 1000 hours until 1020 hours.)

(Whereupon the court reconvened at 1030 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all of the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: Just prior to the recess the witness Stemmler was on the stand. I believe at the time I asked the court if they had any questions to ask of this witness, but with the court's permission I would like to ask him just one or two more questions first.

PRESIDENT: Proceed. The witness is reminded that he is still under oath.

WILLI STEMMLER, called as a witness for the defense, being reminded that he was still under oath, resumed the stand and testified further through an interpreter as follows:

REDIRECT EXAMINATION, continued

QUESTIONS BY DEFENSE COUNSEL:

Q During the last recess I spoke to you, did I not, about your testimony with respect to this meeting in Wiesbaden in September, 1944?

A Yes.

Q I asked you what made you—

CAPTAIN VANDE: Do I understand you to be talking about the conference between you and this man during the recess?

DEFENSE COUNSEL: Yes.

CAPTAIN VANDE: I object to that. I don't mind your asking him what you want but not about the conference you had with him while the court was in recess.

DEFENSE COUNSEL: I am just explaining the basis of a question I was going to ask. I asked him—

(Stemmler-redirect)

PRESIDENT: Objection overruled.

QUESTIONS BY DEFENSE COUNSEL:

Q Did I ask you what was the basis of your statement or your memory that Sonnin was present at that meeting in Wiesbaden in September, 1944?

A Yes.

Q Will you tell the court what you told me was the basis of that statement?

A As I said before, during the meetings at Wiesbaden it was always like this; that first, the leaders of the Allgemeine SS discussed, with Stroop, the internal matters of the Allgemeine SS and only when these conferences were finished the other gentlemen came. But I cannot remember that Sonnin was ever present during one of these meetings before the time of the first meeting. Sonnin always came later on and whether he was present at all during this meeting, I can't say. I know for some definite reasons which I do not like to mention here in court that the meeting was not in August but later on.

Q No. My question was this. You stated that he was present. I am asking you to tell the court what you told me was the basis, the reason, why you said he was present? That is all I am asking.

A Because usually Sonnin was present.

Q That is the basis of your statement, that he was present in September, the fact that usually he was present at these meetings?

A Yes, but I can't say that definitely that Sonnin was present at all. Usually he was.

DEFENSE COUNSEL: Thank you.

PRESIDENT: Any questions by the prosecution?

CAPTAIN VANEK: No sir.

EXAMINATION BY THE COURT

QUESTIONS BY LAW MEMBER:

Q Mr. Stemmler the court desires to ask you several questions but

before do ng so again wishes to remind you that you have been warned by the court that any questions that tend to incriminate you may be refused to be answered by you.

A Yes.

Q You referred to the police president repeating the order referred to as Saarbruecken during the execution. Do you recall that?

A Yes.

Q What was the execution, or who was being executed at that time?

A That was a flyer.

Q When you received the order from General Stroop that you referred to as having been received in June or July of 1944 that "From now on all flyers are to be shot," did you pass on that order to any of your subordinates?

A No.

Q Were any flyers ever executed as a result of that order that you received?

A Of course it is that the police president passed down the order, when flyers had parachuted. I, of course, could not.

Q Your answer to the question was not exactly responsive to the question itself. The question will be read to you again and you answer the question if you can.

(Whereupon the reporter repeated the previous question as directed.)

A No.

Q Do you know why the flyer, whom you referred to as being executed, was executed?

A Yes.

Q What was it?

A These flyers in question were shot down over Saarbruecken and while coming down they shot at the German civilian population and therefore the police president gave the order.

(Stemmler-court)

Q Was this flyer tried by a court, do you know?

A No.

Q Was he shot on the orders of the police president alone?

A Yes.

Q In order to clarify your previous answer, did this flyer that was executed shoot at the civilians while he was coming down in his parachute?

A Yes.

Q What organization or individuals carried out this execution?

A On orders of the police president I had to carry out the execution with the Allgemeine SS.

Q Did you discuss this order you received from General Stroop in June or July of 1944 with anybody or any other person after you received the order?

A No. On orders of this character it was strictly forbidden to discuss them with anybody.

Q Were those instructions given to you at the time those orders were given to you?

A No. These orders were continuously repeated during the meetings by Stroop.

Q When an order was referred to with reference to flyers in the meeting that was held in September, 1944 at Stroop's headquarters what reference was made to this particular order?

A During this meeting Stroop published the general orders and in this connection this order came up again and Stroop said, "Everybody knows of course the flyer order."

Q What flyer order did you understand that that referred to?

A Only this one order, the only order, because I had no other order.

Q What order do you refer to as the only order?

(Stemmler-court)

A Where Stroop personally had given me the order at Saarbruecken.

Q Was that the only order that you received from General Stroop the one you received in June or July of 1944 to the effect that from then on all flyers were to be shot? [illegible]

A Yes. Otherwise Allgemeine SS did not receive any written orders in this respect.

Q Did the Allgemeine SS have any special orders relative to flyers other than the one you have just referred to?

A Yes. On the 20th of July there was another meeting at Wiesbaden. This order was in connection with an attempt at Adolph Hitler's life that sabotage troops which had parachuted should be defeated through all party organizations. We were told that these sabotage troops which had parachuted had some connection with the attempt on Hitler's life.

Q Referring again to this meeting in September of 1944. Was the reference to the order pertaining to flyers that Stroop referred to by saying, "You know the orders about flyers.", referring to the saboteurs or was it referring to all flyers?

A He could not have referred to these sabotage troops anymore since after a very short while the attempt had been beaten down.

Q Do you mean the attempt on Hitler's life?

A Yes.

Q In your mind this meeting of September, 1944 had only the one order that he referred to when he said, "You know the order with reference to flyers."?

A Yes.

Q What were the other general orders you referred to as having been issued before this order relative to flyers was brought up at this same meeting?

A Matters of general welfare were discussed; organization of companies. That all was in reference to the invasion and the approaching enemy that should have taken up most of the time.

Q What was your relationship with General Stroop? Was it friendly

or unfriendly? [illegible] ever have any trouble with General Stroop?

A Stroop gave the orders and they had to be carried out and he was pushing every single leader day and night. [illegible] Stroop for quick [illegible] runs.

Q Were you ever threatened to be reported by General Stroop?

A Absolutely not. We always cooperated.

Q Do you have any resentment toward General Stroop because of these accusations?

A No.

Q Returning again to this meeting in General Stroop's office or this conference in September of 1943, where General Stroop ordered orders relative to fliers to be brought up by General Stroop?

A These orders were repeated by Stroop again and again whenever he [illegible] with important orders.

Q Was this order with reference to fliers again a reference to by General Stroop after the meeting was thrown open to the public organizations?

A No.

Q At what other meetings did General Stroop repeat this order referring to flyers being killed?

A He did not repeat this order any more because in view of the [illegible] the next meeting we had [illegible], I can remember already in January of 1944.

Q When you referred to his repeatedly referring to this order, was that before September of 1943?

A He was not referring to this one order. I said already that we were referring to other [illegible] I have all

(Recess taken)

Q Did you ever have any trouble with General Stroop?

A In general not, because I carried out my orders, since I knew Stroop after we worked together already for such a long time.

Q Were you ever punished or reprimanded by General Stroop?

A Admonishments were given continuously.

Q Do you have any resentment toward General Stroop because of these admonishments?

A No.

Q Referring again to this meeting in General Stroop's office or this conference in September of 1944, what caused this order relative to fliers to be brought up by General Stroop?

A These orders were repeated by Stroop again and again whenever he had to do with important orders.

Q Was this order with reference to fliers again referred to by General Stroop after the meeting was thrown open to the police organizations?

A No.

Q At what other meetings did General Stroop repeat this order referring to flyers being killed?

A He did not repeat this order any more because in view of the invasion the next meeting we had as far as I can remember already in January of 1945.

Q When you referred to his repeatedly referring to this order, was that before September of 1944?

A He was not referring to this one order. I said already that he was referring to other important orders all

the time.

Q Was this meeting in September 1944 the only time that you heard General Stroop refer to this order that all fliers were to be killed in a meeting or conference?

A Yes.

PRESIDENT: No further questions by the Court.

DEFENSE COUNSEL: Nothing further here. Anything further?

CAPTAIN VANCE: Nothing further by the Prosecution.

PRESIDENT: No further questions. The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: The Defense calls as its next witness Else Hoecker. I am informed that she has been sworn for the Defense before. This is for Best, Goss and Micholy.

PRESIDENT: You are reminded you are still under oath.

WITNESS: Yes.

ELSE HOECKER, recalled as a witness by the Defense, resumed the stand and being reminded that she was still under oath, testified further through an interpreter as follows:

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q You are Else Hoecker who has heretofore testified in this case, are you not?

A Yes.

Q When you were called here some time ago to testify, you stated that you were in the room for a short period of

time when there was a conference going on between General Stroop and Lieutenant Goss. Do you remember?

A Yes.

Q Can you tell the Court approximately the date of that conference?

A It must have been in the beginning of 1945.

Q That was in General Stroop's office?

A Yes.

Q Now what was it that you said you overheard at that time?

A "You know the treatment of parachuted fliers--this is one of the assignments of the Werewolf."

Q That is what General Stroop said to Lieutenant Goss?

A Yes.

Q And what did you understand that General Stroop meant by that?

DR. RAU: I object.

PRESIDENT: Objection overruled.

WITNESS: My personal opinion?

MAJOR SAXON: Yes.

WITNESS: I understood it this way--that it was one of the assignments of the Werewolf to do away with the fliers.

QUESTIONS BY MAJOR SAXON:

Q Now did General Stroop receive any orders that you know of from the Gauleiters of Wehrkreis 18?

A Yes.

Q Just tell the Court what those orders were, so far as you know.

A I know one order of a Gauleiter in which the civilian population was asked to participate in the lynching of flyers.

Q What Gauleiter did that come from, Miss Hoecker?

A I don't remember any more exactly from which of the three Gauleiters.

Q Did you handle that order personally?

A I had to send copies of this order to the SS regiments.

Q And upon whose instructions did you do that?

A On orders of General Stroop.

Q Now, did you have access to all orders that were received by General Stroop?

A No, only what was lying on his desk.

Q Did General Stroop receive some orders at addresses other than his office where you were working?

A I think that he received orders also at home.

Q Did you have access to certain of these orders that he received at home, or did you not?

A No, only I saw sometimes in the morning that he took orders out of his jacket.

Q Were those orders ever given to you to file away or did he retain them?

A No, I didn't see anything of them anymore.

Q Did you know Major Best?

A Yes.

Q Over what period of time did you know Major Best?

A End of 1944, 1945--I can't give you the exact dates.

Q And in what capacity did you know him?

A He was in charge of the Werewolf office at our Headquarters.

Q Do you know what Major Best's general reputation is for truth and veracity and for performance of his duties?

A Best was known as a frank and very honest person.

Q If Major Best testified in this Court that he received instructions to deliver an order to Lieutenant Goss for the execution of a flyer in March, 1945, would you believe that he told this Court the truth?

A As far as I know Best, yes.

Q Did Major Best have any command functions around Stroop's headquarters?

CAPTAIN VANCE: We object because we are getting into repetitious matter. I believe this has been testified to before, even by this witness.

MAJOR SAXON: By others, but not by this witness.

PRESIDENT: Objection overruled.

WITNESS: Individual authority of command? No, as far as I know.

QUESTIONS BY MAJOR SAXON:

Q Did that irk Major Best, and did he talk to you about that fact?

A Yes, quite often.

DEFENSE COUNSEL: Cross examination by Dr. Rau for Stroop.

QUESTIONS BY DR. RAU:

Q Didn't you say once that you weren't certain

whether this meeting between Goss and Stroop didn't take place already around the end of 1944?

A I testified already once before here in Court that I think it was in the spring of 1945. May I say something else, too? I can't give you any definite dates--at our Headquarters the date was of no importance at all, since we worked every day--weekdays and Sundays.

Q Did you say, perhaps outside the Court room, that it's possible that this meeting took place about the end of 1944?

A Dr. Rau asked me about it already, and I said snow was lying. I told him it was the end of 1944 or beginning of 1945; but I told him so that I couldn't state any definite dates.

Q You said before that you assume that General Stroop received orders also at his home address. On which observations do you base this assumption?

A I saw envelopes with the marking "secret command matter", which he pulled out of his pocket in the morning, and which I had not put in his brief case in the evening.

Q Did you alone take care of these matters, or did other people work on them, too?

A I do not understand this question.

Q Did you alone have anything to do with these secret orders, or did other people have to do with them, too?

A The Staff Leader, but then the letters were not presented together with the envelope.

(Hoecker-Redirect)

Q You said on direct examination that Stroop's utterance "you know what has to be done with the flyers" meant, in your opinion, that the flyers should be done away with. Is that correct?

A Yes.

Q Therefore, you expressed your personal opinion?

A I was asked for my personal opinion.

Q What is the basis of your personal opinion--which facts?

A Since the civilian population had been asked to lynch flyers publicly.

DR. RAU: Thank you.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You considered Major Best as a good SS officer, didn't you?

A As a good comrade.

Q He was a good officer, too, wasn't he?

A I can't judge him in a military way.

Q I believe you said he had to take all his orders from General Stroop, is that correct?

A Yes.

Q And he was the type of officer that would take his orders and carry them out, was he not?

A All our officers had to carry out the orders which they received from General Stroop.

Q And Major Best carried out the orders which he received, is that correct?

A Yes, he had to.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Anything by the Court?

PRESIDENT: No questions by the Court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: The Accused Trummler will now begin the presentation of his case under the charge of Major Saxon.

MAJOR SAXON: May it please the Court, this accused desires to be sworn.

PRESIDENT: Do you desire to be sworn?

ACCUSED TRUMMLER: Yes.

HANS TRUMMLER, an accused, voluntarily took the stand in his own behalf and having been duly sworn, testified as follows through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your name, age and present status.

A Hans Trummler; 46 years old; prisoner at Dachau.

Q What is your home address?

A I had to leave my home. My family is in Pretsch on the Elbe in the Russian Zone.

Q What does your family consist of?

A My wife, two girls nine and six years old, and a son three years old.

Q What was the rank and in what organization did you hold that at the end of this war?

A I was a Colonel of the Police and Commander of the Security Police and the Security Service, Rhine-Westmark.

Q Now, Colonel Trummler, what service did you see

in the First World War?

A. In April, 1918, at the age of 17 and a half years, I became a soldier; and I came on the first of July, 1918, to the 104th Infantry Regiment in Flandern.

Q. How long did you then stay in the military service of Germany?

A. After my return from military service, I graduated from high school, and then until 1929 I served with a volunteer corps that was part of the Government troops--the frontier battalion number 6. We were committed at that time in middle Germany to suppress internal revolts.

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Q. Now, did you become a member of the Nazi Party at any time?

A. Yes, on the first of January, 1930, I became voluntarily a member of the NSDAP. The political -- the armament and the economic conditions of Germany at that time convinced me, especially the results of the Treaty of Versailles that under the conditions which existed at that time, only the Nazi Party had to be considered by me.

Q. Now, Colonel Kraemer, will you next tell the court how many parties existed in 1929?

A. In Germany at that time we had a democratic form of government, but this could not work for that reason because it was carried by a few responsible parties, and because there existed in Germany approximately twenty-five political parties which [illegible] were considered in the Government. Under such conditions Germany was [illegible] at that time. The Nazi Party [illegible] a political [illegible] or rebuilding a strong economy [illegible] the right [illegible] party. For these reasons I joined the latter

Q After you were released from military service in 1920, tell the Court what you did next.

A Then I studied in the business school and the University at Leipzig.

Q Did you receive any degrees from these schools?

A Yes. In 1921 I passed the examination of diplom merchant in the business school there and in 1923 I made my Doctor degree of economics in the University at Leipzig.

Q Then what became your work or avocation after that?

A From 1924 until 1933 I was working then in the industrial life, in banking and industry, especially in the automotive industry.

Q Now, did you become a member of the NSDAP and if so, when?

A Yes. On the first of January, 1931, I became voluntarily a member of the NSDAP. The political -- the government and the economic conditions of Germany at that time convinced me, especially the results of the Treaty of Versailles that under the conditions which existed at that time, only the Nazi Party had to be considered by me.

Q Now Colonel Trumbler, will you just tell the Court how many parties existed in 1931?

A In Germany at that time we had a democratic form of government, but this couldn't work for that reason because it was not carried by a few large responsible parties, but because there existed in Germany approximately twenty to twenty-five various parties which followed each other continually in the government. Under such conditions Germany could not be helped at that time. The Nazi Party intended by combining all forces and by constituting a strong government power to make an end to this misery. At that time I thought to go to the right political way. For this reason I think it is a matter

of course that even after the collapse of my government and people I continued freely to believe in the things in which I had believed at that time. [illegible]

Q Now Colonel, you joined the party because you believed it was best for Germany at that time, is that true?

A Yes. [illegible]

Q Did you later join the SA? [illegible]

A Yes. [illegible]

Q [illegible]

A In November, 1933, I became a SA man and in the SA during the years I got the titles of Second Lieutenant of the SA, Major of the SA and Colonel of the SA.

Q Now, will you tell the court what your occupation was from 1933 to 1935?

A In 1933 I took over, under the command of the chief of the training organization of the SA, one after another several SA schools. Until 1933 I was a member only -- an honorary member of the SA. Since 1933 I became an SA leader as my main profession.

Q Now, from 1935, in that year rather, will you tell the court what your position was -- your occupation and change of location.

A In 1935 the SA schools dissolved and I took over for a short while a school of the Reichs Agricultural Department.

Q For how long a period was that?

A Until the end of 1936.

Q Now, did you join the Allgemeine SS?

A All the leader of the Reichs Agricultural Department, the Reichs Leader of the Farmers, Darre, was SS Lieutenant General and most of the

members of the Reichs Agricultural Department, who were members by their main profession, were members of the SS. In 1936 I was transferred to the SS in agreement with the leadership of the SA.

Q Now Colonel Trummler, what was your occupation in 1936 and 1937?

A In 1936 the Border Police was established in Bavaria on the Bavarian-Czech, Bavarian-Austrian and Bavarian-Swiss border line. I was a leader of this Border Police in the years 1936 and 1937. My headquarters was at Munich.

Q What was the mission of the Border Police?

A The mission of the Border Police was the general supervision of the Borders.

Q Now, just tell what happened to this Border Police finally and when?

A On the first of August, 1937, this only established Border Police was transferred in its entirety into the Security Police.

Q And what became your job then at that time?

A I took over in the Reichs Security Main Office at Berlin a department which had the assignment to organize the Border Police in the entire Reich or better on the entire border lines of the Reich, to get the personnel and to train it and to get the necessary equipment for the various headquarters. This Border Police was stationed only at the most important passageways. Customs officials supervised the entire border line and also took care of the financial aspects of border traffic. Together with this assignment in Berlin, I established in Pretzsch on the Elbe a border police school.

Q Now Colonel, just tell the court what was this Border Police work. You said it was supervision of the border, but just what does that mean?

A First in the checking of passports, the checking of baggage of travelers and in the supervision of the travelers themselves. It was to be prevented that enemies of the German States should enter the German Reich.

Q Now Colonel, how long did you continue the operation of this Border Police school at Pretsch?

A In 1939 I took over myself the leadership of this school and at the end of 1940 I gave up my position as in a technical department in the Reichs Security Main Office and took care solely of my job as head of this school.

Q At what date did your service end at that school?

A Until the thirtieth of September, 1941.

Q Then what became your next work?

A On the first of October, 1941 this Security Police School Fuerstenber in Mecklenburg was established. The Border Police School Pretsch was dissolved and I moved, with my staff, to Fuerstenber and I became the commander of this school.

Q How large was this school? How many student personnel were in it?

A On account of the war, the number varied a lot. On the average there were eight hundred pupils. But furthermore, additionally in this school were quartered, beginning in 1942, various departments of the Reichs Security Main Office which, through bomb damage in Berlin, had lost their various offices.

Q Did any persons attend this school as students other than those who were known as the Security Police?

A In this school I furthermore got a guard company of the SS Battalion Konitz and a company of the Waffen SS, which was under

the direct command of the inspector of the Waffen SS at Berlin. For these two companies I was their superior officer in disciplinary matters. Students were trained and instructed only for their assignment in the Security Police.

Q How long were you in command of this school?

A Until I was nominated the commander of the Security Police and Security Service, Rhein-Westmark.

Q And that was about the first of September, 1944.

A Yes.

Q On the fifteenth of September, 1944 -- dealing with certain matters and just at present, I want to know approximately the date. Was it around the fifteenth of September, 1944? [illegible] Colonel Trumbler, [illegible] Were not at the school by your notification that you had been

Q And now to get back to this school, you had two companies of Waffen SS there. Were they there for the purpose of being instructed in police methods?

A Yes, I together with my staff personnel were trained. As to the assignment of the guard company was to guard the very extended school area because the school was built in the form of an Olympic Village, that means it consisted of approximately fifty-two smaller buildings, with the stadium and rifle ranges accordingly. Since, as I said before, in my school since 1942 there were quartered offices which were bombed out in Berlin, it was necessary to guard the school accordingly. The Company of the Waffen SS, they made their own duty there from the assignment of the Waffen SS [illegible]

Q Your instruction there was concerned entirely with the instruction of the Security Police students who were sent, is that right?

A Yes.

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Q What was the nature of this instruction that you gave these students?

A Real instruction the students received in constitutional law, criminal law, knowledge of State Police organization, criminology, together with exercises in criminology, for instance searching of people, searching of buildings, vehicles of all kinds, to find footsteps and so on. Furthermore, they got education in German and geography. As practical training, they received a lot of sports, especially training in jiu jitsu and shooting with machine pistols and rifle, but not with medium sized or heavy guns.

Q While you were in command of that school Colonel Trumpler, was there received at the school by you notification that you had been transferred into the Armed Forces?

A In the Fall of 1943, I can't say definitely anymore whether September or October, I together with my staff personnel were transferred to the Waffen SS and were attached formally to the SS Battalion Kemita. It wasn't done with the students at our place, but the students who returned from foreign countries or who served at the front agent I knew definitely of them that they were members of the Waffen SS.

Q Now, did you continue in the Waffen SS then until the end of the war?

A Yes. At that time we received all the rights and everything else which is part of an army unit. From that time I didn't receive my civil service pay anymore, but I received pay as an army officer. We received paybooks, army identification dog tags. We received the military travelling tickets. First of all we received the orders of the post commander of the Wehrmacht and I was called to the meeting of the commander of the District Moustrelitz, together with other commanders of the Wehrmacht.

Q What rank did you receive in the Waffen SS at that time?

A SS Colonel.

Q While you operated that school there and before you were relieved from duty, were you called out on any special missions - using the school students on this mission?

A The Security Police school, that means all the schools of the Security Police, had no executive powers. That means they had no outside duties. They had to take care only of the training of their students. Only in special cases the schools too were supposed to be committed as a kind of reserve units of the Security Police. On orders of the Gauleiter Hildebrandt, he was our Gauleiter in Mecklenburg, in 1942, after the large scale air attacks on Hamburg, with three of my companies I was committed in the Fort Dessau. The Fort Dessau is located on the Elbe River on Mecklenburg territory. That was the unloading place for hundreds of people from ships and Elbe River boats, which at that time brought tens of thousands of wounded men, women and children to this place. My companies for three days and nights brought in these wounded and bandaged them until the men couldn't go on anymore and fell to the ground. Most of the wounds were burns through phosphate. I am not exaggerating when I say that it was, even for us men who were no weaklings, a terrible sight to carry out for three days wounded women and children. I myself had a boy approximately four years old on my arms and when we wanted to give him milk from a bottle, he always grabbed to the side of the bottle and we had to notice that through phosphate burns the boy was completely blind. But the most gruesome thing was a few hours later I had to tell his mother, who was also

wounded, that her little boy was completely blind. That was in one committment of the School. The second committment was on the twentieth of July, 1944. Around noontime I heard about the attempt on Hitler's life. According to my orders, I ordered then an alarm for the School. In the evening around 1900 I received an urgent state call at my home by Lieutenant General Mueller, the Chief of Department Four, who gave me the order to come immediately with several companies on the shortest possible route to Berlin for the protection of the Reich Security Main Office. I put the school on alarm now and with three companies I drove to Berlin and I arrived there at 2230 at night. The companies other than the three stayed behind. In Berlin I reported to General Kaltenbrunner. A committment of these companies was not necessary, since the revolt attempt had been beaten down already.

PRESIDENT: Court will recess until 1:30 this afternoon.

(Whereupon at 1200 hours the court recessed until 1330 hours.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: At the end of the last session, the accused Trumpler was under direct examination by Major Saxon.

PRESIDENT: You are reminded that you are still under oath.

HANS TRUMPLER, an accused, resumed the stand and after being reminded he was still under oath, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON (Cont'd):

Q Colonel Trumpler, when we left off at noon intermission, you had just finished explaining to the court that the companies you brought down to put down the uprising were not beaten; is there anything in connection with that particular trip you desire to tell the court?

A The night from the 20th to 21st we still spent in Berlin on the alert. My men and I did not participate in the arrangements that were made and on the morning of the 21st of July were returned to Kersting, to school.

Q Now, Colonel Trumpler to get back to something that occurred in 1937, at which time you said the border police were taken into the security police. At that time did you also become part of another SS organization?

A Yes, at that time the old Bavarian frontier police as a unit was transferred to the security police and together with that all men of the frontier police including myself were entered into the SD.

Q Now, Colonel Trumaler, stepping over to September 1944, tell the court what word or order you received from Berlin to report to Berlin?

A I received an order from the chief of office Number 1 Reich Main Security Office, one Colonel Erlinger to report to Berlin on the 15th of September 1944.

Q Did you do so?

A Yes, I did report there and in the course of a conference Colonel Erlinger informed me that I had been appointed the commanding officer of security police for SD in the Rhein-Westmark district under Dr. Kaltenbrunner. I might add here that this assignment surprised me completely since in the course of an inspection on the 21st of July 1944 Dr. Kaltenbrunner told me this school was a job which I ought to keep for years.

Q When did you then report to Dr. Kaltenbrunner?

A I had a talk with Dr. Kaltenbrunner in the afternoon of the 16th of September. That part lasted for about two hours.

Q Can you give the court the highlights of the conference between you and Kaltenbrunner at that time as relating to your future duties?

A Dr. Kaltenbrunner gave me a birds' eye view of my new job, this particularly with a view to the fact that Wehrkreis 12 was an area particularly under air attack and that the enemy was close to the Reich's border even at that time and in a conversation of these facts he also gave me a set of rights and duties which exceeded the normal rights and duties of an inspector.

Q Continue by telling the court the details of the duties you had performed under this new command in Wehrkreis 12.

A In the first place, there were two security police headquarters in Rhein-Westmark -- the inspector of Wiesbaden and the commanding officer

of Westmark-Lorraine. The former inspector of Wiesbaden, my comrade Semann was called to Berlin for the organization of the duty frontier protective police and the until then commanding officer of the security police in the SD for Westmark-Lorraine, the SS Brigadier General Dunkern received a job of commanding officer for security police in Lorraine and the police president in Metz, and since there was supposed to be only one commanding officer of each, as the case might be, inspector of security police in the SD in each Wehrkreis and SS and police leader, these jobs were joined to one under my command.

Q Now, will you just continue for a little further, Colonel Trumbler, with the specific duties which he gave you with respect to this particular area, exclusive of anything to do with fliers.

A I received the further authority of establishing or closing down, such as the need might arise, I also received the authority to replace office chief by more suitable men if incumbents proved not suitable, and I received the further authority to exceed my normal disciplinary powers which would be due to my job, and maintain discipline under any condition and any means at my disposal and I received, in the fourth place, the authority to make any changes along financial or technical lines to maintain official business. To give an example, I could use my own judgment in the distribution of vehicles and weapons if the need might arise. Those authorities and duties were assigned to all commanding officers if the areas they were working in were classified as emergency areas.

Q Now, Colonel, you went over there then as a commander of the area and not as an inspector as Semann had been is that correct?

A That's right.

Q Now, what did Kaltenbrunner say to you relative to the effort to meet the air war in that area and what action you were to take regarding certain fliers?

A At first Dr. Kaltenbrunner gave me a brief view of the effects of the strengthened attacks of the allied air force, which had commenced in 1944. He particularly expostulated that my job in Wehrkreis 12 would be an especially difficult one, that is the reason it was called Wehrkreis 12, it was the area through which most of the Allied planes passed in and out of Germany and also because particularly heavy air raids took place in that area. After that Dr. Kaltenbrunner explained to me that the Reich government would now begin more energetic measures to combat air warfare. Subsequent thereto he gave me the unambiguous shooting order concerning terror fliers and under terror fliers he understood fliers who attacked nonmilitary civilian objectives, or who flying at low altitude strafed civilians, therefore not including bombers in general, nor including fliers who bombed or strafed military objectives. This order appeared to me completely surprising and I dared, I want to emphasize the word "dared" to ask the chief of security police whether this order might cause any complications in international law. Upon that Dr. Kaltenbrunner answered me in a very sharp tone of voice that was none of my business — this is literally what he said, "We in Berlin had examined the matter and decided upon this." This "we" I had to understand as the rather close circle of officers around Adolf Hitler, and its members unquestionably were Himmler, Bormann, Keitel, Jodl and also Dr. Kaltenbrunner. I was familiar with the fact that Dr. Kaltenbrunner was permitted to take his problems to the Fuehrer personally and I also found out in the course of a conference in Berlin that he was at the Fuehrer's rather frequently, so when he said "we" I had to assume with certainty that means the Reich government and in all possibility, even the Fuehrer. For that reason I was silent and for that reason I had to accept this order as a legal one applicable to me. It was not my job as a police colonel to examine the lawfulness or unlawfulness of an order decided upon by the Reich government. I fully realized at that time and lately in this court it is my deepest con-

viction that I would have suffered the most severe penalty, that is, the death penalty if I refused to carry out this order. I was very familiar with the fact that the Reich Fuehrer of the SS had the most severe penalties pronounced and carried out against high ranking SS and police officers without any SS and police court.

Q Colonel Trummler, did you ever again during the rest of the war challenge that order?

A I would like to add something else, please.

Q Continue.

A After that I had a conference with the chief of the Reich main security office Number 4, Major General Dr. Muller and chief of Office Number 5, Colonel Dr. Panziger and in course of these conferences Major General Muller repeatedly gave me this shooting order.

Q Now, Colonel Trummler, did you ever again after you first questioned Dr. Kaltenbrunner regarding the validity of this order, ever challenge the order again throughout the war?

A No, I was in no position to do so.

Q Colonel Trummler, will you give the court an example or two of what you understood from Kaltenbrunner constituted a terror flier?

A I explained it already. Do you want me to explain it again?

Q An example as you gave me the other day.

A Under terror fliers he meant fliers who shot only at civilian objectives or low flying planes shooting at civilians. As an example, that means the following: If a low flying plane shoots at a peasant, a farmer who is escaping, and that would occur, then he is a terror flier because that farmer is not directly involved in warfare, but if a bomber squadron shall, we say attacks an ammunition dump and in bombing that ammunition dump hits a few civilian houses inthat vicinity, then these are not terror fliers, because it is perfectly obvious that

no flying outfit can aim close enough, particularly in view of ground defenses, in order not to hit some civilian objectives in the vicinity. If there is a column of civilians walking along a country road because they had been bombed out and that airplane fires at that column of civilians, then he is a terror flier, but if a low flying airplane strafes a column of infantry which is going along a country road and in doing so also hits some civilians, then he is not a terror flier. That is it.

Q Tell the court about that example you gave me about trains being strafed in which the strafing itself did not constitute a terror flier attack.

A The air corps men had great difficulty in determining whether a train was a military train or civilian train, that is obvious, but in Bermeshiel that is located in the Eifel Mountains, we had the experience that civilian trains which might at the most contain very few furloughed army men were daily strafed by enemy planes. Those are terror fliers.

Q Now, Colonel Trummler, before you took over this command, had you ever held any command of a defensive area before in the German Reich?

A No.

Q Now, after you talked to Koltenbrunner some two hours, then you spoke of talking to General Muller. For how long a time did you talk to him about your future duties?

A About one hour; an hour and a half.

Q And Kaltenbrunner's direction to you was that reiterated by General Muller?

A Yes, the shooting order was repeated to me by General Muller.

Q What did both Kaltenbrunner and Muller give as orders or authority as to how you should maintain peace and cooperation with the civilian population, that is, the German civilian population in your area?

A That question is a little bit difficult, Major. Do you mean what right and authority I had to maintain order?

Q Over the civilian population of this new area?

A The military and economic situation of Germany had deteriorated considerably during 1944 without any question and for that reason, in a nation consisting of no less than 80,000,000 people it was clear that there should be some element who might turn to revolution or disorder. It is just as obvious that any state which is fighting for its existence and very life must do everything in its power to maintain peace and order behind the lines. For that reason, Dr. Kaltenbrunner told me that if the necessity would arise it would also be my duty to support the Higher SS and Police Leader in maintaining peace and order and by all the means at my disposal. That case, however, did not arise.

Q What was said to you about placing you and your personnel at the disposition of the Wehrmacht, if necessary?

A There were some more orders here if I might mention them. These however, were not all given to me at this time by Dr. Kaltenbrunner but would arrive during the month later when I had taken over my command. The order or orders would have the following general purpose: Firstly, the maintenance of normal business among the security police by all available means; in the second place the maintenance of orders in this area, also by all means, the support of the party and of the military in the fulfillment of their tasks by the use of all means available.

(Trummler-direct)

Q When did you then proceed to Wiesbaden?

A I left Furstenberg on 19 September 1944 and arrive at Frankfurt in the evening of 19 September 1944. I spent the night there and took over my new job on the 20th September 1944.

Q Who was it you first contacted when you reached Frankfurt relative to your duties?

A I went to Wiesbaden.

Q Didn't you go to Frankfurt first?

A Yes. At night I called up Breder and spent the night with him.

Q Prior to your meeting on 18 September with Kaltenbrunner, had you at any time received any orders or instructions or information relative to the disposition of flyers?

A As the commanding officer in Furstenberg I received the orders of the Reichs Security Office directly but not all of them and I might add here that I did read the article of Dr. Goebbels in Das Reich. In Furstenberg I also received the information copy of this so called non-interference order of the police.

Q Whose orders were they, Colonel?

A That was the order of the Reichsfuehrer SS Himmler.

Q Did you pass that on to the students in your school there?

A No. These orders came to me only in the form of information copies but of course my officers did find out about it. They were not handed down to the companies because that was not part of the instructions.

Q When did you and where did you next learn of these next so called orders or decrees put out about flyers after the Kaltenbrunner decree?

A When I took charge in Wiesbaden I issued an order to have all the most important orders of the last few weeks collected so that I could familiarize myself with them. At that occasion I found out about the Bormann orders, and about the orders that all flyers were to be turned over to Oberursel by the Security Police.

Q When you assumed your duties at Wiesbaden how much personnel did you find that were to serve under you there in the whole Wehrkreis area?

A That was a total of 6,200 including the Duty Protective Organisation. That did include also all Auxiliary Forces and the Letter Censorship Office of Frankfurt on the Main which had bout 2,000 men.

Q Approximately how many sub-offices did you have?

A You cannot answer this question definitely because the number of offices varied but if I include the offices of the border duty protective service I might come to 120.

Q How far was your headquarters in Wiesbaden from those of General Streep?

A About a fifteen minute walk.

Q Did you know General Streep before you assumed this new command?

A No. I had never seen him before.

Q How soon after you entered your new duties was it that you met General Streep?

A I started on my job on the 20th September and it might have been on the 23rd or 24th of September when I reported to General Streep as starting my duties but it was not possible at that time because he was on an official trip then.

Q How soon did you meet him after you arrived there?

A On the 23rd or 24th was the first time I saw him, after three or four days.

Q What was the arrangement or the order of procedure in Wehrkreis 12 so far as conferences were concerned between yourself and General Streep. I mean, how many were held or were they at stated intervals or periods over a period of a month at a time?

A I do not understand.

Q Was there an arrangement made whereby conferences were held between you and General Streep at stated intervals?

(Trumbler-direct)

A You could not call it regular intervals but it might have been about once a week. General Streep would hold conferences and I was compelled to participate in them. These were the so called commanding officers conferences and subsequent thereto either the commanding officer of the regular police or myself would get in on conf-rences alone.

Q How were these conferences arranged, who called them?

A They would take place by order of General Streep.

Q Were your relations there at first amiable and friendly as far as General Streep was concerned?

A I was never able to get any personal relations established between myself and General Streep. Our relations were also on a technical and strictly business basis. To get anything like that done our differences in character and differences in opinion of our jobs were too diverging.

Q After you had been there a week or so did you andthe General have some kind of falling out which necessitated your calling Kaltenbrunner.

A General Streep's attitude was that he personally wanted to have all the communications with the army headquarters and the gauleiters.

Q Continue.

A The opinion of General Streep was in contradiction to my job as commanding officer of the security police because it was one of my most important jobs to maintain communications and contact between the security police and the party and the army. The first time we had a disagreement on this matter was shortly after I arrived and was compelled to demand a decision from Dr. Kaltenbrunner on the matter and he, of course, told me I had the authority and in fact the duty to establish correct contact with the party and the army.

Q Did you tell Dr. Kaltenbrunner at that time that you would like to be relieved on account of that?

A Yes.

(Translator-direct)

Q What did Dr. Kaltenbrunner tell you?

A Stick to it.

Q From whom did you get orders to carry out the duties you had in Mohntreis 12 primarily?

A Primarily I received my orders directly from Reichs Main Security office in Berlin and secondarily from the Higher S" and Police Leader, General Stroop.

Q Was there anyone else who could give you orders in that area?

A No.

Q After you had become established there will you give the Court some idea how many communications you had with your headquarters in Berlin either by telephone, teletype, or otherwise? [illegible] had written communications with Berlin, telephone, teletype [illegible] and radio and whenever decisions had to be made I could make a phone call either to Dr. Kaltenbrunner or to some of the chiefs of the offices.

Q These orders that you mentioned a while ago, was it through these communications that you continued to receive these additional orders as to your duties in this area? [illegible]

A Yes.

Q At these meetings that you had with General Stroop was the disposition or treatment of terror flyers talked over between you and he?

A I would like to establish the following first: I would like to say that all the participants of these conferences, including General Stroop, and myself, were of the opinion that something, that anything had to be done against these terror flyers. Now, that was the general opinion of the participants in those conferences. In addition to this general opinion, however, General Stroop told me unambiguously, in the course of a conference between the two of us, that terror flyers were to be shot. I was not talking about individual cases with him. In the course of that that was his general opinion.

Q Was that an order by General Streep in Wehrkreis 12 that terror flyers were to be shot? Was that an order to you?

A In those conferences with me I could consider it only as an order. A Higher SS and Police Leader as a commanding officer, just like I, couldn't in the course of conferences say "I would like to have somebody shot". He would have to say, "They are to be shot" and these are orders.

Q These orders you got from General Streep were not in conflict with the ones you got from your own government, is that not so?

A I received my first orders from Dr. Kaltenbrunner and the orders from General Streep were only in the nature of confirmation to me. Since I was thoroughly convinced that General Streep had received the same orders from a higher headquarters, probably from the Reichsfuehrer, I was also familiar with the fact that the Reich government must have sent the orders for the shooting of flyers down through channels. Otherwise such organizations as the regular police or the labor service could not have gone around shooting flyers too.

Q Calling your attention particularly to the charges in the bill of particulars which are made up of ten different charges in which your name is mentioned in each one of them, I want to ask you if you have [illegible] these ever?

A Yes.

(Truebler-direct)

THE WITNESS: No. I feel not guilty of this charge.

QUESTIONS BY MAJOR SAXON:

Q Referring you to charge number two and the particulars thereunder, what is the extent of your guilt in that charge?

CAPTAIN VANCE: Object on the same grounds.

PRESIDENT: Objection overruled.

THE WITNESS: In the first place I had been a member of the Nazi party since the first of January 1928, however, I had no leading positions in the NSDAP who soever. I was not a deputy nor an orator. Then I belonged to the SS since 1935, the Allgemeine SS and to the SD since the first of August 1937 and in the fourth place I belonged to the secret state police on account of the transfer of the frontier plice to it. Also since the first of August 1936, therefore point number one does not apply in charge number two but I did belong to the other organisations. Might I explain something as to point number one? I might say that until the time I took my job in Wiesbaden I did not know General Streep nor any of his staff, or Colonel Hinmann or any of his staff or anybody of the staff that I took charge of in Wiesbaden myself. There were only two chiefs of offices in this area that I did know and one was the chief of the Kripo Office Koblenz and criminal counseller Sillmann who used to be the adjutant of the school, the officers school of the security police and SS Lt. Colonel Dr. Christmann whom I had known from athletic activities of the security police. And of all the accused sitting here I did not know one personally and only later did I find out that of the accused here there were two who knew me, they had been students of mine, one of them in Prissch and the other one from Furstenberg and those are accused numbers 21 and 22.

(Truebler-direct)

Q Col. Trummler, referring you again to Charge No. 2, were you ever guilty of any of the crimes that are commonly charged to these organizations that are named in Charge No. 2, some of the organizations to which you happened to belong?

CAPTAIN VANCE: Same objection, may it please the court.

PRESIDENT: Objection overruled.

THE WITNESS: I don't know of any such participation.

QUESTIONS BY MAJOR SAXON:

Q You have read Charge No. 3, Col. Trummler?

A Yes.

Q Are you guilty of any offense charged there?

CAPTAIN VANCE: Same objection, may it please the court?

PRESIDENT: Objection overruled.

THE WITNESS: I had nothing to do with it. The only place I met the Comrade Lagnak was here and the only time I found out about this case was after I was served charges here.

QUESTIONS BY MAJOR SAXON:

Q In reference to Charge No. 3, Col. Trummler, and some subsequent charges here, what control, if any, did you have over the Ordnungspolizei?

A I had no power of command whatever over the regular police and, conversely, the commanding officer of the regular police had no authority whatever over our Security Police. If there is anything at all that is perfectly clear about this chart over here, then it is the channel of command of the regular police and Security Police and the fact they are run completely separately.

Q Now, Col. Trummler, referring you to Charge No. 4, will you tell the court in your own words what transpired there in your office on the 19th of October 1944?

A On the 19th of October 1944, according to the reports that my adjutant made to me, a terror flier was turned over to us by the Rural Police together with a proper report of the Rural Police, of course. In spite of this I issued the order that my adjutant, Capt. Wrede, and I think also my investigating officer, Major Dr. Schilling, were to interrogate this flier one more time.

Q Just a moment, Col. Trummler, what was the substance of the report you received from the gendarmerie that indicated that this particular flier was a terror flier?

CAPTAIN VANCE: We object to his leading the witness.

PRESIDENT: Objection overruled.

THE WITNESS: I didn't read this report myself. I was merely told by my adjutant that the Rural Police had turned this flier and report concerning this flier over to us, but in spite of this I issued the order that Capt. Wrede and probably also Major Dr. Schilling, were to interrogate the man. Upon that, Capt. Wrede reported to me that the report of the Rural Police had been substantiated and that this man had been correctly established as a terror flier.

Q Col. Trummler, how had these men established the facts from interrogating this flier that supported the report of the gendarmerie?

A I myself didn't do the interrogating.

Q But what did Capt. Wrede tell you.

A The report of the Rural Police indicates that the man is a terror flier. Then this man, upon my order, was interrogated one more time in my office -- that is, not in my room, of course, I didn't see the flier, and apparently his testimony confirmed that. There was no reason for me to doubt the correctness of my officers' reports,

at any rate, not until the time that some officer actually tells an untruth.

Q After this fact was established to your satisfaction that this flier was a terror flier, what did you next do?

A I called up the Chief of the State Police branch office at Wiesbaden, Criminal Councillor Luckhard, and I ordered the detailing of two men to carry out the shooting of this flier. In doing so I properly carried out the order from Berlin. I am not one of those persons who did not desire to remember certain things two years after the collapse. I had transmitted this order to down below on account of the unambiguous order I had received from Dr. Kaltenbrunner.

Q In response to your request to Kriminalrat Luckhard, what next occurred?

A The Criminal Secretary, I think that was his rank, Criminal Secretary, Fraund reported to me as did SS M/Sgt. Fuehr, and to these two men, and particularly to Fraund because Fuehr unquestionably had come along only as a driver, I transmitted this shooting order, and as far as I know the shooting then took place in the evening.

Q When did you next get any further word on this?

A I think Fraund and Fuehr were up in my place one more time that evening and reported the carrying out of the order but I am not quite sure of the fact that the next morning 1st Sgt. Hoehler came to my place with a proper report of the mission being completed from Criminal Secretary Luckhard.

Q Was Kriminalrat Luckhard one of your subordinates?

A Yes.

Q And were Fraund and Fuehr your subordinates?

A Yes. Of course, they were correctly under Criminal Councillor Luckard but in the large group, under me.

(Trummler-direct)

Q They were under you directly or indirectly?

A Yes.

Q What if these men had refused to obey your order, what would you have done with them?

A I might say the following to that -- as long as I had the honor of wearing a German uniform nobody had ever refused to carry out one of my orders. Had this happened in the vicinity of the front in such places as Saarbrucken or Trier, I would have had his insignia removed, removed him from office and shot after a sentence by a summary court, within 24 hours. Had this happened in an area further to the rear where comparative peace prevailed, I would have, in the same manner, had him arrested, removed from his position and turned over to an SS court with a request for prompt and severe punishment. I and all other commanding officers of the Security Police had received this authority from Dr. Kaltenbrunner and I would have made use of this in any case arising.

Q I now call your attention, Col. Trummler, to Charge No. 5 and ask you to state to the court the facts, so far as your participation therein is concerned.

A All right. Criminal Councillor Luckard reported to me on the 30th that the Rural Police had turned over a flier to the Gestapo branch office in Wiesbaden with a proper report. I'd like to put something in here. Wiesbaden itself had only one large scale bombing attack and sporadic bomb droppings daily, but the area surrounding Wiesbaden was flown over by a low-flying aircraft daily and strafed. That report came to me by telephone from Luckhard. Upon that I gave the order to have this flier interrogated one more time, to both Capt. Wrede, my adjutant, and Luckhard. After it had been reported to me from Wrede that this man was actually a terror flier who had been

strafing the vicinity of Wiesbaden, I gave Luckhard the order to have two men sent to my headquarters, and Luckhard again sent me Secretary Fraund and Fuehr, and in conformance with my higher orders, I gave both of them the order to have the flier shot. That order was carried out. About evening these men, Fraund and Fuehr, came to my office. There was an air raid alarm going on and I was in the air raid shelter of my office and there Fraund and Fuehr reported the carrying out of the order. Upon that, and in the presence of these two men, I gave Capt. Wrede the order to have the execution of this flier reported to the Higher SS and Police. This order was carried out. I was standing next to the telephone as Capt. Wrede was reporting the shooting of this flier to the Higher SS and Police Leader. I wasn't able to determine whether he was on the telephone himself but I assume that it probably was somebody on his staff.

Q Col. Trumpler, is there anything further in Charge 5 that you have to say in connection with that?

A I wouldn't know.

Q Now, Col. Trumpler, you have read Charge 5, have you not?

A Yes.

Q And you have heard the evidence as given here by the witnesses regarding such participation as they said you had in that charge?

A Yes.

Q Will you just tell the court the facts as they are, so far as your memory is concerned?

A I think that was the 15th of March or the 20th. I don't know exactly.

Q The 15th of March?

A The 15th of February, that's right. I had reduced the correspondence

between my offices to a minimum just permissible within the Security Police. On account of this it was necessary for me to occasionally talk to or telephone the various office chiefs in order to talk the most important matters over. In that way I am sure I often had telephone calls to Major Girke. In these conversations all important incidents and regulations were discussed. I personally am not sure whether I remember this conversation because in that big area that I had under me and in what you might easily call an excited time, I received quite a number of telephones from outside offices and it is quite possible that Major Girke told me on the telephone that day that the State Police of Darmstadt had arrested a terror flier in Bensheim, and it is also possible that upon that I told Major Girke that this flier was to be shot in accordance with a general order that I had. By the way, there was no necessity for this telephone call anyway because Girke had received Dr. Kaltenbrunner's order quite a while before that because of a conference verbally.

Q Col. Trumpler, had Girke never called you he still had your standing order to execute terror fliers, is that correct?

A He would, of course, have been bound to carry out Dr. Kaltenbrunner's order which he had once before received during the course of a conversation in Wiesbaden.

Q You intend to honestly tell the court here, Colonel, that you just don't remember this one conversation but that he had a standing order of Kaltenbrunner's, through you, to execute terror fliers?

A Through me, yes, and it is also perfectly obvious that Hellenbreich, Stattman and Haaf had to obey Kaltenbrunner's orders. I'd like to point out to the court, as has been pointed out here many times before, that discipline within the SS was strictly adhered to

and breaches thereof severely punished and punished all the more if the men concerned were regular SS men or police men.

Q Col. Trummler, you have read over Charge 7, have you not?

A Yes.

Q Did you have anything to do with the alleged facts that are charged in that charge?

A I'd like to say that I met the officers and non commissioned officers mentioned in this charge only here and that it was also here that I heard about this incident for the first time. That time doesn't have anything to do with the Security Police.

Q You had nothing to do with the offenses charged on the 22nd of February 1945 that are charged in this charge?

A No.

Q You have read over Charge No. 8?

A Yes.

Q Did you have anything to do with the alleged offenses charged in there?

A No. I want to state the same thing here as to Charge 7.

Q You have read over Charge 9?

A Yes.

Q Did you have anything to do with the alleged offenses charged there?

A I had nothing whatever to do with the alleged offenses charged there. I had nothing whatever to do with the "W" School and nothing to do with the commission of the crime, either. The only way I met Major Rost was because of the staff meetings in Gen. Streep's office building and of course, I had no authority of command whatsoever over Major Rost or his men.

Q Did you ever hear of it before the end of the war?

A I only found out about Charges 5, 7, 8 and 9 when the charges were served here.

Q Now, referring you to Charge No. 10 in which an offense is alleged to have been committed on the 24th of March 1945, at that time was the accused that are named in there, exhibit of Jurgen Streop and Otto Sumann, still under your command?

A They were still under my command, Charge 10.

Q Was the standing order of Gen. Kaltenbrunner which you had transmitted on to Ritze and Hellenbreich in effect at that time?

A I'd like to state the following for Charge 10 -- In Charge 10, exactly as in Charge 6, the order issued by General Kaltenbrunner and transmitted by me concerning the shooting of terror fliers, was in effect. However, in the second place, there was no possibility of myself receiving a report of this incident since the communications had been broken between the Darmstadt State Police office located in Bensheim and my headquarters. All communication was cut and the American army, with its armored spearheads had already penetrated Gross Gerau and thus broken the line between Wiesbaden and Mannheim. Therefore, there was no chance for Major Ritze to make a report to me and it is also definite that at that time SS Major Hellenbreich and Ritze, SS T/Sgt Stattmann, and 1st Sgt Reif were among my subordinates.

PRESIDENT: Court will recess for thirty minutes, during

(Whereupon at 1500 hours court recessed until 1550 hours, [illegible]

(Trumler-direct)

[illegible] I have already explained that I always took to the [illegible] between Groos Gerau [illegible] and Gross Flytz. I [illegible] these flyers must be dropped [illegible] military [illegible] [illegible] [illegible]

to obey Kaltenbrunner's orders?

A That I would have been shot. Might I add something to that?

Q To be short.

A At that time in an emergency to my people it would have been impossible for me as a police official to refuse to obey orders that were given to me in a lawful manner by my government and I have already testified that I did and I had to consider this order a lawful one.

Q Now Colonel Trumbler, outside of the terror flyers that [illegible], you ordered executed, that you testified to here, did you ever, during your tenure of office in Weistrogia XII ever order the execution of any other flyer?

A No. I have already explained and I always stuck to this distinction between bomber flyers and terror flyers. I never ordered bomber flyers shot who dropped his bombs on military objectives. In fact, that would have been against the orders I issued. [illegible] was such that it would have [illegible]

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(Thereupon court was opened at 1530 hours.)

THE COURT: Court will come to order.

THE RECORDER: Let the record show that all members of the court, all members of the prosecution, all members of the defense, all of the counsel and the reporter and interpreter are present.

THE COURT: At the end of the last session the [illegible] counsel [illegible] on the stand on direct examination [illegible] polygraph [illegible] and being reminded that he was still under oath, testified [illegible] as follows: [illegible] CAPT [illegible], as counsel, voluntarily [illegible] the stand [illegible] polygraph [illegible] and being reminded that he was still under oath, testified as follows:

DIRECT EXAMINATION (Cont'd.)

BY [illegible]

Q. Colonel [illegible], I think you previously answered this question but I want to make sure that there's no doubt, have you ever had any [illegible] with [illegible] or any of his associates [illegible] any of the matters [illegible] in this case?

Q You have testified here that Breder was under your command at Frankfurt, is that correct?

A Yes.

Q Will you tell the court what a part of Breder's duties were at Frankfurt and Oberursel?

A Breder was the Chief of the State Police Office in Frankfurt on the Main and in Oberursel it was his job to interrogate flyers about political conditions in their home countries, which flyers he would receive from the prisoner of war camp in Oberursel and I am sure that Major Breder and his men conducted these interrogations in the proper manner and I want to point out that I myself would have severely punished any one of my men had I found out that he mistreated or beat any flyers or prisoners of war, and the court can be sure that if any of my men had ever robbed a body they would have been shot by me, of course to the extent to which I would find out about these cases.

Q When you had this conference on the eighteenth of September, 1944, with Kaltenbrunner, was any mention made to you by Kaltenbrunner as to the intended or hoped for result from the execution of terror flyers?

A Doctor Kaltenbrunner told me that he thought these shootings, which after all couldn't be kept secret, would also become known to the countries outside of Germany and would serve as an example. That was his opinion.

Q Why weren't these shootings carried out in the open, in the public square?

A The excitement of the population caused by the air-raids and increased by the Normann regulations and the propaganda in general was such that it would have been increased even more had we performed

those executions in public. I don't want to go into another discussion of the conditions here at the time but one thing is quite definite and there is a limit to strength of anybody, especially if he lives in a country that has suffered so from bombings and especially if he has suffered at the front. I myself had the following experience in Wiesbaden about the end of February or the beginning of March, 1945. There was a dog fight between German and American fighter planes in the air. It was in the afternoon about 1600 hours. I was just about to go to Frankfurt on the Main with my driver and I was located at the end of town. There was some gardens, all gardens around there. A German fighter plane was shot down by an American plane because of this fight. This German flyer jumped off in a parachute. But the population had probably been unable to determine that the man shot down was a German flyer. The flyer came down with the parachute in Wiesbaden in the direction of Frankfurt on the Main, landing about five or six hundred meters away from me in a garden. The flyer hadn't reached the ground yet when the population, which was inside, was already coming out carrying sticks and clubs and the soldiers had their side arms in their hands because they all thought it was an enemy flyer and when the German flyer actually reached the ground, the first civilians who arrived at the scene started beating upon him with clubs. I ran over there over to this flyer with my driver, Schade. The German flying sergeant kept shouting, "I am a German." Upon that I pulled the man away from him promptly and I took this flyer, who had received quite a few blows, up to my office and had him calmed down a little bit first, and what I have told you just now this SS Sergeant Schade, my driver, will be able to confirm this under oath any time you wish him to. With this little example I am merely trying to show

(Trumbler - Direct)

what the attitude of the population was during those last few months, particularly the population of the damaged areas.

Q Now Colonel Trummler, did you have occasion to personally witness a strafing attack on a non-military objective near Trier?

A I don't want to burden the court and waste its time once more with a discussion of these air raids but wish to state that many time during my inspections I myself have been fired on by airplanes but in this case the firing on me should not be considered terror flyers, but I did see also that they did shoot at civilian populations in many places and at various times. Because I wasn't in uniform, I was a civilian.

Q Do you recall Colonel Trummler, an attack on a train that you mentioned to me somewhere near Trier?

A I have already mentioned, near Hermeskiel. I went through that town quite frequently whenever I had to get to Trier and there I myself observed two or three times and was told by the population that a train carrying civilian populations, which arrived from Trier about two or three o'clock every day, was strafed daily and that civilians were wounded daily.

Q During your tour of duty in Wehrkreis XII, without going into detail, just in round numbers, can you tell the court approximately how many strafing attacks you saw yourself, that were against non-military objectives?

A Well, that was at least a hundred times. By that I also mean the firing at individual civilians. It was the main area through which planes flew into Germany and it was also a front line area.

Q I will ask you whether or not the execution of these flyers by shooting under the laws of Germany was considered honorable?

A The shooting of these flyers was on carrying out the order passed through from above and in my opinion, as a soldier and police official, the carrying out of a lawful order is not a dishonorable act.

Q I haven't made myself clear. I mean the method of execution. Was that method here in Germany honorable or not?

A We would have done it another way in peace time. This method was conditioned by the circumstances and conditioned by the order.

Q Colonel Trumpler, who was your immediate predecessor in Wiesbaden.

A That was Lieutenant Colonel Hiebens. He was not the commanding officer though. He merely carried on the business of the office from the time my comrade Scmann left until I took over.

MAJOR SAXON: That is all.

DEFENSE COUNSEL: Dr. Rau will cross examine on behalf of Stroop.

QUESTIONS BY DR. RAU:

Q If I remember correctly, you stated you were taken into the Waffen SS in the Fall of 1933?

A Yes.

Q As a Colonel of the Waffen SS?

A Yes.

Q From the outfit SS Training Battalion Konitz?

A Yes.

Q Where was this training battalion stationed?

A In Komits.

Q In 1943 also?

A Yes.

Q Was this training battalion an outfit of the Waffen SS?

A As far as I know, it was.

Q Was it not an outfit of the Security Service?

A I don't know about that.

Q Who was the commanding officer of that outfit?

A I didn't know him. It changed quite a few times.

Q Did you have any papers from that outfit?

A Yes.

Q What kind of papers?

A I had a service record, a paybook, from that outfit. Not only I but all personnel.

Q And who had signed that service record?

A The service records were sent to us from Komits. I think some Lieutenant Colonel signed them but I don't remember it exactly. They were filled out in our place then.

Q Do you mean to tell us that a full Colonel would be attached to a battalion that is normally commanded by a Major or sometimes a Lieutenant Colonel.

DEFENSE COUNSEL: I pray the Court's judgment. That has nothing to do with any testimony on direct examination.

PRESIDENT: Sustained.

QUESTIONS BY DR. RAU:

Q Was it not a fact that the SS Training Battalion Komits was organized in Komits in the Fall of 1944?

A If I, as a police Colonel, told you Dr. Rau that I, together with my whole personnel was attached to that Battalion and received proper papers from it in the Fall of 1943, that is enough for me and also, I believe, for this court. As to whether its name was changed later on, I don't know.

Q Are you familiar with the fact that I worked as defense counsel for the Waffen SS in Nuernberg?

DEFENSE COUNSEL: I pray the court's judgment. That is absolutely immaterial.

PRESIDENT: Sustained.

Q What was the purpose of the conferences of the commanding officers?

A These conferences would have several subjects of discussion, among others the activation of the so-called security lines, the organization of protective police outfits for combat, the questions whether the gauleiters or political officials should receive police powers, or the relationship to the Wehrmacht might be discussed. At any rate, all kinds of subjects with all kinds of significance were discussed.

Q Did these command conferences also serve to have the more important orders announced or discussed?

A Only in part. In general, only those subjects which directly affected Wehrkreis 12 would be discussed.

Q Would you consider an order to the effect that terror fliers should be shot in Wehrkreis 12 as such a subject?

A That would depend on who is participating in this particular command conference, and whether this order had to or was permitted to be handed down to all the men present at the conference.

Q Was it not required for such orders to be published at command conferences at which at least the commanding officer of the regular police was present?

A I don't know what you are after, Dr. Ham.

Q I can imagine that.

A I have to differentiate here between two flyer orders. One is the one that I received from my superior headquarters and the other order or the other orders are those which General Stroop issued either on his own initiative or upon orders from his higher headquarters.

Q I beg your pardon. I think you have been evading my question. The order of yours is a government measure, is it not?

A Yes.

Q Now, was it not necessary for such a government measure to be discussed at a command conference in the presence of the commanding officer of the regular police?

A On the contrary, the most important orders that I would receive from Berlin I had discussed with General Stroop alone after one of these command conferences, and, in fact, I always declined to discuss orders for the security police in the presence of a member of other branches. That was true not only concerning flyer matters, but also for instance in the case of the security line.

Q Who was present when you informed General Stroop of those orders that terror fliers were to be shot?

A About that I talked to General Stroop alone several times.

Q Why were you talking to him alone?

A That was an order from Dr. Kaltenbrunner to me.

Q How did this order from Dr. Kaltenbrunner read?

A Terror fliers are to be shot. And I have already testified as to what this concept of terror fliers is constituted in this case.

Q I think we have not been understanding each other. What I want to know is whether Kaltenbrunner also gave you the order to discuss this matter with General Stroop alone.

A It was not common practice for the chief of the security police to give instructions to his commanding officers as to the manner in which they are to discuss them or the

manner in which they are to transmit them.

Q Im that case, after these answers I will have to repeat my question. Why did you transmit this order to General Stroop when he was alone?

MAJOR SAXON: I object to that as repetition.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q To whom did you transmit that order?

A I transmitted it to the chiefs of the state police offices Trier, Koblenz, Saarbruecken, Neustadt, and Darmstadt.

Q Did you transmit it to Frankfurt also?

A I talked about it to Breder.

Q What did you talk about with Breder?

A That fliers are to be shot. Terror fliers, of course.

Q Did you just discuss that or did you give them a direct order?

DEFENSE COUNSEL: I think this is going far beyond the scope of the original examination. Breder is not an accused, and this is no way to attack the credibility of a witness.

DR. RAU: But Breder is one of General Stroop's subordinates, and therefore I think I have the right to clarify the matter as to which of General Stroop's subordinates this order was given to.

DR. BUERGER: I want to state here that it is not correct, and that General Stroop has denied here that the Sipo was under him. I further ask this question since Breder has

already testified here, in order to test the credibility of this witness.

PRESIDENT: Objection overruled.

MAJOR SAXON: I think the counsellor should change the form of his question and state what is a fact. We all know before this court that Breder was a subordinate of Trummler's, and not a subordinate of Stroop's. He should state his question and not in a back-handed method, as he is stating it, that he gave this order to Stroop, and now he is giving it to a subordinate of Stroop's. Both premises are wrong.

QUESTIONS BY DR. RAU:

Q Did you give Breder the order to shoot terror fliers?

MAJOR SAXON: I object to that as repetition.

PRESIDENT: Objection overruled.

THE WITNESS: As far as I know I did.

QUESTIONS BY DR. RAU:

Q Apparently you are not quite sure of that.

A I just said, as far as I know I did.

Q How come you are sure in the other cases and not sure in this case of Frankfurt?

A Because I have very little to do with Frankfurt, but on the other hand I was very much together with the other state police chief and we talked the matters over, because Frankfurt wasn't a war area, where Trier and Saarbruecken were war areas even at the time I arrived.

Q Was Darmstadt a war area, too?

A Became a war area very shortly thereafter.

Q Before Frankfurt or after Frankfurt?

A A long time before Frankfurt. That is obvious, because the enemy came from the West.

Q Aren't Frankfurt and Darmstadt just about the same distance from the frontier?

A The Rhine happens to be in between, and since the enemy was coming from the West he had to hit Darmstadt first. Then he had to cross the Rhine and then the Main, and then he had Frankfurt on the Main.

Q Now, after this shooting of the fliers took place, did you report that to Berlin?

A Yes.

Q What did you report to Berlin?

A I made this report by radio and also through conversations with the chief of office No. 1, Aldinger.

Q One further question concerning the transmittal of those orders: When and by what means did you transmit those orders to the particular offices?

A That happened approximately through the months of September down to the end of October. The reason for that was that as I spent the first few days in Wiesbaden there organizing the new staff, and only later went down to the various state police and criminal police offices. So that I assume that the last offices to receive these orders received them about October.

Q So, if I understand you correctly, you transmitted these orders verbally?

A I gave this order to the chiefs of the offices verbally, that's right.

Q And you did that by driving out to the various chiefs of the offices yourself?

A As I said, I drove out to him, but there is a possibility that to some of them I gave this order by telephone beforehand. That is possible.

Q And for that reason it took you about a month to get this order down to the last headquarters--last office?

A About a month, because I had a very big area geographically.

Q And the shooting of terror fliers was an urgent and important matter at that time, was it not?

A It was so urgent that it could wait until I personally took the orders to the chiefs of offices.

Q Was it not common practice for you to transmit important orders to your men--urgent orders--by calling the chiefs of offices over to your headquarters and you informing them there?

A All the time that I was commanding officer, security police, in Rhein-Westmark, I did not have a single official conference where all the chiefs of offices were present. On the contrary, I tried to avoid to take the chiefs of the offices away from there headquarters in these difficult times. I called some of the office chiefs in severally, but I had no joint conference.

Q When you told General Stroop for the first time that you had received this order to shoot terror fliers from Berlin, what did General Stroop reply?

A I don't remember the exact words anymore, but one thing is for sure--that he agreed to it thoroughly.

Q Besides General Stroop, did you report to any other members of his staff that you had received such an order from Berlin?

A I had no occasion for doing that. The security police--it was a general security regulation that you wouldn't talk to anybody about a matter except the men who had to know about it, and I didn't carry on any lobbying in the adjutant's room either.

Q Why did General Stroop have to know about this order?

A Because it so happened that he was my higher SS and police leader.

Q Did he personally have anything to do with the shooting of those fliers?

A In many conferences he told me personally that it was his desire that these fliers were shot, so I guess he did have something to do with it.

MR. RACHAEL: I respectfully submit that the witness used the word "terror flieger". The word "terror" should be used in the translation.

PRESIDENT: Will you read the answer?

(Whereupon the last answer was read by the reporter.)

PRESIDENT: Ask the witness if he used the words "terror fliers".

THE WITNESS: Terror fliers. Always terror fliers. I never received any order to shoot all fliers.

(Trummler - Direct)

Q Now, the first time you received such a terror flyer--as you call them--and you were told if he was such a terror flyer, did you inform General Stroop?

A I do think I did, and I am sure of it in the second case. In the case of the first one I don't want to say it definitely--positively.

Q How about the third case?

A I am sure I reported this one to him, too.

Q And the fourth case?

A I couldn't report it because I didn't have a report myself.

Q Why did you not report the first case?

A I don't remember anymore why I didn't.

Q In all these cases did you also report the carrying out of the shooting?

A I know that I reported to him the presence of a terror flier, and the shooting of a terror flyer in the second case. The witness to that is sitting over there. I am also quite sure that I reported to him in case number 6, and in case number 10 I wasn't able to report it to him because I didn't have a report myself. I explained this to the court before.

Q So, if I understand you correctly, you reported the fact that the flyer was in your custody, together with the fact that he had already been shot. Is that right?

A That's not right.

Q What is right?

A In the second case I know that I reported it before he was shot.

Q Did you not say a few minutes ago that you reported at the same time that the flyer had gotten in your custody and that he had been shot?

A I didn't do that.

MAJOR SAXON: If it please the court, I would like to object to this line of questioning. Apparently counsel is intentionally trying to confuse this witness with a misstatement of what he said and what you said. If he is going to do that I am going to ask that he have it read from the record so that he can know what he said and what he did not say.

PRESIDENT: Objection sustained.

DR. RAU: I am not trying to do that. I would like to object to this insinuation. I am trying to conduct the examination according to the best of my recollection.

QUESTIONS BY DR. RAU:

Q Why did you not report the carrying out of the order in the other cases?

A I explained to you already that in case number 1, that is charge 4 over here, I am not sure whether I reported it, or let's say I did not report it. Charge number 5, that is the case of the 30th of December, 1944, and in that case I reported the presence of the flier, and later on the carrying out of the order. In case number 6 I am also sure that I reported the fact that there was a flyer present in Darmstadt, or rather in Bensheim, and that the flyer would be shot. And in case number 10 I was in no position to make any report. I didn't get a report of charge 10.

I have no interest here of charging untruthfully acts to a German general which will cause him to be severely punished, nor am I interested in seeing a German general forgetting about things two years after the war which he required of us during that time, namely, discipline, comradeship. I regret to have been forced to make this explanation here.

Q Do you know the situation that General Stroop is in?

A I know that just as well as I know the situation I am in and the situation the other comrades are in.

Q Do you then, in view of the developments that are possible for him in the future, think that he has any interest at all in saying anything but the pure truth here?

MR. RACHAEL: The defense objects to that question.

PRESIDENT: On what grounds?

MR. RACHAEL: On the general ground that it is improper.

PRESIDENT: Will you read the question, please?

(Whereupon the last question was read by the reporter.)

MR. RACHAEL: Objection withdrawn.

(Trummler - Direct)

Q In view of what the fulness of General Stroop is likely to be, in view of the fact that you are familiar with what is probably going to be, do you think the General Stroop has the very slightest interest even in not saying the truth?

A I would like to answer that as follows. I have no interest in it whatsoever, to cause the higher punishment to be meted out in a German General, an old national socialist, but I am interested and I want to be interested in everybody standing up for what he confessed at one time. Perhaps it might also have been quite easy for me to talk my way out of a few things by not remembering them.

Q Didn't you say that when you came to General Stroop you had a precise order from Berlin already?

A Yes, I had one of those.

Q Did this order have anything to say about the details or the carrying out of the orders, that is the carrying out of the shootings.

A Yes. Dr. Kaltenbrunner had told me that the execution orders, the shootings, is not to take place in public and I have already commented the reasons for that.

Q Did he say in what part the shootings would take place?

A I would probably be difficult for the chiefs of the Security Police in Berlin to say in what spots of Wehrkreis 12 such a measure was to be carried out.

Q What I mean is did he tell you whether it was supposed to be done in the jail, on the road, on the way or what?

A The shooting is to take place secretly. The details are left up to us and would be determined by individual conditions prevailing.

Q Did you personally determine the details of the shootings that actually took place?

(Translator-redirect)

A I did not order these details. I had to leave this up to those men who had to carry out this very difficult mission and furthermore it would have been simply technically impossible to tell Major Girke by telephone from Wiesbaden even where he was supposed to shoot that flyer.

Q Now about these cases of Charge 4 and 5 which took place in Wiesbaden proper, unless I am mistaken?

A I gave the order to shoot on account of the higher order and I said the shooting was to take place on the way to Frankfurt on the Main. The details I did not order.

Q You said that Girke called you up one day and told you he had a flyer in custody?

MR. MACNAIL: If it please the court, I object to all this line of questioning and cross examination. I have been waiting patiently for counsel for General Stroop to get to the part where General Stroop is involved. He has been cross examining the witness on matters which took place outside of what General Stroop may have had any interest in. He is now seeking to cross examine on something which happened in Rossbach, which as far as I know, General Stroop knew nothing about. How he is attempting to attack the credibility of this witness on behalf of General Stroop is beyond me. I respectfully submit that the counsel should be instructed to cross examine only on the matters in which General Stroop is personally interested.

DR. RAU: I would like to point out that General Stroop is mentioned as one of the accused in charges 4, 5, 6 and 10 as well and therefore I think I have a right to put those questions to the witness.

PRESIDENT: Objection overruled. Try and conduct your questioning so that we can cut down the time.

QUESTIONED BY DR. RAU:

Q Why do you think that Girke called you up one more time in view of the fact that he one order to sh ot already?

(Translator's addition)

DR. BERGER: I would like to object to this question since the question requires the knowledge of a mental process of Hitler which you can't expect this accused to have knowledge of.

DR. RAU: I would like to add, 'If you know.'

PRESIDENT: Objection overruled.

THE WITNESS: It has already been established here that other matters besides the shooting of the flyer were discussed in this conversation and, by the way, I would not consider it unusual for the chief of some office to call up one more time on such a matter. It is just the same as if in combat the battalion and company commanders have their orders for the emigency of combat but if the attack actually takes place it is still possible for one of the company commanders to call up the battalion commander.

QUESTIONS BY DR. RAU:

Q During the whole investigation did you also insist on the fact that you had received an order from General Stroop to shoot "Terror Flyers"?

A I always had that opinion, yes.

Q In that case it is not a fact that you just thought that up shortly before the trial?

A No.

Q How about your further statement that you received such an order from Berlin?

A What do you mean by that?

Q Hasn't it always been your point of view throughout your custody, your time in custody?

A I had my orders from Berlin.

Q Answer my question please. During all the time of your captivity did you maintain such an order from Berlin?

A I did.

Q Always?

A Always.

DR. RAU: That is all.

MAJOR SATOW: Your witness.

pl-#23-b

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANES:

Q Dr. Tramler, when did the so-called "Terror Flyers" begin to appear over Wahstreda 12?

A The first case?

Q Yes.

A That, I think, was in October on the 19th.

Q 19th?

A Yes.

Q If that is a fact, what was the occasion to have you talking to Kaltenbrunner about that in September 1944?

A It is common practice when a person of the Security Police receives a job, the job in the rank of commanding officer, that the chief of the Security Police and the chiefs of the various offices give this man precise instructions.

MAJOR SAXON: Would the court pardon me and the prosecution also. I can see, and I know you understand Captain, that he didn't understand your question. He thinks the first case means the first case in which he was involved and you are talking about when "Terror Flyers" are supposed to have first come over Wahstreda 12.

Q Maybe you misunderstood the first question I asked you. My question was; When did the so-called terror flyers begin to pester you up there in the 12th Wahstreda.

A They didn't pester me any because I just got there on the 20th of September and I didn't know about conditions there before hand.

Q So you don't know whether there were any there before you arrived or not?

A I assumed there were some there.

Q Colonel, you said that when you were ordered away from your school

(Tramler-cross)

pls-23-5

that yo. and your staff were taken into the Waffen SS, is that right?

A He had already been taken over.

Q Did you get into the Waffen SS after you left the school?

A I had been taken in before that already, while I was still in school in Furstenberg with my assigned cadre--not with the students.

Q You don't mean to lead this court into believing that the whole security police system of Germany was taken into the Waffen SS, do you?

A I cannot claim that here. I would merely like to state that my assigned cadre and myself were in the Waffen SS in Furstenberg and also that to my knowledge of it all my command in my area of command of Sonderstab 12 were in the Waffen SS. There is, however, the possibility that some outfits might have lagged behind. I can't say that for sure, but in January, 1945 the chief of the Reich Main Security Office Number Two, Colonel Ehlin, visited me in Wiesbaden in my office and we happened to be talking about that matter there. That was for the reason that an order existed from Dr. Kaltenbrunner to the effect that all SS men of the Security Police who were fit for front line duty and these offices had fallen into the hands of the enemy were to be collected into units and sent to the front.

Q Dr. Trumbler, I just want to see if I understand you. You say that all of your Security Police were members of the Waffen SS, is that right?

A As far as I know they were.

Q You said on direct examination that the set up was that in case of necessity you should make all of your security police available to the Wehrmacht. Did you say that?

A Just now?

Q If they were already in the Wehrmacht how could you make them available?

A From the organisational standpoint we belonged to the Wehrmacht but in our office set up, our course of business, we were still working as security police.

(Trumbler-cross)

Now this order of Dr. Kaltenbrunner's that I just mentioned said that all of the SS men from the Security Police who were fit for front line duty and who had been attached to offices in Germany which had been captured by the enemy due to his advance were to be organized into units and these units were to be attached to the army. Maybe that is a more comprehensible statement--were to be attached to the army.

Q When did this take place?

A These orders?

Q Yes, when?

A They arrived about November or December, 1944 and they kept coming in. They were coming all the time.

Q Dr. Trummler, you heard Girke and Hellenbreich talk about Geneva being notified in 1943 about everyone in the police being taken into the German Army. Did they know what they were talking about?

A That is entirely possible.

Q What do you think about it?

A I consider it entirely possible.

Q By possible you mean that you don't know, is that right?

A No. I do consider it entirely possible that that was reported to Geneva, but I don't want to state a fact before this court unless I have positive knowledge of it.

PRESIDENT: The court will recess until Monday morning at 9:00.

(Thereupon the court recessed.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary / *Intermediate Military Court to be held / *General

Die Verhandlung wird vor dem *Einfachen / *Mittleren Militärgerichte / *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden. By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

Count 31

Pages 2202 - 2265

Case No. Superior Orders

Prosecutor Lt Col Dwinell

~~Summary~~
*~~Intermediate~~ Military Court.
*General

Defence Counsel Lt Col Herman Rudolph Nathanson

Place Dachau, Germany

Interpreter: Herbert B Rosenstock

Date 10 March 194 7

Reporters: Imogene Butler, Evelyn Cohen, Paula Silverman, Peter L DiCurti, John D MacDonald, Pvt William F Jones

~~Members of Court~~:

WITNESSES

~~HANS THUMLER~~
~~JOHANN KORNE~~
~~OTTO SCHMIDT~~
~~REINHARDT BIEDER~~

Accused JURGEN STROOP, et al.

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning 194
- Fine
  - Amount .....
  - To be paid before 194
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

10 MARCH 1947 Pages 2202 - 2265

TESTIMONY

	Direct	Cross	Redirect	Recross	Court
HANS TRUDSLER	2202		2231 2232		2231
JOHANN ZOLLNER	2234	2235	2236 2237		2236 2237
OTTO SCHAHN	2244				
REINHARDT HEINRICH			2259	2263	2263

EXHIBITS

NONE

CAMP DACHAU, GERMANY

10 MARCH 1947

MORNING SESSION

(Whereupon the Court reconvened at 0900 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court, all members of the Prosecution, all the members of the Defense, all of the accused, the reporter and interpreter are present.

DEFENSE COUNSEL: At the end of the last session, may it please the Court, the accused Trumpler was under cross examination by the Prosecution.

PRESIDENT: You are reminded you are still under oath.

ACCUSED TRUMPLER: All right.

HANS TRUMPLER, an accused, voluntarily resumed the stand in his own behalf, and being reminded that he was still under oath, testified further through an interpreter as follows:

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Dr. Trumpler, I believe at the last session of this Court you had just finished testifying that on 18 September 1944 you were in a conference with Dr. Kaltenbrunner and had received the order that all terror flyers were to be shot, is that correct?

A Yes, on 18 September 1944 in Berlin.

Q At that time had you ever been in the Rhine-Westmark area?

A I had not been in this area before that.

Q So at that time you didn't know what the situation

was down in the Rhine-Westmark area, is that correct?

A I had heard about it on the radio and read about it very often in the official Army reports.

Q But you had no personal knowledge?

A No.

Q Now, Dr. Trumpler, I believe you said on direct examination that while you were the Commanding Officer of this police school that the subjects of criminal law and international law were taught at your school, is that correct?

A Yes.

Q Did you teach either of those subjects?

A No.

Q Dr. Trumpler, I believe you described your educational background, and you are a highly educated man, aren't you?

A I think so.

Q Now you knew that this order which Kaltenbrunner passed to you was unlawful and you told Dr. Kaltenbrunner in your opinion it was unlawful, didn't you?

A I have already made my statement here. When Dr. Kaltenbrunner gave me that order I dared to suggest that this order might possibly entail difficulties in international law; but, since Dr. Kaltenbrunner, in a very sharp tone of voice replied, "That isn't any of your business. We have already examined and decided this business," I kept silent for the following reasons. I was familiar with the fact that Kaltenbrunner belonged to the circle of very closest advisors of the Fuehrer, among which we also counted persons like Himmler, Ribbentrop, Bormann and others.

Q Hermann Goering also?

A Of course.

(Trumpler-Cross)

Q My question to you, though, Dr. Trummler, is, what is your opinion as an educated man as to the legality of that order?

A I am not through with my statement yet.

Q I don't believe you answered my question, though, that I asked. I asked for your opinion--not someone else's.

A That's a misunderstanding, Captain. When Dr. Kaltenbrunner says to me "we", and that means the Reichs Government; and, in the second place, I also know that when Dr. Kaltenbrunner said "we" it meant the Fuehrer, because I was familiar with the fact that Kaltenbrunner, as well as Himmler, had the authority to bring his problems to the Fuehrer directly, and he made use of this personal conference with the Fuehrer continuously. I have no chance as a Colonel to check measures of the Reichs Government for their legality and correctness--all of this in view of the fact that the air raids of the allies at that time increased greatly and that the effects of those air raids increased similarly.

Q Dr. Trummler, I am going to repeat my question. You probably didn't understand it. I want to know what was your opinion as to the legality of this order.

A My opinion was that in consideration of conditions that order was to be considered an absolutely legal one, particularly since the extent of air warfare and of warfare in general had exceeded the normal limits as it was conducted on both sides.

Q Dr., I--

A Those, for the first time, were the results of a total war.

Q Dr. Trumpler, what was your opinion as to the legality of this order--in your opinion was it legal or not legal?

MR. RACHAEL: If the Court please, the Defense believes that this question has already been answered. The witness answered it in his previous answer as to his own personal opinion.

PRESIDENT: Would you please read the answer.

(Thereupon the answer was read by the reporter.)

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q You just answered that it was your opinion that these orders should be considered as legal. Now I want to ask you what is your own personal opinion? Were the orders in your mind legal or not legal?

DEFENSE COUNSEL: I pray the Court's judgment.

WITNESS: Yes.

QUESTIONS BY CAPTAIN VANCE:

Q Now, Dr. Trumpler, you said in direct examination that if you had failed or refused to obey these orders, you would have lost your life. Is that correct?

A I am quite sure of that.

Q Now, was it your fear of losing your life that caused you to carry these orders into execution, or was it because you thought you were serving your country by doing so?

A Since I had accepted this order as a legal one, it was my duty as a police official to do everything in its execution which would serve my people.

Q Why did you mention the fact that you would lose your life if you failed to carry it out?

A I had to give a reason as to what would happen to me if I failed to carry it out.

Q But you had no desire to fail to carry it out, did you?

A I was asked here on cross examination what would have happened to me had I failed to carry it out. Upon that, I said I would certainly have been shot.

Q I believe you said when you reported to Rhine-Westmark you had approximately 6,200 people. Is that correct?

A Including, however, the entire auxiliary forces and the duty border protective service. This duty protective service contained at that time about 1700 men.

Q Do you remember General Stroop's testifying about 10,000 Order Police in the Rhine-Westmark area?

A Yes.

Q So there were roughly approximately 16,000 or more police officials in Rhine-Westmark, is that correct?

A There is a distinction we make between executive officials and auxiliary forces. Now these 10,000 regular policemen which General Stroop mentioned I am sure were executive officials, and if I take my executive officials only then I won't get up to about 3500, either, including the duty protective service.

Dr. Trummler, do you know whether or not all of the police system, I mean the Security Police and the Order Police, had the same orders to execute these terror flyers?

A I have no way of knowing that because the channels of command of the Security Police and Regular Police were entirely separate.

Q Isn't it true that you got information copies

of orders to the Order Police and vice-versa--that they received copies of orders to the Security Police?

A I don't know of any such thing. Of course, I did have frequent conversations with my comrade, Colonel Niemann, the Commanding Officer of the regular police; but I don't know of any official exchange of orders of these two police sections which came from above.

Q Colonel Trumpler, I believe you said you received the order first from Dr. Kaltenbrunner and later you received the same order from General Stroop, is that correct?

A I said that I received the order from General Kaltenbrunner; and, in the course of my later conversation with General Stroop I again received the order; however, not concerning the individual cases.

Q Now, did you ever receive any orders to execute these terror flyers from any other source except those two?

A There were no other sources who were in a position to give me orders.

Q I believe you reported to Wiesbaden to take command of the Security Police about the 20th of September, 1943, is that correct?

A Yes.

Q And I believe that shortly after your arrival you reported to General Stroop, is that correct?

A That might have been about the 22rd or 24th of September. I couldn't get there earlier because General Stroop was on a trip.

Q What was your occasion to get to General Stroop?

DEFENSE COUNSEL: May I interpose. I object--I think the witness said "dienst reise", which means, I believe

"official twip".

INTERPRETER: That's what I said.

DEFENSE COUNSEL: I only heard the word "twip".

PRESIDENT: Would you please read the answer.

(Thereupon the reporter read the answer.)

INTERPRETER: It does, and I corrected myself. I am sorry if the reporter did not get the correction--it's the official translation.

PRESIDENT: Proceed.

QUESTIONS BY CAPTAIN VANCE:

Q Why did you report to General Stroop?

A General Stroop was the Higher SS and Police Leader of [redacted].

Q Was he your superior officer?

A Yes, but he was responsible for the whole entire SS and Police in his area of command.

Q Do you know whether or not General Stroop was Commanding Officer of Colonel Scmaun?

A My comrade Scmaun was Inspector, and his official relationship to General Stroop was a different one from mine.

DEFENSE COUNSEL: I am sorry, and I apologize if I am wrong, but I think he said "befehlshaber"; so the translation, may it please the Court, should have been "his relationship as Inspector was different from mine as commander"--that's important to us. If I am wrong, I apologize. I don't think I am.

PRESIDENT: Ask the witness if he said "from mine as commander."

WITNESS: Yes, as commander.

(Translator-Cross)

PRESIDENT: Watch your translations.

INTERPRETER: Yes, sir.

WITNESS: (Whereupon the witness spoke in German, and the remarks were not translated.)

CAPTAIN VANCE: I object to that and move that it not be translated. I haven't propounded a question and don't know what the witness is saying.

DEFENSE COUNSEL: I ask that it be translated so that the Court might then better decide.

PRESIDENT: Is he still answering the same question?

WITNESS: Yes.

PRESIDENT: I ask that it be translated.

WITNESS: Furthermore, at the time I took command, the enemy had already set foot on the German Reich area, and the area Rhine-Westmark had been declared to be an emergency area.

DEFENSE COUNSEL: Does your motion to strike still stand?

CAPTAIN VANCE: I will withdraw it.

QUESTIONS BY CAPTAIN VANCE:

Q Now, Dr. Trumpler, after you reported to General Streop as your Commanding Officer, he ordered a conference in his office at least once a week from then on out until the end of the war, did he not?

A Almost every week there would be a conference.

Q Who attended these conferences besides yourself and General Streop?

A Usually Colonel Schimana, Colonel Niemann, Captain Guenther, sometimes also General Hermann; and at times also other technical advisers to his staff.

Q What about the Commanding Officer of the Order Police? Was he present at these conferences?

A Yes.

Q That would be General Mills or either Colonel Niemann?

A General Mills was no longer on duty when I came there. The only conferences I participated in were those where Colonel Niemann was present.

Q Now, Dr. Trummler, what did you personally think about the execution of the orders which you had received from General Stroop and Dr. Kaltenbrunner?

DEFENSE COUNSEL: I was going to object to that, may it please the Court. That's the same question in another form which was objected to successfully on the ground that it's repetitious.

CAPTAIN VANCE: No, sir, the first question was on his opinion of the legality of the orders.

PRESIDENT: The objection is overruled.

WITNESS: I mentioned before already that I considered these orders as legal ones.

QUESTIONS BY CAPTAIN VANCE:

Q I asked you about carrying these orders into execution. What did you think about that?

A I don't understand the question.

Q You have testified that you received orders that terror flyers would be executed and you have already said that you considered that a legal order. Now, I want to know what you thought about it personally, as to the

execution of these orders--whether they were good, bad, or just what you did think?

DEFENSE COUNSEL: I pray the Court's judgment. That's a difficult and ambiguous question--whether he thought the execution was good, bad or indifferent. Does he mean by that, legally carried out all the executions, bungled or what?

PRESIDENT: Do you wish to rephrase the question?

CAPTAIN VANCE: No, sir, not unless the Court directs me.

PRESIDENT: Objection is sustained.

QUESTIONS BY CAPTAIN VANCE:

Q Did you consider the execution of these orders to be proper warfare?

A The shooting orders were carried out in the manner in which I ordered them, and I take the responsibility for that.

Q Did you have any hesitation to order the execution of these orders?

A No, the order was a legal one; I had no chance to hesitate.

Q Did you have any desire to not carry out these orders?

A As a soldier you don't have any desires.

Q Now, I will ask you the same thing about General Stroop. Was his mind on the matter the same as yours, or was it different, if you know?

DR. RAU: I object.

WITNESS: I think so.

QUESTIONS BY CAPTAIN VANCE:

Ta 296 BC 1

Q Colonel Trumpler, you have already told the court what a terror flier was. There is no need to repeat that again. I will ask you some questions about terror fliers.

A All right.

Q Now, those planes the terror fliers flew were very fast and low flying planes, weren't they?

A In this case, the captain is by passing my explanation. The concept of terror flier is not dependent on the type of plane used by that flier, rather it depends upon the method in which this flier would fight. Take for instance a heavy bomber with a crew of eleven men, which the Americans used against the Germans, if such a heavy bomber bombs a hospital, he is a terror flier, but if he bombs a troop area he is not a terror flier and if a fighter plane shoots at me he is not a terror flier, that is at a civilian train, a train carrying civilian refugees, he is not a terror flier.

Q I understand that, Dr. Trumpler, you explained perfectly. A flier who comes down and strafes civilians would have to come down fast and strafe civilians, would he not?

A If it is low flying aircraft, he can carry out that mission only with a fast plane.

Q And as he carries out that mission, only you can see that plane?

A Well, captain, usually an airplane flies above the ground so he is visible to hundreds of thousands of people.

Q You cannot see the pilot sitting in the plane, can you, Colonel?

A Well, if it happened he flew so low you could see him and he was seen, but of course, I was unable to recognize him.

Q That is what I mean. No one could recognize him?

A That's right. And when a high flying bomber bombed a non-military objective, you couldn't see these fliers.

Q That's clear and you know in one of these low flying fast planes it is impossible to bail out from the plane?

A I can't pass judgement on that; I don't have any technical knowledge of that.

Q Will you tell the court how you can determine whether a flier bombed a non-military objective or some civilians.

A Let's take an example. I am riding on a country road in the Rhein-Westmark district and there are hundreds of vehicles containing civilians moving along that road. They are on their way eastwards on account of evacuation of the area, or being bombed out into the interior, so a low flying plane comes along and strafes the roads and in the course of doing so, hits a large number of civilian women and children, so this flier is fired at by a flak battery located in the vicinity, so he gains altitude, however the plane has been hit by anti-aircraft, and at an altitude of eight thousand or ten thousand meters the plane starts wobbling and the pilot gets out. Now, there are hundreds of people there, hundreds of persons there and again, already hundreds of people who saw the shooting of flak at the airplane, and there are also hundreds of them who saw the parachuting of the flier out of the plane and since at this instance there is only one flier who jumps out of this airplane, he must be the flier who strafed the population and it is quite clear that the population who saw that did their very best to take the flier into custody.

Q All right, if you heard the testimony of these cases we have been trying -- for instance, Hollenbreich never did go out and get a witness that he saw the flier come down.

A Now, Captain, this flier was turned over to Hollenbreich with a proper report from the rural police and there is no question about the fact that the rural police was a competent organization.

Q Now, to get back to the rural police. They must have had

orders to bring the fliers to the Gestapo. [illegible] terror fliers [illegible]

A [illegible] I am sure they did. [illegible]

Q Dr. Trumler, you knew of these dead flying planes, you have seen strafing, you knew if one of these planes were shot down, it would land fifty miles away, wouldn't it? [illegible] I think this number of fifty kilometers seems rather large.

Q You never did see a man bail out of an American fighter plane, did you? [illegible]

A I have seen it frequently.

Q You have heard witnesses testify about four motor bombers, where they bailed out, and parachuted. You remember that? I would certainly [illegible]

A Yes. [illegible]

Q Now, they wouldn't be shooting in those big planes, would they? [illegible]

A No, but bombing at non-military objectives - I gave the explanation concerning that already. [illegible] It is far beyond the [illegible] Dr. Trumler, you don't seem to say a bombing plane would bomb an objective and then stay around and try to gain altitude, would you?

A Well, I don't understand. A bomber would drop his eggs and get away. The question is where he would drop his eggs. If he would drop them at civilian objectives, he is a terror flier and if he would drop them at military objectives, he is not and if he happens to hit a few civilian objectives while laying his eggs, he is not a terror flier either. [illegible] into their own [illegible], you cannot evaluate this war by my [illegible]

Q Don't you know every captured flier was labeled a terror flier?

A Both by me and not by my orders. [illegible]

Q You are talking about yourself personally. You don't know about the other people. [illegible]

A Which other people. [illegible]

Q The Generals. [illegible]

A As long as they were following my orders, they were shooting terror fliers. [illegible]

Q But you don't know whether they were terror fliers or not.

A That is, acting on orders by me.

Q Dr. Pfannler, what is the total number of terror fliers executed in the Rhein-Westmark area?

A I don't know. The cases I am talking about are the ones I know about.

Q So, if you don't know about these executions taking place, you don't know whether they were carried out by your orders or not.

A These four cases here?

Q All cases.

A I don't know. I don't know of any other cases. I would certainly stand up for my orders and take the blame for these men.

Q Dr. Pfannler, would you be surprised to hear that more than four hundred were executed?

DEFENSE COUNSEL: I pray the court's judgment. It is far beyond the purview of cross examination and far beyond any issues germane to this trial.

ACCUSED PFANNLER: I would like to answer it anyway.

PRESIDENT: Objection overruled.

A Captain, this is the first time I hear about this number and I would like to say the following, that since not only the security police and other organizations did the shootings, the civilian population took matters into their own hands, you cannot conclude this was by my orders.

Q I believe you said you witnessed at least one hundred strafings in the Rhein-Westmark area when it was a front line area?

A Yes, I am sure that number is correct.

Q Let me ask you, are women and children supposed to be in a front line area, or moved back?

A In that case the question is how far back you consider an area a front line area.

Q You are the one who said it was a front line area. [illegible] sure the Reich [illegible]

A The front zone area in a modern war extends to at least thirty, forty or fifty kilometers from the front and it would have been entirely impossible to have the whole population evacuated at the same time the enemy set foot on German territory. [illegible] which they could stop the fliers coming.

Q To those executions of terror fliers, those fliers were not executed in an honorable manner, were they? [illegible] I am sure he did think the law [illegible]

A They were shot. [illegible] strafing of civilian objectives.

Q Were they shot in an honorable manner? [illegible] were scores every day.

A Shooting is always honorable and they were buried afterwards.

Q Tell the Court how a German soldier would be executed if he were sentenced to death. [illegible] special orders were kept secret in Germany.

A That depends on the case. [illegible] rather not to say anything about [illegible]

Q You would take him before a firing squad and he would know what was going to happen to him? [illegible] and by the way, anything in this world about [illegible] those two people I mentioned about.

A Yes.

Q You wouldn't take a German soldier in the dead of night in an automobile and shoot him in the back, would you?

A This order of Dr. Kaltenbrunner's expressly stated that no official executions would take place. [illegible] you had to have these reports. Q Do you agree these American fliers were not executed in an honorable manner, do you not? [illegible] I will instruct how to make a report.

A I have no comment to make to this. [illegible] make a report.

Q Dr. Thomas, what did you, Dr. Kaltenbrunner and all the German people expect to accomplish by killing a few members of the American army?

A Captain, you just told a while ago there were four hundred.

Q Four hundred out of a million is a few, isn't it? [illegible]

A One million fliers? [illegible] and now the [illegible] are about [illegible]

Q Yes? [illegible]

Tr. 2955-67

A A deterring example was to be set by this and I am sure the Reich government would have gone and stop further and ordered official executions, but that wasn't my worry as a little colonel, that was up to the men who were to lead the German people.

Q Did Kaltenbrunner and his bunch think they could stop the fliers coming to Germany by that treatment?

A I am sure he didn't think that, but I am sure he did think the low flying attack would stop and strafing of civilian objectives.

Q You have said in your opinion these orders were secret orders. Why were they kept as secret?

A I cannot answer that question. Those were orders. A very large number of legal orders were kept secret in Germany.

Q Did you tell Prauscht and Fuchr not to say anything about shooting to hide, and I further want to explain to you at the time I issued

A I don't remember that and by the way, anything in this world about which more than two people know is talked about.

Q If these orders were legal, why did they fake all the reports and say these people tried to escape?

A I have already said those were the orders we had.

Q Dr. Kaltenbrunner didn't tell you that you had to have these reports made out, did he?

A It isn't common practice to tell a colonel how to write a report.

Q Did you tell your subordinates how to make a report?

A In individual cases.

Q Why did you have to fake them to show the fliers tried to escape.

A I don't know the point of the Captain in asking that question. This report that was sent to me was put aside or rather, destroyed.

Q Why did you have them fake the reports and show the fliers were shot trying to escape?

A I have already told you that was the order we had, furthermore that doesn't change the fact fliers tried to escape, word of the office of [illegible]

Q Dr. Trummler, you said you gave the orders. You must have had some reason. [illegible] re said the other two were buried in the [illegible]

A I transmitted the orders.

Q Dr. Trummler, I will tellyou the reason. You know if the Germans lost the war, the Americans would investigate these killings and you wanted it to look like the fliers were shot trying to escape, did you not?

A Captain, if we as security police, and I want to emphasize security police, would have found some way of getting rid of these fliers in a way there wouldn't have been a trace of them, and if in these two cases of Fuchr and Freundt, these men after the execution of orders ordered by us were buried, that is certain proof there was nothing we wanted to hide, and I further want to assure you at the time I issued those orders I never thought of the fact I would be before an American military court; all the thought I had in my mind at that time was with my country.

Q If you thought at a future date you would be before an American military court, you never would have issued that order?

A That order was a legal one and I would stand up for it just as much as now.

Q Dr. Trummler, they tried to hide these graves, and didn't mark them, didn't they?

A I didn't issue orders for that.

Q That was done by the German police force?

A I don't think so.

Q You have heard the testimony before this court where the bodies were hidden in the woods?

DEFENSE COUNSEL: I object.

PRESIDENT: Objection overruled.

A\ As far as I know of those five fliers who were shot, three were buried in cemeteries and two of them in the back yard of the offices of Bensheim.

DEFENSE COUNSEL: I think he said the other two were buried in the garden.

INTERPRETER ROSENSTOCK: Back yard or garden.

PRESIDENT: Strike what you have. Three buried in the cemetery and two in the garden back of the offices,

PROSECUTION: The prosecution agrees that is what he said.

PRESIDENT: Court will recess until 1330 this afternoon.

(Whereupon at 1000 hours the court recessed until 1330 hours.)

(Trumbler-cross)

By Captain Payne:

Q Mr. Trumbler, this morning [illegible] why you [illegible] and you told me that it took you a half hours to [illegible] Can you answer it now?

A It was Mr. [illegible] order that the whole matter should be kept secret in a court in order, [illegible] already testified that the [illegible] order, [illegible] or reserve personnel to not [illegible]

Q Well, now, you [illegible]

A [illegible]

Q You never [illegible]

(Trumbler-cross)

Q No, I asked you if you read that these reports show that a flier [illegible] that wasn't true?

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and record-interpreter, are present. [illegible] received from higher authority. I didn't hear [illegible]

DEFENSE COUNSEL: At the end of the last session the accused, Trummler, was on the stand being cross examined by the prosecution's duties. PRESIDENT: You are reminded you are still under oath.

HANS TRUMMLER, an accused, voluntarily resumed the stand and after being reminded he was still under oath, testified through an interpreter as follows:

CROSS EXAMINATION (continued)

QUESTIONS BY CAPTAIN YANCE: [illegible] can't remember this anymore. There was no specific [illegible]

Q Dr. Trummler, this morning I asked you this question -- why you ordered these reports to show the fliers were killed while attempting to escape and you didn't answer. You have had three and a half hours to think over that question. Can you answer it now? that moment that Kaltenbrunner [illegible]

A It was Dr. Kaltenbrunner's order that the whole matter should be kept secret to a certain degree. On Friday I already testified that the Reichsregierung probably decided not yet for publication in order not to excite the very excited or nervous population to acts of violence [illegible]

Q Well, now, your police records weren't open to inspection by the public of Germany, were they?

A My police records, that's an answer to my question. You don't want to know your records in the Police Department. They were not open for inspection by the civilian population, were they?

A You asked me why this kind of execution was chosen.

(Trummler-cross)

A I'd like to hear the question once more.

Q No, I asked you why you ordered that these reports show that a flier was killed while trying to escape when you knew that wasn't true?

A I ordered so.

Q I know but why did you do so?

A I said before it was to be kept secret to a certain degree. My order, Captain, was absolutely clear to shoot the fliers in accordance with the order which I had received from higher authority. I didn't hide anything before my men. That was a matter of course. I received my order and I transmitted my order in accordance with my duties.

Q I understand that, Doctor, but you told me this morning that you ordered that the reports show that the fliers were executed while trying to escape. I want to know why you instructed this.

A I have to say I can't remember this anymore. There was no special reason for it. My orders were clear,

Q Well, let me ask you if this wasn't the reason -- that you knew you were committing a crime and you wanted to cover it up!

A I testified here already several times that meant that Kaltenbrunner told me, on the 18th of September 1944 in the early hours of the afternoon, that was and with this he meant no doubt himself and the Reichs government, had investigated this matter and decided for me, on further consideration of the conditions in Germany and the extensive increase of the air attacks by the Allied air forces, this order was a legal one.

Q Well, Dr. Trumler, that's no answer to my question. You don't want to answer that question, do you?

A Yes, I'd like to answer it.

Q Can you answer it?

(Trumler-cross)

A I'd like to hear the question once more.

CAPTAIN VANCE: Let him have the question again.

(Thereupon the reporter read the question as follows:

"Q Well, let me ask you if this wasn't the reason -- that you knew you were committing a crime and you wanted to cover it up?")

THE WITNESS: The purpose of the statement which I just made was to show you that I didn't know that it was a crime.

QUESTIONS BY CAPTAIN VANCE:

Q Dr. Trummler, you talked to Dr. Kaltenbrunner about this order and you talked to General Stroop about it. To whom else did you talk about this order?

A Talked to or given the order to?

Q Given the order to.

A I gave the order to the State Police Headquarters at Koblenz, Trier, Neustadt, Saarbrucken, Frankfurt and Wiesbaden and, furthermore, I passed it down to the Criminal Police Headquarters at Koblenz and Trier and Saarbrucken.

Q I believe on direct examination you were asked if you had read and understood Charge 1 and you said that you did, that you had nothing to do with it, is that correct?

A I read it. I have had nothing to do with it. I did not commit any conspiracy.

Q As to Charge 2, you do belong to some of the organizations declared criminal by the Nuernberg court?

A Yes.

Q Now for Charge 3 -- do you know who was the next higher police official above Colonel Lasaak?

A The Higher SS and Police Leader.

(Trummler-cross)

A I'd like to hear the question once more.

CAPTAIN VANCE: Let him have the question again.

(Thereupon the reporter read the question as follows:

"Q Well, let me ask you if this wasn't the reason so that you knew you were committing a crime and you wanted to cover it up?")

THE WITNESS: The purpose of the statement which I just made was to show you that I didn't know that it was a crime.

QUESTIONS BY CAPTAIN VANCE:

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A I read it. I have had nothing to do with it. I did not commit any conspiracy.

Q As to Charge 2, you do belong to some of the organizations declared criminal by the Nuernberg court?

A Yes.

Q Now for Charge 3 -- do you know who was the next higher police official above Colonel Lasemann?

A The Higher SS and Police Leader.

(Trummler-cross)

Q And Colonel Lassak would receive his orders --

A I have to correct myself. To my knowledge it should be the Commander of the Order Police and afterwards then the Higher SS and Police Leader.

Q And would Colonel Lassak's orders and instructions come through that channel of command?

A It should have been that way but it is possible also direct orders were given. I can't decide that.

Q Now, on Charges 4 and 5 you admit that you gave the orders to Fuehr and Fraund to execute this flier, don't you?

A I transmitted to Fuehr and Fraundt Dr. Kaltenbrunner's orders and for this transmittal I take the full responsibility. These men could do nothing but carry out my orders. They had no chance to prove whether this order was legal and they had even still less a possibility to refuse this order.

Q Dr. Fremmler, you don't mean that you told Fuehr and Fraundt that Dr. Kaltenbrunner said for me to direct you to kill this flier, do you?

A That isn't necessary at all, as in the German language of command it is not customary that a superior officer who passes down an order first says that he received the order from a still higher authority.

Q So you just ordered Fraundt and Fuehr to take the flier out in the darkness and shoot him, is that right?

A I had ordered that these fliers would be shot because they were terror fliers.

Q Now, when they came back and reported to you that your order had been carried out, why did you call up General Streep to tell him about it?

A I said before, in the first case as far as I remember, I did not report to him. I don't want to claim that here before the court.

(Trummler-cross)

In the second case I made a report, I informed General Stroop, beforehand and, furthermore, I reported to him the carrying out. My adjutant, Captain Wiede, reported to him. Frantz and Fuehr are witnesses for the telephone call.

Q I know that but my question is, "Why did you report it to General Stroop?"

A I had from General Stroop, not for individual cases but in general, the same order to have terror fliers shot.

Q So you just wanted to let General Stroop know you were following his orders; is that correct?

A I wanted to let him know that a terror flier had been delivered at my office. That means at Gestapo Headquarters, and that he had been shot in accordance with Dr. Kaltenbrunner's orders and his orders.

Q Now, Dr. Trummler, one of these killings took place on the 10th of October 1944 and the other one on the 30th of December 1944. After which one of these killings was it that you passed out the box of cigars for a job well done?

A I'd like to state the following -- At the beginning of October 1944, through SS Lt. Colonel Wiebens who can come here as a witness immediately because he's in camp, I received 10,000 cigars. That means 200 boxes of cigars. I distributed these cigars, part of them to General Stroop for his Headquarters, of course, part to the Commander of the Order Police, Colonel Kiemann. In my Headquarters all officials received a large number of cigars and I, furthermore, distributed cigars to outlying Headquarters and to the three offices at Wiesbaden, Criminal Police, Wiesbaden, State Police, Wiesbaden, and Security Service, Wiesbaden. Colonel Kiemann, Moehler and other chiefs of other headquarters testified to that effect. In no way it was sought as a premium for the killing of the fliers. First of all, I had no hate towards the American fliers and, secondly, I considered my duties much too serious to distribute cigars for that.

Q So it was just a coincidence then that this box of cigars was passed out when they made the report of the execution, is that right?

A Dr. Stinger can testify to this too. I think he was even present when it was done. I would like to hear Koehler, whether he considered this as a premium for the killing of the flyer.

Q Can you remember whether this was the October killing or the December killing?

A It was on the nineteenth of October and the cigars, the boxes of cigars, I received from Himmler at the beginning of October.

Q Now Colonel Brunnlar, Major Seaman on direct examination asked you this question and received this answer from you. I will read it to you. It appears on page 2176 of the record: "Question. What if these men had refused to obey your order, what would you have done with them? Answer. I might say the following to that -- so long as I had the honor of wearing a German uniform nobody had ever refused to carry out one of my orders. Had this happened in the vicinity of the front in such places as Saarbrucken or Trier, I would have had his insignia removed, removed him from office and shot after a sentence by a summary court, within 24 hours. Had this happened in an area further to the rear where comparative peace prevailed, I would have, in the same manner, had him arrested, removed from his position and turned over to an SS court with a request for prompt and severe punishment. I and all other commanding officers of the Security Police had received this authority from Dr. Kaltenbrunner and I would have made use of this in any case arising." Do you remember that?

A Yes.

(Brunnlar - Gross)

Q Now, I want to ask you this question. What would you have done at Wiesbaden at that time?

A In Wiesbaden I would have ordered them to take off their insignia, would have arrested them and would have delivered them immediately to the SS and Police Court for prompt and severe punishment, at the time when these incidents happened. If it would have happened later on when Wiesbaden was under artillery fire, I would have done the same what I mentioned before in regard to Sandstrahm.

Q Dr. Trumbler you are putting in suppositions. This is the nineteenth of October at Wiesbaden. I want to know what you would have done on that date in Wiesbaden?

A I have just said it.

Q You would not have them executed within twenty-four hours, is that correct?

A At that time it wasn't a front line area yet.

Q Now about Charge VI. I believe you say that it is possible that Major Girke called you about this execution but you just can't remember it one way or the other, is that correct?

A Yes.

Q Now, on the fifteenth of February, 1945, were Girke, Hallenbreich, Stattmann and Reaf your subordinates and members of your command?

A Yes.

Q Now, this American that they executed on that day in Bensheim, you have no way of knowing whether that man was a terror flyer or not, do you Doctor?

A That is Case Number 6?

Q Yes.

A There are only two possibilities. Either, what seems to be certain, SS Major Girke, during a telephone call, informed me of the

presence of the terror flyer at headquarters Buchheim, then I certainly have told them that according to the order from higher authority this flyer has to be shot. If a Major reports to me that the man is a terror flyer, I have no reason to doubt the truthfulness of this report.

Q Now, I believe you don't know exactly whether he called you or not, do you?

A Captain, Major Girke testified to this effect here in court. Major Hollenbreich confirmed it. I myself can't remember exactly any more this call, but if two of my Majors, whom I got to know as truthful and decent, confirmed this to me here, then it happened this way, and therefore also in this case I take the full responsibility.

Q Mr. Trumbler, you are testifying. Major Girke and Major Hollenbreich have furnished testimony. I am asking you what you know about it.

DEFENSE COUNSEL: I pray the Court's judgment. He has answered that question in the answer to the previous question.

PRESIDENT: The reporter will read the last question and answer.

(Thereupon the last question and answer were read by the reporter.)

PRESIDENT: Objection sustained.

QUESTIONS BY CAPTAIN VANCE:

Q Who was the next higher police officer above Colonel Michel, if you know?

A To my knowledge also the commander of the Order Police.

Q And who above him?

A The Higher SS and Police Leader.

(Trumbler - Cross)

Q And is that the chain of command through which Colonel Eichel would receive orders and instructions?

A I can't decide that because I know too little about the office routine of the Order Police.

Q Dr. Trummler who was the highest police official in Rhein-Westmark in connection and in command of the Werewolf School?

A The Higher SS and Police Leader.

Q Was he the Commanding Officer of this School?

A I can't decide that. I knew only that Major Rank was attached to his staff as technical expert and adviser. The internal organization set-up is unknown to me.

Q Now in Charge X, on the twenty fourthof March, 1945, were Cirin, Hallenbreich, Stutzmin and Ranf still members of your command?

A Yes.

Q Now, I believe you said that that there was no communication with your headquarters at that time?

A Yes.

Q So you wouldn't attempt to tell this court that they were terror flyers that were killed on that day?

A I don't understand this question.

PROSECUTION: Will the reporter repeat the question?

(Whereupon the reporter read the last question.)

THE WITNESS: I heard about this case only here during my imprisonment, but I have to state once more, if two of my Majors investigated this and came to this result, they must have been terror flyers.

QUESTIONS BY CAPTAIN VANCE:

Q What two majors do you mean investigated this?

A Major Girke and Major Hollambrelch.

Q You haven't heard Major Girke claim he investigated anything, have you?

A I don't know that. Major Girke was the leader of this unit and Major Hollambrelch was his deputy.

Q Dr. Trumbler are you familiar with or did you ever hear of an order that was issued to the effect that it was forbidden for an American prisoner of war to ride in an automobile with a Colonel?

A This order is unknown to me, but I don't know which kind of orders the Swiss Police received.

Q Did you know Colonel Nichol while he was running the police forces in Offenbach?

A No.

Q Did you know Colonel Lesnik while he was running the police forces in Giessen?

A No. Both these police directors I met only here during my imprisonment.

Q Dr. Trumbler, I believe you testified last Friday that if any members of your command were to rob a dead body or to mistreat a flyer you would have them shot, is that right?

A If I had received notice Captain that one of the officers or men under my command had robbed the dead bodies, without any hesitation I would have them shot. There was no doubt about it.

Q Well it was very fortunate for Colonel Nichol that he was not a member of your command, is that right?

MR. WICHER: I would like to object to this question, since this witness testified that he didn't know Nichol.

CAPTAIN VANCE: I will withdraw it.

QUESTIONS BY CAPTAIN VANCE:

Q Dr. Trumler, when you first reported to Wiesbaden, I believe that you said you had the files brought out so you could see what orders were in existence at that time, is that right?

A I said that I had the orders of the last weeks compiled for me, the most important ones, because I was there as the commander of the schools and I had nothing to do with executive powers before.

Q After you familiarized yourself with outstanding orders, did you revoke or rescind any of these orders?

A I had no reason to do so. At least I can't remember. Furthermore I could not rescind orders of my superior headquarters.

Q Therefore the non-interference order which was passed down by Colonel Semmes remained in effect, is that correct?

A It had to stay in force. Colonel Semmes passed this order down just in the same manner as I passed down the order to shoot.

Q Now, I remember you described an incident where you saw two planes dog fighting and you said a German pilot parachuted to earth and that German civilians started to beat him, is that correct?

A Yes.

Q Did you ever see an American flyer parachute to earth where the civilians started to beat him?

A That American flyers came down with a parachute I saw on several occasions. That the German population beat an American flyer I have not seen.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: I would like to ask one question of Dr. Trumler.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q As you said just a moment ago, the non-interference order which was passed down by your predecessor, Inspector Ramm, remained in effect, so that the non-interference order was in effect at the same time as the order you got from Kaltenbrunner to shoot barver Ilyurs. That is true, isn't it?

A The non-interference order had not been rescinded.

Q That's right. So that both were in effect?

A Yes.

Q Now this is my question. When you gave Freundt and Fuchs the order and when you talked to Girke, as Girke says he talked to you, and when Girke gave the order in Charge X, which order was being carried out by Trumpler, the non-interference order or the order to shoot barver Ilyurs?

CAPTAIN VANCE: May it please the court, we object to that as to Charge X because Dr. Trumpler says this is the first time he has heard about this case.

DEFENSE COUNSEL: I remember him saying that, but he can state his opinion as to which order was carried out.

PRESIDENT: Objection overruled.

THE WITNESS: The order to shoot.

DEFENSE COUNSEL: Questions by the Court?

EXAMINATION BY THE COURT

QUESTIONS BY THE LAW MEMBER:

Q Colonel Trumpler, had you given orders to the men under your command that anyone found stealing from the body of a deceased Ilyur would be shot if they took anything from it?

(Trumpler - Redirect & Court)

A I didn't issue such an order, but it was a matter of course that if somebody would have done something like that he would be punished as a man who robbed a dead body.

Q Did all of the men under your command know that?

A I think so.

Q Did you or anybody under you [illegible] call it to their attention specifically?

A I think that the chiefs of the various headquarters during their meetings with their men brought this to their attention.

Q Would you say in your opinion that every German soldier or every German police officer, whether it was the Security Police or the ordinary police, knew that would be his fate if such a thing happened?

A I think so.

LAY MEMBER: That is all.

QUESTIONS BY THE PRESIDENT:

Q Dr. Trumpler, you mentioned that a certain town, I don't recall the name, was considered in the combat area if it was within artillery range, is that correct?

A Yes General.

Q And that is your idea of modern warfare, is that correct?

A If a city is under enemy artillery fire, we in Germany were of the opinion it was front line area.

PRESIDENT: No further questions by the Court.

REDIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Dr. Trumpler, I believe you testified at sometime that any community, any town that was within twenty, thirty or forty kilometers

of the fighting, was considered in the front, is that what you said?

A Yes.

Q And I think in talking about artillery you were testifying about something that happened when Wiesbaden was already under artillery fire, weren't you?

A Yes.

DEFENSE COUNSEL: That is all. Any further questions by the Court?

PRESIDENT: No further questions by the court. The witness will take his place in the dock.

(Thereupon the witness was excused and resumed his seat in the prisoners' dock.)

JOHANN KOEMM, called as a witness by the defense, being first duly sworn testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY MAJOR SAXON:

Q State your full name, age and present status to the court.

A Johann Koemm, born 29 December, 1893, business employee.

Q What is your present status?

A Prisoner.

Q Now what was your connection with the German Police force in the summer of 1944?

A I was criminal secretary.

Q Where were you stationed?

A Wurtsburg.

Q What wehrkreis was that in?

A Wehrkreis 13.

Q Sometime in the summer of 1944 did your headquarters in Wurtsburg get an order for some of you to come to Berlin for instructions?

A Yes.

Q Do you know about what date that was?

A That was on the 21st of July, 1944. We had an air attack on Wurtsburg, a few bombs were dropped and on this day I had to leave.

Q Are you the person who undertook this trip to Berlin to receive the instructions?

A Yes. I was ordered by the chief of our headquarters.

Q To whom did you report to in Berlin?

A I reported to the Reich Security Main Office, Department Five, War Apprehension Section.

Q Were you summoned up there for any other purpose than to receive these instructions I am about to ask you about?

(Koemm-direct)

A No. Only to pick up an order.

Q Do you know the wording of this order that you there received at that time?

A Yes, very exactly.

Q Will yo give it to the court as you received it that day?

A Yes. The wording was as follows, verbatim:

The British, as well as the American Government have denied that they have given the order to their flyers to bomb or to strafe non-military objectives or the civilian population. If they do so in spite of it they have to be treated as criminals and to be killed--if they are not in custody.

Q What did you to with that order after receiving it?

A In accordance with my custom I reported this to my chief.

MAJOR SAXON: Your witness.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Who signed that order?

A This order was given orally.

Q From whom did you receive it?

A That was the Chief of the War Apprehension Department, First Government counselor and Lieutenant Colonel of the SS Schultz or Schultze.

CAPTAIN VANCE: Nothing further.

EXAMINATION BY THE COURT

QUESTION BY THE LAW MEMBER:

Q What explanation was given to you as to what was meant by "If not in custody."?

A Various questions were asked by the participants there. It was then explained like this, "If they are already arrested by Wehrmacht, rural police or rural guards, etc."

Q In other words if they had been taken into custody by the rural police, by the gendarmes or by the Wehrmacht then they were supposed to be

(Kosma-court-cross)

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considered as being in custody, is that correct?

A Yes, when they were arrested in custody.

Q If they were in such custody they were not to be killed isthat correct?

A Yes.

Q Were any other orders given at that time?

A No orders, but a few explanations were given on request.

Q Did they pertain to orders previously given or treatment of prisoners that had been captured.

A Not in reference to previous orders only in reference to this order.

PRESIDENT: No further questions.

MAJOR SAYRE: I have one other question.

REDIRECT EXAMINATION

QUESTIONS BY MAJOR SAYRE:

Q How many other persons participated in the receiving of this command with you at the same time?

A This order was given out in various groups because the room was small. One group was ordered for 9 o'clock. An hour later another and an hour later another group. They were always 20 to 24 people present each time.

Q When you got your orders to come up there did you know what order you were going to receive or have any indication of what the order was?

A May be idea.

Q I understood you to say that you were giving the contents of this order to the court verbatim.

A Yes.

Q Can you tell the court how come you are able to do that at this time?

(Recross-redirect)

(Recess not)

A I remember these two sentences so well/so that I can't forget it at all.

EXAMINATION BY THE COURT

QUESTIONS BY THE LAW MEMBER:

Q What was the cause of your remembering these two sentences so well.

A I was here already once last year for Arial.

Q Were you permitted to write down this order when they gave it to you orally?

A No.

Q Were you told not to write it down?

A Yes.

Q Were you required to memorize it before you left?

A No, but it was given so slowly and so clearly that you couldn't mistake it to remember.

PRESIDENT: Any further questions by the defense.

MR. RACHAELS: This is cross examination on behalf of the defendant Girbe.

REDIRECT EXAMINATION

QUESTIONS BY MR. RACHAELS:

Q At this meeting in Berlin were there any other questions asked and were there any other explanations made with regard to the substance of those orders?

A I deliberately didn't ask any questions because I thought this order was so absolutely clear it is of no importance for our headquarters.

Q Do you know of anybody else at that meeting who asked questions?

A Yes. Various men were there who asked questions. One of them was there. He asked a question, "What had to be done if the flyer is taken prisoner and is being beaten?", and there the man answered, "It should not happen that the flyers are tortured because we don't want this. We want them dead.

(Kocmm-redi-ect)

Q In other words the answer to the question was that torturing was not permitted, that they wanted admissions, is that right? to all people.

A Yes, they did from the criminal police headquarters.

Q Were there any other questions that were asked?

A Furthermore the question came up about custody of the police and there it was said that we don't want that flyers in custody of the police are taken out. Then they should be handed over to the Wehrmacht.

Q Anything else?

A [illegible] Then there was talk that I don't remember this so exactly anymore-- about civilian population who are first on the spot when a flyer is shot down by partisans or a flyer who has dropped bombs or had strafed them. No action should be taken against such persons [illegible] will later [illegible].

Q Was there anything else said by the defense, being remained [illegible] stand and testified further through [illegible]?

A Otherwise I wouldn't know anymore.

MR. RACHAIL: No further questions.

DR. AHRENDT: Cross examination for the accused Hellenbreich.

QUESTIONS BY DR. AHRENDT:

Q Mr. Schenk, in which capacity did you go to Berlin at that time?

A I was Deputy Chief of the second department to which Apprehension Section was attached. Not the War Apprehension Section but the pursuit department. [illegible] as I mentioned, the latter was called as to

Q You said your headquarters was the criminal police at Nuremberg, is that correct.

A [illegible] Yes, criminal police headquarters, Nuremberg.

Q In which manner were you requested to come to Berlin?

A At that time I was requested by the chief of our headquarters, or better the deputy chief, of our headquarters Kaltenbrunner criminal commander Rauh was not there and the deputy chief criminal commissar Barthaler ordered me to go to Berlin and to pick up the order there.

(Recess-Redirect)

Q To which group of people did the order given in Berlin apply?

A In Berlin itself there were approximately 20 to 25 people meant by Q. Were they all from the Criminal Police Headquarters? Similar transfers applied to the other areas.

Q Did Allied flyers in Schwarzes 12 go both to Oberursel?

MAJOR SAKOW: Does the court have any further questions of this witness? According to the orders they had first to come to Oberursel since

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

MAJOR SAKOW: Call Reinhard Breder. If it please the court, the witness has heretofore been sworn.

PRESIDENT: You are reminded that you are still under oath. Interrogation

REINHARD BREDER, recalled as a witness by the defense, being reminded that he was still under oath, resumed the stand and testified further through an interpreter as follows:

DIRECT EXAMINATION

BY MAJOR SAKOW:

Q You were direct examination, is that correct?

QUESTIONS BY MAJOR SAKOW:

Q I don't want to ask you repetitious questions here Breder, but I want to ask you first, to make sure I understood you correctly, how many airmen you had as a total in Oberursel from the beginning until the end of the war? You, of course, [illegible] was no superior officer now from time to time

A In January, 1945, as I remember, the number was estimated as to approximately more than 35 thousand. These 35 thousand had gone through the Camp Oberursel. In addition to these another seven thousand flyers who without coming to Oberursel went directly to a prisoner-of-war camp.

Q Where was that camp located? The other day there were [illegible]

A [illegible] Those camps were in the middle of Germany or in Eastern Germany, I don't know their exact locations. One camp was in Wetzlar on the Lahn.

Q Was that in Schwarzes 12? Now, you

(Recess: 15 minutes)

(Breder-redirect)

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Q How many did you have in Wetzlar at one time?

A I think that at Wetzlar there were approximately eight thousand flyers. This number, of course, always varied since from Wetzlar transfers took place to the other camps.

Q Herr Broder, did captured allied flyers in Wehrkreis 12 go both to Oberursel and Wetzlar.

A According to the orders they had first to come to Oberursel since Oberursel was the central office for that.

Q I believe you testified the other day that you had charge of the Gestapo Headquarters in Frankfurt, is that correct?

A Yes.

Q You had command of the detachment that was engaged in the interrogation of flyers for political reasons in Oberursel?

A Yes. One department of my headquarters was stationed at Oberursel.

Q They were directly under your command, is that correct?

A Yes, they were my officials.

Q Who was your immediate commander in Wehrkreis 12?

A The accused Colonel Dr. Trumpler.

Q Did you constantly report your activities there to Trumpler?

A Yes, of course. He was my superior officer and from time to time I informed him of my activities.

Q Was Dr. Trumpler entirely satisfied with the manner in which you handled and treated the prisoners, allied prisoners I mean, at Oberursel.

A Yes. He did not make any objections.

Q I believe that you mentioned the other day that there were around four thousand allied prisoners-of-war in there from September to the end of February 1945, is that correct?

A That is an estimate of mine, yes.

(Broder-redirect)

Q Did I understand you to say that one-fourth to one-third of that number came out of Wehrkreis 12?

A You can assume so in accordance with the transport condition as it existed at that time.

Q Was ever an allied flyer mistreated by any of your staff there at Oberursel during these interrogations?

CAPTAIN VANCE: We object. Camp Oberursel was a prisoner-of-war camp and has no place, connection, or bearing on the issues in this case.

PRESIDENT: Objection sustained.

MAJOR RAKOW: Might I mention it to the court. The other day the evidence, and I didn't want to repeat it again, was to the effect that this detachment took these flyers with them for periods of four or five days at a time for the purpose of interrogating them for political reasons. They were out of the immediate custody of the prisoner-of-war camp and were in the custody of one of Colonel Trumbler's men. Technical custody probably remained with the prisoner-of-war camp but physical custody was in their hands for four or five days at a time.

PRESIDENT: The court ruling stands.

QUESTIONS BY MAJOR RAKOW:

Q Did any captured allied flyers that were delivered to you there for the purposes of interrogation show any signs of physical mistreatment by anyone who had captured them?

A No. In general we received only officers and, the officers we received—all of them—praised the treatment which they had received. A few of them, for instance Lieutenant Colonel Charley Stark, Lieutenant Colonel Joseph Miller and the Lieutenant Colonel Stanislaski asked my interrogators to come to the U.S. after the war. Furthermore General Vanaman told my interrogating officer Schmidt that he should look him up if he should come to the U.S. after the war.

Q Herr Preder approximately when was General Vanaman captured?

A Approximately September or October, 1944 as far as I can remember.

Q Herr Breder, do you have the names of some other Americans who were there as your prisoners?

A Yes. I have here another list of Lieutenant Colonels and Captains and furthermore we have a good friend of Mrs. Roosevelt's who had been captured during the war and she too asked a private family where I had quartered her to start contacts again with her after the war. These invitations certainly would not have been made if we wouldn't have treated the prisoners correctly.

Q Herr Breder, you have the approximate date of the capture of Lieutenant Colonel Zemak?

A Approximately November, 1944. It might have been October too.

Q Do you have the date of the capture of Captain Silvermail.

A That was in October, 1944.

CAPTAIN VANCE: I fail to see the relevancy of this. The prisoners were over in Oberursel.

PRESIDENT: Are you objecting.

CAPTAIN VANCE: I think it is just killing time.

DEFENSE COUNSEL: We were showing the dates they were captured, may it please the court. That is the important thing here. Instead of being hung or shot the men captured in October or November of 1944

CAPTAIN VANCE: I am going to object to Colonel Everett testifying.

DEFENSE COUNSEL: That is what the record should be made.

CAPTAIN VANCE: I think everyone knows that Oberursel was run in a decent manner. I will be willing to stipulate to that, but that has nothing to do with this case whatsoever. I agree with them that if a man got to Oberursel he got pretty good treatment--if he got there.

PRESIDENT: Objection sustained.

MAJOR TAXON: Your witness.

(Breder-redirect)

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q These men were praising you about the treatment they got in Oberursel, were they not?

A They expressed it this way. General Vanaman for instance, when he left Oberursel wrote a letter to the German Commander in which he thanked him for the treatment through the interrogator Schmidt of the Gestapo Headquarters.

CAPTAIN VANCE: Nothing further.

MAJOR SAXON: Does the court have any questions.

CAPTAIN VANCE: I would like to ask one more.

RECROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Is this the same Schmidt that used to work for Major Girke?

A To my knowledge no Schmidt worked for Major Girke.

CAPTAIN VANCE: Nothing further.

EXAMINATION BY THE COURT

QUESTIONS BY THE LAW MEMBER:

Q Were all these flyers that you referred to that you interrogated prisoners at Oberursel before they came to you for interrogation?

A Yes. We got them from Oberursel. Usually we brought them to a hunting lodge of the family Opel in the Taunus for one or two days.

PRESIDENT: No further questions, the witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: That ends the defense of Trumelers case subject to our right to produce anything that may come to our attention. Further on, after the recess, if I may so say, we will proceed with the last accused, Fonsmu.

PRESIDENT: The court will recess until 3:30.

(Whereupon the court recessed at 3:00 o'clock.)

Take 289 JG 80;2
8-10-47;JGMcD;1

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order. The defendant

PROSECUTION: May it please the Court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all of the accused, the reporter, and the interpreter are present in court.

DEFENSE COUNSEL: At this time, may it please the court, we will begin the introduction of evidence specifically on behalf of the accused Somann, who will now take the stand in his own defense. He will be examined by Dr. Wacker.

PRESIDENT: Do you desire to be sworn?

ACCUSED SOMANN: Yes, I do, for in my father's

OTTO SOMANN, an accused, voluntarily took the stand in his own behalf and, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. WACKER:

Q What is your full name?

A Otto Somann.

Q Are you the accused No. 3 in this case?

A Yes.

Q How old are you?

A Forty-seven years.

Q Are you married?

A I am married and have one boy, and a wife of my deceased brother and five of their children also live in my household.

Q Where does your family reside now?

A My family resides now in Hamburg, as refugees.

Q Mr. Somann, I will now ask you for your profession, and later I will ask you about your political career. What

was your final professional job? intelligence service for the Army. I managed to become a soldier when I was fifteen years old, in 1915, and I was fighting at the very front lines from 1915 until the end of the war as an infantryman. I had suffered three wounds. After the war I studied agriculture for three years, attended agricultural college for the winter semesters, and took my final examinations before the state agricultural board.

Q What year was that? took job of inspector in

A From 1919 until 1922.

Q What did you do after you passed that examination?

A After that I worked as a farmer in my father's estate. was first an SS colonel and colonel of the

Q How long did you work there?

A Until 1934, after I had bought an estate of my own in 1931 with the help of my parents and brothers and sisters.

Q What job did you get in 1934? was called to Berlin and

A In 1934 I received a call to the SS main sector on "North" in Hamburg held that job until the surrender.

Q What was your rank when you entered this service?

A At first as a master sergeant, and a short time later as SS second lieutenant. that time had been under the

Q How long did you stay in Hamburg? The matter to be changed

A I was first sent to the SS quartermaster troops called Hamburg, and later to the Waffen SS Regiment Germania. In 1936 I was then transferred to the SD by instructions of the Reichsfuehrer of the SS. the state protection police, and a

Q What was your job in the SD? went back to the finance

A I first received my training in the SD main sector

(Semann - Direct)

in Stettin. The duties there were intelligence service for the Party in general in the economic life, cultural instruction.

Q How long did you stay with the SD then?

A In 1938 I was sent to Liegnitz, where I received a sector of my own. The next station I had in the same capacity in 1939 was in Breslau. In 1941 I had the same job in Hamburg. And in 1943 I became the inspector of the security police in the SD in Wiesbaden.

Q How long did you have this job of inspector in Wiesbaden?

A From January 1943 until the end of July 1944.

Q What was your rank at that time?

A My final rank was SS colonel and colonel of the police.

Q We will get back to this time later, but what was your job after you left Wiesbaden?

A On the 20th of July, 1944, I was called to Berlin and there got the job of inspector of the border protection duty service. I held that job until the surrender.

Q What was your job at the duty protection service?

A My job there was to transfer the border duty protection service, which until that time had been under the financial authorities only, under the police. The matter to be changed was like this: that everything along the so-called Green Frontier--meaning the frontiers on the soil--was to be sent to the security police; all the frontiers along the sea-coast were to be sent to the water protection police, and a large number of officials were to be sent back to the finance offices. A further job of mine while I was in Berlin was to

[illegible] to it. I came in close contact with [illegible] set up a security line along the fighting front, at first in the Western Front, from Switzerland all the way up to [illegible] Holland, and the close cooperation with the armed forces. I also organized fifteen combat battalions for the front. For that purpose of training and equipping these battalions I had organized an office in Donaueschingen. [illegible]

Q Mr. Somann, right now, in connection with your political career, I would like to discuss charge No 2. Did you read Charge 2 on the Charge Sheet? [illegible] Rossbach, [illegible] Ast Yesterday? and [illegible], who addressed us.

Q Which organisations described therein as criminal organisations did you belong to?

A Since December 1931 I was a member of the Allgemeine SS, and since May 1936 I belonged to the SD.

Q Mr. Somann, will you please tell the court when you first took an active part in politics?

A When I came back from the front, having first been in the hospital, in 1918, or rather the beginning of 1919, and when I still was an enthusiastic young soldier, organizations known as Freikorps were organized, whose job at first was to annihilate the revolutions perpetrated by the Spartakus movements.

Q What kind of an organisation was this Spartakus?

A A bolshevist unit. And these Freikorps or free corps were also called in by the government and sent to the east in order to fight the intruding enemy there. One of these free corps was a free corps Rossbach, which I came in contact with after the government did not fulfill the obligations it

had promised to it. I came in close contact with that outfit, and upon the invitation of the commanding officer of that unit, Rossbach, I went to Munich in January 1923 together with three hundred more comrades.

Q At that time did you make contact with any of the men of the Party?

A On that 28th day of January 1923, the first three regiments of the National Socialist Party were dedicated, and in the course of a meeting, in the comradely meeting in the evening, I, upon invitation of the free corps leader Rossbach, also met Ludendorff and Adolf Hitler, who addressed us.

Q Did you join the Party at that time?

A No. Any party, whichever it might have been, was no

Q When did you join the Party?

A I went back to my home town and there tried to orient myself politically some more. At first I made no contact with any Party. The reason was that in my opinion none of the parties which were mushrooming out of the ground at the time had any right of claiming the support of a large percentage of the population.

Q When did you join the Party?

A On 20 March 1927 I heard and saw Adolf Hitler for the second time while he was at a meeting in the vicinity of my home town.

Q Why did you join the Party?

A At that time Adolf Hitler described and discussed the idea of the community and of socialism in such a manner to the persons present at that meeting that he impressed me very deeply as well. At that time I became a National Socialist and joined the NSDAP.

(Somann - Direct)

Q When did you join the SS?

A Since the political contest which up to that time had been found mainly in the papers and had as such been coming to the attention of the public was transferred to the streets by the communist tactics of physically attacking anybody who did not join their opinions, and since that even went so far that the communists sheltered the salute of Hail Moscow on the streets, it became to me, as a nationally educated person, obvious that this Hail Moscow had to be stopped by any and all means. Since the German economy was at a low ebb at that time, the number of persons unemployed grew daily. The Communist Party grew stronger constantly, and matters reached a state where any party, whichever it might have been, was no longer able to conduct a peaceful meeting without being attacked by communist partisans.

Q Were those the reasons you joined the SS?

A These reasons--the reasons of trying to protect my own party meetings as a National Socialist--led me to the SS.

Q What was the exact date of your joining the SS?

A December 1931.

Q What were the goals and the program of the SS at the time?

A The SS was instituted for the protection of the Fuehrer, of the leadership corps of the NSDAP. Another one of its jobs was to insure the security of the German Reich and to be prepared to fight the internal as well as the external enemies of the Reich at any time, to the last man if necessary. And the virtues proclaimed by the SS, namely, following the Fuehrer at any cost, complete obedience to orders, that sort of

obedience which does not ask why any orders are issued, and comradeship--one for all and all for one--were factors which particularly drew me to the SS.

Q At that time did you recognize those factors which today have led people to describe the SS as a criminal organization?

A No. In no way.

Q Do you know what the charges were against the SS which were corroborated by the Nuernberg sentence?

A Yes.

Q Did you have any function in the Party?

A No.

Q As a member of the SS did you serve in any concentration camp?

A No, never.

Q What was your duty in the SS? What type of duty did you have in the SS?

A My service before the ascension and the power was purely police service--that is, we learned the handling of persons by police methods, jiu-jitsu, boxing, and to steel men so that they would be strong in personal combat and would not run away, and military drilling.

Q What was your job in the SS after January 1939?

A I was in the SD in 1939, and I remained in the area of the Reich, in the zone of the interior, that is, until the end of the war, and I was never in a foreign country.

Q Will you tell the court whether there is any difference whether you got out of the SS when you were taken into the SD?

A When I became a member of the SD I had no function in the Allgemeine SS anymore, nor did I have any power of command.

Q You did not do any work anymore either?

A No, no kinds of work either.

Q Are you familiar with the fact that the SD has also been declared a criminal organization?

A Yes, unfortunately.

Q Do you know what the charges against the SD are according to the Nuernberg judgment?

A Yes.

Q Did you have anything to do with the matters which are charged against the SD there?

A No, I did not have anything to do with them. The SD in the zone of the interior was purely an intelligence organization without any executive functions. The SD in foreign countries--in occupied territories--however, were under the command of the commanding officers of the security police and the SD and were used for executive functions there, as were the members of the state police and the security police in occupied territories as well.

Q Will you please tell the court briefly what your jobs in the SD were before you came to Wiesbaden?

A Since we were living in a Fuehrer state, and since our position within the government is not permitted in that type of a state as it is within a democracy, there had to be created some organization which would bring to the attention of the leading elements the opinions and the criticism of

the population. Of course, the Party had its own information organization in its own organization from the ortsgruppenleiters through kreisleiters, gauleiters, and up to Bormann or, at that time, still Hess. But it was also necessary to have such an intelligence organization which would be unbiased, and which was unbiased as long as I had anything to do with the SD. And for that reason the SD was organized as the state intelligence organization. In a few words, the SD was the ear of the leadership of the state at the body of the population, and simultaneously the megaphone of the people towards the state.

(Somann - Direct)

Q Did you have to send in intelligence reports only concerning party members or others concerning non-party members?

A On account of my education to act honestly and decently, particularly when you do not feel yourself under obligation, I became a Nationalist Socialist) and, after becoming one, I remained true to this precept. My main task through the years that I was in the SD was to see that cleanliness and orderliness be maintained, particularly among our own ranks in the party, and primarily to combat all bribery, corruption, all improper actions within the state, the party, the economy or the armed forces, or at least to see that such corruption would cease. This I did by means of making our reports to the very highest offices in Berlin, hoping to have these transmitted to the Fuehrer himself, hoping to have corrective action taken.

Q Did I understand you incorrectly in implying that the actions of the SD were directed against Party members as well as non-Party members?

A Yes, I paid particular attention ever since the time I became a sector leader, ever since 1938, to have my unpaid directors throughout the area recruited from the ranks of non-party members primarily for the reason that I wanted to take precautions not to be unjust and to receive the opinions of the population, particularly from the opposing elements. The relationship was one of 20 to 80, meaning 20% of my collaborators being Party members and 80% non-Party members.

Q Mr. Semann, I will now start talking about your activities in Wiesbaden. On what date did you move into Wiesbaden?

in accordance with SS ideology. I had to supervise the work done by these officers.

Q. What did this title "Inspector" connote?

A. As the name says--duties of an inspector were to inspect the offices of the Security Police and the SD.

Q. Please elaborate on the manner in which this supervision would have to take place.

A. Every six or eight weeks I was supposed to call, call the chiefs of the various offices--State Police, Criminal Police and SD to Wiesbaden to inform them of the orders of a fundamental nature that had come down from the Reichs Main Security Office during that period and to have a discussion of any incidents of any unusual nature that might have occurred in any of the offices or perhaps my office, to get all chiefs of the offices lined up according to one standard to take note of reports from me or my office if by any chance they had any kind of disagreement with High

A. I took my position in Wiesbaden on 20 January 1945. [illegible] the chief's in the [illegible]

Q. What was your position? [illegible]

A. As Inspector of the Security Police and the SD. [illegible]

Q. What was your rank at the time?

A. Standartenfuehrer, Junior Colonel [illegible] of the Security [illegible]

Q. What was your task as Inspector of the Sipo and of SD? [illegible] to [illegible]

A. My task in the first place was a liaison to the Gauleiters, to the Higher SS and Police Leader, to the Commanding General of the Wehrkreis, and to act as a liaison officer with the Reichs Security Main Office. Further, to see that the Security Police and the SD, that is the State Police and Criminal Police and the SD would be oriented

Party officials, to discuss the transfer of officials into the SS--anything in this general frame--if the chiefs in the offices for instance might have some personal questions that I could help them with or just removing any sort of difficulties.

Q Now, who was your immediate superior?

A My immediate superior was the Chief of the Security Police, SS Lt. General Kaltenbrunner and also the chiefs of the offices shown on the chart over there from 1 to 7, to the extent to which they transmitted to me or issued to me orders in lieu of himself or by his order.

Q When you are talking about this chart, Defense Exhibit Number 2?

A Yes, that's what I mean.

Q How was your official relationship to General Stroop?

A General Stroop was the Higher SS and Police Leader that had been selected for this area by the Reichsfuehrer of the SS, and for that reason as the highest ranking SS officer in the area, looking at it from the SS standpoint, he was my superior officer, but he could give me orders and instructions only to the extent to which these orders and instructions did not contradict the orders and instructions of the chief, Dr. Kaltenbrunner.

Q Do I understand you to mean that General Stroop could give you orders only concerning matters of the SS and nothing else?

A He could also give me other orders, but only when these orders did not contradict the orders or instructions or directions of the Chief of the Security Police.

Q When did you meet General Stroop?

(Schmann-Direct)

A At the time that General Stroop was transferred to Wiesbaden as Higher SS and Police Leader, November, 1943.

Q What was your personal relationship to General Stroop?

A My relationship to General Stroop was purely a technical one, purely a business relationship, whereas our personal relationship was not a very good one.

Q Why?

A Maybe it was my fault, because I was sort of touchy. At any rate, our opinions concerning all things really were very much divergent. The first time this really cropped up was during an official trip when General Stroop took me along and said, "Now is your time Bingel." I then told him that his position there wasn't an easy one--that he had to cope with three rather difficult candidates. Upon that he said, "That won't be so bad. I will take care of them all right, and if the Fuehrer needs three candidates for the area but only one Higher SS and Police Leader, and I am him, then you will see what my position is, won't you?" General Stroop had to realize that these candidates had a much higher position than he might have assumed in the beginning. I, however, knew this already since I had been around various Gaus of the Reich many times and had known that that two out of the three candidates, namely Sauer and Sprenger were absolutely dominating and had no regard for any person's opinion except themselves.

Q You just mentioned two candidates. Will you please tell the Court what area your command of Inspection of the Security Police and the SD included?

A The three Gaus of Hessen-Nassau, Moselland and

Ga 300, 3/10/47, 1st-3
Ga 300, 3/10/47, lab-6
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Westmark belonged to the area of the Higher SS and Police Leader of Rhine-Westmark. Now, in this area, there were, too, the Security Police and the SD from the standpoint of inspection, and one Commanding Officer. The Commanding Officer had the area of Westmark and Lorraine, and my area of command from the standpoint of the Security Police and the SD, including the two Gaus of Hessen-Nassau and Moselland

Q What were the orders that existed at the time you took your position in Wiesbaden concerning the treatment of allied flyers?

A At the time that I had this position, several orders came in, most of which I don't remember too exactly, but some of them which I remember positively. The order existing was the one that all captured flyers in general were to be turned over to the armed forces or to the Air Forces in particular, and in the beginning of 1944 I then received an order from the Reichs Main Security Office Number 4, with General Mueller in command, that flyers which came into the hands of the Security Police or were picked up by the Security Police were to be sent to the Camp Oberursel by way of the State Police, Frankfurt. The reason he said that was to be done was that the State Police in Frankfurt had bought or built or rented a house there in which captured flyers were to be interrogated about, in the first place, their political opinion in general, and, in the second place, their attitude and opinions of the population of the country they were coming from. At that time that seemed to be a rather competitive business set up against the Air Corps.

(Schmann-Direct)

Apparently there were some attempts to be the first ones to make these reports to Goering or perhaps to the Fuehrer himself.

Q Am I understanding you correctly--that the political interrogation was to be performed by the Police and the military one by the Air Corps?

A Yes.

Q Which was to take place first, the political or military interrogation?

A I don't know. All I know is that I received the order from General Mueller to turn over as quickly as possible to the State Police office in Frankfurt any flyers that might have been delivered or picked up by us so that they might be turned over further possibly to Oberursel.

Q How did you receive this order, verbally or in writing?

A I received the order verbally, and then I transmitted it verbally as well to the Chiefs of my offices.

Q To what offices did you transmit it?

A To the offices of the State Police, Criminal Police and the SD in my area.

Q And was that order carried out?

A I had no way of checking this, but I do assume it was. At any rate, I heard of no reports to the contrary while serving in this capacity.

Q Did you receive any other orders concerning the treatment of parachuted flyers?

A One order of a basic nature. This non-interference order came towards the end of June, 1944.

Q By what means did you receive that order?

Ta 300, 8/10/47, afb-7
SECRET, 8/10/47, afb-8

A That was a copy of an order of the Reichsfuehrer of the SS, Heinrich Himmler, reading as follows: "It is not the duty of the police to interfere in any altercations between the populace and parachuted flyers."

DEFENSE COUNSEL: I am sorry, I beg the Court's pardon--that was "terror flyers" and was omitted from the translation.

INTERPRETER: That's correct. I am sorry--terror flyers.

WITNESS: This order had a supplement signed by Dr. Kaltenbrunner saying that this order is to be brought to the attention of the subordinate offices verbally.

QUESTIONS BY DR. WACKER:

Q Now, in what manner did you carry out this order of Kaltenbrunner and Himmler?

A I brought this order to the attention of the Chiefs of the offices, among other orders which were also brought to their attention at the same time, in June or July, 1944, and in the course of a meeting at my office in Wiesbaden.

Q Where did that take place?

A As far as I remember in my official building in Wiesbaden, Paulinen Strasse.

Q Who did you ask to that conference?

A The men usually called to that conference were the chiefs of the State Police Office, Criminal Police Office and SD Sectors of Frankfurt, Koblenz, Darmstadt, Trier, the Kripo chief of Wiesbaden, Kripo Chief of Heidelberg, and I think the Kripo Chief of Mannheim belonged to that group yet, also my personal advisor was present.

(Session Recess)

Q Who was that?

A Captain Dr. Krieger was my personal advisor and the administrative official.

Q Now, what did you announce to these persons who were present? I mean concerning this non-interference order?

A Either I, or my personal advisor, Dr. Krieger read this order out aloud with the supplement of Dr. Kaltenbrunner, without any further comment.

Q Didn't you give any supplementary order?

A No, never.

Q Did you give any explanations to this order?

A I don't know of giving any general explanation, but even though I did not give a general supplement to this order, I might have expressed my opinion about this order, and about the way this order impressed me to one of the other office chiefs, by saying to him that it is out of the question that any of the men lay their pistols down so that perhaps a flyer will be shot by the civilian population with one of our pistols. The Chief of the Koblenz Office, Dr. Christmann, either after this meeting or after a meeting following that, expressed his opinion and desires to the effect that some more energetic treatment should be given these flyers or something to that effect--I don't remember his exact words; and he asked me to give him permission to turn his flyers over to the Luftwaffe directly.

Q What did he mean by turning them over directly?

A He, himself, did not like my former order that these flyers were to be turned over by way of the State Police Office in Frankfurt, or felt that somebody who was

not his superior was paying undue attention to him.

Q And what was the position that you took concerning this?

A Upon that I expressed my views at the conference with the Gestapo Chief Breder who was here as a witness already, and he pointed out the instructions which had been given him by the Chief of Office Number 4. He was also familiar with the fact that I had received identical instructions from General Mueller; and upon that I said the orders that are issued still stand. Any flyer turned over to us or picked up by us will at first be turned over to the State Police Office at Frankfurt.

End ta 300,
C fols.

Q Will you please tell us, Mr. Somann, whether you yourself could change this order of General Muller's in view of the fact that this order existed?

A I always stuck strictly to the orders I received. I neither changed them nor did I add to them, and I had to be particularly careful since I knew I had been under supervision and observation for years.

Q Who was observing you?

A At first by the former chief of the security police of the SD Lieutenant General Heidrich and later by Gruppenfuehrer Major General Muller.

Q Now, let's get back to Wiesbaden and one point to the preceding answer. Why were you observed?

A During my training in the SS in Stettin I had succeeded in sending a personal friend of mine, an 18th degree Free Mason, to the Mason's congress in Paris in 1937. This order came from the chief of the SD, Lieutenant General Heidrich.

Q What order are you talking about?

A To send a man there who was able to participate in the congress -- this meeting in Paris. Since this man happened to be the brother of a friend of mine whom I had in an evil eye and it was the only case that occurred in the field of this nature, everybody was terribly distrustful that I had left the one to go, and this man, the chief justice counsellor Dr. Luckmann went to this congress, went with him to Paris and brought a lot of material with him.

Q Who did he bring this material to?

A At first to me and then transmitted it to the SD. The main office in Berlin at that time had a special office which was to free Masonry questions, but these papers, this material which was brought to me contradicted everything that had been written there by everybody.

particularly two gentlemen, Schwartzberg and the other Reich. On account of this material submitted by me and since it contradicted and made untrue everything that had been before used to base the standards, former members of the Free Masons could become members of the NSDAP and all the work which had been done in the main office in Berlin concerning Masonry was made pointless by that.

Q Now, Mr. Somann explain to the court how you know you were under observation?

A I heard this first from comrades in Berlin, without being able to put my trust in it, but later on I had to find out even my telephone was tapped.

Q What were you accused of?

A I was not actually accused of anything, but I know that this had been commented on and disapproved in conferences in Berlin.

Q What had been disapproved?

A That I had made the whole work of the SD concerning the Free Masons useless.

Q Now, let's get back to my former question. You know the testimony of your co-accused, Hellenbroich?

A Yes.

Q What do you have to say to that testimony?

A During the time I spent in Wiesbaden, I learned to know SS Major Hellenbroich as a clean cut and decent SS officer. I am sure he did not make this statement in order to produce evidence against me particularly and the only explanation possible for his statement here is an error or a mistake in identity.

Q Do you maintain the statement that you did not make any elaboration or supplement to that order even towards him?

A Yes, I will stick to that particularly for the reason at that time one living flier was of greater value to me than one hundred dead ones.

Q Why?

A I think so because otherwise he could not have said anything [illegible] political interrogations conducted by the state police, Frankfurt.

Q Was Hellenbroich present at your place at this general conference of police chiefs at Darmstadt or Frankfurt, either?

A I don't remember that exactly, but according to his own statement he arrived later after the order had been announced to the conference in general and I personally gave him the order.

Q While you served in that capacity in Wiesbaden, was any parachuted Allied flier beaten or mistreated by the civilian population?

A I never found out about any such cases officially nor did I privately. I am talking about any such cases of possible mistreatment or beating or killing of Allied fliers.

Q Was this non-interference order ever again subject for discussion while you served in Wiesbaden?

A No.

Q You said to the court a while back in reply to one of my questions you might have made an explanation approving a conversational remark. Did you do that towards Hellenbroich?

A I don't know that any more, but there certainly is a possibility for otherwise Hellenbroich would not say the supplementary order was issued or there was some talk about it and I would like to repeat what I might have said is the following: It is always out of question for a police official to give his pistol away so a flier could be shot by one of our pistols.

Q What were you trying to express by that?

A This order would be strictly obeyed as a non-interference order and it was not the duty of the security police or SD to either kill Allied fliers or participate therein.

Q Is it possible Hellenbroich might have misunderstood such a remark?

CHARGE SHEET
ANKLAGESCHRIFT

A I do think so because otherwise he could not have said anything and the only explanation for this is a misunderstanding or an error.

PRESIDENT: Court will adjourn until 0900 hours, 11 March 1947.

(Whereupon at 1615 hours the court adjourned until 0900 hours, 11 March 1947.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden. By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

Count 32

Pages 2266 - 2348

Case No. Superior Orders

Prosecutor Lt. Col. Dwinell

*Summary
*Intermediate Military Court.
*General

Defence Counsel Lt. Col. Berman
Rudolph Nathanson

Place DACHAU, GERMANY

Interpreter Herbert B. Rosenstock

Date 11 MARCH 194 7

Reporter Paula L. Silverman, William F. Jones, Peter DiCurti, John MacDonald, Imogene Butler, Evelyn Cohen

~~Members of Court~~: WITNESSES:

OTTO SOMANN	JOSIAS COUNT OF WALDECK	HEINZ WOLFGANG WILHELM PINDER
KARL KALESKE	REINHARD BREDER	
WILHELM WIBBENS	HANS JUTTNER	
WOLFGANG BERGER	FRITZ DIETRICH	

Accused JURGEN STROOP, et al

Address Sex Age

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term
  - Beginning 194
- Fine
  - Amount
  - To be paid before 194 or in case of default of payment to serve a *further term of imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

(Signature of member of court.)

REVIEW

Action of Reviewing Authority

(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES vs. JUERGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

DACHAU, GERMANY BEGINNING 20 JANUARY 1947

21 MARCH 1947 Pages 2266 - 2338

TESTIMONY

	Direct	Cross	Redirect	Recross	Court
OTTO SOMANN (Contd)	2266				
KARL KALEBER	2293	2307			
WILHELM WOHLEBE	2312	2316			
WOLFGANG REHDER	2317	2321			
RICHARD BRIDE				2328	
JOSIAS COURT OF WALDECK	2324				
HANS JUPNER	2326				
FRITZ DIEDRICH	2332				
HEINZ WOLFGANG WILHELM FINDER	2334				

EXHIBITS

NONE

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

Quartz 52

Pages 2266 - 2348

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 11 MARCH 194 7

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolph Nathanson

Interpreter Herbert B. Rosenstock

Reporter Paula L. Silverman, William F. Jones, Peter DiCurti, John MacDonald, Imogene Butler, Evelyn Cohen

~~Members of Court~~: WITNESSES:

OTTO SCHAMM — JOSIAS COUNT OF WALDECK — HEINZ WOLFGANG WILHELM PINDER

KARL KALESKE — REINHARD BREDER

WILHELM WIBBENS — HANS JUTTNER

WOLFGANG BERGER — FRITZ DIETRICH

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning ..... 194.....
- Fine
  - Amount .....
  - To be paid before ..... 194.....
    or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES vs. JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

DACHAU, GERMANY BEGINNING 20 JANUARY 1947

11 MARCH 1947 Pages 2266 - 2340

TESTIMONY

	Direct	Cross	Redirect	Recross	Court
OTTO SCHAUB (Contd)	2266				
KARL HALBURK	2293	2307			
WILHELM WIESNER	2312	2316			
WOLFGANG REINHER	2317	2321			
REINHARD BREDER			2322		
JOSIAS COUNT OF WALDECK	2324				
HANS JUTTNER	2326				
FRITZ DIETRICH	2332				
HEINZ WOLFGANG WILHELM PFEIFER	2334				

EXHIBITS

NONE

Camp Dachau, Germany
11 March 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense; all the accused except Rost, No. 14, Opas, No. 15 and Michely, No. 16, who are temporarily absent in conference with defense counsel; the reporter and interpreter, are present.

DEFENSE COUNSEL: At the end of the last session the accused, Semann, No. 8 was on the stand, under direct examination by Dr. Wacker.

PRESIDENT: You are reminded you are still under oath.

THE WITNESS: Yes.

OTTO SOMANN, an accused, voluntarily resumed the stand and being reminded he was still under oath, testified further through an interpreter as follows:

DIRECT EXAMINATION (continued)

QUESTIONS BY DR. WACKER:

Q Mr. Semann, we discussed yesterday the non-interference order. Do you have anything else to testify about this point?

A No.

Q What other instructions did you receive in regard to parachuted enemy fliers?

A During the time several other orders came in.

Q What kind of orders were they?

A These were orders mostly in regard to agents who had parachuted and who had the assignment to commit sabotage and espionage behind the German lines, behind the German front.

Q Can you give us approximately, at least, the contents of this order?

A As soon as an enemy parachutist has been recognized as an agent, he was to be delivered without interrogation by the police to the State

Police, that means the secret State Police. There, then, was decided about him.

Q When did this order come out?

A I can't give you the exact date but I think it was around the middle or end of 1943.

Q From whom did this order come in?

A From the Chief of the Security Police and the Security Service, Lt. General Kaltenbrunner.

Q Did incidents like that happen in your area during your time of service which had to do with agents of this type?

A During the winter of 1943 we succeeded in capturing an agent who had parachuted from an English plane in the neighborhood of Trier. At that time I ordered Major Mohr to take care of this matter. First, a counter espionage game was played with Moscow. He was an agent Moscow and he had parachuted from a plane.

Q May I ask the question again? Didn't you say that he himself was from the Ahr Valley.

A Yes, that's true. Later on he was transferred to the Reichs Security Main Office at Berlin. What happened later on I don't know.

Q That means you don't know what happened to the flier?

A He was not a flier, he was a German agent who had received his training and instruction at Moscow in order to commit espionage in Germany for Moscow.

Q Do you know of any other case which fell under this particular order?

A Not to my time at Wiesbaden.

Q Did you receive additional orders in regard to parachuted enemy fliers?

(Seemann-direct)

A I know about an order from Adolf Hitler, the high command of the Wehrmacht, according to which parachuted commando units, agents and saboteurs, in accordance with orders had to be rounded down to the last man. Such a case did not happen during my time of service at Wiesbaden.

Q How did you understand this order?

A That these troops of agents and saboteurs had to be killed up to the last man.

Q Were these troops supposed to be captured first and then to be killed, or how was it meant?

A They were to be killed on the spot where they were found.

Q Do I understand you right that they were not supposed to be taken prisoners?

A No, not to be taken prisoners.

Q Do you know of any additional orders?

A Additional orders? I can't remember right now.

Q Mr. Semann, please tell the court about all and any incidents where fliers have been shot during your period of service at Wiesbaden.

A Since the beginning of my activity as an inspector of the Security Police for the two Gaus, Hessen-Nassau and Moselland from January '43 until the end of July '44 not a single case came to my knowledge in which a flier had been killed.

Q Mr. Semann, did you read the charge sheet?

A Yes.

Q Do you realise that in the charges from 3 up to and including 10, you too are charged with a crime?

A I am only charged but I am not guilty.

Q What do you have to say about the individual charges?

A Of the cases 3 to 10 in which I am charged too, I heard about them for the first time after the 15th of July 1946.

Q Please tell the court once more when you left Wiesbaden?

A I left Wiesbaden on the 20th of July 1944.

Mr. Sauter, did you hear the testimony of the witness, Kaltenbrunner, yesterday?

A Yes.

Q What do you have to say about this testimony?

A I did not hear anything about this meeting in Berlin during my presence in Wiesbaden and even afterwards. It isn't even known to me that a member of my Criminal Police Headquarters was called to Berlin for such a meeting.

Q How do you explain this in view of your position as inspector of the Security Service and Security Police?

A It happened often that the chief of the Criminal Police Headquarters or the chiefs of Gestapo Headquarters or the chief of the Security Service Headquarters were called to Berlin for special meetings. It was customary and, of course, a matter of course, that afterwards these chiefs informed me of the discussions which had taken place at Berlin. Of this meeting on the 21st of July 1944 about which the witness, Kaltenbrunner, testified yesterday, I heard for the first time yesterday here.

Q Mr. Sauter, I come back once more to your relations with the Higher SS and Police Leader, General Stroop. Did you hear the remark which was made, I think it was done by the witness, Kaltenbrunner, about the relationship to the Gauleiters and Kreisleiters?

A Will you please repeat the question once more, I didn't hear it?

(Whereupon the reporter read the last question.)

A I must have overheard this remark. If I am not mistaken, that is a reference to the pressure of the Party about which there was talk on several occasions here in court.

Q Did you have to do with this Party pressure?

A I myself had to do with it a lot and, furthermore, I felt very much the pressure of the entire Party which was exercised on the entire police organization.

Q How was this Party pressure to be felt?

A The Party pressure against the Security Police came out especially this way -- that the chief of the Gestapo office in a Gau, was, at the same time, the political adviser and expert to the Reichsstatthalter in this Gau. It was the job of the Gestapo chief to inform the Gauleiter about all important events of a political nature. During these meetings the Gauleiter was able to exercise a pressure against the chief of the Gestapo Headquarters in this way -- that he informed him of his wishes, was able to make admonishments, and did so. If and when the Gestapo Headquarters did not act in accordance with the wishes of the Party. Mostly, the complaints against the Gestapo were that the Gestapo was not tough enough against enemies of the State. This was the complaint of the Gauleiter and others. This went so far that Kreisleiters in the Gau Hessen-Nassau, during a meeting of Party officials, made the request that the Gestapo officials in their districts should be put under their supervision as the Kreisleiters of the Party. Of course, I rejected this. Another influence was given because the SD chief, that means the man who was in charge of the Party information service, was the political expert and adviser to the Gauleiter for the Party sector. Here, too, arguments developed repeatedly --

Q Just a moment. With whom did it come to arguments?

A Between the Gauleiter on one side and the chief of the SD sector on the other side.

Q Did you report about these arguments?

A Yes.

Q By whom?

A Especially as an old SD man I was extremely interested in this matter and drew the SD sector man to me as closely as possible.

Q What kind of reports did you receive?

A Since there was an assignment of the SD, as I explained already yesterday, to investigate shortcomings, complaints and crimes in all fields -- I'd like to correct myself -- and it was his job to see that these things would be corrected, these cases were reported by the chief of the SD sector to the Gauleiter as the highest Party official in this sector.

Q Mr. Somann, what was your reaction to this Party pressure?

A Whenever an SD sector chief reported to me an incident and the Gauleiter did not remedy this condition, I personally took action by writing to the Gauleiter and asking him to remedy this condition, since the Party leaders, first of all, had the duty to live an exemplary life before the people. If even I couldn't be successful against the Gauleiter, which happened quite often, then the chief of the SD sector sent his report to the Reich Security Main Office at Berlin.

Q During these efforts did you have the assistance and help of General Stroop?

A Partly, yes, but unfortunately not always.

Q What do you mean, not always?

A Incidents happened which I reported to General Stroop and in these cases he probably didn't take strong action for the reason that he didn't want to have any difficulties with the Gauleiters. Another enormous Party pressure was exercised through the Gauleiter in his capacity as Reichsstatthalter.

Q Against whom?

SO tm 302 pls

A Against the president of the government. Furthermore, through the same channel of command against the police presidents and police directors, chief mayors and the chief magistrates of the counties. This same pressure was exercised especially since the individual Kreisleiters increased this pressure and tried and tried to enforce their wishes with the chief magistrates of the counties, the chief mayors, police presidents and police directors.

Q Mr. Semann, I return once more to your membership in the SD. When you entered the SD did you have to sign a certain statement?

A Yes, each member of the SD whenever he entered the SD or whenever he was used for confidential missions, had to sign a statement which read as follows: I swear absolutely to obey the Fuehrer and the men ordered by him. If, in spite of this oath, I become a traitor, I accept every punishment without sentencing by court.

Q What was the influence of this statement on the disobedience to orders?

A Before the war an SD man who had refused to carry out an order would have had to expect a long term at hard labor and, furthermore, transferred to a concentration camp.

Q How was it during the war?

A During the war there was only one punishment for that and that was death.

Q Mr. Semann, I come now to Charge No.1. How many of the accused did you know during the time of your service as inspector of the Security Police at Wiesbaden?

A Before I came to Wiesbaden I had met, in 1938 during my presence at Berlin, the accused, Rasp. That is the only one. Of all the other men accused with me during my service at Wiesbaden, I got acquainted with General Streep, SS Major Cirkc, SS Major Hellenbreich, M Sgt. Stattmann, and M Sgt. Fuehr.

Q Please tell the court what you have discussed or planned with all of the accused when you have mentioned or with any individual of these accused in regard to parachuted fliers?

A I passed down the non-interference order of 1942 to SS Major Heilenbroich. The non-interference order, as far as I can remember after it had been received by me, was reported by me to General Streep. Furthermore, it was discussed during a meeting which General Streep had called in view of the defense plan which was discussed here.

Q Mr. Semann, I think you misunderstood my question. I'd like to know which discussions and conferences you have held without the carrying out of orders which you had received?

A Never. I have never talked with anyone of the comrades who are accused with me.

Q Did you try to take any influence on the orders which you had received?

A No.

Q Was such an influence possible?

A The influence was possible in this way -- in that I either had taken an interest personally that these orders were carried out, or that a chief of one of my offices had reported to me that men under his command had refused to carry out this order.

Q I think here again you have misunderstood me. I wanted to say did you have any influence on the orders which you received from Berlin?

A No, all orders from Berlin were passed down in the same way I received them, without additions or deletions.

DR. HACKER: No more questions.

DEFENSE COUNSEL: May it please the court, I have a few that I want to ask as a continuation of the direct examination but at this time I'd like to raise one question. When the accused, Semann, was on the stand previously and under my instructions refused to answer questions certain presumptions were necessarily raised because of his refusal so to answer. I'd like to ask the prosecution, through the court, whether

they are going to stand on that presumption or whether they are going to take advantage of their opportunity to address those questions now or any other questions they might have to the accused. If they don't care to do that or don't want to make any statements, then we will ask the questions ourselves. It occurs to me it might make a little better procedure if the prosecution will say, "Let's forget about the fact he didn't want to answer. We'll ask him now."

PRESIDENT: Do you have any remarks you'd like to make?

CAPTAIN VANCE: No, sir, I have no remarks.

PRESIDENT: Just proceed with the direct examination.

(Examination-direct)

Q Coming back just for a moment to your membership in the SS. Beginning with January 1st, 1939, tell very briefly what your contribution to the SS or the Allgemeine SS was.

A I had no activity in the Allgemeine SS since January 1st, 1939. Only from January 1st, 1939, until the beginning of the war I paid a monthly membership fee of fifty pfennigs. During the war even this fee was not paid anymore.

Q Now, I believe you stated that your entire service from January 1st, 1939, until the end of the war was with the SD and within the limits of continental Germany as it existed before the war, is that correct?

A Yes.

Q Did you, at any time, in any capacity, between January 1st, 1939, until the end of the war serve outside the original boundaries of Germany as it existed before the war?

A No.

Q I should put the question this way. Did you serve at any time between those dates in any place outside of Germany proper?

A No.

Q Did you at any time in the course of your duties have anything to do with the importation into Germany or the control in Germany of the so-called slave labor?

CAPTAIN VANCE: We object. This question is obviously leading. It suggests the answer.

DEFENSE COUNSEL: It is part of the denial of guilt, may it please the court.

CAPTAIN VANCE: I don't mind him denying anything but I don't want you to put words in his mouth.

DEFENSE COUNSEL: I pray the court's judgment as to the form of the question.

PRESIDENT: Objection overruled.

THE WITNESS: No.

QUESTIONS BY DEFENSE COUNSEL:

Q Have you read or had read to you the Nuremburg decision with respect to the SD?

A Yes, I read it.

Q Can you tell the court some of the grounds or bases for the finding of guilty as mentioned in that decision?

CAPTAIN VANCE: We object on the ground that this document is in evidence. The document itself is the best evidence.

DEFENSE COUNSEL: I am just trying to beat your objection about leading. I will withdraw the question.

QUESTIONS BY DEFENSE COUNSEL:

Q What did you have to do during the course of your duties with the SD with the so-called Einsatzcommandos?

A Personally nothing.

Q Did the course of your duties bring you in contact with the management or control in any way with concentration camps?

A No, never.

Q Will you please tell the court what reports you received during the entire time you were inspector at Wiesbaden which had to do with the mistreatment or killing of any Allied personnel whatsoever?

A I never heard anything or mistreatments or killings.

Q Now, you stated that previous to the end of the war you knew Fuehr. Did you ever sit down in a conference with Fuehr and plan anything?

CAPTAIN VANCE: We object on the ground that it is repetitious. The same question has been asked before.

PRESIDENT: Objection overruled.

THE WITNESS: No, never. The accused Fuehr during my term of duty at Wiesbaden was twice my driver and once he came to me with a personal matter in which I helped him.

QUESTIONS BY DEFENSE COUNSEL:

Q Were any of the other accused involved in that personal matter?

A No.

Q I think you mentioned Stattman and Raaf, that you knew before the war. Did you ever sit down in conference with those two men?

A I did not know Raaf. Stattman only through the fact that once he brought to me a file from the Gestapo headquarters Darmstadt to Wiesbaden. Otherwise I had no official contact with him and didn't talk with him.

Q Coming down to Cirke. Other than passing down to him directly or indirectly these orders you mentioned having to do with flyers, did you have any contact or conference with him in regard to other matters charged in this case?

A No, never.

Q Now, coming down to Party pressure that you talked about before, did you ever have occasion to go to the Higher SS and Police Leader with matters involving Party pressure?

A I can't remember any of the original cases, but it is certain that I discussed with the Higher SS and Police Leader, General Stroop, the party pressure.

Q On these occasions when you did discuss the party pressure, did that involve matters which came to your attention originally or were they brought to your attention by the headquarters of the other organizations under your command, or both?

A These were incident which had come to my knowledge through the chiefs of my various offices.

Q And why did they bring them to you?

A Because the requests of the party organizations were beyond the allowed limits and the chiefs of the headquarters refused to give in to all desires of the party. Then it was my business as inspector to get involved in the matter, to repudiate the Kreisleiter or to tell the Gauleiter that it was impossible to give in to their request since they were contradictory to instructions received from Berlin.

Q Prior to the end of the first session Herr Semann, I started to ask you what authority you had over the Gestapo, Kripo and the SD as inspector. I mean the first time you were on the stand and you started to explain also your disciplinary powers over the members of the Gestapo, Kripo and the SD. Will you tell the court what your personal powers of punishment were over the personnel of the Gestapo, Kripo and SD in the area of which you were inspector?

A My authority in regard to the members of the Gestapo, Criminal Police and Security Police Service was as follows ---

Q I asked you about your power to punish.

A Yes.

Q All right.

A I could -- the members of these organizations in case of bad behaviour inside the office and in off duty hours for unsatisfactory performance of their duties, I could punish up to four weeks of strict arrest and up to six weeks of light arrest.

Q What were your powers of punishment in the event of a refusal to obey an order which you passed down as having been received from higher headquarters, or which they received direct by passing you from higher headquarters?

A If a case of disobedience of orders came to my knowledge, according to the importance of the order, I would have relieved this man of his assignment, would have had him arrested and would have sent a report in regard to him to the Reichs Main Security Office, Berlin. The punishment would have taken place from there. In light cases it would have been possible that this case would have been transferred back to the SS and Police Court of the Higher SS and Police Leader at Wiesbaden.

Q Now, you said that the course of action you would take for the disobedience of an order would depend on the seriousness of the order disobeyed. What difference would that make as far as your action is concerned, or your authority to take action is concerned?

A For instance, if a member of the Gestapo headquarters had refused an order of little importance, for instance an order to repair a bicycle, he would have been punished with strict arrest.

Q Let's stop taking all year to try this case. I asked you what authority you had to punish for disobedience of an order which came to you direct from Kaltenbrunner's office or came direct to them and you said you would report the matter to Berlin or punish him according to how serious the matter was. Tell the court what action you would take?

A I had the possibility to check whether orders had been carried out only if and when I was informed of the order.

Q Let's assume that you knew please. Let's assume that you knew there had been a failure to obey an order that came down either direct or through you. What would happen. I will repeat the question. You testified before that if there was a case of disobedience to an order which came down from the Reichssicherheitshauptamt either direct or through yourself, you would relieve the man from his job, take off his uniform and put him under arrest or report the

matter to Berlin, depending on whether it was a serious order or not so serious. What difference would that make in your opinion?

A The not carrying out of an important order, I would have reported to Berlin. The not carrying out of the less important orders I would have punished myself.

Q Now Colonel Somann, who furnished the information for the preparation of the charts which have been introduced in evidence as Defense Exhibits 1 and 2?

CAPTAIN VANCE: We object on the ground that the question is repetitious. The same question was propounded by myself and the accused refused to answer.

PRESIDENT: Objection overruled.

DEFENSE COUNSEL: May it please the court, if the court would like to recess, I can stop right now.

PRESIDENT: Court will recess for twenty minutes.

(Whereupon at 1000 hours the court recessed until 1020 hours.)

(Whereupon the court reconvened.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all of the accused the reporter and interpreter are present.

PRESIDENT: You are reminded that you are still under oath.

OTTO SCHAAN, an accused, voluntarily resumed the stand and being reminded he was still under oath, testified further through an interpreter as follows:

DIRECT EXAMINATION, continued

QUESTIONS BY DEFENSE COUNSEL:

Q Schaan, at the end of the last session I asked you the following question, "Colonel Scheerer who furnished the information for the preparation of the charts which have been introduced in evidence as Defendants Exhibits one and two.

CAPTAIN VANCE: I object on the ground that it is repetitious.

LAW MEMBER: That was overruled.

DEFENSE COUNSEL: That was overruled just before the recess.

THE WITNESS: On the request of the chief defense counsel Colonel Berenda we were working on this chart--General Stroop, Colonel Trumbour, SS Major Girke, SS Major Hollenbreich, Colonel of the SS Lassak and myself.

QUESTIONS BY DEFENSE COUNSEL:

Q Now Colonel Scheerer, calling your attention to the part of the chart which pertains to the Security Police from Kaltenbrunner down, who furnished the information for the preparation of that part of the chart?

CAPTAIN VANCE: Same objection, if it please the court, and to save time I will enter a blanket objection to every question read out of this record as being repetitious.

PRESIDENT: Objection overruled.

(Schaan-direct)

pld-3Gk-2

CAPTAIN VARCH: Will the court consider that I make an objection to each and every question separately as propounded?

PRESIDENT: It is so considered and so overruled.

DEFENSE COUNSEL: As it pertains, of course, to questions that are part of the record which were previously declined to be answered.

THE WITNESS: Colonel Trumbler, SS Major Girke, SS Major Hellenbreich and myself.

QUESTIONS BY DEFENSE COUNSEL:

Q Now on this chart, the personnel section, Amt number two which you testified was supply--that line in command goes directly to you, does it not?

A Yes. To department number one and department number two.

Q You drew that line on this chart, did you not?

A Yes.

Q I notice that the other section from Hattenbrunner's office, which is marked SD, Gestapo or Kripo, as a direct chain, skips your headquarters and goes down to the headquarters of Frankfurt, Coblenz and Darmstadt. I will ask you if you did draw that line and furnish that information yourself?

A Yes. In addition Colonel Trumbler, SS Major Girke and SS Major Hellenbreich.

Q Now a question of my own not on the record. I call your attention to the right hand side of Defendants Exhibit Number two--this part underneath the Reichssicherheitshauptamt all the way down. Who furnished the information for that as it stands?

A Mainly, I myself.

Q Tell the court what is meant by the line going from SD to Gestapo and Kripo, the line with the jagged teeth on it which goes down to your headquarters?

A The red and black line going from departments four and five to the Kripo, Stapo and SD offices at Frankfurt, Coblenz and Darmstadt shows the

(Sommer-direct)

direct channel of command of these two departments to these headquarters. The line with black teeth from the Reich Security Main Office to the inspectors of the Security Police and the Security Service and then further down to the headquarters Frankfurt, Cologne and Darmstadt represents the channel of command from the Reich Security Main Office all the way down for orders of fundamental importance.

Q By your preparation of this chart you show that you had no connection with the SD, Gestapo and Kripo, is that correct?

A Connection I had. Only these lines were the direct channel of command from the departments in Berlin to these individual headquarters.

Q I believe, on direct examination, you described your position as inspector of the Stapo and SD, is that correct?

A Yes.

Q Tell the court exactly what your duties were as inspector of the Stapo and SD?

DEFENSE COUNSEL: May it please the court, in this connection it has been answered previously and in other testimony this would be merely repetitious and I am asking him to conform entirely to the record. May I ask if the court has any instructions in that one particular question?

PRESIDENT: The court does not desire a lot of repetition. If some of these questions have been answered then we don't want to hear them again.

DEFENSE COUNSEL: Thank you sir, we will pass that one up.

QUESTIONS BY DEFENSE COUNSEL:

Q Did you know one Heinrich Himmler?

A Yes.

Q Did you know the head of the Security Police, one Dr. Kaltenbrunner?

A Yes.

Q Do you know General Wuennenberg?

(Seminar-direct)

A Only from seeing him.

Q To whom did you pass on orders that you received from whoever had authority to give you orders?

A To the chiefs of the Gestapo, Criminal Police and Security Service headquarters.

Q You have testified to the party pressure on the police. I will ask you if it wasn't also the duty of the police, particularly the Gestapo, to put pressure on the party?

CAPTAIN VANCE: I object on the ground that it was leading.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q You have testified already somewhat about the party pressure on the police. Can you tell the court whether or not the police in turn put pressure on the party?

CAPTAIN VANCE: Same objection, if it please the court.

PRESIDENT: Objection overruled.

THE WITNESS: The police were unable to exercise pressure on the party and never did exercise it.

QUESTIONS BY DEFENSE COUNSEL:

Q How would you know whether orders which were passed down by your superiors to your subordinates directly or which were passed down to your subordinates through you were obeyed or disobeyed?

A I could know about it only through the individual chiefs of my headquarters or through an inquiry from Berlin.

Q Can you tell the court how many times you attended conferences with General Stroop while you were inspector? Just by number.

A The number of conferences on which I participated with General Stroop--conferences which took place in a larger group--is certainly not larger than ten.

(Cross-direct)

Q Did you have personal conferences with him privately?

A First I went to General Stroop approximately once a week and informed them of all activities in my area in regard to security police and security service. This information was later on taken care of through my personal representative and expert, SS Captain Dr. Krieger.

Q During the same period, while you were inspector, did you have conferences with Kaltenbrunner?

A Yes.

Q How many?

A Approximately three to four times.

Q Tell the court in detail just what these conferences were about and where they were held.

A For the first time in December, 1943 I was gone to the chief of the Security Police, General Kaltenbrunner and asked him to be transferred since my relationship to General Stroop was not the best one. Kaltenbrunner told me that I could expect to become the commander in Norway in February or March of 1944.

Q Wait a moment. Did you tell Kaltenbrunner, at the time, why you wanted to be relieved?

A I explained before that since my relations to General Stroop were not good I asked him for transfer.

Q All right. When and where was the second conference with Kaltenbrunner

A The second conference with Kaltenbrunner was about the end of May, 1944.

Q Where?

A In Berlin.

Q About what?

A The chief of the branch office of the Gestapo, Frankfurt, SS Captain Knapp came to me and reported to me that his immediate superior SS Lieutenant

(Sommer-direct)

Colonel Pohl, the predecessor of SS Major Breder, had complained to him, Knapp, why he made a secret report about me. At that time I took a sworn statement from SS Captain Knapp, went to Lieutenant General of the SS Kaltenbrunner and asked him to be relieved if I didn't have his full confidence. SS Lieutenant General Kaltenbrunner gave orders to Brigadier General Schulte head of Department One at the Reich Security Main Office, to investigate this matter. Later on I heard from Schulte that Pohl had testified during his interrogation to have received the order to report to the Security Police, Wiesbaden from the Lieutenant General of the SS Heydrich. The Lieutenant Colonel of the SS Pohl was transferred then as a punishment and became the commander of the concentration group, Mittelbau. I didn't hear anything else about this incident.

Q. Was the [illegible] that you told you were talking about?

A. Myself.

Q. What was there in this sworn statement with which you go to Kaltenbrunner? What did it say?

A As I said before Lieutenant Colonel of the SS Pohl, at that time in charge of the Gestapo at Frankfurt, had admonished the SS Captain Knapp that he had made no reports about me.

Q Now come down to the third conference with Kaltenbrunner. When and where was that?

A This was very soon thereafter. Approximately the end of May.

Q What year?

A 1944.

Q Where was it held?

A In Berlin.

Q About what?

A I had technical conferences with the various heads of departments and in this connection I reported again to SS Lieutenant General Kaltenbrunner and asked again for a transfer from Wiesbaden.

(Sessions-direct)

Q Did you tell him why you wanted it?

A For the same reasons as before.

Q Now the fourth conference, when and where was that?

A The fourth conference I had forgotten. The fourth conference was already in January, 1944.

Q That was the second conference in point of time, was it not?

A Yes.

Q What was that about?

A At that time all the chiefs of Gestapo Headquarters, criminal police headquarters and Security Police centers, the inspectors and the commanders of the Security Police had been called to Koenigsberg for a large meeting. There, too, I talked to Lieutenant General Kaltenbrunner about matters of general importance.

Q Tell the court all the talk you had with Kaltenbrunner which had to do with the treatment of allied airmen and personnel?

A I never had any official talk with SS Lieutenant General Kaltenbrunner in regard to the treatment of allied prisoners of war.

Q Did you ever have any unofficial talks with him?

A No, neither. Not about this.

Q During the time you were inspector how often did you have conferences with the chiefs of Frankfurt, Coblenz and Darmstadt, of the Kripo, Stapo and SD?

A Approximately every six to eight weeks the chiefs of the Gestapo Headquarters, Criminal Police Headquarters and Security Service Sectors were called to me to Wiesbaden for conferences. There the orders of fundamental importance which had been received in the meantime were brought to their attention and knowledge and other matters too—personnel questions, transfers to the SS, etc., were discussed there.

Q Were these conferences held with the Stapo, Kripo and SD separately or would you have the meetings with two or three organizations at the same time?

(Seemann -direct)

A No, usually together.

Q Isn't it a fact that when you did have these conferences with the Gestapo, the Kripo or the SD, either together or separately, you discussed with these subordinates the treatment to be given to allied flyers?

A No. Only in case that order had been received, as I testified to before about arrested agents and their treatment and something similar like that.

Q Because it is a matter of great importance I want you to tell the court once more, but briefly, how many orders you received dealing with the treatment of allied flyers? Just a number.

CAPTAIN VANCE: We object on the ground that the question is repetitious. It has been propounded to this witness several occasions?

PRESIDENT: Objections sustained.

Take 305 - 30
3-11-47;JCMcD;1

Q Is it not true that at one or another or more of these meetings which you had with the several chiefs you issued orders to them individually or collectively that captured Allied air personnel were to be shot?

A No, never.

Q Tell the court how many Allied flying personnel were executed in the area under your jurisdiction while you were inspector of the Sips and SDs.

A None.

Q You testified a while ago about an order which came down to the effect that commandos who parachuted down were to be shot to the last man. Will you please tell the court to whom that order was directed, if you know?

A That was an order of the chief of the army, General Keitel, to the Wehrmacht, which we -- that means I as inspector of the security police -- received from the chief of the Reich Security Main Office, Dr. Kaltenbrunner, for information only.

Q There was quite a lot of testimony previously about the relationship of the Party to the police. I will ask you one more question: If you had taken up with the Gauleiter matters involving Party pressure on the offices in your jurisdiction unsuccessfully, did you have recourse to any other authority?

A May I ask you to repeat the question?

(Whereupon the last question was repeated by the interpreter.)

A Through Party channels, to nobody.

Q On any channel.

A As far as the security police was concerned, I would have turned to the chief of the security police, SS Lieutenant General Dr. Kaltenbrunner.

Q Prior to the last recess you testified that previous to the end of the war you had met, among the accused, Stattmann, Fuehr, Girke, Stroop, and Mellenbroich. Had you known any others of the accused prior to the end of the war?

A On the 24th of October, 1944, I met and talked to Colonel Trummler for the first time. I know this date so exactly for the reason because the 24th of October is my birthday; and I intended to spend this day with my family and interrupt my official trip on which I was at that time. And so I paid a visit to my successor, Colonel Trummler, and there I noticed that this was his birthday, too.

Q Did you have any talk with him at that time about any official matters?

A No.

Q Did you ever see Trummler after that before the end of the war?

A Then I have seen him again around the end of November 1944. I asked him to come to the neighborhood of Koblenz, where we had a conference as the inspector of the border police. It was the problem of determining the security line, and Colonel Trummler participated on this conference.

Q At any time did you talk with Trummler about the treatment or handling of Allied air personnel?

A No, never.

Q Mr. Somann, I call your attention to Prosecution Exhibit P-20, which is a document in German which apparently bears your signature. Will you please make to the court any statement or comment you have to make with respect to that particular exhibit?

CAPTAIN VANCE: We object, if it please the court. The document speaks for itself.

DEFENSE COUNSEL: I said to make any comment or explanation he has to make.

CAPTAIN VANCE: It needs no explanation.

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection overruled.

THE WITNESS: From the contents of this letter it is clear that it is information or, better, an instruction, from the chief of the security police, which I had passed down in April 1944 to the chief of the Gestapo headquarters at Koblenz and Darmstadt, Commitment Group Luxembourg, and for information only to the leader of the SD sector Koblenz.

QUESTIONS BY DEFENSE COUNSEL:

Q Does that document make any special reference or any reference at all to Allied air personnel?

A First, it has a subject to inform the chiefs of the Gestapo headquarters that some men arrived from a British airplane--a flyer had parachuted wearing an insignia around his arm "German Wehrmacht". Since men with these armbands had access to secret installations or industry --

PRESIDENT: Just a moment. We have the document right here in evidence. You do not need to explain it.

QUESTIONS BY DEFENSE COUNSEL:

Q Have you any comment to make with respect to that order which does not appear on the document itself?

A No. It's an instruction and information from the chief of the security police which I passed down to the various headquarters.

Q Prior to coming to Wiesbaden January 1, 1945, where were you on duty?

A I was in charge of the SD sector at Hamburg.

Q When did you go to Hamburg and when did you leave?

PRESIDENT: I think all those questions have been answered once.

DEFENSE COUNSEL: Have they? I am sorry. I withdraw the question. Any questions by any other member of the defense?

DR. AHRIMER: Cross examination in behalf of the accused Cirke, Hellenbroich, and Stattman.

QUESTIONS BY DR. AHRIMER:

Q Mr. Somann, this morning you testified about the so-called SD statement. Were these SD statements to be signed by any other people in addition to members of the SD themselves?

A The SD men and all confidential agents of the SD.

Q How was it with the members of the state police?

A As far as they were members of the security service, yes. This applies to the comrades Cirke, Hellenbroich, and Stattman.

DR. AHRIMER: Thank you. That is all.

DEFENSE COUNSEL: Your witness.

CAPTAIN VANCE: No cross examination.

DR. WACKER: No more questions.

DEFENSE COUNSEL: Any questions by the court.

PRESIDENT: No questions by the court. The witness will take his place in the dock.

(Whereupon the accused Somann resumed his seat in the dock.)

(Somann - Direct)

DEFENSE COUNSEL: Call the witness Karl Kaleske. He was sworn for the prosecution but not for the defense.

PRESIDENT: Is this atill on behalf of Somann?

DEFENSE COUNSEL: Yes, if it please the court, and I think for others of the accused too. I think with respect to Goss and Rost also.

KARL KALESKE, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q You have previously testified as a witness in this case?

A Yes.

Q Will you please tell the court just what regulations and rules were in effect in the headquarters of General Stroop with respect to participants in conferences with him?

A There was always the personal instruction by General Stroop, whom he ordered for personal conferences at his headquarters. That is the way I understood your question.

Q Assuming that someone was ordered there, were there any rules as to who could participate in such a conference? For instance, how about yourself?

A No. General Stroop always decided personally who could participate on these conferences.

Q Can you tell the court whether or not conferences were held between General Stroop and individual members of the secret police or the order police?

A Yes. In general it was like this: that whenever a larger conference took place and the conference was finished, that the commander of the order police or the commander of the

security police then remained in General Stroop's office, and then probably matters were discussed between these two gentlemen. But, of course, then witnesses or other participants were not present anymore.

Q What authority did you have to attend the conferences which you have just discussed?

A Personally I did not participate on official conferences. I was only supposed to sit in the anteroom and to make certain that the conference would not be interrupted by visitors, etc. From time to time it happened that General Stroop called me into the room and gave me some orders, perhaps that I had to take care of something over the phone.

Q Was there any way for you to tell whether or not a conference was one which could not be interrupted or was one which you could interrupt?

A A conference which was not to be interrupted was marked in this manner: that from his desk General Stroop turned on his light, and then in my anteroom a sign was lit which said "Do not enter".

Q When that sign was lit up who could enter?

A Nobody could enter. Not even I could, although otherwise the secretary, Miss Hoecker, and I myself had always the right to enter the room.

Q You knew Somann, did you not?

A Yes.

Q Do you know what the relationship was which existed between Somann and Stroop?

A In which respect?

Q Their personal relationship or their official relationship.

A Personally I had the impression that there was a certain tension between General Stroop and SS Colonel Somann.

Q Can you give the court any reasons for the existence of this tension that you know about?

A Of course, these reasons are unknown to me, because I did not participate on these official meetings.

Q Do you know whether or not differences of opinion existed between the two with respect to personal and official matters?

A That is beyond my knowledge.

Q Do you know whether or not Somann was under the supervision of anyone?

A Personally, I don't know anything about it.

Q Did you ever hear that he was?

A Nothing came to my knowledge.

DEFENSE COUNSEL: Dr. Buerger will examine.

DR. BUERGER: Cross examination on behalf of Trummler, Best, Goss, and Michely.

QUESTIONS BY DR. BUERGER:

Q Did anything become known about the individual meetings on which you or Miss Hoecker were not permitted to participate?

A I personally did not hear anything about the contents of these conferences. Whether General Stroop later on gave orders to Miss Hoecker to put in writing the contents of such a meeting, I can't say that either, because I had nothing to do with it.

Q During the meeting, when you were allowed to enter the room from time to time, was it possible for you to hear part of the conversation between General Stroop and the participants on these conferences?

A In general this was not possible. When I entered the room I was told only by General Stroop to do this or that or call up this fellow. That was all. So that the conference as such was interrupted at this moment and no talks were going on.

Q Did you accompany General Stroop on his official trips?

A Yes.

Q Did conferences take place at branch offices, and did you participate on these conferences?

A General Stroop had the habit to visit the gauleiters, the presidents of the government--in general, the chiefs of all departments under his jurisdiction, in order to discuss with them official business. On these meetings, especially as they were with high government officials, I did not participate, but I had to stay in the anteroom of the gauleiter or whoever it was, and there I had to wait for instructions from General Stroop if something had to be taken care of immediately.

(Kaleske - Direct)

Q Were you with General Stroop also at the office of the Leader of the SS Regiment Saarbrucken, SS Colonel Stemmler?

A Yes, we, too, visited this Headquarters on several occasions.

Q Did direct conferences take place there between General Stroop and Colonel Stemmler--conferences in which you could not participate?

A The possibility certainly exists, but I don't know what you are referring to--whether you have any definite--

Q Did it come to your knowledge that General Stroop gave a direct order in regard to flyers to SS Colonel Stemmler?

A Certainly not in my presence.

Q During one of these conferences at Saarbrucken were toys or stilts for children taken along by you or General Stroop?

A Yes, I remember that SS Colonel Stemmler had made for General Stroop a pair of stilts.

CAPTAIN VANCE: May it please the Court, I would like some information. I understand he is cross examining and he is going into new matters. Am I permitted to do likewise, or am I bound by direct examination.

DEFENSE COUNSEL: This is really not cross examination--it's as much direct examination as mine was, only for a different accused.

LAW MEMBER: All right.

QUESTIONS BY DR. BUERGER:

Q Did you know at that time the SS Major Best?

A Yes.

Q Did you identify him already the last time when you testified here in Court as the witness of the Prosecution?

A I don't know whether Best was present during identification.

Q Could you identify Best when he is present here in Court?

A Yes.

Q If he is, please point him out.

A Number 14.

DR. BUERGER: The record may indicate that the witness identified the accused Best as number 14.

Q What was the position of Best on the staff of General Stroop?

A Best was sent as the Deputy of Lt. General Fruetzmann in Berlin for the Werewolf, and he was used as such on the staff.

Q Did he have any direct authority of command on the staff?

A As representative of the Werewolf he must have had authority of command in his sector.

Q What was the personal reputation of Best on the staff?

A Do you want to know the general attitude of the members of the staff?

Q Your personal attitude/

A I got to know Best as a very decent and valuable man whom I valued especially as a comrade, and his decent

character gained him only friends in the staff.

Q Do you know the accused Goss?

A Yes.

Q If you see him in the court, please, will you point him out for the court?

A Number 15.

DR. EUERGER: May the record please indicate that the witness identifies the accused Goss as number 15.

Q Do you know when Dr. Goss came to the command of General Stroop, to his staff?

A That must have been the fall of 1944.

Q Do you know in which capacity he reported to the staff of General Stroop?

A Yes, Dr. Goss was supposed to be my successor as General Stroop's adjutant, since General Stroop was interested in having an SS leader as his adjutant.

Q And did not Goss report to you only as a member of the SS, an officer of the Waffen SS?

A After Dr. Goss started his assignment I got to know him only in the uniform of an SS man, as a First Lieutenant of the SS.

Q Do you know whether Dr. Goss came of his own request or had been transferred to the staff?

A This, of course, cannot be known to me since I never talked about this matter with Dr. Goss. I only know that SS Captain Keller recommended him as adjutant after he had heard that General Stroop wanted to have a change in the person of his personal adjutant.

Q Did Dr. Goss ever start this assignment as adjutant?

A No.

Q Do you know, Mr. Kaleske, whether General Stroop had a special authority from Heinrich Himmler which gave him special prerogatives and rights?

A Yes.

Q Did you read this authority?

A Yes.

Q Who showed you this authority?

A First General Stroop showed it to me after he had received it from Himmler or his adjutant, respectively, at Saarbrucken after an official meeting.

Q Do you know when this happened?

A Yes, that was after the troops in France did not resist any more and were flooding back, and Himmler attempted to stop this flooding back by all means.

Q Was the contents of this document limited to one individual case?

A As far as I can remember, this authority was on a plain, white piece of paper without any headquarters printed on it--without any letterhead--and only typewritten. The wording, as far as I can remember, was as follows: "I am giving herewith General Stroop all authorities. His orders have to be obeyed completely," properly signed by the typical letters of Himmler.

Q Mr. Kaleske, was this document in addition to you known to any other people at the Headquarters?

A Yes.

Q Who showed this document to the other members of the staff?

A That could have been done only by the bearer of this authority--that means General Stroop.

DR. BUERGER: Thank you.

QUESTIONS BY THE DEFENSE COUNSEL:

Q Herr Kaleske, do you remember talking with me and other counsel yesterday about certain questions and answers concerning your possible testimony this morning? Do you remember the fact that we did?

A Not all the questions which came up here were discussed there, for instance the question of authority.

Q Please listen to my question and answer only my question. Do you remember we talked about what evidence you might give? In fact, did we or did we not talk?

A Yes.

Q Now, do you remember your discussing with me your opinion of Schmann's character?

A Yes.

Q Do you remember my asking you who, among the members of Stroop's staff, would differ with Stroop?

A Yes.

Q Will you tell the Court what you told me about those two matters?

CAPTAIN VANCE: May it please the Court, that's certainly not proper--what they talked about in there in chambers. They were not under oath. If he wants to ask questions, let him ask them.

DEFENSE COUNSEL: Yes, I agree, I am sorry.

QUESTIONS BY THE DEFENSE COUNSEL:

Q Will you please tell the Court what your opinion is of Schmann's character as you personally observed it.

A I got to know Schmann as a quiet man, absolutely certain of his position, who understood as one of the few

to report his opinion towards General Stroop in a quiet, decent and efficient manner.

Q Do you mean his opinion to General Stroop or his opinion on matters of business?

A His opinion in regard to official matters were perhaps different.

Q Do you know what reactions took place with General Stroop when these differences of opinion were expressed by Scmann?

A General Stroop did not bring these to my knowledge, but Colonel Scmann when he left one of these official meetings when I asked him in short now "what has happened", then SS Colonel Scmann did tell me--

Q Well, let's skip all that, unless the Prosecution wants it before the Court. Yesterday, do you remember using one particular word descriptive of Scmann which you said was not to be found exactly in the German language?

A Yes, a word which is difficult to translate?

Q Yes.

A Yes.

Q Well, will you please tell the Court what that word was?

A I called Scmann a gentleman.

Q Now, likewise, didn't you express an opinion as to whether or not Best or Goss--

CAPTAIN VANCE: Are we still talking about what went on in your chambers? If you are, I object to it.

DEFENSE COUNSEL: I am going to withdraw it, and let somebody else ask it. I am through; I think Dr. Buerger has something else.

QUESTIONS BY DR. BUERGER:

Q Mr. Kaleske, if Major Best testifies that in a certain matter he received an order, a definite order, from General Stroop, in your opinion is this correct, or do you think that Best is using another one to hide himself and to cover himself?

A No, I think that's impossible since Best, in accordance with his character and as a comrade would never act as vicious as that and as mean as that.

DR. BUERGER: Thank you.

QUESTIONS BY DR. WACKER:

Q Mr. Kaleske, please identify Mr. Scmann and point to him.

A Number 3.

DR. WACKER: The record may indicate that the witness identified the accused Scmann, Number 3.

MAJOR SAXON: Dr. Rau has something.

DR. RAU: Cross examination on behalf of the accused Stroop.

QUESTIONS BY DR. RAU:

Q Mr. Kaleske, did you never make a mistake in your life?

A I don't know what you are driving at, Dr. Rau.

Q My question--isn't it clear?

A I can answer you only with the proverb-"To err is only human."

Q That means to make a mistake would be possible also in regard to your opinion about Best and Goss?

A No, in this case it's impossible.

Q So you think there are cases where a man cannot make a mistake?

A In this particular case I am not mistaken, because I do not know of any act committed by Best which could change my opinion about him.

Q Since when was the light signal, "do not enter"?

A This sign existed already at the time when the predecessor of General Stroop, Lt. General Bergelmann was still on duty at Headquarters.

Q Do you have any indications when this light signal was put to use?

A The reason must have been that he didn't want to be disturbed, or perhaps that certain persons were not supposed to participate or know about it.

Q If I understand you right, this means that you or the secretary were not allowed to enter?

A Yes.

Q That means whenever the secretary was allowed to enter, this meant that they were not discussing matters in which he did not want to be disturbed?

A Yes.

Q Can you write shorthand?

A Yes.

Q Can you write shorthand well?

A Yes.

Q Did you make shorthand notes about the conferences between General Stroop and other people?

A I did not take the entire proceedings of a conference down by shorthand. Whenever I had participated in a conference,

I received from General Stroop short remarks "make a note about this and that."

Q Wasn't it like that that you yourself participated in conferences with the Gauleiters so that the Gauleiters complained about this fact?

A In personal conferences between General Stroop and one of the three Gauleiters I have never participated.

Q Did you participate in conferences with Gauleiters in which other people participated too?

A Yes, I remember especially a conference which was called by Gauleiter Sprenger at Koenigstein at which Party and police matters were discussed.

Q When was the official conference with Himmler at Saarbrucken?

A I can't give you the exact date, but I testified already to the conditions which brought this meeting to pass.

Q Don't you know approximately when, in which month, the flooding back of the troops in France started?

A That could be easily found out through official Army reports.

PRESIDENT: The Court will recess until 1:30.

(Whereupon at 1200 hours the Court recessed.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show all the members of the court are present, all the members of the prosecution are present, all the members of the defense, the reporter and interpreter are present.

DEFENSE COUNSEL: At the end of the last session, the witness Kaleske was on the stand. Will you bring him in, please.

KARL KALESKE, called as a witness by the defense, being reminded he was still under oath, resumed the stand and testified further through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU (cont'd):

Q You remained in your position as Stroop's adjutant until the end of the war, is that right?

A Yes.

Q Now, if any visitors came in for conferences, did you as adjutant not feel interested in what was talked about, later?

A I had no way of knowing whether these several cases were secret. Of course, I would occasionally ask one of the other participants after they left the official room, "Well, what went on."

Q Did you ever hear anybody say he received an order from General Stroop to have terror fliers shot?

A No.

Q Did you find out about these shootings?

A No.

Q So it came as a surprise to you yourself such shootings took place?

A I only found out about these shootings in the course of interrogations or trial.

Q Then you were thoroughly convinced that no such shootings by the police took place?

A The regular police?

Q The police in general, all police.

A No.

Q You mean you were thoroughly convinced such shootings did not take place?

A I was convinced they did not take place.

Q It was a mistake on your part?

A My answer to the last question?

Q No, a mistake on your part such shootings did take place.

A That can't be called an error on my part because I didn't know about it.

Q And in the same manner, you didn't know what Best said to General Streep?

A No.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VINCE:

Q Mr. Kaleske, from what date to what date were you with the police department?

A From the 6th of March 1940 until the surrender.

Q Were you with General Streep during that entire period?

A No.

Q During what period of time were you working for General Streep?

A That was from November 1942 until the collapse.

Q During the entire time you were with the police, were you a police official or with the German army?

A I was a member of the protective police and at the end was wearing the insignia of a reserve captain of the protective police

and did not belong to the armed forces.

Q Did you have papers showing you to be a member of the Waffen SS?

A No.

Q Did you have what is called an SS sold book?

A No, however such book was supposed to be issued, the preparation of the book was being worked on and such papers were being issued to the police at the end of 1944, beginning of 1945.

Q I believe you testified you were almost all the time with General Stroop when he was out on official visits, is that right?

A Yes.

Q Did you ever witness any American planes shooting men, women and children?

A I didn't see it, no.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Any questions by any member of the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: May it please the court, I would like to offer on behalf of the accused Sommer a statement by one Dr. Hans Krieger, who is not here -- has been sent away. There is a stipulation agreed to between the prosecution and defense that Dr. Hans Krieger would testify in accordance with the questions and answers I now have here. I would like to read into the record.

CAPTAIN VAN S: That is so stipulated. The accused Sommer should be joined in the stipulation.

DEFENSE COUNSEL: The accused Sommer, his attorneys and prosecution.

(Kniedam - Cross)

PRESIDENT: Sommer, do you agree to the stipulation entered into between your attorneys and the Prosecution?

ACCUSED SOMMER: Yes.

PRESIDENT: The stipulation is accepted by the court.

DEFENSE COUNSEL: With the court's permission I will now read it into the record.

"Q What is your full name?

"A Dr. Hans Krieger.

"Q Do you know Otto Sommer?

"A Yes.

"Q Since when?

"A The end 1943 until the end of August 1944 in Wiesbaden and later I think it was beginning of November 1944 till April 1945 in Berlin.

"Q I was told by Sommer that he was relieved as the inspector in Wiesbaden July 20th and went to Berlin, does that correspond with your recollection?

"A I don't know the exact day, but it could have or might have been the end of July or beginning of August.

"Q So that your recollection is at the end of July, beginning of August?

"A Yes.

"Q What was your position under his command?

"A I was a referent (assistant) with the inspector in Wiesbaden in the same office.

"Q Were you present at meetings, helper at all the conferences which Sommer had with his subordinates?

"A Yes, with the exception of a time I was sick, as I had pneumonia. It was the first half of March 1944, I was two weeks in bed, and later one other week.

(Stipulation by Krieger)

"Q Did you become acquainted with what took place at the conference between Semmm and his subordinates at the time you were sick?

"A I do not think that a big (important) meeting took place at this time otherwise I would have heard about it.

"Q Do you remember the time the non-interference order came down?

"A Yes, in 1944, in early summer about June.

"Q How long before Semmm left for Berlin?

"A It could have been six or eight weeks.

"Q Was there a meeting held at which time this non-interference order was discussed?

"A Yes.

"Q Who was present?

"A There were two or three meetings held, one in the Kurhaus and another in our office. I do not remember the intervals of time and I do not know at which meeting the non-interference order was read.

"Q At how many meetings was the non-interference order read?

"A One time, as far as I remember.

"Q What was done and what was said by Semmm?

"A Semmm read the order, I knew nothing else.

"Q What else? Did anybody else say anything?

"A That is all I have in memory.

"Q When did Semmm become inspector of Wiesbaden?

"A I don't know, I arrived in Wiesbaden end of 1943 and he was already present there.

"Q During the time you were the referent for Semmm, what was the order with respect to Allied fliers?

"A They had to be turned over to Oberursel and a report had to be forwarded to the Gestapo, Frankfurt.

"Q What was Oberursel?

"A I know that there was a Dulag (transfer camp) West for prisoners of war.

"Q Who was in charge of this camp?

"A I do not know this with certainty.

"Q Was it the Wehrmacht?

"A Yes.

"Q During the time you were referent for Semann did you ever hear of a single case of an Allied airman being killed by the population?

"A No.

"Q Did you ever hear of a single case of an Allied airman being killed by anybody during the entire time you were referent?

"A No.

"Q Were your duties such that you would have heard about it?

"A Yes.

"Q How long did you stay there in Wiesbaden after Semann left?

"A I have changed my position four weeks after Semann left.

"Q Who was Semann's successor?

"A Wiebens, I think, but just for a little while.

"Q One Trummler was his real successor, were you present when Trummler came?

"A Yes, but he made me/be a criminal police referent (assistant) but I did not actually work any more.

"Q How long altogether were you in Wiesbaden after Semann left?

"A I stayed in Wiesbaden till the beginning of November 1944.

"Q When did you go on furlough?

"A The last days of October.

"Q You remember the date when Trummler came to Wiesbaden?

"A He came in the beginning of Octobe r, if I am not mistaken.

"Q Were you there when the policy with respect to the handling of fliers was changed?

"A As far as I could overlook it, there was no change in my time.

"Q And what were the duties of the SD?

"A The so-called "Information Service" (Counter Intelligence Corps) for example, the SD had to get the information what the German population thought and said about what happened in Germany."

(Whereupon the interpreter read the foregoing stipulation in the German language.)

DEFENSE COUNSEL: The next witness is Wilhelm Wiebens. He has not been sworn by the defense.

WILHELM WIEBENS, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Your full name is Wilhelm Wiebens?

A Yes.

Q Have you testified in this case before?

A No.

Q What is your present status?

A Sector leader of the SD in Coblenz/

Q No, are you a prisoner now?

A Yes.

Q What was your civilian occupation?

A Merchant.

Q What was your profession during the war, were you a member of the Krepo or SD?

A With the SD.

Q And were you with the SD in the years 1944 and 1945?

A Yes.

Q And where you at that time?

A Coblenz.

Q Do you know one Otto Sommer?

A Yes.

Q If he is in the courtroom, please point him out to the court.

A Number 3.

DEFENSE COUNSEL: Let the record show the witness identified the accused Somann wearing placard Number 3.

Q When did you first meet Somann?

A I have known Somann from before that.

Q Were you on duty at Coblenz when Somann came to Wiesbaden?

A Yes.

Q Were you there when -- withdrew that. Do you know a man by the name of Hans Trummler?

A Yes.

Q If he is in the courtroom, please point him out to the court.

A Number 2.

DEFENSE COUNSEL: Let the record show the witness identified the accused Trummler wearing placard Number 2.

Q Do you know what Somann's position was in Wiesbaden?

A Yes.

Q Will you state it to the court.

A He was inspector of security police SD.

Q Do you remember the time when he left Wiesbaden to go to another station?

A That must have been towards the end of July 1944.

Q Who was Semann's successor?

A Colonel Trummler.

Q When did Trummler come?

A That must have been toward the end of September.

Q Who was the inspector or acting inspector between Semann and Trummler?

A Well you couldn't really call it acting. There really wasn't any deputy there. I came over from Koblenz two or three times a week and took care of the business there.

Q What rank did you hold with the SD office in Koblenz?

A SS Lieutenant Colonel.

Q Who was your superior?

A The Reichs Main Security Office.

Q Was Semann your superior?

A From an SS standpoint he was.

Q How about from an SD standpoint?

A The Reichs Main Security Office, Office Number 3.

Q What authority did Semann have over you to give you orders with respect to this work as head of the SD?

A He couldn't give us any direct orders of that sort. We got our orders directly from the Reichs Main Security Office, Office Number 3 and that is where we made our reports as well.

Q What was the relationship between your office and the inspector?

A The inspector took care of the office in Koblenz from an SS standpoint.

Q What does that mean?

A Well the members of the office were SS men and they were taken care of from an SS standpoint by the inspector. For instance personnel files would go to the Reichs Main Security Office by way of the inspector and not directly, but the technical assignment of the men as to one certain office for instance, that was done by the Reichs Main Security Office, Office Number 3.

Q Did you ever hear of the so-called non-interference order?

A No.

Q Do you know what the non-interference order is?

A I knew it now.

Q Were you ever present at a meeting at which this non-interference order was read or discussed?

A I think now that there was a meeting in July, 1944, which might have had to do with this order, since I now find out there was such an order, as a subject, but I don't know whether that is correct or not. I think that is so now because a decision was made by Colonel Somann in that meeting which makes me conclude now that might have been what the subject was, but I don't know whether that is right. All I know is that after this conference, together with the Stapo chief of Frankfurt and the Stapo chief of Coblenz, Colonel Somann made the decision that captured flyers were to be turned over to Oberursel. I don't know the details, but I do know definitely -- I remember that the decision was made.

Q Who was present at that meeting so far as you remember?

A The Stapo chief of Koblenz.

Q What is his name?

A Christmann, The Stapo chief of Frankfurt.

Q What was his name?

A Broder.

Q Who else?

A The sector chief of the Frankfurt am Main.

Q Who was he?

A His name was Jaskulski. I think the Stapo chief of Darmstadt was also there.

A DEFENSE COUNSEL: That is all. Any questions by associated counsel? You may inquire.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANS:

Q Did Colonel Semann have the power to make decisions about orders?

A No.

Q Well you just finished saying that he made a decision about what to do with flyers, didn't you?

A Well the experiences which the various office chiefs had in their areas were discussed in the course of those meetings.

Q Experiences about what, in connection with what?

A About their work in their area. Experiences varied because the organization -- the structure of the various areas was also varied.

Q Did Colonel Semann make any changes in orders you had received down from Kaltenbrunner?

A Not for our sector of the SD.

Q What about SS matters?

A These were very definite from the very beginning. Any such as welfare matters concerning the men they were definite and there was no reason for change.

(Wiebens -CDirnes)

Q Did you ever get an order from Colonel Semann in substance that it was not the business of the police to interfere when civilians attacked allied flyers?

A No.

Q You never heard of any such order?

A No.

Q So if Colonel Semann testified you were in his office when he read that order, he is mistaken, is he?

A Yes. I don't remember that.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Any questions by members of the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: The defense calls Wolfgang Berger, likewise on behalf of the accused Semann.

WOLFGANG BERGER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name?

A Wolfgang Berger.

Q During the war what was your official position?

A Chief of the Criminal Police, Frankfurt on the Main.

Q When did you become such and when did your duties as such end?

A I took my position in February 1942 and left it in March, 1945.

Q During that period of time were you in charge of the Criminal Police District in Frankfurt?

A Yes.

Q Do you know a man by the name of Otto Somann?

A Yes.

Q If he is in the room, will you please point him out to the court.

A Number 3.

DEFENSE COUNSEL: Let the record show that the witness identified the accused Somann as wearing placard number 3.

Q Where did you meet Somann?

A I met Mr. Somann in Wiesbaden.

Q Do you remember what time that was? About when?

A That might have been about 1943.

Q Do you know what Somann's official position was?

A Inspector of the Security Police.

Q Do you know when Somann left Wiesbaden?

A I think toward the end of July, 1944.

Q As the inspector of the Security Police, what authority did Somann have over you and your office?

A Mr. Somann's duties were of a supervisory nature. He had to supervise me in my office. He had to see to it that MK got -- that I worked along with other offices well and he could give me orders which were not in contradiction with the main office of the Security Police in Berlin.

Q From whom did you generally receive your orders?

A From the Reichs Main Security Office in Berlin.

Q Was there any change in the relationship between the head of the Security Police and SD at Wiesbaden between the time Scmann was there and the time Trumler was there?

A When Mr. Trumler came in as inspector he was telling us that he had the strongest, most important authorizations with him; that he could relieve any one of his office chiefs right away.

Q What orders could Scmann give you?

CAPTAIN VANCE: We object. That is repetitious.

DEFENSE COUNSEL: I don't mean it to be.

PRESIDENT: Is that an objection?

CAPTAIN VANCE: Yes sir. That is repetitious. He just asked that question and it was just answered about two minutes ago.

PRESIDENT: Objection sustained.

QUESTIONS BY DEFENSE COUNSEL:

Q Did Scmann ever give you any orders as to how the business of your office should be conducted?

A No. Scmann permitted me to do my work all by myself without disturbing me.

Q Do you remember a so-called non-interference order?

A Yes.

Q Were you ever present at a meeting in which such an order was read?

A Yes.

Q Will you tell the court what was said or done at that meeting at which such an order was read and by whom?

A I don't remember this meeting where this order was given me exactly anymore and can't give any details, but I do know this order

was read to me.

Q Do you remember a man by the name of Breder?

A Yes.

Q What is Breder's official relationship to you?

A Mr. Breder was the chief of the State Police in Frankfurt on the Main from the end of 1943, or the Summer of 1943, until the first days of March, 1945. At the beginning of May he was then assigned as commanding officer of the Security Police by Dr. Brunnler, that is from that time on he had under him not only the State Police but also the Criminal Police.

Q Now at the time you heard this order read, was any discussion had about the order that you remember?

CAPTAIN VANCE: We object, may it please the court. The witness has said that he can't remember any such meeting and now he wants him to tell about a discussion that took place at that meeting.

DEFENSE COUNSEL: He says he thinks he heard it read at a meeting.

PRESIDENT: Objection overruled.

THE WITNESS: All I can remember, as I said before, was that in the course of some meeting that order was announced to me. Whether I was there by myself or with some other people too, I don't remember.

QUESTIONS BY DEFENSE COUNSEL:

Q During the time that Semann was inspector of the Stapo and SD in Wiesbaden, how many cases came to your attention involving mistreatment of allied personnel by the Security Police or the SD?

A I heard of no such during that time.

(Berger - Direct)

Q How many cases of killings of allied air personnel came to your attention, or did you hear about during the entire time Somann was inspector in Wiesbaden?

A I didn't hear of any case of killing either.

Q Did Somann issue orders to you as to how you should carry out the duties of your office?

A No.

DEFENSE COUNSEL: Questions by associated counsel? You may inquire.

CROSS EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Mr. Berger, how many flyers were shot in Frankfurt while trying to escape?

A I don't know.

Q What is your best judgment. Give us an estimate.

A I don't know anything at all about these cases. All I know about is this one case which I heard about after being captured.

Q You never heard about a flyer being shot while attempting to escape in Frankfurt, is that what you want to tell this court?

A No. With the exception of this one case which I found out about after I was captured, that is all I know.

Q Which case is this?

A Fuchs, Hechler.

Q And you didn't know about that one until after you were captured?

A I didn't hear about it.

Q What was your position in Frankfurt?

A My position? [illegible] until the end of March, 1945.

Q Yes. [illegible]

A Chief of the Criminal Police.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Questions by the court?

EXAMINATION BY THE COURT

QUESTIONS BY LAW MEMBER: [illegible]

Q What was the connection between your office as Chief of the Criminal Police and Breder's office as Chief of the State [illegible] Police?

A Our positions were entirely different. All I worked on were Criminal Police matters and all Mr. Breder worked on were State Police matters.

Q Did you, as Chief of the Criminal Police, interrogate any captured Allied soldiers? [illegible]

A No, never. [illegible]

LAW MEMBER: That is all.

DEFENSE COUNSEL: May I ask that the witness be excused?

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

REINHARD BREDER, formerly a witness for the prosecution, was called as a witness by the defense and being reminded that he was still under oath, testified through an interpreter as follows:

RE DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q I think you testified what your official position was during the years 1943, 1944 and 1945.

A Yes.

Q Were you the Chief of the Gestapo Office in Frankfurt?

A Yes, from September, 1943, until the end of March, 1945.

Q Have you previously identified the accused Somann while you were a witness here?

A Yes.

Q And Libourine Trumpler?

A Yes.

Q Have you previously testified as to when Somann came to Wiesbaden and when he left?

PRESIDENT: I think he has answered most of these questions before.

QUESTIONS BY DEFENSE COUNSEL:

Q Have you heard of the non-interference order?

A Yes.

Q Were you present at any time when such an order was read.

CAPTAIN VANCE: May it please the court, I am going to object to this line of questioning as being repetitious. We brought him into court in the beginning of the case and he told us all about this meeting and went into every detail.

DEFENSE COUNSEL: I don't think it is in all respects.

PRESIDENT: The objection is sustained.

DEFENSE COUNSEL: Any questions by associated counsel? Your witness.

CAPTAIN VANCE: No questions.

DEFENSE COUNSEL: Questions by the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

DEFENSE COUNSEL: That ends the introduction of evidence at this time so far as Somann is concerned. I am informed by Dr. Rau that there are three witnesses he would like to call at this time for Streep. May I say in our own defense at this time we are winding up and there are a few small chinks we are trying to fill in.

JOSIAS COUNT OF WALDECK, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Josias Count of Waldeck.

Q How old are you?

A Fifty one.

Q Are you a prisoner at this time?

A Yes.

Q Where?

A Dunker Number 2.

Q What was your final rank before the war?

A Before the war?

Q Before the end of the war. Excuse me.

A General of the Police and Waffen SS.

Q What was your official position?

A Higher SS and Police Leader in Wehrkreis IX.

Q Where did you have your headquarters?

A Headquarters in Kassel.

Q Did the Wehrkreis IX border on Wehrkreis No. XII?

A Yes.

Q In what direction of it?

A The other one was to my west.

Q Did you, as Higher SS and Police Leader have a commanding officer of the Security Police after August or September of '44?

A Yes.

Q Did this commanding officer of the Security Police ever transmit an order to you according to which allied terror fliers were to be shot?

DR. WACKER: I'd like the court to point out to this witness that he has a right to refuse to answer certain questions in view of the fact that he is a prisoner.

PRESIDENT: The witness is warned that he does not have to answer any question that may tend to incriminate him.

DR. RAU: Would you like to answer my question?

THE WITNESS: Yes.

QUESTIONS BY DR. RAU:

Q Did you have such an order transmitted to you or did you not?

A Never.

Q Did you have any inspecting powers at all to the effect that the Higher SS and Police Leader was following his job in informing you?

A You made a mistake there. I can't inspect myself, can I?

Q Did you have any way of checking up on the inspector of the Security Police to see whether he was informing you of all orders?

A Technically I didn't have any power to see whether he actually reported everything that came in to his office to me. The commanding officer of the Security Police had a duty to inform me but that duty was not clearly delineated.

Q So, if I understand you correctly, it depended entirely upon the attitude of the commanding officer whether he would inform you and about what?

A That is absolutely correct.

DEFENSE COUNSEL: Any questions on this side? Your witness.

CAPTAIN VANCE: No cross examination.

DEFENSE COUNSEL: Any questions by the court?

PRESIDENT: No questions by the court. Witness is excused.

(Thereupon the witness was excused and withdrew.)

HANS JUTTNER, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Hans Juttner.

Q How old are you?

A 58 years old.

Q What is your present place of residence?

A Camp Dachau, here.

Q In what capacity?

A As a prisoner.

Q Were you a member of the German armed forces before the end of the war?

A Before the end of the war?

Q Yes, before the end of the war.

A Yes.

Q What was your rank?

A General.

Q Of what branch of the service?

A Of the army.

Q Were you a member of the Waffen SS also?

A Yes.

Q From when until when?

A I was in the Quartermaster troops beginning the 1st of January '45 and after that in the Waffen SS, when this Quartermaster unit was transferred into the Waffen SS.

Q What was your official position after 1943 and until the end of the war?

A I was Chief of the Leadership Main Office of the Waffen SS and after the 1st of July 1944 I was Deputy Commander of the Replacement Army.

Q What was the job of the Leadership Main Office of the Waffen SS?

A The Leadership Main Office had to train the replacements for the field units of the Waffen SS, to equip them, and to train and organize new units if such new units were to be formed.

Q What was the official terminology used for replacement units stationed in the zone of the interior after the summer of 1943?

A They had running numbers and their names also depended on the branches of service -- infantry, armored, signal, etc., training and replacement regiments and battalions.

Q Did they ever have the name of a town or of a location?

A I don't know about that.

Q What was the rank of the commanding officer of such a replacement battalion?

A Captain up to Lt. Colonel.

Q In accordance with military regulations was it possible for a Colonel of the Waffen SS to be assigned to such an outfit and that he would be transferred into such a battalion as a Colonel of the Waffen SS?

DR. BUERGER: I object to that question. It is phrased in an entirely improper manner and will give an entirely improper picture about the German military conditions.

MR. RACHAEL: And for the further reason that it is leading.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q When was a Colonel of the police transferred into the Waffen SS?

A In general, the officers of the police, of the regular police, that is, joined the Waffen SS through the police division.

MR. RACHAEL: If the court please, on behalf of the defendants Girke, Hellenbreich, Stattman and Haaf, the defense moves to strike all the testimony of this witness from the record on the grounds it is not germane to the issue of the defendant, Stroop, and also is wasting the time of the court.

PRESIDENT: Motion is denied. The court would like to know what points you are trying to bring out from this witness.

DR. RAU: I should like to prove to the court that the statements which the accused, Trumpler, has made concerning his membership in the

Waffen SS and which statements are now in a position to be checked by other statements, were not of a truthful nature, and if it is possible to show that these statements were not truthful, then the court draw certain inferences concerning certain testimony of the remaining accused, as well.

PRESIDENT: Unless it has something to do with the defense of General Streop, the court does not desire to hear it.

DR. RAU: Thank you. I would, however, like to remark that in my personal opinion as his defense counsel it does have something to do with the defense of General Streop.

PRESIDENT: If it does then bring it out in the shortest possible manner.

QUESTIONS BY DR. RAU:

Q Was there an SS training battalion, Konitz, of the Waffen SS?

A I don't remember any such battalion, Konitz, existing unless it was a closer description of something or other, because I just said before that the battalions were described with running numbers and with the branches of the service. The name, SS Training Battalion Konitz, does not mean anything to me.

Q Who worked on the transfer of police officers to the Waffen SS?

A The Personnel Main Office.

Q Did the Leadership Main Office have anything to do with that?

A The Leadership Main Office had to do with it to the extent that anybody who was transferred to the Waffen SS was then examined by the Leadership Main Office to see whether he would find any use in accordance with his rank. I would like to remark, however, that in my testimony I am concerned only with the troops of the Waffen SS. Whatever else might have happened within the Waffen SS but not concerning the troops or Leadership Main Office, I cannot make any statements about.

Q Was any Waffen SS not under the Leadership Main Office?

A Yes, unfortunately.

Q What type was that?

A These were units attached to the Reichs Security Main Office and SS Main Office. Those are the ones I remember at the moment. They were under these offices and not under the Leadership Main Office.

Q Did these also have the title, Waffen SS, or did they not?

A Yes, they had this description, Waffen SS, attached to them by order of the Reichsfuehrer.

Q Since when?

A That must have happened about 1942 but I can't give the exact date.

Q Would a Colonel be assigned to a battalion?

MR. BACHAUS: The defense objects to that question as hypothetical and speculative.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. RAU:

Q Were Colonels carried in higher ranking staffs?

A Carried? I don't quite understand the question. When they were assigned they were assigned to duty but practice among the Waffen SS, among the troops, that is, was that if somebody had a higher rank for which his qualifications did not make him useful, he would have to wear the lowest insignia of the next lowest rank below without, however, being demoted.

Q So, if a Colonel of the police was transferred as a Colonel of the Waffen SS, which outfit would he have to be assigned to?

A That would depend on the instructions of the Personnel Main Office, depending on which outfit they had assigned him to. So, if he were to serve on active duty in the Waffen SS, he would be assigned to a replacement battalion and he would have to prove his qualifications there.

As to outfits on the outside, among those, I just remember the Economic and Administrative Main Office which I forgot when I mentioned the other two.

PRESIDENT: I would like to have you come to the point. The court is not getting a thing.

DR. RAU: I have only one more question. Would this man have to be transferred to this new outfit or not?

THE WITNESS: He would have to be transferred.

DR. BUSSOER: One question in cross examination on behalf of Trummler.

QUESTIONS BY DR. BUSSOER:

Q Now, if a Colonel of the Security Police in the SD transferred to the Waffen SS as a Colonel, what kind of a Soldbuch would he receive and what outfit would be registered in there?

A If he was transferred to the Waffen SS he would get a Waffen SS Soldbuch, and in there, of course, it would have his Waffen SS rank since it's a Waffen SS Soldbuch.

Q Do you know what the outfits were that were mentioned in these Waffen SS Soldbuchs issued to SD and Waffen SS Officers? Was the replacement outfit the man belonged to registered in the Waffen SS Soldbuch.

A It had to be in there.

Q So in that case, even in the case of a Colonel, it might say "replacement unit","replacement battalion" so and so?

A Well, that might have been written in there by the office that issued the book, that is possible.

DR. RAU: Thank you.

DEFENSE COUNSEL: Your witness.

(Juttner-direct)

CAPTAIN VANCE: No questions.

PRESIDENT: No questions by the court. The witness is excused.

(Thereupon the witness was excused and withdrew.)

PRESIDENT: Court will recess in place.

(Thereupon the court recessed in place.)

PRESIDENT: Court will come to order.

DEFENSE COUNSEL: The next witness is one Dietrich. He is also for Stroop.

FRITZ DIETRICH, called as a witness by the defense, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DR. RAU:

Q What is your name?

A Fritz Dietrich.

Q How old are you?

A 49 years old.

Q Are you a prisoner at this time?

A I am an internee.

Q Where?

A In Cage 1, Dachau.

Q What was your profession until the end of the war?

A I was an official until the end of the war, Police President of Saarbrucken.

Q Do you know the accused, Stroop?

A Yes.

Q If he is present in the courtroom, please point him out.

A General Stroop is wearing No. 1.

DR. RAU: Let the record show that the witness identified the accused, Stroop.

QUESTIONS BY DR. RAU:

Q Did you ever receive an order from this accused to the effect that an allied terror flier was to be shot?

A No.

Q Do you know one of Colonel Stemmler?

A Yes.

Q Where did he reside before the end of the war?

A In Saarbrucken.

Q Did you ever have a conversation with this Colonel concerning the shooting of allied fliers before the end of the war.

DR. RAU: I'd like to request the court to inform this witness he is not required to answer questions which he thinks might incriminate him.

PRESIDENT: The court wishes to warn you at this time that you can refuse to answer any question which will tend to incriminate you.

QUESTIONS BY DR. RAU:

Q Please answer the question.

A No.

DR. RAU: Thank you.

DEFENSE COUNSEL: Any questions by the prosecution?

CAPTAIN VANCE: No questions.

DEFENSE COUNSEL: Any questions by the court?

PRESIDENT: No questions by the court. Witness is excused.

(Whereupon the witness was excused and withdrew.)

PRESIDENT: Court will recess for thirty minutes.

(Whereupon at 1500 hours the court recessed until 1530 hours.)

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all of the accused, the reporter and the interpreter are present.

DEFENSE COUNSEL: If it please the court, we have one witness I would like to introduce on a legal question. He has never been sworn before.

HEINZ WOLFGANG WILHELM PINDER, called as a witness by the defense, being first duly sworn, assumed the stand and testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What is your full name?

A Heinz Wolfgang Wilhelm Pinder.

Q You are a prisoner at the present time in Dachau, are you not?

A I got into the status of a prisoner-of-war in May, 1945.

Q What is your civilian occupation?

A Lawyer.

Q What was your scholastic education?

A I attended high school after elementary school. After that the universities of Kiel, Heidelberg, Berlin and Leipzig. Upon that I passed my first bar examination and I worked in the legal service of the state of Saxony for three years in preparation of my second bar examination. I then took my second bar examination. I worked in the lower Burgstett as an assessor for a while. At that time I also completed my doctor's thesis in law. That thesis concerns, among other things, international law. After not quite one year of trial service and three years of preliminary service I would have completed the prerequisites for becoming a lawyer. I received

(Pinder-direct)

my permission to practice before the state in lower courts of Leipzig after having been inducted into the armed forces, into the air force on 26 of August, 1939. That was the day of my being drafted.

Q I will show you, Dr. Pinder, a writing and ask you just if you have seen it and whether or not you have read it before.

A Yes, I have seen a copy of this, but may I first examine the individual sheets to see whether it is the same document? Yes, I saw a copy of this document a few minutes ago in a waiting room outside this courtroom.

Q Dr. I am going to ask you whether or not the contents of that paper are a true statement, so far as it goes, of the law existing in Germany? Before you answer that question I would like to know if you need time to read it again before you answer such a question?

A As to one point I can answer this question before rereading the statement.

Q As to some other point, do you have to read it again?

A Maybe it would be better for me to reread it briefly.

Q Well, in order to save time while the witness is doing that, Have I the court's permission to present a motion?

CAPTAIN VANCE: I would like to make a statement about this if I might. I will not take the court's time, because I am sure the law member knows how you put foreign law before a court. You bring in the ordinance or the case or what it happens to be and you introduce it in evidence. After it is in you may bring a lawyer in from a foreign state or foreign country to tell how that statute or law has been construed. Now here is a paper we know nothing about. The foundation hasn't been laid. We don't know whether it comes from a German law book or a decree of the German Government. All we know is that it is a piece of paper in his hand that contains a law. Until the proper predicate is laid we object to any further reference to this

piece of paper the witness is discussing.

DEFENSE COUNSEL: There are certain legal situations existing in Germany which we desire to put into the record and so I drafted what I hoped would be a stipulation as to what the law was with respect to those one or two matters. It was a statement of the law as known to be by lawyers practicing in Germany. The prosecution, for its own good reasons, which I don't question for a moment, refuses to agree to the stipulation.

I produced here an expert who has studied in German law for a long time and I propose to ask him whether, insofar as the law of Germany is referred to in that paper, that is a correct statement of it with respect to those matters mentioned. I think it is perfectly proper. It has reference to the Weimar Constitution, some enabling act and all sorts of things of that kind. I wouldn't even know where to find them. I don't think the law library boasts of their possession.

The court may say his opinion isn't worth anything. That is a matter for the court to decide. All I want this man to say is that so far as it goes it is a correct statement of the law of Germany. Based on my own personal knowledge, I can't see where that is wrong.

CAPTAIN VANCE: May I ask the defense counsel, if their books are not in existence and around, where did he copy this law from?

DEFENSE COUNSEL: They made it up out of their own little heads Captain. The four German lawyers prepared it. They say it is a correct statement of the law. They feel it wouldn't be proper for them as counsel to testify and that is why we are bringing it out sir. I don't want to take up any more time in arguing. I will be content with the judgement of the court.

PRESIDENT: The court will recess in place.

(Whereupon the court recessed in place.)

(Whereupon the court reconvened.)

PRESIDENT: The court will come to order.

(PRESIDENT: The court will recess.

(Whereupon the court recessed.)

(Whereupon the court reconvened.)

PRESIDENT: The court will come to order

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all of the accused the reporter and interpreter are present.

LAW MEMBER: Read the last question and the motion please.

(Whereupon the reporter read as follows:

"Q I am going to ask you whether or not the contents of that paper are a true statement, so far as it goes, of the law existing in Germany? Before you answer that question I would like to know if you need time to read it again before you answer such a question?

A As to one point I can answer this question before rereading the statement.

Q As to some other point, do you have to read it again?

A Maybe it would be better for me to reread it briefly.

Q Well, in order to save time while the witness is doing that, have I the court's permission to present a motion?

CAPTAIN VANCE: I would like to make a statement about this if I might. I will not take the court's time, because I am sure the law member knows how you put foreign law before a court. You bring in the evidence or the case or what it happens to be and you introduce it in evidence. After it is in you may bring a lawyer in from a foreign state or foreign country to tell how that statute or law has been construed. Now here is a paper we know nothing about. The foundation hasn't been laid. We don't know wether it comes from a German law book or a decree of the German Government. All we know is that it is a piece of paper in his hand that contains a law. Until the proper predicate is laid we object to any further reference to this piece of paper the witness is discussing.")

PRESIDENT: The objection is sustained.

HEINZ WOLFGANG WILHELM PINDER, called as a witness by the defense, resumed the stand and testified further through an interpreter as follows:

DIRECT EXAMINATION (continued)

QUESTIONS BY DEFENSE COUNSEL:

Q Dr. Pinder, can you tell the court whether or not the various matters referred to in that paper which you have in your hand have been reduced to writing and published officially by the German Government?

CAPTAIN VANCE: Same objection, if it please the court.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: I was going to show that they never were published officially, so that the normal channel of proving it by official publications is non-existent.

CAPTAIN VANCE: If it has never been published, how is it the law?

DEFENSE COUNSEL: The court stands by its original ruling despite that offer of proof?

LAW MEMBER: Yes.

PRESIDENT: That is correct.

DEFENSE COUNSEL: I would like to ask one more question, may it please the court.

QUESTIONS BY DEFENSE COUNSEL:

Q Limiting ourselves to the period of 1 January 1939 on to the end of the war, in the event that during that period of time a citizen of Germany wanted to test the legality of any order or decree published by Adolf Hitler or his cabinet, what if any sources of legal appeal did he have?

CAPTAIN VANCE: Same objection, if it please the court.

QUESTIONS BY DEFENSE COUNSEL:

Q Perhaps I might rephrase the question. Was there or did there exist, so far as you know, any system of appeal by him to the courts to test the legality of any such decree, order, or enactment?

CAPTAIN VANCE: Same objection, if it please the court.

PRESIDENT: The objection is overruled.

THE WITNESS: I don't know anything about the existence of any authority which would have the right to make that sort of a decision, but I do think that would have been known to me if such an authority had existed.

DEFENSE COUNSEL: That is all. Any more questions?

QUESTIONS BY DR. WACKER:

Q Dr. Pinder, what is the basic difference between a fuehrer state and democracy, so far as obedience to authority is concerned?

CAPTAIN VANCE: We object, may it please the court. It is irrelevant, incompetent, and immaterial and has no bearing on the issues of this case.

DR. WACKER: I think this point is very material indeed. The orders which we are talking about here were issued in Germany, a fuehrer state, and it seems extremely important to me that this difference is explained to the judges here, who come from a democracy.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. WACKER:

Q Dr. Pinder, what are the regulations of international law about the question of when a member of an enemy nation becomes a prisoner of war?

CAPTAIN VANCE: Same objection, if it please the court, as made to the questions as propounded by Colonel Bowman.

PRESIDENT: Objection sustained.

QUESTIONS BY DR. WACKER:

Q May a belligerent power make a decision as to whom they desire to make a prisoner of war and whom they do not desire to make a prisoner of war?

CAPTAIN VANCE: Same objection, if it please the court.

PRESIDENT: Objection sustained.

DR. WACKER: No further questions.

MAJOR SAXON: Any cross examination?

CAPTAIN VANCE: No cross examination.

MAJOR SAXON: Does the court have any questions?

PRESIDENT: No questions by the court. The witness is excused.

DEFENSE COUNSEL: May it please the court, I would like to present a motion for the consideration of the court, a copy of which was given to the law member a few days ago and to the prosecution a few days ago. I would like permission to read it.

Take 311 - 30
3-11-47;JMMcD;4

DACHAU, GERMANY

Case No. 12-2000 4 March 1947

UNITED STATES

vs.

JURGEN STROOP, et al

MOTION TO STRIKE FROM THE RECORD

1. Now comes Julius Lassak, named as an accused in the above entitled cause, and moves that Prosecution Exhibits P-56, P-56A and P-57 introduced and received into evidence as confessions be stricken from the record and for reasons assigns the following: -

That the plain weight of the evidence shows that the aforementioned confessions were obtained through duress and coercion and were not voluntarily made by the accused.

WILLIAM BERMAN
Lt. Col. AC
Chief Defense Counsel"

I do not intend to make any extended argument. The court has in mind the evidence of Lassak himself as to the circumstances under which these confessions were received, and the court will recall that the prosecution produced a witness by the name of Coates who, on the stand, corroborated--and I say so most respectfully--everything which Lassak himself said as to the circumstances under which they were obtained.

I appreciate fully the fact that under the regulations now in vogue and in effect the burden is no longer on the prosecution to prove the confessions were voluntarily made, but in this case the defense has sustained the burden of proving that they were involuntarily made.

CAPTAIN VANCE: If it please the court, I will not attempt to answer the argument as to why the motion should not be granted or should be granted. I will say that the court

at this time does not have the power nor authority to rule on this motion. If the court should entertain such a motion as this at this time it would be reading the mind of the prosecutor as to whether or not we intend to bring in rebuttal against Lassak on this. We would be foreclosed from bringing in any rebuttal testimony in regard to this particular matter if the court should entertain this motion at this time. We have a right to do so, and we say that the court has no authority to rule on this motion until all of the evidence is in and the case is closed.

DEFENSE COUNSEL: May I make just one more statement?

PRESIDENT: Proceed.

DEFENSE COUNSEL: The evidence produced, if I remember rightly, was direct evidence produced by the prosecution with the intent to negate at that time what Lassak had to say, and he was put on out of place because he had to go back to America. He was their rebuttal testimony, but unfortunately instead of rebutting it he corroborated it. I submit that a motion to strike from the record can be made at any time.

PRESIDENT: The motion is denied.

DEFENSE COUNSEL: My attention has been called to a stipulation apparently entered into between the prosecution and the defense --

PROSECUTION: And the accused.

DEFENSE COUNSEL: -- and the accused, that a certain witness named herein, if present, would testify about a certain wrist watch owned by the accused Eichel.

CAPTAIN VANCE: It is so stipulated.

PRESIDENT: Does the accused Eichel agree to the

stipulation?

ACCUSED HANS EICHEL: Yes.

PRESIDENT: The stipulation will be accepted by the court.

DEFENSE COUNSEL: With the court's permission I will read it.

PRESIDENT: Permission granted.

DEFENSE COUNSEL: (Reading)

STIPULATION

"It is hereby stipulated and agreed upon between the prosecution, the defense and the accused that if August Herold from Dietzenbach were present he would testify as follows:

"From my own knowledge, I know that the accused Hans Eichel No. 6, wore a German wrist-watch which personally belonged to him until he was taken prisoner."

There is one other small thing, but it may be important in the minds of the court, and that is a correction of Prosecution Exhibit 146. The original exhibit, written in the handwriting of the accused Hoehler, has two lines, one beginning at paragraph 2 and closing the end of that paragraph 2. It is a straight line which shows on the original German and not in the English. It occurs to us that the court might read the English translation and not see the German. These are the two lines (indicating), one here and one there. The court may remember that there was some testimony that part of that thing was a restatement of a report which he made. We think that those lines may substantiate his testimony to that effect.

PRESIDENT: Is that offered as a stipulation?

DEFENSE COUNSEL: They have agreed that that does not appear in the English.

CAPTAIN VANCE: I see a little line in there, but I do not know what the straight line means. If you want to put it in there I have no objection.

DEFENSE COUNSEL: All I want is that the English should have the same line that the German has.

LAW MEMBER: Is it an exhibit?

DEFENSE COUNSEL: The original exhibit in German, written by Hoehler, is Prosecution Exhibit 146. It contains those two straight lines beginning and ending paragraph 2, and the English does not. This is the original exhibit in his handwriting. You see that paragraph 2 begins with that line and ends here with a line, and the English omits them.

PRESIDENT: You are just putting in a line and no words?

DEFENSE COUNSEL: That is all.

PRESIDENT: That may be entered on the exhibit.

DEFENSE COUNSEL: May it please the court, in view of the ruling of the court on the motion, we are now going to put into the record some testimony which, for the sake of a short definition, I will refer to as strafing testimony. I am going to ask Dr. Ehrgen, who is going to put it in, that perhaps before he puts it in he had better make a short statement to the court as to the subject matter of this, so that if we are going to run into any trouble as to the admissibility and relevancy of it we might as well do it now. With the court's permission I will have him make a very short statement.

PRESIDENT: Permission granted.

DR. BUERGER: Before bringing in these witnesses, I should like to state to the court that we intend to bring in witnesses residing in the towns where the accused resided or worked or in the vicinity of those towns. That is about things which the accused themselves know about. There is no intent whatever on the part of myself or my co-counsel to decide to make any decision as to the value of the air warfare as it was fought at the time. Rather, we are presenting this testimony for the purpose of presenting a psychological background for the attitude of the accused and the population in those areas. The first witness is Miss Irma Leonhard.

PROSECUTION: The court will recall that when the question of general or special individual reprisal was first brought to the attention of this court, at that time the defense offered evidence on the subject; that, as chief prosecutor, I made a strenuous objection to the introduction of that evidence and to the proposal of that defense, either as an affirmative defense or by way of mitigation. I objected on the ground that the testimony offered in that connection by the defense was irrelevant, and gave many reasons in support of my contention. My argument appears on pages 1161 to 1169 of the record. The court deliberated the question and, after much consideration, made a decision, which appears on page 1182 of the record:

> "The court will admit evidence of the character sought to be introduced by the defense and will consider it as being offered in mitigation or as reprisal by the accused, providing it is not irrelevant, immaterial or otherwise incompetent. The weight that should be given this or similar evidence will be reserved for future consideration. The court already has common knowledge of

the propaganda that was disseminated generally by the German Government and further evidence of this nature is deemed unnecessary."

Recently the defense renewed its offer of evidence to support the defense of general reprisal, and made a specific offer of proof in that regard. This resulted in further consideration by the court, and a decision was made limiting the defense to proof of reprisals which affected the accused personally and which concerned itself only with their personal experiences and reactions.

Evidence of general propaganda by the German Government was especially declared again by the court to be inadmissible. To offer evidence again in line with the decision made by the court, the accused Stroop and Trummler were permitted to answer questions in which they discussed the bombings and strafings in their particular area by the Allied air force.

It cannot be said that the prosecution by cross examining those accused on those very points, keeping as they did within the scope of that direct examination, did by that means extend the scope of the defendants' evidence or open the door again to unlimited evidence on the subject. General Stroop and Dr. Trummler gave the court by their answers their own personal reactions and feelings based upon personal experiences in their areas. The questions on cross examination by the prosecution have pointedly tested their knowledge on the subject and were designed to show the court that the mental conditions were not based on truth and fact but on their bias and prejudice and on false premises.

So again we renew our objection, and, as evident from

the statement made by counsel, that evidence will now again be submitted of general reprisal and evidence of strafing in general in Wehrkreis 12, which cannot be the personal feelings and reactions of the individual accused in the dock. They are the only ones that can tell us about that.

PRESIDENT: Do you have anything further?

DEFENSE COUNSEL: No, sir, what I said is that if what I understand is correct, we could introduce evidence as to what took place in the community where the accused lived or worked, and by Dr. Buerger's statement that evidence will be so limited.

DR. BUERGER: I would like to comment briefly on this point. As I have said before, it is not the intention of myself or the Defense to offer any proof concerning reprisals in general, but rather up to now we have only had the testimony of some of our accused, and the credibility of that testimony has to a certain extent been questioned, and what we, and I as a representative of the Defense now desire to do is to corroborate that testimony of the accused by some more or less unbiased witnesses.

PRESIDENT: The objection is overruled. Court will recess until tomorrow morning.

(Whereupon at 1650 hours the Court recessed.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 Legal Form No. 8

MILITARY GOVERNMENT COURT

CASE RECORD.

33

PAGES 2349- 2396

Case No. Superior Orders

*~~Summary~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 12 March 1947

~~Members of Court~~

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt Col Berman

Interpreters Rudolph Nathanson
Herbert B. Rosenstock

Reporters Imogene Butler, Evelyn Cohen, Paula Silverman, Peter L DiCurti, John D MacDonald, Pvt William F Jones.

WITNESSES:

Gladstone Kohloss Margot Geis
Alfred Wunnenberg Wilhelmina Appel
Erwin Schulz
Karl Goetz
Maria Rechel

Accused JURGEN STROOP, ET AL

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning 194
- Fine
  - Amount .....
  - To be paid before 194
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

..... (Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

..... (Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES vs. JURGEN STROOP, et al

by

GENERAL MILITARY GOVERNMENT COURT

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

12 MARCH 1947 Pages 2349 -

TESTIMONY

	Direct	Cross	Redirect	Recross	Court
GLADSTONE KOHLOSS	2350	2353			
ALFRED WUNNENBERG	2353	2355			
ERWIN SCHILS	2358	2359		2364	2363
KARL GOERZ	2365	2370			
MARIA RECHEL	2371	2374	2374 2377	2376	2375 2377
MARGOT GEIS	2378	2379	2379		
WILHELMINA APPEL	2380				2382

EXHIBITS

NO.	DESCRIPTION	MARKED	RECEIVED IN EVIDENCE
P-148	Statement of Joseph Kiwitt	2390	
P-12	(Withdrawn)		
P-14	(Withdrawn)		
P-70	(Withdrawn)		
P-127	(Withdrawn)		

the defense counsel have considered that question and we now have a statement to make to the court by Dr. Buerger who made the statement yesterday afternoon.

DR. BUERGER: May it please the court, discussed thoroughly last night and this morning whether it would be necessary to bring to discussion individual proof of the air warfare. The defense came to the conclusion that this is not necessary any more for the reason that two of the accused, General Streng and Colonel Semmler gave here a picture of the entire situation as it existed and because the defense is of the opinion that the members of the court as war experienced soldiers through their own experience in Germany had the possibility to make themselves a picture of the influence which the air warfare must have had on the German population. For this reason the defense desires not to bring any more evidence.

DEFENSE COUNSEL: The American defense counsel join in that desire and because of it, the defense rests its case, subject of course

[illegible]

[illegible]

[illegible]

to anything the prosecution may bring in. At this time I have a number of motions I wish to present. If it is the with of the court that I delay this until the prosecution brings in rebuttal, I will of course do that.

PRESIDENT: The court believes it will be better for the defense to make its motions at the end of the rebuttal testimony.

PROSECUTION: The prosecution calls Lieutenant Colonel Kohlose.

Lieutenant Colonel GLADSTONE KOHLOSS, called as a rebuttal witness by the prosecution, being first duly sworn, testified as follows: (Whereupon the proceedings were translated into the German language.)

DIRECT EXAMINATION

QUESTIONS BY PROSECUTION:

Q Colonel, please state your full name.

A Gladstone Kohloss, AGN O-[illegible].

Q You are a Lieutenant Colonel in the United States Army?

A Yes.

Q You are on duty with War Crimes here in Dachau?

A Yes.

Q Were you on duty here with War Crimes on the 23rd of October 1946?

A I was.

PROSECUTION: I hand the reporter a document and ask that it be marked Prosecution Exhibit 118 for identification.

(The document referred to was marked Prosecution Exhibit 118 for identification.)

Q I show you document marked for identification Prosecution Exhibit 118 and ask you if you will examine it.

DEFENSE COUNSEL: I pray the court's judgment. I haven't seen it.

PROSECUTION: That document was used before the trial in connection with the cross examination of the accused Kiwitt.

DEFENSE COUNSEL: Even though I don't know the contents, I question whether evidence which was available at the outset can be rebuttal.

PROSECUTION: Sometime during the trial, Kiwitt was on the stand and questioned about certain statements that were made on the witness stand and questioned about answers he made to questions, which were contrary to the answers in this document. When he was pressed for the reason of the inconsistency, it was claimed at that time this statement was taken he was not permitted to answer the questions the way he wanted to make them. For that purpose we have called Colonel Kohlers to rebut these statements made by the accused Kiwitt that he was not permitted to answer the questions the way he wanted.

DEFENSE COUNSEL: Well, if the sole purpose of the witness is to rebut the statement that the accused was not permitted to examine the statement, that is allright, but that does not permit the introduction of the document.

PROSECUTION: We have not offered it into evidence.

QUESTIONS BY PROSECUTION:

Q Colonel Kohlees, I believe I previously asked you to examine Exhibit 148 for identification. Tell the court what it is and the circumstances under which it was asked.

A These are interrogatories which I propounded to Mr. Kiwitt in request to which was made in a letter, as I recall, in a letter as I recall from the leaders of War Crimes. They were trying to locate the perpetrators in the killing of American fliers.

DEFENSE COUNSEL: I am willing to concede whatever he did was in the course of official duties.

Q Will you tell the court what happened at the time the interrogations took place.

A At the time I took these interrogatories, Mr. Kiwitt came in and I had an American civilian as reporter and a German civilian as an interpreter. I explained to Mr. Kiwitt the purpose of calling him in, and the information I was seeking. I also told him that it was necessary to have his testimony under oath, and would he object to testifying under oath, to which he answered he did not. The oath was administered by me and this is in response to questions I propounded to him.

Q After the interrogatories had been prepared, did he make any objection or complaint as to whether or not the answers were improperly reported in the interrogatories?

MR. RACHAEL: The defense objects on the ground it is leading.

PRESIDENT: Objection overruled.

A As I recall/the last page there was a change made in an answer. That is one reason I particularly remember this particular interrogatory.

Q What was the change made on the last page?

A In the whole five questions. I don't mean that all of them were changed, but I mean to read the whole five, it would show the change. In other words, I was trying to find out who it was who actually executed the fliers and in the former part of this interrogatory he mentioned this man's name, and the question was, "Is that the man whom you stated you did not remember his name?" The stenographer when she took it down, she had the answer as "Yes". When it was read back to Mr. Kiwitt he said it was not right, that was not the man and his answer was changed to "No," and there was another change, I don't know what it was, and as I remember I had Mr. Kiwitt make the changes in the one original, then the whole interrogatory from the beginning to end was read to him again, and he said, "That is all right." That was the way it was and he signed it and I signed it.

PROSECUTION: Your witness. Let the record show that the accused, Oess , Number 15 and Koehler, Number 5 have resumed their places in the dock.

CROSS EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q Colonel, what was the name of the interpreter you had?

A Mr. Koenig.

Q Prior to the time these questions were taken down by the stenographer, did you have a conversation through the interpreter with the accused, Klutt?

A As I recall, and that is the way I usually took depositions, and I have taken quite a number of them for interrogatories, the accused along with the interpreter and stenographer all started from scratch, in other words everything was explained in the presence of the accused.

Q And that was taken down?

A That's right.

Q At any time during that interrogation, was there any conversation that was not taken down?

A Yes, probably quite a bit that was not taken down.

MR. RACHAEL: No further questions.

PROSECUTION: Any questions by any member of the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew from the courtroom.)

ALFRED WUNNENBERG, called as a rebuttal witness by the prosecution, being reminded he was still under oath, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You are the same General Wunnenberg who testified for the

defense?

A Yes.

Q I believe you testified you were the commander for the order police for the state of Germany?

A Yes.

Q I believe you stated you had approximately three and a half million men under your command?

A Yes.

Q General, at any time were these three and a half million men of yours ever taken into the German Wehrmacht?

A No.

DEFENSE COUNSEL: There never has been any evidence introduced that members of the Ordnungs were taken into the German army. The only evidence was as to members of the security police. If he wants to testify he knows who happened to the security police, I have no objection. I also move to strike his answer from the record.

PRESIDENT: Objection sustained. The motion to strike is granted.

Q General Wunnenberg, I will ask you the same question in reference to the security police in Germany.

A At least I didn't hear about it.

Q I believe you testified you were a personal friend of Dr. Kaltenbrunner's, is that right?

A Yes.

Q And did you see Dr. Kaltenbrunner various and sundry times on many occasions?

A Approximately over three months or six months.

Q Did you ever hear him make any statements about the security police being taken into the German army?

DEFENSE COUNSEL: I pray the court's judgment. The answer would be a presumption. It has no value and would merely be a presumption by the witness.

PRESIDENT: Objection overruled.

A I did not hear anything about it.

Q General, do you know the components of the various branches that make up the German army?

A The air force, the army and the navy.

CAPTAIN VANCE: Nothing further. Your witness.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q When was the last time you saw General Waltenbrunner before the end of the war?

A If I am not mistaken, that was the beginning of 1945 in Vienna.

Q And when did you see him before that time?

A I think it was on the 20th of July 1944.

Q And that was the date of the attempted assassination of Hitler?

A Yes.

Q And when did you see him after January 1945?

A Not at all after January 1945.

Q Now, on the 20th of July 1944, did you ever talk about anything but the attempted assassination?

A No, I didn't talk with him at all because he was so busy that we exchanged only short greetings.

Q How long did you see him in Vienna in January 1945?

A Perhaps half an hour, or an hour.

Q And what did you talk about that time?

CAPTAIN VANCE: We object on the grounds it is immaterial and irrelevant what these two generals talked about.

DEFENSE COUNSEL: I withdraw the question.

Q Did you discuss during this meeting in Vienna to any extent at allanything concerning the security police?

A No, during this meeting, it wasn't really an official meeting, more like a discussion between two comrades, at the time I had some difficulties and arguments with SS Lieutenant General Wolff and I told him about these.

Q Now, it was the law was it not, that matters of a secret nature could be explained only to those directly concerned with the execution of that secret matter?

CAPTAIN VANCE: We object. It is beyond my examination.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: May I address the court? The whole purpose is to show something did not exist and he didn't know about it. Now I will show he wasn't supposed to know about the secret orders concerning the security police.

CAPTAIN VANCE: You mean he wasn't supposed to know who was in the German army?

PRESIDENT: The court's ruling stands.

QUESTIONS BY DEFENSE COUNSEL (Cont'd):

Q Now, you have testified that the German armed forces consisted of the army, navy and air force. Are you familiar with allthe components of the German army?

A You mean the army?

Q Are you familiar with all the elements which made up the Waffen SS?

A Yes, in general. Yes, I was a member of the Waffen SS myself.

Q Did you ever hear of an organization known as the Battalion Konits?

CAPTAIN VANCE: No objet, may it please the Court. That's going beyond direct examination.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: Nothing further, Major Saxon has a question.

MAJOR SAXON: This appearance is solely in behalf of the accused Truemler, and I would like to ask the Prosecution at this time if they are willing to stipulate that Colonel Truemler was a member of the armed forces?

CAPTAIN VANCE: The Prosecution is willing to stipulate that Colonel Truemler was a member of the Waffen SS.

MAJOR SAXON: I would like the record to show that the Prosecution and Defense have stipulated that Colonel Truemler was a member of the Waffen SS at all times with which we are concerned.

PRESIDENT: Colonel Truemler, are you agreeable with that stipulation?

ACCUSED TRUEMLER: Yes, General.

PRESIDENT: The stipulation is accepted by the Court.

QUESTIONS BY DR. AHEIMER:

Q General, was the Waffen SS a part of the German armed forces?

A Yes.

DR. AHEIMER: That's all.

(Wannenberg-Cross)

CAPTAIN VANCE: Any questions by the Court?

PRESIDENT: No questions by the Court; the witness is excused.

(Thereupon the witness was excused and withdrew.)

CAPTAIN VANCE: Bring in Erwin Schulz.

ERWIN SCHULZ, called as a witness in rebuttal by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Will you please state your full name?

A Erwin Schulz.

Q Are you presently interned in Camp Dachau?

A Yes.

Q Prior to the end of the war, what was your business or profession?

A I was commander of the Security Police at Salzburg.

Q How long did you hold that position as commander of the Security Police at Salzburg?

A From the first of May, 1944, until the surrender.

Q What was your rank?

A I was Brigadier General of the Police and SS Brigadier General, too.

Q General, before becoming Commanding Officer of the Security Police, what did you do prior to that?

A I was in charge of the Department 1 of the Reichs Security Main Office, in charge of personnel.

Q Was that office located in Berlin?

A Yes.

Q And was that one part of Kaltenbrunner's office?

A It was one of the Departments which was a part of the Reichs Security Main Office.

Q For what period of time did you hold that position, General?

A From the first of February, 1943, until April, 1945.

Q What is the total length of service that you have had with the police system of Germany?

A From 1923 without interruption until the day of the surrender.

Q General, was the entire Security Police system of Germany ever made a part of the German Wehrmacht?

A The entire Security Police was not transferred into the Wehrmacht.

CAPTAIN VANCE: Nothing further. Any questions by the Defense?

CROSS EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q General Schulz, was part of the Security Police taken into the Wehrmacht?

A At various times various parts of the Security Police were put at the disposal of the Wehrmacht.

Q At any time were Waffen SS "soldbuchs" issued to members of the Security Police?

A At the end of 1944 when the pay schedule of the Wehrmacht was introduced for the Security Police, pay books of the Waffen SS were also given to the men.

DR. RAU: I must object to the translation. The witness didn't say Waffen SS pay books. He said only "SS pay books."

INTERPRETER: That's correct.

(Schulz-Cross)

QUESTIONS BY MR. RACHAEL:

Q In 1944, what parts of the Security Police were put at the disposal of the Wehrmacht?

CAPTAIN VANCE: I object, may it please the Court--that's going beyond direct examination. I proved one point by this man. Further, it's immaterial and has nothing to do with the issues in this case.

PRESIDENT: Objection sustained.

MR. RACHAEL: Will you explain to the Court, if you know, when various elements of the Security Police were inducted or made a part of the Waffen SS?

CAPTAIN VANCE: We object, may it please the Court--same grounds, and further that the question is misleading. This man has testified that it was never made a part of it.

PRESIDENT: Will you please read the question?

(Whereupon the reporter read the last question.)

MR. RACHAEL: May it please the Court, this witness has testified that the entire Security Police was not made a part of it at one time. I am asking as to parts of the Security Police on cross examination.

CAPTAIN VANCE: That's the only thing I rebutted--that's the only question I asked.

PRESIDENT: Objection overruled.

INTERPRETER: Will you please read the question?

(Whereupon the reporter read the last question.)

WITNESS: I cannot answer this question because it is beyond my knowledge. In my area a transfer of the

security Police into the Wehrmacht did not take place.

MR. RACHAEL: Do you know whether a transfer took place where Germany occupied other countries?

CAPTAIN VANCE: We object, may it please the Court--it's beyond direct examination.

PRESIDENT: Objection sustained.

MR. RACHAEL: Do you know whether such elements were inducted into the Waffen SS in front areas or near front areas.

CAPTAIN VANCE: Some objection, may it please the Court.

PRESIDENT: Objection sustained.

MR. RACHAEL: When was Salzburg a front area or a near front area?

CAPTAIN VANCE: Some objection, may it please the Court.

PRESIDENT: Objection sustained.

MR. RACHAEL: If the Court please, I respectfully move that the entire testimony of this witness be stricken from the record on the ground that he, himself, does not know of his own knowledge what transpired in the Security Police in front areas or near front areas where Wehrkreis 12 is.

PRESIDENT: The motion to strike is denied.

MR. RACHAEL: Nothing further.

QUESTIONS BY DR. RAU:

Q You said that you had been a Brigadier General of the SS. Were you a Brigadier General of the Allgemeine SS or of the Waffen SS?

A I was a Brigadier General of the Allgemeine SS.

DR. RAU: Thank you.

QUESTIONS BY DR. AHRIMER:

Q General, were there any pay books of the Allgemeine SS?

CAPTAIN VANCE: We object--going beyond direct examination.

DEFENSE COUNSEL: There has been testimony on that subject already in the record, and we think it is wrong.

CAPTAIN VANCE: Not by this witness.

DEFENSE COUNSEL: By this witness.

PRESIDENT: Stop the argument.

DEFENSE COUNSEL: This witness testified about pay books just prior to the time that Dr. Rau got up and corrected the translation. Will you please read that question and answer?

(Whereupon the reporter read the question and answer referred to as follows:

"Q At any time were Waffen SS "soldbuchs" issued to members of theSecurity Police?

A At the end of 1944 when the pay schedule of the Wehrmacht was introduced for the Security Police, pay books of the Waffen SS were also given to the men.

DR. RAU: I must object to the translation. The witness didn't say Waffen SS pay books. He said only "S" pay books."

INTERPRETER: That's correct.")

DEFENSE COUNSEL: That's definitely associated with the statement he made as corrected. We are asking him now point blank whether there ever was such a thing as an Allgemeine SS pay book.

(Schulz-Cross)

PRESIDENT: Objection overruled.

WITNESS: I don't think so.

QUESTIONS BY DR. AHEIMER:

Q General, when you talked before about the issuing of pay books to the members of the Security Police, were you referring to pay books of the Waffen SS?

A These were the pay books with the heading "SS Pay Books" which were given to us by the Reichs Security Main Office centrally, and which, in my opinion were identical with the pay books of the Waffen SS.

DR. AHEIMER: No more questions.

DEFENSE COUNSEL: Nothing further.

CAPTAIN VANCE: Any questions by the Court?

EXAMINATION BY THE COURT

QUESTIONS BY THE LAW MEMBER:

Q General, did you receive a pay book of the SS at the time when the pay schedule of the Wehrmacht was introduced for the Security Police?

A At the same time, together with all my men, I received the pay book.

Q Did that make you a member of the SS by receiving the pay book?

A No, of course I was already an SS member.

Q Did any other man in the Security Police, by reason of receiving that pay book when the new pay was introduced for the Security Police--did that of itself make that man a member of the Wehrmacht?

A Not in my area.

PRESIDENT: No further questions.

MR. RACHAEL: One more question.

RECROSS EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q How about the near front areas?

CAPTAIN VANCE: We object, may it please the Court.

PRESIDENT: The witness can answer the question if he knows.

WITNESS: I cannot answer this question because I don't know.

QUESTIONS BY DR. RAU:

Q Did the pay book which you received make you a member of the Waffen SS?

MR. RACHAEL: May it please the Court, that question has already been asked and answered.

DR. RAU: No, the question was only whether it made you a member of the SS, and there's a difference between the SS and Waffen SS.

DEFENSE COUNSEL: I join in the objection, may it please the Court. I don't understand why the question is being asked, and I don't understand a great many other things which I intend to find out about.

DR. RAU: The Court asked this question and I am only making a supplement to it.

PRESIDENT: Objection overruled.

QUESTIONS BY DR. RAU:

Q Please answer the question. Did the pay book which you received make you a member of the Waffen SS?

(Schulz-Court)

A Through the issuance of the pay book, no change took place in my personal position.

Q That means you did not become a member of the Waffen SS?

A No, otherwise, I would have received at the same time the equivalent rank in the Waffen SS.

Q Have you ever heard of the Battalion Konitz?

CAPTAIN VANCE: We object, may it please the Court. That's going beyond everybody's examination.

PRESIDENT: Objection sustained.

DEFENSE COUNSEL: Nothing further.

PRESIDENT: No questions by the Court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: Bring in Karl Coetz.

KARL COETZ, called as a witness in rebuttal by the Prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Please state your name.

A Karl Coetz.

Q Mr. Coetz, prior to the end of the war what was your business or profession?

A I was Police Assistant at Gestapo Headquarters, Luxemburg.

Q Who was your chief at that time?

A The Chief of the office was Chief Inspector Stein.

Q At any time did you work under Major Sinke or Major Hellenbroich?

A Yes, he was in charge of the entire headquarters.

(Schulz-Court)

(Coetz-Direct) 2068

Q Mr. Coats, I call your attention to the 15th day of March, 1945, and ask you if you had an American prisoner of war in custody on that date?

A Yes.

Q Did you have a conversation with Major Hellenbreich on that date in reference to this flyer?

A Yes.

DEFENSE COUNSEL: Excuse me a second.

CAPTAIN VANCE: It's not charged. You won't find it in there.

DEFENSE COUNSEL: Then I object to it--it's entirely new, and couldn't possibly be rebuttal.

CAPTAIN VANCE: Now, if it please the Court, Major Girbs, Hellenbreich, Stattman and Raaf testified to this Court with reference to the 24th day of March when they executed two flyers, and with the exception of that and the 15th day of February when they executed one flyer, they had never seen an American prisoner on any other occasion and didn't know anything about any other flyer. This is to disprove that testimony. We offer to show that on various and sundry dates other than the dates charged in the charges being tried here that they did have flyers in custody and what disposition was made of them.

DEFENSE COUNSEL: I would like to state first of all that I don't accept the Prosecution's statement as to what the evidence was as it was actually entered. Secondly, it's evidence which could have been put in in the first instance under Charge I--that's the place it should have been put in as direct evidence. What the Prosecution is doing

in here now is putting in evidence of other offenses, going far beyond the question of discrediting the witness with respect to one isolated statement, but if Gixha says he never saw anybody before they are bringing in evidence, I assume, of other executions. That goes far beyond part of their direct case. I think it is seriously prejudicial to the rights of every single one of these accused.

PRESIDENT: Do you have anything further?

CAPTAIN VANCE: Yes, sir. If it please the Court, I think the Court will remember that during the defense of these accused and other accused that Colonel Berman himself propounded questions, "Did you ever have any other flyers?" "No". "Did you ever mistreat any other flyers?" "No, we don't know anything about any flyers except the ones charged." When I took these accused on cross examination I said, "Are you sure of that?" "Yes." "Are you just as sure of that as anything else you told the Court?" "Yes". We are here to disprove those statements and prove them liars and prevaricators.

DEFENSE COUNSEL: I never asked a single question, to my knowledge, of anybody in connection with Charges 6 and 10.

PRESIDENT: The objection is overruled.

The Court will recess for 20 minutes.

(Whereupon at 1005 hours, the Court recessed.)

(Thereupon the court reconvened at 1030 hours.)

PRESIDENT: Court will come to order. [illegible]

PROSECUTION: May it please the court, let the record show that all the members of the court except Lt. Colonel Walker, who is temporarily absent by permission of the appointing authority, all the members of the prosecution, all the defense, the reporter and interpreter, are present.

CAPTAIN VANCE: Will the court reporter please read the last question and answer?

(Thereupon the reporter read the last question and answer as follows:

"Q Did you have a conversation with Major Hellenbroich on that date in reference to this flier? [illegible]

A Yes.")

KARL GOETZ, called as a witness in rebuttal by the prosecution, resumed the stand and being reminded he was still under oath, testified further through an interpreter as follows: [illegible].

DIRECT EXAMINATION (continued)

QUESTIONS BY CAPTAIN VANCE: [illegible]

Q If you were to see Mr. Hellenbroich at this time, would you be able to recognize him? [illegible]

A Yes. [illegible]

Q If he is present in the court, will you point him out to the court? [illegible]

A No. 80. [illegible]

CAPTAIN VANCE: Let the record show that the witness identifies the accused, Hellenbroich, wearing placard No. 80.

Q What was this conversation which you had with Major Hellenbroich?

DEFENSE COUNSEL: We object, may it please the court.

PRESIDENT: Objection overruled. [illegible]

(Goetz-direct)

THE WITNESS: I called the headquarters at Bensheim. SS Major Hellenbroich answered the phone. I told him that I had a flier there. The Rural Police wasn't there, and then he said I should bring the man. I answered him I couldn't do it, I couldn't walk anymore. Then he told me he would send a car, a vehicle, motor bicycle, or something. That was the entire talk which I had.

QUESTIONS BY CAPTAIN VANCE:

Q Did he send anyone to pick up the flier?

A Yes.

Q Who came?

A The Criminal employee Hienkel and a man named Schmidt came.

Q Were Schmidt and Hienkel Gestapo agents employed by Major Girke?

DEFENSE COUNSEL: I pray the court's judgment -- employed by Girke? It's leading among other objections.

PRESIDENT: Objection overruled.

THE WITNESS: What do you mean "agents"?

QUESTIONS BY CAPTAIN VANCE:

Q Were Schmidt and Hienkel two men employed by the Gestapo Headquarters which was headed by Major Girke?

A Hienkel was a driver and Schmidt had come from the Order Police a short time before.

Q Now, when these two men arrived, what did they tell you?

A "This is the man, bring him to the hospital."

Q Did they take the flier away from you?

A No, he walked all by himself into the car. He stepped into the car.

Q Did they take custody of the flier from you and go away with him?

A Yes.

(Goetz-direct)

Q Did you ever see the flier again?

A No.

CAPTAIN VANCE: Any cross examination?

DEFENSE COUNSEL: Cross examination by Dr. Aheimer.

DR. AHEIMER: In behalf of the accused, Wirke, Hellenbroich, Stattman and, furthermore, Naaf.

CROSS EXAMINATION

QUESTIONS BY DR. AHEIMER:

Q Mr. Goetz, you testified before that you called the headquarters at Bensheim and spoke to Major Hellenbroich over the phone, is that correct?

A Yes.

Q From where did you call him?

A From Lindenfels.

Q What is Lindenfels?

A A small village.

Q How far away from Bensheim?

A Fifteen to eighteen kilometers.

Q You said before Major Hellenbroich told you on the phone you should bring the flier to Bensheim, is that correct?

A Yes.

Q And then you testified that he said he would send a vehicle after you since you said you couldn't walk anymore, is that correct?

A Yes, that's what he said.

Q Do you know whether this flier about whom you have just talked was ever at any time at the office of the headquarters at Bensheim?

CAPTAIN VANCE: May it please the court, I don't object to his going into that but he may be inviting some more trouble. I am attempting to rebut his testimony without prejudice. If they want to go into it, all right, but I want to warn him again.

DEFENSE COUNSEL: Just a minute. We may be able to save some time.

(Goetz-cross)

ED to Sls pls/6

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order.

DR. AHEIMER: I withdraw my last question.

QUESTIONS BY DR. AHEIMER:

Q To your knowledge, did Dirks, Stattman, Hellenbroich or Raaf see this flier?

A I don't know this.

DR. AHEIMER: Thank you.

DEFENSE COUNSEL: Nothing further.

CAPTAIN VANCE: Any questions by the court?

PRESIDENT: No questions by the court.

CAPTAIN VANCE: Request the witness be excused.

PRESIDENT: Witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: Bring in Maria Rechel.

MARIA RECHEL, called as a witness in rebuttal by the prosecution, having been first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Will you please state your name?

A Maria Rechel.

Q Miss Rechel, I call your attention to the 12th day of September 1944 and ask you if you were working for the Gestapo at Darmstadt on that day?

A I remember this morning. It was the morning after the terrible air attack on Darmstadt. We did not work on this day.

Q Were you at your office on that day?

A I wasn't in our office because the building had been destroyed.

Q Were you in the yard or anywhere near your office?

A Yes.

Q Now, if you can, please answer my question yes or no, if it is possible. Did you see an American soldier on that day in Gestapo Headquarters?

DEFENSE COUNSEL: I pray the court's judgment. She said it was destroyed.

CAPTAIN VANCE: Yes, she said she was somewhere near the place, may it please the court.

PRESIDENT: What is the question?

(Whereupon the reporter read the last question.)

CAPTAIN VANCE: I will amend it to "near Gestapo Headquarters."

DEFENSE COUNSEL: I object to that, too, may it please the court, without some more definition as to what "near" means.

PRESIDENT: Objection overruled.

THE WITNESS: Yes.

QUESTIONS BY CAPTAIN VANCE:

Q Where was the American soldier when you saw him?

A May I make an explanation to this?

DEFENSE COUNSEL: I pray the court's judgment. Just answer where you saw this American soldier.

THE WITNESS: Shall I tell you?

PRESIDENT: There is an objection.

DEFENSE COUNSEL: Yes, sir, I object. She should be confined to the question which is where she saw him.

CAPTAIN VANCE: I have no desire for this witness to volunteer any information. I shall appreciate it if the court will instruct her to just answer the question.

PRESIDENT: No explanation is necessary. Go ahead and answer the question.

THE WITNESS: In the park.

(Rechel-direct)

QUESTIONS BY CAPTAIN VANCE:

Q Where is the park in reference to the Gestapo headquarters?

A The park is in the back, directly closing on to the building.

Q Who had the American soldier in custody?

A A German soldier.

Q Did you see Major Girke on this occasion?

DEFENSE COUNSEL: I pray the court's judgment. I don't understand myself upon what occasion.

CAPTAIN VANCE: On the occasion when you saw the soldier having the American soldier in custody.

DEFENSE COUNSEL: I still pray the court's judgment. "On this occasion" might mean within any degree of distance away from the flier and there might be a difference in time.

PRESIDENT: Objection overruled.

THE WITNESS: Yes.

QUESTIONS BY CAPTAIN VANCE:

Q Did you see Major Girke talking with the German soldier who had the American soldier in custody at that time?

A Yes.

Q Now, the Major Girke that you have been discussing -- if you were to see him today could you recognize him?

A Yes.

Q If he is present in the court will you point him out to the court?

A The accused, No. 19.

CAPTAIN VANCE: Let the record show that the witness identifies the accused, Girke, wearing placard No. 19. Your witness.

(Rechel-direct)

CROSS EXAMINATION

QUESTIONS BY MR. RACHAEL:

Q When was the first time you ever saw an American soldier?

A Then I have to go back to the 15th of February '45 where I saw an American soldier at Gestapo Headquarters Bensheim.

Q And the incident you are talking about happened on the 12th of September 1944?

A Yes.

MR. RACHAEL: No further questions.

DEFENSE COUNSEL: Dr. Aheimer has one question.

QUESTIONS BY DR. AHEIMER:

Q Miss Rechel, do you know the uniform of the American soldiers?

A The general uniform or the flier uniform?

Q Yes.

A Yes.

Q How does the uniform look as far as the color is concerned?

A The brown-yellow uniform as shown here in the court and the flier uniform was not of this color.

Q How do you know then this was an American soldier?

A Because, during my interrogation to the Colonel, I was told this was supposed to be an American.

Q Then you drew your identification through the Colonel?

A Yes.

DR. AHEIMER: That is all.

REDIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Which Colonel are you talking about?

A I can't give you the names. The one who took my interrogation, the first interrogation.

CAPTAIN VANCE: Any questions by the court?

PRESIDENT: Colonel Hunter.

(Rechel-redirect)

EXAMINATION BY THE COURT

QUESTIONS BY LAW MEMBER:

Q The court would like to know, Miss Rachel, if this soldier you say you saw on the 12th of September '44 was or was not an American.

A Yes, on the contrary.

Q Will then did you see another American soldier at Darmstadt? Do you know?

A Yes, it certainly wasn't a German soldier.

Q What American soldier are you referring to as being the first one you saw on the 15th of February '45?

A Might I say that might be even on the 12th. That is the case about which you are talking.

Q The court feels that you are somewhat confused in these answers in that in answer to a question you said that you saw the first American soldier on the 15th of February '45. Now, was that a correct answer?

A May I say that was a soldier which came for the first time to Headquarters Bensheim. I can't give you the date.

Q Before that time that you saw him at Bensheim you saw another soldier at Darmstadt the day after the big air raid, is that correct?

A That is what I said.

Q Was he an American soldier or was he an American flier?

A I said already he was an American flier.

Q Then you have seen at least two American soldiers or fliers?

A Yes.

Q And you also said that the color of his uniform was the color of the uniform of that soldier standing up in the corner.

PRESIDENT: Objection overruled.

THE WITNESS: One.

I don't remember saying anything of the sort.

(Rachel-court)

QUESTIONS BY LAW MEMBER:

Q Did you see one American soldier at Darmstadt?

A Yes, on the twelfth.

Q Well then did you see another American soldier at Bensheim later on?

A Before the twelfth of September. After the twelfth of September, I said before, I don't remember the exact date.

Q Then you saw two American soldiers, is that correct?

A Yes.

DEFENSE COUNSEL: I am going to ask her a few more questions, may it please the court.

RECROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q Now you saw somebody in Darmstadt sometime in February, 1945 — in Bensheim, I am sorry.

A Yes, that is correct.

Q And you say that the man you saw in Bensheim was an American flyer?

A Yes.

Q And you also say that sometime in September, 1944, you saw an American flyer in Darmstadt.

A Yes.

Q And you also said that the color of his uniform was the color of the uniform of that soldier standing up in the corner.

CAPTAIN VANCE: We object. The question is misleading. I don't remember saying anything of the sort.

DEFENSE COUNSEL: She said so, may it please the court.

CAPTAIN VANCE: She didn't say anything about a soldier standing in a corner.

PRESIDENT: Objection overruled.

THE WITNESS: No. That was a misunderstanding. I answered only the question how the uniform of an American soldier looked like.

QUESTIONS BY DEFENSE COUNSEL:

Q What kind of a uniform did the man you saw in September

have on?

A As far as I can remember, a uniform something like grey blue.

Q And one more question. Your statement to this court that he was an American soldier was based, was it not, upon what an American colonel told you he must have been. Please answer that yes or no.

A Yes.

DEFENSE COUNSEL: Nothing further.

QUESTIONS BY CAPTAIN VANCE:

Q Was it a German soldier?

A Yes, infantry.

Q How are you talking about the guard or the prisoner?

A Of course about the escort.

Q I am talking about the prisoner. Was he a German soldier?

A No.

CAPTAIN VANCE: Nothing further.

QUESTIONS BY LAW MEMBER:

Q Another question by the court. Did the soldier who was a prisoner, that you saw at Darmstadt in September, 1944, have the same kind of a uniform as the soldier you saw as a prisoner in Bensheim in 1945?

A I can't remember exactly anymore.

PRESIDENT: No further questions by the court.

CAPTAIN VANCE: May the witness be excused?

PRESIDENT: The witness is excused.

(Thereupon the witness was excused and withdrew.)

MARGOT GEIS, called as a rebuttal witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Please state your name?

A Margot Geis.

Q Mrs Geis, I direct your attention to the twelfth day of September, 1944 and ask you if you were working for the Gestapo at Darmstadt at that time?

A Yes.

Q Did you see an American soldier there on that day?

A Yes.

Q Was he dead or alive when you saw him?

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection overruled.

THE WITNESS: Dead.

QUESTIONS BY CAPTAIN VANCE:

Q Where was that body located in reference to the Gestapo Headquarters?

A It was lying in the garden.

Q How long did that body lay there in the garden?

DEFENSE COUNSEL: I pray the court's judgment.

PRESIDENT: Objection overruled.

THE WITNESS: We saw it for the first time in the morning at eleven o'clock and we saw it still in the afternoon at five.

CAPTAIN VANCE: Nothing further.

CROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q This was the day after the big raid on Darmstadt, was it not?

A Yes.

Q Now you said he was an American soldier. Who told you he was an American soldier?

A You saw it already from the uniform that it couldn't be a German soldier and then the comrades who were standing around him said he was an American soldier.

Q What is the difference between the American uniform and the British uniform, if you know?

A I don't know that.

Q So that your knowledge and the identity of this soldier whom you saw on that morning is based entirely upon statements you heard from people who were standing around you, is that correct?

A Yes.

DEFENSE COUNSEL: We have nothing further.

CAPTAIN VANCE: I would like to ask one more question.

REDIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q You say your comrades standing around said it was an American soldier. Which of your comrades did you see on that occasion?

A You can't say it exactly anymore. It happened too long ago.

CAPTAIN VANCE: Nothing further.

(Ceis - Redirect)

RECROSS EXAMINATION

QUESTIONS BY DEFENSE COUNSEL:

Q What do you mean by the word "comrades"?

A They were officials of our headquarters.

DEFENSE COUNSEL: Dr. Ahelmer wants to ask a question.

QUESTIONS BY DR. AHELMER:

Q What was the color of the uniform of this soldier?

A Gray.

A Blue-green uniform.

Q Was it the same blue-green which you see here in court, or wasn't it?

A No, it wasn't that.

CAPTAIN VANCE: Any questions by the court?

PRESIDENT: No questions by the court. The witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: Bring in Mrs. Appel.

WILHELMINA APPEL, called as a rebuttal witness by the prosecution, being first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

QUESTIONS BY CAPTAIN VANCE:

Q Please state your name.

A Wilhelmina Appel.

Q Mrs. Appel, were you, before the end of the war, employed by the Gestapo Headquarters at Darmstadt?

A Yes.

Q When the Gestapo Headquarters moved from Darmstadt to Bensheim, were you still employed by them?

A Yes.

(Appel - Direct)

Q Have you ever seen any American soldiers in the G
Headquarters, either at Bensheim or Darmstadt?

A Yes, in Bensheim.

Q Did you ever see any in Darmstadt?

A No.

Q Do you recall the date that Gestapo Headquarters at Darmstadt was bombed and it was moved to Bensheim?

A Yes.

Q Now, you say you did not see any American flyers in Darmstadt. I will ask you if you have seen the body of any American flyer at Gestapo Headquarters?

A No. I saw only in the garden of the Gestapo Headquarters the corpse of a soldier.

Q How many flyers can you remember seeing in Gestapo Headquarters after it moved to Bensheim?

DEFENSE COUNSEL: I think the question was "Gestapo Headquarters". Did you translate it that way?

INTERPRETER: Yes, Gestapo Headquarters.

THE WITNESS: As I said before, I saw one American soldier in Bensheim.

QUESTIONS BY CAPTAIN VANCE:

Q Can you remember that date?

A I think it was in February, 1945.

Q Can you remember seeing any more besides that one?

DEFENSE COUNSEL: I pray the court's judgment. The question has been answered. It is repetitious.

PRESIDENT: Objection overruled.

(Appel - Direct)
(Appel - Court)

THE WITNESS: No, I haven't seen any more.

QUESTIONS BY CAPTAIN VANCE:

Q Were you still working there on the twenty fourth of March, 1945, when they moved from Bensheim?

A No.

CAPTAIN VANCE: Nothing further.

DEFENSE COUNSEL: Nothing by the defense.

EXAMINATION BY THE COURT

QUESTIONS BY LAW MEMBER:

Q The corpse of the soldier you saw in the garden of the Gestapo Headquarters, was that at Darmstadt?

A Yes, that was in Darmstadt.

PRESIDENT: No further questions by the court.

CAPTAIN VANCE: Request that the witness be excused.

PRESIDENT: The witness is excused.

(Whereupon the witness was excused and withdrew.)

CAPTAIN VANCE: The prosecution rests.

DEFENSE COUNSEL: May it please the court, at this time the defense renews the motion which it made yesterday with respect to one Julius Lassak, which at that time was denied by the court. Of course, we don't know on what ground and so we renew it now at the end of the prosecution's case. It is a motion to strike from the record: "Now comes Julius Lassak, named as an accused and moves that Prosecution Exhibits P-56, P-56A and P-57 introduced and received into evidence as confessions be stricken from the record and for reasons assigns the following: That the plain weight of the evidence shows that the aforementioned confessions were obtained through

(Appel - Court)

duress and coercion and were not voluntarily made by the accused. I stated my grounds yesterday and I don't take the time to reiterate them. ... he testified that that was taken in the Frankfurt jail, and he ... CAPTAIN VANCE: May it please the court, Colonel Kimball's testimony was this in regard to the statement. He held that on the twenty seventh day of June, 1946, he was a prisoner at Nuernberg and that he was severely beaten during an interrogation by said member of the OSS. He was asked on cross examination and said that no statement was taken from him and refused to testify that the matters for which he stands charged before this court were not even told him and that he didn't know why he was being interrogated, except that the interrogator accused him of beating Jews. Certainly nothing that resulted from that interrogation was used during this trial, so he will forget about Nuernberg. Now secondly, he contended and testified that while he was in confinement in Dachau that he was interrogated and mistreated and threatened and talked about this case and that after that the interrogator gave him a pencil and some paper and told him to go back to his cell and write a statement. He says he did so and was alone for several hours and wrote down what he says is a statement in his own handwriting. Here in court, on the witness stand, he spent at least twenty minutes reading that document and said that he wished to make some changes. I had him go down the line through the document and he made three corrections, which were immaterial and did not ... affect the substance of the statement. After I had pointed out the three corrections, I think I asked him this question: "Now does the statement contain the truth and do you stand by its ... correctness", and he said "It is absolutely true." Now, if it is true, what has he got to complain about? We put them further to ...

stand before this court. But, if you push him a little and insist on it, you can finally get the truth from him sometimes. He did not deny the correctness of the statement, merely claimed that he was mistreated. If these statements contained the truth and he says that they dop them there is no grounds for this motion. Even if the court believed that Lesnak was held at the point of a gun or with a pick at his head and made to make these statements, they would still be admissible for whatever probative value the court wished to give them, which, of course, in this case was not a fact but were exaggerated statements made by Colonel Lesnak. It seems strange to the prosecution that twenty one accused all made statements, but Colonel Lesnak was the only man that was tortured.

DEFENSE COUNSEL: I don't want to argue the evidence because my memory is not exact. I do want to comment on the fact, however, that because Lesnak is the only man who testified to mistreatment it doesn't mean that he was the only man subjected to mistreatment and if ——

to the second interrogation, which is Prosecution Exhibit P-67. I believe he testified that that was taken in the Pisebeien jail, and that on that occasion the interrogator roughed him up a bit. The court will remember what Mr. Coates testified about so I won't go into that. Mr. Coates did say that the interrogator took him Lanzak by the coat, pushed him up against the wall and told him to tell the truth. Even Lanzak does not contend that he was struck on that occasion or mistreated in any way, but he said that he was pushed and we concede that he was pushed. I can understand the difficulty that the interrogator had in making Colonel Lanzak tell the truth because I had the same experience when he was on the

CAPTAIN VANCE: I object to the statement. He is insinuating that some of the others may have been mistreated. If so, it is his duty to put them on the stand to testify about it.

DEFENSE COUNSEL: I will withdraw the statement. My memory is, however, exact and definite about two things. First, Lasaak says that in addition to the treatment he actually received at the time he made the statement in Wiesbaden, that he was interrogated there by the same man who had badly mishandled him on a previous occasion and he had this mishandling in mind. He said that he was so afraid that he didn't care what he said as long as he got out and away from that man's presence. He also said that the statement made at Wiesbaden was not the truth.

Now, a prosecution can not blow hot and cold. It is either offered as a confession, in which case we submit it should be stricken from the record, or it is offered as an admission against interest. It has to be offered on one ground or the other and the prosecution must stand on that ground and my motion is that it was offered as a confession and as a confession, it must be stricken from the record.

One more brief comment. Whether the man is maltreated and beaten, according to the prosecution, doesn't make any difference. The Court has to decide that despite that beating what he said was the truth. I just want to wind up by saying that is not the American conception of how things should be done. Please, just one more sentence. The significant statement about that whole Wiesbaden business came from the prosecution witnesses. The statement as it was finally signed was drawn up according to this man's, this Zimm's, conception of what the truth would be and he was satisfied with it.

PRESIDENT: Motion is denied.

DEFENSE COUNSEL: The defense, at this time, makes the following motion on behalf of each and all of the accused:

In the case of each and every one of the accused mentioned in the above entitled case, that is the U. S. versus Jurgen Stroop, I move for a finding of not guilty with respect to each of them on charge one and the particulars thereunder. That is a charge, may it please the court, that could be argued in great length, so I am going to limit my argument on that question. The charge is that certain people, specified by name, did conspire to do certain things.

PROSECUTION: Colonel Berman, may I interrupt for a moment for the purpose of my interruption is to try and save time. The motion that counsel for the defense is making now is an automatic motion. It is a motion that is a renewal of a motion made at the end of the prosecution's case. In order to preserve the rights of the defense and under the legal subtleties that they raised at the time they made that motion. Now if the court desires to hear Colonel Berman and hear the prosecution in answer to Colonel Berman's argument it will be the same discussion that we will have at the conclusion when we make our final argument. It would seem to me if he makes his motion then we will argue it as part of our final argument and the court can make a decision at that time along with its findings.

I am merely trying to save time so there won't be any repetition. If I answer your argument now I will be answering it with the same argument I will be when I am making my final argument.

DEFENSE COUNSEL: I will have to say three things, may it please the court. In the first instance I am not making this motion to preserve the rights which he thinks were established when the motion was originally made. That is the exact procedure in court martial cases. It is being made, of course, for that reason and also because of the evidence which has come in since that time. It is not a formal motion. It goes to the

very substance of the case. Now, it is true that I could wait until sometime that we agree upon and present these motions one after the other. However, that would result in a situation which we feel is definitely harmful for the accused. I say, very frankly, that we are making our motions in the sequence in which we think there should be no question that they should be granted. That is our opinion of course. The result would be that if the court subscribes to our motions we will then join issue in the final argument on matters which are controverted, in our opinion, on the evidence as it actually exists. So far as repetition of arguments is concerned that won't bother us because we won't reargue it. Once I argue this motion on Number I, I don't intend to reargue it again and I don't think the prosecution has to, but that is their decision.

I would rather get it out of the way if the court should grant it in its entirety—that simply means when the final showdown comes we have lots to contend with and so will the court and it would be a lot easier for the court to have fewer issues or fewer individuals or charges to consider.

To sum up what I have said is that we believe we have a right to present it this way. We don't see how it is going to prejudice the court's time in any way and we respectfully request permission to proceed.

PRESIDENT: Have you anything further?

DEFENSE COUNSEL: Well, I plan to go ahead with my argument on my motion.

PROSECUTION: I have no objection to the motion as such. I was proposing something to save time. May I suggest an alternative procedure. If defense makes his motion will the court reserve decision on that motion until I have made my final argument so that I don't have to make my argument first.

DEFENSE COUNSEL: I won't agree to that, may it please the court. We believe we have a right to raise these issues at certain periods of time and we have a right to a decision by the court at the time they are made. I am sorry I can't go along with the prosecution on it.

PRESIDENT: The court will be closed.

(Whereupon at 1145 hours the court was closed.)

Take 317 - 30
3-1-47; 7 CMcD; 1

AFTERNOON SESSION

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all of the accused, the reporter, and the interpreter are present.

LAW MEMBER: Has this motion been presented to the court?

DEFENSE COUNSEL: That was not a motion. It was a suggestion by the prosecution.

LAW MEMBER: Did you present this motion to the court?

DEFENSE COUNSEL: No, sir! I presented one part of it as an independent motion, and that was the motion that a finding of not guilty be made as to Charge I and the Particulars thereunder, which is made on behalf of each and all of the accused. After that motion was made, and before I could argue it, Colonel Dwinell made his statement.

PRESIDENT: The court will take the motion under consideration and will rule on the same at the conclusion of the final argument.

CAPTAIN VANCE: May I ask the defense at this time if they have any more evidence or any more testimony to offer before the court?

DEFENSE COUNSEL: Actually, I do not think we have. I was just turning over in my own mind what I would do next, in view of the ruling of the court with respect to other motions which I have. Before making a decision as to whether

we will rest or not, I would at least like to read into the record the remainder of the motions which we have.

CAPTAIN VANCE: May I ask the court if they have any desire to recall any prosecution witnesses and if there is any need to hold them here at all?

PRESIDENT: The court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order. The court does not desire to recall any of the witnesses.

CAPTAIN VANCE: The prosecution does not intend to introduce any more evidence and asks that all of the prosecution witnesses be excused permanently.

PRESIDENT: They may be excused.

CAPTAIN VANCE: May it please the court, we introduced in evidence Prosecution Exhibit 12, which is a large wall map. We also introduced Prosecution Exhibit 14, which is a large organizational chart. We introduced Prosecution Exhibit 70, which is a large-scale diagram, and Prosecution Exhibit 127, which was a large-scale diagram. At the time these documents were introduced we asked the permission of the court to withdraw them at the end of the case, and we now ask to withdraw Prosecution Exhibits 12, 14, 70, and 127.

PRESIDENT: Any objection?

DEFENSE COUNSEL: We have no objection to the prosecution's withdrawing any evidence it sees fit.

PRESIDENT: Prosecution Exhibits 12, 14, 70, and 127 may be withdrawn.

DEFENSE COUNSEL: I will now present further motions, may it please the court, which we, on behalf of the accused,

ask the court to pass on before the defense rests its case, as we submit we have a right to ask the court to do. It is practically what I gave the law member, except that I have omitted a part of it, so I am going to read it with that part left off.

"UNITED STATES

vs.

JURGEN STROOP, et al

"1. Now come the accused in the above entitled cause as they are named herein below and move for findings of not guilty as to each of them with respect to the charges and particulars under the charges set forth in each instance, and for the reasons assigns the following:

"That the prosecution has failed to prove beyond a reasonable doubt that each of them is guilty of the crimes with which they stand charged.

"A. Otto Schwarz, with respect to Charges 5 to 10, both inclusive, and with respect to the particulars thereunder.

"B. Julius Lassak, with respect to Charge 5 and with respect to the particulars thereunder.

"C. Heinz Hellenbroich, with respect to Charge 5 and with respect to the particulars thereunder.

"D. Johann Kiwitt, with respect to Charges 7 and 8 and with respect to the particulars thereunder.

"E. Wilhelm Friedrich Geschrendt, with respect to Charge 7 and with respect to the particulars thereunder.

"F. Hans Kiebel, with respect to Charge 8 and with respect to the particulars thereunder.

"G. Paul Hohrgang, with respect to Charge 8 and with respect to the particulars thereunder.

"H. Bernard Fay, with respect to Charge 8 and with respect to the particulars thereunder.

"I. Philipp Haumann, with respect to Charge 8 and with respect to the particulars thereunder.

"J. Georg Best, with respect to Charge 9 and with respect to the particulars thereunder.

"K. Hans Trummler, with respect to Charges 3, 7, 8, and 9, and with respect to the particulars thereunder."

DEFENSE COUNSEL: May I say just this: Although the question has been covered by the ruling of the court, which is a matter of record, inasmuch as the defense has not yet rested we consider we have a right to ask that the court pass on our motions and announce its decision before we rest.

PRESIDENT: The court will take the motion under consideration and will rule on same at the conclusion of the final arguments.

DEFENSE COUNSEL: I have just one more, which I am going to have to make orally as I go along:

MOTION FOR FINDING OF NOT GUILTY

Now comes Jurgen Stroop, Wilhelm Hoehler, Fritz Girke, Heins Hellenbreich, and Wilhelm Albrecht, and move that a finding of not guilty of the crime of murder be made with respect to each of them in each instance where such offense is charged, either in a charge itself or in any particular under any such charge, on the ground that the prosecution has not sustained its burden of proving beyond a reasonable doubt that such an offense has been committed by any of the individuals so named.

DEFENSE COUNSEL: May it please the court, in view of the ruling of the court that it will not pass on any of the defense motions as made until after hearing the final arguments, I now state to the court on behalf of the accused that we have no further evidence to offer.

PRESIDENT: The court will take the motion under consideration and will rule on same at the conclusion of the final arguments.

Take 317 - 35
Take 317 A 30
3-12-47;JOMcD;5

DEFENSE COUNSEL: That, I think, brings up now the question of when the final argument is going to be made. On the question, may it please the court, of when the arguments are going to be held, I would like to suggest to the court that it be held Monday morning and that we start with the prosecution's argument and then go all the way through. I cannot speak for the prosecution, of course, except that I imagine -- I will not put it any stronger than that -- that the prosecution would prefer to have the argument go on Monday rather than Friday. So would we, definitely. I realize when I make that statement to the court that we have two full days and a part of this afternoon.

I would like to ask the court to take judicial notice of the fact that there is a sign on the bulletin board now that the whole War Crimes is closed now on Saturdays, both civilian and military personnel. The question is whether or not two days plus the rest of the afternoon is excessive.

I would like to state on behalf of the defense that the rulings of the court are going to make a rearrangement of our plans for argument necessary. We had expected to dispose of a substantial part of our case now, and in view of the rulings of the court there is going to be a reassignment necessary among counsel, which means that whoever is going to write up the argument is going to have to do it himself.

The three American counsel are going to argue. Dr. Rau is going to argue for Stroop himself. He put in Stroop's case and he is going to argue for Stroop. We three are going to argue, and the German counsel have asked for fifteen minutes

to half an hour themselves for certain specific accused where there is a conflict of interest, as there is in some charges. One man cannot argue for two people, each of whom is involved in the case, and particularly where these arguments want to be reduced to writing.

I cannot think of anything else to say. If the court should say "No, you are going to have to do it Friday," we are going to have to do it, of course, but it is going to be much more of a burden on us to meet the change in the situation and it is going to mean a lapse of two full days between the prosecution's argument and our own. I think Colonel Dwinell has previously told the court that it will take the best part of a day.

LAW MEMBER: Do you want all this in the record?

DEFENSE COUNSEL: That is up to the court. I have no objection to it being a part of the record. In fact, I am perfectly willing that my reasons for asking for the continuance be made a part of the record. Whatever the court wants.

LAW MEMBER: All right. Leave it in.

PROSECUTION: The prosecution will be ready to argue Friday morning. However, we do not want to take any undue advantage of the defense. Our argument will be ready Friday morning and will take about a half a day. Part of it will be conducted by Captain Vance and part of it by me.

DEFENSE COUNSEL: There is also this question of these findings of fact, which we have a chance to consider so that we can determine whether we are interested or not.

I would also like to state this: I quoted in my statement to the court my opinion as to what the prosecution's

desires were. I had that feeling. I want the court to know that, even though Colonel Dwinell's statement does not back me up on it. I am unquestionably mistaken, but I really thought so.

PRESIDENT: Court will recess in place.

(Whereupon the court recessed in place.)

PRESIDENT: Court will come to order. Court will recess.

(Whereupon the court recessed at 1355 hours.)

(Thereupon the Court reconvened at 1458 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all the members of the Court, all members of the Prosecution, all members of the Defense, all of the accused, the reporter and interpreter are present.

PRESIDENT: The Prosecution will be allowed in its final argument from 0900 to 1600, Monday, March 17, 1947. The Defense is allowed from that hour until 1200 hours, March 18th. Have you anything further?

PROSECUTION: Nothing further.

DEFENSE: May I ask a question? I assume that's the normal court hours and the normal recesses that have been taken by the Court.

PRESIDENT: That's correct.

PROSECUTION: Does the Defense desire to withdraw their wall chart, too?

DEFENSE COUNSEL: We would rather have it stay there because the Court may want to take a peek at it, but I assume that when the findings are finally in, we just move them out of Court.

LAW MEMBER: The record might as well show that they are withdrawn because they are not going to accompany the record.

DEFENSE COUNSEL: The Defense requests permission to withdraw Defense Exhibits 2, 2A and 2B.

PRESIDENT: Permission is granted to withdraw Defense Exhibits 2, 2A and 2B.

LAW MEMBER: Did you rest?

DEFENSE COUNSEL: I am quite sure that we did.

Place
Ort

Date
Datum

The Court would not pass on our motions at the time, but I am sure that I said we have no further evidence to offer. The Defense has nothing further to offer at this time, may it please the Court.

PROSECUTION: Nothing further from the Prosecution.

PRESIDENT: The Court will recess until Monday morning at nine o'clock, 17 March 1947.

(Thereupon at 1440 hours, the Court adjourned until 0900 hours, 17 March 1947.)

Particulars.

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: ..... Erste Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

Second Charge: ..... Zweite Anklage: .....

.....

.....

.....

Particulars: ..... Einzelheiten: .....

.....

.....

.....

.....

The above charges are referred for trial to the *Summary *Intermediate Military Court to be held *General

Die Verhandlung wird vor dem *Einfachen *Mittleren Militärgerichte *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden. By Order
Im Auftrage von

.....

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

(Signature of person preferring charges;
(Unterschrift des Vertreters der Anklagebehörde)

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....

(Signature of person making service)
(Unterschrift des Zustellers)

CA/GI 13 OK

Legal Form No. 8

MILITARY GOVERNMENT COURT.

CASE RECORD. Pages 2397 - 2577

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Case No. Superior Orders

*~~Subsequent~~
*~~Intermediate~~ Military Court.
*General

Place DACHAU, GERMANY

Date 17 MARCH 194 7
18 MARCH 7

~~Members of Court~~

Prosecutor Lt. Col. Dwinell

Defence Counsel Lt. Col. Berman
Rudolf M. Nathanson

Interpreter Herbert B. Rosenstock

Reporter Imogene Butler, Evelyn Cohen, Patricia Stewart, Peter DiCurti, Irving Hayett, Sally Rose Hayett, John MacDonald, William F. Jones.

CLOSING ARGUMENT

Accused JURGEN STROOP, et al

Address ..... Sex ..... Age .....

	First Charge	Second Charge
Pleas		
Findings		
Previous Convictions		

Sentence
- Imprisonment
  - Term .....
  - Beginning 194
- Fine
  - Amount .....
  - To be paid before 194
  - or in case of default of payment to serve a *further term of ..... imprisonment.

Charge Sheet and Record of Testimony are annexed hereto.

.....
(Signature of member of court.)

REVIEW

Action of Reviewing Authority .....

.....
(Signature of reviewing authority)

*Strike out words not applicable.

RECORD OF TESTIMONY

in trial of

THE UNITED STATES versus JUROEN STROOP, et al.

by

GENERAL MILITARY GOVERNMENT COURT

tried at

DACHAU, GERMANY BEGINNING 10 JANUARY 1947

17 and 18 MARCH 1947 Pages 2397 - 2577

CLOSING ARGUMENTS

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Take 319 - SO
3-17-47;JGMcD;1

Dachau, Germany

17 March 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court, all the members of the prosecution, all the members of the defense, all of the accused, the reporter, and interpreter are present.

May it please the court, at the conclusion of the evidence and at the time both sides rested the prosecution and the defense made certain requests of the court for permission to withdraw the large wall charts from the evidence. We neglected, on the part of the prosecution, to ask the court's permission to withdraw Prosecution Exhibit 7, which is the large book issued by SHAEF Headquarters, G-2 section, entitled "The German Police." Will the court grant permission to the prosecution at this time to withdraw Prosecution Exhibit 7 from the record?

DEFENSE COUNSEL: No objection, of course.

PRESIDENT: Permission granted.

CAPTAIN VANCE: If it please the court, my principal duties in the prosecution of this case have been to present the evidence in support of Charges 3, 4, 5, 6, and 10, and the particulars thereunder.

I would like to review the evidence for the court, first as to Charge 3. The accused Stroop, Trummler, Somann, Lassak, and Branner are accused of wrongfully aiding, abetting,

and participating in the killing of an unknown American soldier at or near Giessen, Germany, on or about 3 October 1944.

The accused Leonard Branner has been tried in absentia before this court. Since the court has no power to make findings or adjudge a sentence against this accused, I will not take the court's time to discuss him. It goes without saying that he is a self-confessed murderer and it is unfortunate that he is not present in court so this court can brand him as a war criminal and give him a just sentence.

Julius Lassak is a full colonel and a member of the SS. This organization has already been proven to be criminal by the International Military Tribunal which sat at Nuernberg.

First, I would like to call the court's attention to what the accused had to say in his defense: Lassak contended before this court that the American soldier was a prisoner of the Gestapo and that all he did was return the American soldier to that organization, therefore that he had not ing to do with the unlawful execution. He says that that was the only thing and the only connection that he had.. About the only thing else that Lassak made as a matter of defense to this court was that he was mistreated by some American personnel. He said that on or about the 23rd of June, 1946, while he was a prisoner at Natternberg, he was severely beaten during an interrogation by some member of the CIC. On cross examination he admitted that no statement was reduced to writing and signed by him and that nothing connected with that

interrogation has been introduced in evidence in this trial. Since the prosecution does not know the person alleged to have given him the beating, it was not and is not in a position to rebut it. Since he did not give evidence against himself at that time, then surely his rights so far as this case is concerned were not prejudiced.

He further contends that while he was a prisoner confined in the jail at Giessen he was mistreated by the interrogating officer, but stated that he was given some paper and made a statement in his own handwriting. On cross examination he admitted that it contains the truth with the exception of three minor changes which he made while sitting on the witness stand. This statement was introduced in evidence as Prosecution Exhibit 56. He further complained that he was mistreated at the time he made a statement in Wiesbaden, which statement is in evidence as Prosecution Exhibit 57. The court will recall that he testified that he had been assaulted in the presence of Mr. Gerald Coates, a U. S. civilian employee. I am sure the court will recall the testimony of Mr. Coates as to exactly what happened that day in Wiesbaden, and so I will not take the time of the court to go into that incident. These are about the only things that this accused has offered as a defense in this Charge.

The prosecution proved that on 3 October 1944, Ernst Muenk, a city policeman in Giessen, took an American flyer away from about 12 men, women and children on the streets in Giessen. This witness was also called as a defense witness, and at that time he emphatically denied that he had taken the

American away from any member of the Gestapo. He says that he delivered the American prisoner to police headquarters and told Lassak that he had the flyer in custody. At that time Lassak was a police director, and he stated himself on the stand that he was the highest police official in that district. There was some testimony that Lassak pushed the flyer on several occasions, but since we are dealing with murder, these pushing incidents would be too minor to discuss. Lassak made a telephone call to the Gestapo, and immediately after the telephone call he stated that the American flyer must be delivered to the Gestapo. This was done, and the court will recall the evidence that shortly thereafter the flyer was executed by Leonard Branner, a Gestapo agent. By Lassak's position, being the highest police official in the area, he certainly could have kept this American prisoner in his custody, and it was his duty to protect this prisoner. Instead of this, he had him delivered into the hands of the Gestapo with full knowledge of the order that then existed that all fliers delivered to the Gestapo would be killed. In Lassak's statement he admits that he knew the flyer would be killed when delivered to the Gestapo, but that he did not know who was going to do the actual killing. At the time Lassak ordered the flyer to be taken to the Gestapo his order amounted to the signing of his death warrant. Lassak is equally as guilty of this murder as the accused Branner. Under our federal laws and the laws of most states, aiders, abettors, accessories before the fact and after the fact of a criminal offense are guilty as principals. The prosecution

feels that it has proven beyond a reasonable doubt that Lassak did wrongfully aid and abet in the killing of this American soldier and should be found guilty as charged.

If I had any compassion for Lassak -- and I say "if" I had any -- I would have lost it after hearing him testify before this court. Lassak repeatedly contradicted himself from the witness stand, and it became almost impossible for him to speak the truth about the most immaterial matters. The court heard this accused testify about the functions and purposes of the Allgemeine SS. You will recall that he contended that it was some kind of a charity organization, about which the court certainly knows differently. If the court believes that Colonel Lassak was lying in part about any of his testimony, then the court has a perfect right to disbelieve his testimony in full. After hearing him testify I became convinced that he was not capable of speaking the truth.

In charges 4 and 5 the accused Stroop, Trummler, Sosmann, Hoehler, and Fuehr are charged with wrongfully encouraging, aiding, abetting, and participating in the killing of an American soldier, Sergeant William F. Perry, at or near Wiesbaden, Germany, on or about 19 October 1944, and with the exception of Hoehler, the killing of Sergeant Robert W. Garrison, at or near Delkenheim, Germany, on or about 30 December 1944. In both of these cases the identity of the deceased American soldiers has been proven. In both of these cases numerous witnesses were called to the stand to testify about the circumstances of these killings, and the prosecution

established a strong case, disregarding the confessions of Hoehler and Fuehr. On both of these occasions Colonel Trumbler issued the orders to have the Americans executed. He had received this order from Stroop. It is undisputed that both the Americans were killed in cold blood at the places alleged in the charges. The only dispute is who actually fired the shots into the bodies of the Americans. In Charge 5 Arthur Fuehr admits having fired at least one shot into the body of the American, so we need not argue any more on Charge 5 on that point.

Fuehr is a self-confessed murderer by his own admission from this witness stand. About the killing which occurred on 19 October 1944, there is a dispute as to who actually fired the shots into the body of this American. The court has heard the testimony of the accused Hoehler and the accused Fuehr. They were the only witnesses at the actual scene of the shooting with the exception of Richard Fraund, who has never been apprehended. It was obvious from the testimony of the two accused that they were attempting to throw the actual shooting upon Richard Fraund. The prosecution contends that it is immaterial as to who actually fired the shots. On this particular occasion Fuehr admits that he was a chauffeur and that he drove the death car to its destination. In his written statement he testified that Fraund and Hoehler removed the American the car and that he drove on to turn the car around. Some shots were fired and when he had turned the car around the American was lying dead on the ground, but on the witness stand he could not testify as to who actually fired these shots. In his testimony from the witness stand he testified that he stopped the car, faking motor trouble,

and was working on the engine of the car at the time Fraund got out and ordered the flyer to get out. He states that shots were fired at that time, but he still could not testify as to who fired the shots. Since there was no one else present, they must have been fired by Fraund or Hoehler, or both. The accused Hoehler testified that all he did was go along on the journey and took no part whatsoever in the shooting. He claims that he did not get out of the car and that the American soldier was shot by Fraund. He could not say whether Fuehr fired or not. In his sworn statement he said that the flyer was shot by both Fraund and Fuehr. The testimony is clear, undisputed and agreed in that at the time the death transport started from Wiesbaden all three of these Gestapo men were armed with pistols; that Fuehr was driving the murder car and that Fraund was sitting in the front seat by him. Hoehler and the American soldier were sitting in the rear seat. On cross examination Hoehler admitted that he went along and that he guarded the flyer during the trip. On this occasion after the murder had been committed, Hoehler and Fraund made arrangements with the police official, Eisenmann, to have the body buried. Hoehler made the report, he being the highest in rank.

It has already been stated that under our American law there are no degrees of guilt as between aiders, abettors, accessories and participants in the commission of the criminal act. The court can accept any theory of this killing that it desires to accept and convict both Hoehler and Fuehr. Hoehler admits guarding the prisoner, but even if he had done nothing but go along on this murder journey he was encouraging a criminal deed, and by not taking action against the commission of this crime he was giving it his stamp of approval.

On this occasion, if the court believes that Fuehr did nothing but drive the car, that is sufficient. I am sure that this court has knowledge of, and has heard of many cases where a person just drives the "get away" car where a bank is to be robbed. The person driving the car does not even have knowledge that a murder is going to be committed; that after the bandits leave the automobile and enter the bank a killing occurred which is unknown to him, but in driving the "get away" car for his accomplices he is equally guilty of murder and our courts give him the same punishment as the man who actually fired the shots. This case at hand is much stronger, due to the fact that all persons in this car, except the American flyer, knew that a murder was going to take place at a pre-arranged time and place.

Since Koehler and Fuehr were acting under orders which had come down from Dr. Trummler and from Stroop to Trummler, they are also equally guilty of this heinous crime. The court will recall that at the time Koehler and Fuehr made their report to Trummler that the flyer had been executed, that Trummler thereupon called General Stroop over the telephone and notified him of the execution. Trummler told the court that he made this report to Stroop so that Stroop would know that his orders were being carried out. The court can only reach one conclusion--that Stroop had been previously informed that the flyer was in custody and that Stroop either approved of the execution or ordered it also. It would seem strange for Trummler to make a report to his commanding general about something which he did not have previous knowledge of.

The prosecution contends that the court can only reach one verdict on Charges 4 and 5, and that is that Stroop, Trummler, Hoehler and Fuehr are guilty as charged.

Charges 6 and 10 charge the accused Stroop, Trummler, Somann, Oirke, Hellenbroich, Stattmann, and Raaf of wrongfully encouraging, aiding, abetting, and participating in the killing of Ray R. Herman, at or near Bensheim, Germany, on or about 15 February 1945, and also the killing of Lt. William H. Forman and Pvt. Robert T. MacDonald on or about 24 March 1945.

The evidence on both of these charges is clear and undisputed by any of the accused. The testimony shows that on 15 February an American officer named Ray R. Herman was in custody of the Gestapo in Bensheim, Germany. He was unarmed at the time and in custody. There can be no question whatsoever that he was a surrendered prisoner of war. Hellenbroich held an investigation and interrogated this American officer and determined that this American was a terror flyer and should be executed. Hellenbroich was not willing to take the responsibility of ordering this execution, so he went to his chief, Oirke, and reported to him that he had investigated the case and determined that the American was a terror flyer and had strafed some civilians in Worms, Germany. He admitted that he did not call any witnesses or leave his office, but on the contrary he reached his decision from talking to the American and to the police officials who brought him there from Worms. The court will recall that Hellenbroich had studied law and qualified to be a judge, but due to the outbreak of the war he had never been able to judge a person. This afforded him his first opportunity to judge a person, so on this occasion he acted as prosecutor, judge, and jury and

found the American guilty and delivered his report to Major Girke. Girke thereupon ordered that the American officer be executed after first calling his superior, Dr. Trummler. Girke said that he knew what should be done, and that he only called Colonel Trummler because he had other matters to discuss with him, and during this conversation the American was mentioned and Trummler said, "Shoot him." After that Stattman and Raaf were given their instructions by Hellenbroich to take the flyer into the woods and execute him. There is no need to take the time of the court to describe the execution of this American. I will only point out that Stattman admits firing the first shot into the body of the American and that after he fell to the ground Raaf fired two bullets into the head of the American, thereby causing death, and that that is all he had to do with this killing.

Since Stattman and Raaf are both self-confessed murderers, I do not think it necessary to say more about them. Hellenbroich explains that he only delivered the order of Major Girke and that is all that he had to do with this killing. We cannot lose sight of the fact that Girke did not even know of the presence of the American until Hellenbroich reported it to him.

The court will recall that Hellenbroich admitted on cross examination that when he made his report to Girke he had in mind the orders and instructions that he had received from both Colonel Trummler and Colonel Somann. At that time he says that he knew what the orders were about terror flyers and he had already at that time determined that the American officer was a terror flyer. Hellenbroich was

in a position to save the life of this American had he cared to do so, but he made an election to go to Girke and tell him that the American was a terror flyer and that was one of the links in the chain that caused the death of this American. In this case Hellenbroich was more than just an agent or conduit to pass on orders from Girke to Stattman and Raaf. He told the court that he was the immediate subordinate of Girke, and that in Girke's absence he took command of the headquarters. It was during one of these occasions that Colonel Somann ordered him to report to Wiesbaden when Somann read the non-interference order, and in addition stated that fliers would be killed and that no person should be heard of who failed to use his weapon or became a coward and handed his weapon to another. Since Hellenbroich had Somann's words in mind when he made his investigation and report to Girke, then certainly Somann played a part in the killing of this American. There is no evidence before this court that Somann ever rescinded any of his orders. Dr. Trummler testified that when he took command he did not rescind any of the orders that were in existence at that time. Since Trummler gave his stamp of approval and also ordered the execution to Girke he also is guilty of this murder.

Girke and Hellenbroich are both men with legal educations. They told this court that the orders to kill unarmed prisoners of war were, in their opinion, legal orders. I will leave it up to this court to determine whether or not they want to believe this kind of evidence from two highly educated men. Hellenbroich also contended that he was in fear of punishment if he did not do his job, but on cross

Hollenbroich testified that when he returned to his office from supper on that night he was annoyed because the members of his organization had accepted two more prisoners of war when at that time they were in the progress of moving away from Bensheim. He again held a hurried investigation and determined that these two Americans were terror fliers and reported that to Girke. Girke was so annoyed that he asked Hollenbroich why he came to him and wasted so much time, and that he knew already that these fliers should be shot. Hollenbroich admitted on cross examination that on this occasion he had in mind the orders and instructions of both Colonel Trummler and Colonel Seuberm.

If it please the court, there is only one dispute about this case between the evidence of the prosecution and the evidence of the defense, and that is that Hollenbroich

examination he did not know of any person who was punished for failure to kill a disarmed prisoner of war. Girke, on the contrary, stated that he was not afraid of being punished, but that as an SS officer he did his duty.

Stattmann's and Raaf's only answers to this question are that they had their orders and that they were forced to obey them.

Charge 10 is almost a duplicate of Charge 6. About the only difference is the fact that they had in custody two American soldiers instead of one. Raaf and Stattmann have both admitted that on the night of 24 March 1945 they executed the two Americans and Raaf buried the bodies in the garden behind the Gestapo headquarters. On this occasion they state that their orders again were received from Major Hellenbroich and Hellenbroich in turn states that his orders came from Girke.

and Stattman contend that the two infantry soldiers, whose bodies were dug up in the back yard of the Gestapo headquarters, were not the two soldiers executed that night in Benshéim. The court heard the witness Marion Kaminsky testify that he saw Stattman and Raaf take one American officer and one American enlisted man into the garden that night; that a few minutes afterward he heard shots and saw Raaf take spades and shovels and go to bury the dead. He testified that he took CIC agents into the back yard and pointed out two fresh graves from which the bodies of Lt. William H. Forman and Private Robert T. MacDonald were exhumed. The accused Raaf testified and showed to the court on Prosecution Exhibit 70, which is the large chart in evidence, exactly where he buried the two Americans on that night. The bodies of Forman and MacDonald were found at exactly the same spot.

The accused Hellenbroich and Stattman were asked on cross examination that if these were not the bodies of the two Americans that they executed, then to explain how the bodies of the two infantry soldiers got into the back yard. Neither of these accused had an explanation. Kaminsky was present when the bodies were removed from the grave and testified that they were the two bodies of the two soldiers that he saw Stattman and Raaf take into the garden.

The prosecution feels that it has proven definitely by all the evidence that it was Forman and MacDonald who were executed on that night, but if the court believes otherwise it does not make any difference as far as the guilt of these accused is concerned. If the court believes that this was not Forman and MacDonald, they could find by substitution that two unknown Americans were murdered on that occasion. It is

clear to me why the defense contends that it was not Forman and MacDonald who were murdered. Hellenbroich has testified that he determined that these two soldiers were terror fliers and had been condemned to death, when, as a matter of fact, they were not fliers at all but were infantry soldiers.

The court heard Kaminsky describe the clothing worn by these two American soldiers. Pictures of the two bodies of the American soldiers are in evidence. I have never heard of an American soldier who was in the Air Corps and flying an airplane wearing a steel helmet with a camouflage net.

The defense with great force has tried to prove that all three of the Americans who were executed were terror fliers and had committed acts in violation of international law. We contend otherwise, but for the sake of argument suppose that these three Americans had been guilty of strafings and other violations of international law. Does this mean that they can be executed without a trial? We say "NO." Hellenbroich advanced the theory that Forman and MacDonald were not even prisoners of war, but he stated on cross examination that they were brought to his headquarters by members of the armed forces of Germany; that they were under guard and that they were disarmed. If it please the court, if this does not make a soldier a prisoner of war then I do not know what a prisoner of war is.

From the evidence produced by the prosecution, which we feel grew stronger with the defense's evidence, this court can reach but one verdict on these charges, and that is that Stroop, Trummler, Girke, Hellenbroich, Stattman, and Raaf are all guilty as charged in Charges 6 and 10.

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From the evidence produced by the prosecution, which we feel grew stronger with the defense's evidence, this court can reach but one verdict on these charges, and that is that Stroop, Trumpler, Girke, Hellenbroich, Stattman, and Raaf are all guilty as charged in Charges 6 and 10.

Throughout all of these charges the defense has offered testimony to the effect that members of the American Army Air Forces have violated international law; that the Germans, and in particular the German police system, took the measures that have been proven as a protection and reprisals. At many points during this trial I have objected to this type of evidence in that it was immaterial and did not constitute a defense to the crimes alleged. The court has admitted this evidence over the objection of the prosecution. I will not argue this point, as I am sure it will be covered by the Chief Prosecutor. I only have this to say: Two wrongs never made a right, and under all existing international law reprisals cannot be taken against prisoners of war, and all of these six Americans who were murdered at the hands of the named accused were surrendered and unarmed prisoners of war.

As to each accused that it has been my duty to prosecute, there cannot be any mitigation or compromise as to their guilt. If they encouraged, aided, abetted, participated, or took a consenting part, then they are just as guilty as the person who actually fired the shots into the bodies of these American soldiers and caused their death.

The prosecution has proven that each named accused did, in fact, occupy one of these positions in reference to one of these murders. I ask the court, in the interests of the United States Government, to find each of these accused that I have named guilty as charged. After the court has found these accused guilty as charged, then I, as prosecutor, have fulfilled my duty to my government.

The matter of punishment to be given to these accused is a matter for this court. Ordinarily I would not even suggest a punishment, as I feel that that is a matter for the court to determine after they have heard all of the evidence, but in a case of this nature, where there has been such a mass plan for mass murder, I would not feel that I had fulfilled my obligation to myself, my government, and to the next of kin to these deceased soldiers without saying this: I feel that each one of these accused, by the part that they have played in this mass plan of murder, has forfeited the right to live among the decent people that are left in Europe today, and as to each accused that I have named the United States Government demands the supreme penalty.

PROSECUTION: When we began this case two months ago we said:

> "The mere combination of persons to do a criminal act is a crime, even though the object of the combination is not consummated. If two or more persons set together with an unlawful intent to commit a crime, the common design and acting together make them conspirators, ipso facto, and a conspirator in a consummated crime thereby makes himself a part of what has theretofore been said and done by his fellow conspirators in the furtherance of the common design. The existence of the assents of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. Proof of acquiescence in, or consent to, the actions of others is relevant to show criminal intention of the passive party and generally the smallest degree of consent or collusion among parties, lets in the act or words of one against the other." See pages 38 and 39 of the record.

In this case our first proof was a diagram and schematic, portraying the organization and channels of command of the Regular and Security Police, and particularly the organization and command of General Stroop, which were our Exhibits P-9 and the large wall chart, P-14. That

descriptive evidence was never challenged during the trial but was emphasized by the defense Exhibit D-1, A, B, and C. There was then unfolded before this court the story of the world's greatest criminal conspiracy, a combination of many personalities of varying degrees of power and importance, deliberately designed to bring about a criminal result--which was the slaughtering of unarmed American prisoners of war.

Let us see how the conspiracy was developed and operated. Gunther told about the Werewolf school which General Stroop organized as an undertaking similar to the Maquis in France (page 119). Major Best, in cooperation with Goss, made this school operate. Proof of the activities of that school is important because it was one of the many things done in furtherance of the common plan. Stroop's secretary, Else Koecker, said that Stroop had said to Goss: "You know what the treatment of parachuted flyers is supposed to be. That also is one of the tasks of the Werewolf" (page 1059). The defense called Else Koecker to reiterate this testimony, because later in the trial she said again that Stroop had told Goss that the treatment of parachuted flyers was one of the assignments of the Werewolf, and by that she understood that the Werewolf was to do away with flyers (pages 2142 and 2143).

The accused, who were conspirators, secretly met and discussed the orders of Kaltenbrunner, Herrmann, and Himmler; and the principal perpetrator, Stroop, on numerous occasions gave his influence and exerted the pressure of his office to bring about the results. This was told to us many times by Gunther, his operations officer, and by Kalsow,

his adjutant. See pages 124, 125, 128 and 129 of the record. It was also told to us by Breder, the chief of the Gestapo in Frankfurt (pages 155, 156 and 157), and by Frans Traeger, who worked in the security office in Frankfurt, who was told by his commander that all Allied flyers were to be rendered harmless because they did not deserve humane protection because of their deeds as gangsters and pirates (page 168). There is no doubt about the receipt, promulgation, and dissemination of all the orders issued by the Berlin High Command to slaughter American flyers as criminals and not as prisoners of war.

Stroop's secretary, Else Noecker, the Commander of the Order Police Colonel Niemann, and Stroop's chief of staff, Colonel Schlums, told us that in addition to the fact that these orders were received in Wiesbaden, that Stroop, Trumpler, and Sommn supplemented them by orders of their own to that effect. See pages 196, 198, 199, 200, 201, 202, 203, 204, 207, 208, 210, 211, 213, 214, 215, 216, 220, 221, 222, 223, 224 and 225 of the record.

Dirks's secretary, Martha Gelbrich, told us that she registered one of these orders in his office in a diary called "Secret State Matters". (pages 316 to 319)

When Stroop testified, he spoke of the channels of command to the SD, mentioned it as an extraordinary channel of command to be used only in emergency. Then he made the unusual statement that, when Allied flyers bombed Germany, such an emergency did not exist to enable him to take command, but his testimony on this point was somewhat evasive:

"Q You tell the court that you never did take command of the Security Police, is that right?

"A No --- Yes, I want to say that." (page 750)

Somann said his job was the supervision of the entire organization of the Security Police and Security Service, that it was his duty to pass on the orders of fundamental importance, and that when an order had not been executed he would make a report to that effect. See pages 759 to 762.

We heard much testimony in the case from Stroop and Somann and the Gauleiter Hildebrandt, concerning the pressure of the Nazi Party upon the police. That, of course, did exist because the evil influence of the Nazi Party necessarily inspired the criminals who activated the conspiracy that we have proven in this trial. Referring to the diagrammatic chart of the defense, Exhibit D-8, Hildebrandt said:

"Q Are there any other additional channels which, in your opinion, should be represented in that chart?

A Yes, there were also oral orders." (page 781)

Again we see the existence of the assents of mind which is involved in the conspiracy, may be, and from the secrecy of the crime, usually must be inferred from the proof of the facts and circumstances.

"Q Taking them one at a time, tell the court what additional indications of channels of command should appear on this chart.

A The position of Bormann and the influence he had on the entire organization is not shown sufficiently on this chart." (pages 780, 781 and 782)

Although Stroop declined to admit this, Hildebrandt said that Hitler himself had defined the Gau Westmark as a "front near area and in the greatest emergency." (page 784 of the record)

Can it be said that Somann was a passive party in this conspiracy? Hildebrandt said that when there was a necessity for energetic action, the state police chief could take action, or else he would turn to an inspector, but if the results were not to the satisfaction of the Gauleiter, he would turn to the inspector, personally, or to Kaltenbrunner or to Hitler (page 792).

He then made a statement which is clearly in accord with all of the facts, to the effect that in September 1944 a great change took place in that Himmler became the chief of the reserve army.

"Q What was the effect of that?

A In my opinion the effects were disastrous." (Page 794). And they will be disastrous to these accused.

Trummler did not say that his predecessor Somann was without power; he merely said that when he, Trummler, took office, his powers were enlarged and this enlargement was the result of the special emergency which existed through the advance of the enemy and the air warfare (pages 819 and 820).

At the very outset of the case there was received in evidence extracts from an official U. S. Government publication issued by the Supreme Headquarters, American Expeditionary Force, Evaluation and Dissemination Section G-2, entitled "The German Police", and bearing date April 1945. This extract was received as Exhibit P-8. We again recall to the court the conclusions of our G-2 who made a timely and thorough study of this police system. I now read from page 1 of Exhibit P-8:

"The local and central direction of the police throughout the Reich was not disturbed by these innovations, but the superficial character of local administration was further emphasized by the creation of certain high police officials to supervise the regional forces of the Orpo andSipo and set as their authoritative liaison officers with the local governments as well as the central police departments in Berlin. To each Wehrkreis (Military District), therefore, were assigned an Inspekteur der Orpo (Inspector of the Orpo) and an Inspekteur der Sipo (Inspector of the Sipo)." (Bottom page 1 and top of page 2)

"The principal duty of these General Inspectors is to bring forward proposals for the effective development of their respective branches, and generally maintain a careful check on the performance of duties." (page 2)

"Other measures directed towards the unification of the German Police concerned the new Sicherheitspolizei (Security Police), the more powerful of the two main branches of police laid down by Himmler on 26 June 1936.

"The first was a decree published on 10 July 1936, which empowered officers of the Gestapo (Secret State Police) and Kripo (Criminal Police), which together constitute the Sipo (Security Police), to conduct their activities in any part of the Reich independently of the area covered by their bureaus." (page 5)

"The Gestapo functioned for nearly three years before its position was defined by law. Though decrees dated 28 February 1933 and 8 March 1934, sanctioned the practice of protective custody, and a ruling of the Prussian Court on 2 May 1935 stated that the Secret State Police were not subject to judicial control, the fundamental legal basis on which the power of the Gestapo reposes is the famous Prussian (not Reich) Law of 10 February 1936, entitled Gesetz fur die Geheime Staatspolizei (Law concerning the Secret State Police). This law which consists of ten brief clauses, is so framed as to allow the very widest span of action to the Secret State Police; it is, in fact, nothing more than legal camouflage for unbridled police despotism of the most ruthless and sweeping nature.

"The essence of the decree is contained in the seventh clause, which is barely three lines long. It states that decisions in affairs conducted by the Gestapo may not be re-examined by the Judiciary. This means in effect that persons may be arrested and imprisoned without just warrant or cause. It also means that persons tried and found 'not guilty' in court, may be rearrested by the Gestapo, the most famous example of this kind being the case of Pastor Niemoller.

"In the course of their duties officers of the Gestapo may also invoke the cooperation of all types and branches of the local Police, whose personnel then enjoy the same legal protection as the Gestapo personnel." (pages 4 and 5)

"The decree issued by the Reich Minister of the Interior on 11 November 1938 made the SD officially responsible for the control of all persons, activities and events which might interfere with the dominance of the National Socialist idea. It stated:

'The Sicherheitsdienst of the RFSS, as the Party and Reich Government organization, has to carry out important tasks, in particular it must assist the Security Police (i.e. the Gestapo and the Kripo). The SD is consequently active on behalf of the Reich and this demands close and intelligent cooperation between the SD and the officials of the General and Interior Administration.'" (page 6)

"The principal functions of the HSSPf today are to ensure smooth cooperation between the regional SS and Police Offices and the local military and civil authorities, and, in the event of an emergency, to take over command of the combined SS and Police forces in his area." (page 9)

"The Superior SS and Police Commanders are also Himmler's representatives with the Wehrmacht and work in close cooperation with the Acting Corps commanders, who are the military chiefs and Commanding Generals of the Wehrkreise. Collaboration between these two high commanders in each area has become more and more important because, since about June 1943 'volunteers' have been drafted regularly and at an accelerated pace, partly through Wehrmacht channels, into the Waffen-SS, instead of into the regular Army, Navy or Air Force."

"The HSSPf has, as principal advisers and members of his staff, the Regional Commander of the Sipo and SD (BdS or IdS: see para 29), the Regional Commander of the Ordnungspolizei (BdO: see para 30), the Stabsführer (Chief of Staff) of the Allgemeine SS, and any other official who may be nominated for a specific task." (page 10)

"Regional Control: Befehlshaber (Inspekteure) der Sipo und des SD. Par. 31. Like the Ordnungspolizei, whose highest commander in each Wehrkreis is the Befehlshaber der Ordpo, the Sicherheitspolizei und SD are commanded in each Wehrkreis by the Befehlshaber (Inspekteur) der Sicherheitspolizei und des SD (Commander or Inspector of the Security Police and the Security Service of the C-in-C of the SS). The BdS or IdS is directly responsible to the HSSPf of the Wehrkreis, on whose staff he is the representative of the Sipo and SD. In the absence of the HSSPf the BdS or IdS assumes final authority in all matters concerning the Sipo and SD within the Wehrkreis or area. He is also, through the HSSPf, responsible for liaison between the Sipo and SD on one hand and the civil authorities, Nazi Party and Wehrmacht Headquarters and Internal Defense Authorities, on the other.

"When these officers were first appointed in 1936, they were given the title and functions of an Inspekteur (Inspector) der Sipo und SD, abbreviated IdS or IdSPuSD. As in the Orpo, however, further concentration of power was deemed necessary in many regions, and Inspekteure in occupied territories and in Wehrkreise close to the national frontier, such as Austria, Alsace-Lorraine and others, where partisan activities were increasing, were therefore raised to the status of Befelshaber (Commanders) der Sicherheitspolizei und des SD, abbreviated BdS or BdSPuSD. The distinction between IdS and BdS is, however, only of minor significance. A BdS has at all times complete command over his forces and supervises the state of training, preparedness, equipment and methods of the units under his command. The IdS normally has only supervisory functions but he is empowered in case of extreme emergency to assume complete command. As Allied troops advance into German territory, this state of emergency will undoubtedly be considered to exist, rendering the actual difference between a BdS and an IdS one of small consequence, if indeed such a difference has not already disappeared. In the following parts of the book and especially in the Annexes, the abbreviation BdS is, therefore, used frequently regardless of whether the latest reports on a particular city give the office as that of a Befelshaber or Inspekteur der Sipo und des SD.

"Whenever the Gestapo, SD and Kripo are assigned a combined operation, the BdS or IdS assumes full command over the united forces in the Wehrkreis in order to coordinate their actions. He may in addition, whenever necessary, request assistance from the Orpo. In occupied territory these commanders are known to have led such combined forces in large scale actions against guerilla and partisan formations." (pages 14 and 15)

These are the observations of our own G-2.

The Court will recall that throughout this whole trial the defense made a point of the fact that Colonel Somann was merely an inspector.

To show then the existence and development of the gigantic criminal conspiracy, the prosecution then submitted evidence by way of decrees and other documentary data emanating from the German Reich and disseminated to police and army officials and to the civilian population at large. These included the orders and directions of Hess, Keitel, the Chief of the Naval War Staff in Berlin, Himmler, Somann, the

propaganda of Dr. Goebbels, the order of Bormann, the order of the Deputy Chief of the Armed Forces Operations Staff of the Fuehrer's Headquarters, the order of Kaltenbrunner, and the memoranda and correspondence between Ambassador Ritter at Salzburg and the Chief of the Supreme Command of the Armed Forces on the subject of the treatment of Allied flyers.

I want to call the court's attention to a very important piece of evidence that may have escaped the attention of all concerned. It certainly escaped the attention of the defense. There was received in evidence in this case Exhibit P-145, which was received in evidence by the International Military Tribunal as their exhibit GB 152 in the trial of Hermann Goering, et al, which began 20 November 1945. This document is another draft of the memorandum issued by Ambassador Ritter at Salzburg under date of 20 June 1944 and classified "Secret", and compares with the draft of the Ambassador's memorandum at Salzburg on the same date, which was received in evidence in this case as Exhibit P-25. I am asking the court to examine P-145 along with P-25. In the draft memorandum the paragraphs of the memorandum are noted throughout by marginal notes in pencil initialled by a man by the name of Harlimont. A comparison of the two exhibits P-25 and P-145 is significant to show the desperate effort on the part of the conspirators in the German High Command to create instructions and memoranda for the Police and the Armed Forces that would have an apparent legal justification. After comparing these two documents carefully, it will be noted that as a result of the comments made in the marginal

notes by Warlimont on Exhibit P-25, Ambassador Ritter's headquarters rephrased the language in Exhibit P-145 more skillfully in an effort to prevent the world from knowing that they were, in fact, attempting to violate international law and violate the laws of war under some cloak or guise of legal justification. These two documents, P-25 and P-145, are not couched in precisely the same language but very clearly indicate when they are read together the mental processes of the authors of these documents and their criminal intentions and their definite attempts to bring about violations of the laws of land warfare in an apparently legal manner. If the court will look at paragraph II, document P-25 first stated that if an enemy airman is captured by the Armed Forces or the Police and handed over to the Air Forces Reception Camp "by this very fact he assumes the legal status of a prisoner of war". To make sure that their language would leave no doubt, in Exhibit P-145 they changed the wording to "he has received, by this very fact, the legal status of a prisoner of war." Referring to the prisoner of war treaty in paragraph II of P-25, they said "These orders are so precise that an attempt to veil a breach of them by means of a clever way of publishing an individual case would be hopeless." Apparently that statement was a bit raw and would be embarrassing to the High Command so therefore, in P-145, it was reworded as follows: "These rules are so specific that it would be futile to try to cover up any violation of them by clever wording of the publication of an individual incident."

In P-25 we find this statement in paragraph II: "On the other hand, the Foreign Office cannot recommend on this occasion a formal repudiation of the prisoner of war treaty."

In P-25 in paragraph II we find this statement: "A way out, if necessary, would be not to allow suspected enemy airmen to assume the legal status of prisoner of war at all to begin with." In P-145 it was reworded as follows: "An emergency solution would be to prevent suspected flyers from ever attaining a legal prisoner of war status."

In P-25, paragraph II, they said, referring to flyers: "They would then be sentenced ad hoc by a special summary court procedure. If, at the trial under this procedure, it becomes evident from the accompanying circumstances that this special procedure cannot be applied to an individual case, the airman concerned could be subsequently reinstated in individual cases, in the legal status of prisoners of war." When they realized in that statement that by using the word "reinstated," it was a determination that they had originally had a prisoner of war status, they reworded that paragraph, and in Exhibit P-145 they said the following: "If the evidence at the trial should reveal that the special procedure is not applicable to a particular case, the flyers concerned may subsequently be given the status of prisoners of war."

And further, in P-25, in paragraph II: "Naturally, this way out would also not prevent Germany being reproached for breaches of the agreements at present in force", but since this referred to "this way out", which would be

embarrassing, they reworded it in P-145 as follows: "Naturally, not even this expedient will prevent the possibility that Germany will be accused of the violation of existing treaties." So we see the clear attempt to cover up their evil deeds by making it obviously legal.

It is, therefore, not inappropriate to remark at this time that the defense failed to appreciate the relative value of these two documents which were received in evidence. When they are read together, it clearly indicates the efforts on the part of the German High Command to create a document that would not too obviously be an attempt to violate international laws. Accordingly, the remarks of the defense when Exhibit P-145 was received in evidence, appearing on page 632 of the record are entirely incorrect, and I quote:

> "DEFENSE: My associates, may it please the Court, have the notion that the exhibit just received in evidence is identical with one already in evidence, number 25."

The conspiracy was then established beyond any doubt by the sworn statements of Stroop, Oirke, Hellenbroich, and Trummler, which verified their knowledge of most of these orders and the part they played in carrying out the letter and spirit thereof. Dr. Christmann testified and verified all of this by his testimony. It is significant to note that he said that "as far as the meaning is concerned, I can recall that Somann did not wish the Security Police to turn any flyers over to the Armed Forces." His testimony appears in Exhibits P-33 and P-34, and he corroborated statements made by Hellenbroich in his statement, which is Exhibit P-30.

August Schaper, the Chief of the Gendarmerie at Koblenz, confirms the issuance of orders in his statement, Exhibit P-35, and this was further corroborated by the

statement of Gregor Hradetsky, who was Christmann's adjutant, Exhibit P-36, and the statement of Jacob Boesen, Police Commissar at Bendorf, in Exhibit P-37.

When Stroop took the stand for the second time, although much has been said in this case about the imminent death that awaited the disobedience of orders, he denied that he had the power to sentence his subordinates to death (page 1959). I think it was quite obvious to this court that Stroop tried desperately to evade the truth. Some of his testimony was an affront to this court--for example, that incredible testimony to the effect that he had visited Dachau in 1938 and found it to be kept clean and in good order, and that there existed especially excellent sanitary conditions. That is an affront to this court. (page 1977). However, he did admit the existence of orders from Keitel, Hitler and Himmler, and that he had taken steps to transmit these orders and to see that they were carried out (pages 1989 to 1994).

He attempted, however, to have it appear that the Gestapo were without sin. Here is another affront to the court:

"A The Gestapo had the job of combatting the enemy."

This was in answer to a question concerning the functions of the Gestapo.

"Q Will you elaborate on that a little?

A When I said to combat the enemies or to combat the opponents of National Socialism, and with that the opponents of the form of state under Adolf Hitler.

Q What did they have to do with prisoners of war?

A The State Secret Police?

Q The Gestapo.

A Yes, nothing.

Q But yet, a thousand or so flyers were delivered into their hands -- that is correct, isn't it?

A Yes, for examination. Those were only a special group of prisoners of war, not in general. I thought this question was meant a different way." (page 1999)

What an affront to a court of intelligent and experienced men.

He also said this -- and this is a mockery to this court -- that the notorious SS had come into this court with clean hands. "I know nothing about criminal activities of the SS." He did admit, however, that to be an SS man one had to take an entrance examination. How utterly ridiculous. Of course, he did not say that the requirements for entrance in the SS were that the applicant had to be willing to cooperate in their diabolical schemes. (pages 2007 and 2008)

Of course, he knew nothing about Hademar or the criminal activities of the SS in his area (pages 2008-2009). They all had lily white, clean hands. The witness General von Eberstein, called by the defense, gave us a clear picture of the leader of Wehrkreis XII:

"All right, did you not say a little while ago that the carrying out of the duties of SS and Police Leader depended to a great extent upon the character and energy of the man holding the job?

A Yes." (page 2060 of the record)

That is what Himmler thought, too, and this man, No. 1, had the character and energy to carry out the job that brought about the results you see before this court.

Let us reflect again for a moment upon the fiction of Superior Orders. The prosecution brought before this court several members of Stroop's personal staff, each of whom told the court how they had defied their commander's orders to do illegal acts in violation of international law. The defense went a step further and called Wehrkreis leaders of other Wehrkreise, and several witnesses who had defied Stroop's orders and the orders of other commanders and who are today alive and some of them entirely free from any connection with war crimes and able to come in and testify before this court.

PRESIDENT: Court will recess for 20 minutes.

(Whereupon the court recessed at 1000 hours.)

(Thereupon the Court reconvened at 1025 hours.)

PRESIDENT: The Court will come to order.

PROSECUTION: May it please the Court, let the record show that all members of the Court, all members of the Prosecution, all members of the Defense, all of the accused, the reporter and interpreter are present.

At the close of the last session of the Court, I had begun to make some observation upon the fiction of superior orders, and I recalled to the Court how several members of Stroop's personal staff came into this Court and told the Court how they defied his orders to do illegal acts; and that the Defense went a step further and called Wehrkreis leaders of other Wehrkreis and other witnesses who had also defied Stroop's orders and other commanders and who are today alive and some of them entirely free from any connection with war crimes.

The witness von Everstein said:

"Q Now you said on the 20th of June 1944 you received an order to arrest some colonel, but I didn't understand from whom you got that order. Will you tell me please?

A That was Col. Grosser, the G-3 of the deputy command of court area No. 7.

Q What I mean is who gave you the order to arrest him?

A The Reichs Defense Commissioner, Col. Giesler.

Q You refused to obey this order?

A Yes.

Q Now, I believe you were told to use your influence to have the prisoners confined at Camp Dachau shot, is that correct?

A Yes.

Q Did you refuse to obey that order?

A Yes.

Q About when did you receive that order?

A The beginning of March, the first days of March 1945."

The Court will recall that the order to arrest Colonel Grosser and shoot him was in June, 1944.

"Q Did you consider that an illegal order, to execute these prisoners in Dachau?

A Certainly.

Q And for that reason you refused to carry it out, is that correct?

A Yes." (page 2061 of the record.)

Of course, it became apparent as the trial proceeded that the accused strove to make themselves military men and thereby come within the concept of Superior Orders. The Court will recall how they desperately tried from time to time to show that the Police had been taken into the Wehrmacht. That this was false and a fiction in the minds of the accused was apparent from the statements of men, some of whom were brought by the defense as witnesses, and men who were in a position to speak authoritatively. General von Eberstein denied that the Gestapo was ever taken into the Wehrmacht (pages 2069 and 2070). Stroop's Chief of Staff, Colonel Schluma, said the same thing both with respect to the Order Police and the Security Police (page 2101). Breder, the Gestapo Chief, stated the same thing (page 2123). The defense confounded themselves many times during this trial, necessarily so because of the conflict of interests and the burden was cast about from shoulder to shoulder, the finger pointed by one accused to the other, each accused thereby

attempting to be excused from blame. In this connection the defense produced a witness, Colonel Stemmler, who said that Stroop had given him oral orders that from now on flyers have to be shot, and that this order was repeated several times, and that it was also given to him by the Police President.

"Q You referred to the police president repeating the order referred to at Saarbruecken during the execution. Do you recall that?

A Yes.

Q What was the execution, or who was being executed at that time?

A That was a flyer. (page 2157)

Q Was this flyer tried by a court, do you know?

A No." (page 2158).

Trumler's testimony was very stright-forward and convincing, and it was refreshing to see such accused as the type of Trumler and Moller in a manly way concede the obvious facts. In referring to the orders from Stroop, Trumler said they were not in conflict with the orders that he had received from Kaltenbrunner concerning the treatment of flyers (page 2169). He then corroborated the accusations made in this case in Charges 4, 5, 6 and 10. If by any stretch of reasoning, there was any doubt at that point concerning the proof in those charges, his testimony removed any of that doubt forever (pages 2171 to 2178). He then made this very interesting observation: "I have no interest here of charging untruthfully, acts to a German General which will cause him to be severely punished, nor am I

interested in seeing a German General forgetting about things two years after the war which he required of us during that time, namely, discipline, comradeship. I regret to have been forced to make this explanation here." (page 2195).

Trumpler, however, although pressed on cross examination to a great extent, refused to answer the questions put to him to determine why, if the orders in his opinion were legal, that they then had to be reported falsely to show that the flyers had tried to escape. He was first asked whether, in his opinion, the American flyers were executed in an honorable way, to which he replied: "I have no comment to make to this." (page 2216). He was then asked over twenty questions to elicit from him the reason why these reports were falsified, and his answers in each case, evaded the question. He did however, say this: "It was Dr. Kaltenbrunner's order that the whole matter should be kept secret to a certain degree" (page 2220).

Colonel Scheim also made a judicial confession on the witness stand and admitted his knowledge of the "Non-Interference" order and the shooting orders and the orders concerning the treatment of flyers, and that he had passed them on with favorable comment.

"All I know is that I received the order from General Mueller to turn over as quickly as possible to the State Police office in Frankfurt, any flyers that might have been delivered or picked up by us so that they might be turned over further, possibly to Oberursel." (page 2236).

"Q Did you receive any other orders concerning the treatment of parachuted flyers?

A One order of a basic nature. This non-interference order came towards the end of June 1944.
Q By what means did you receive that order?

A That was a copy of an order of the Reichsfuehrer of the SS, Heinrich Himmler, reading as follows: "It is not the duty of the police to interfere in any altercations between the populace and persecuted flyers." -foreign flyers. This order had a supplement signed by Dr. Kaltenbrunner saying that this order is to be brought to the attention of the subordinate offices verbally."

I am still quoting Seemann's testimony:

"Q Now, in what manner did you carry out this order of Kaltenbrunner and Himmler?

A I brought this order to the attention of the chiefs of the offices, among other orders which were also brought to their attention at the same time, in June or July 1944, and in the course of a meeting at my office in Wiesbaden." (pages 2258 and 2259).

Now, with respect to Charge Number V, which was the murder in Nieder on the 22nd of February, 1945, it is proven by eye witnesses, Peter Schrod, George Heberer, Peter Gass and Oscar Lucek. Heberer, Gass and Lucek told also that happened in the police station and it is clear that Michel and Kivitt reprimanded the policeman there for treating the pilot to a cigarette and a glass of water and that Michel specifically gave the order to shoot the flyer. Now, although Oestreicht denies this, Gass definitely said that Oestreicht was in the orderly room of the police station and after Michel had said, "This man will be killed," then Albrecht and Michel went into the yard. After some time Moller came back into the orderly room, loaded his carbine and took the flyer into the yard. (Record, pages 444 and 446). Later on, Albrecht came into the room and said, "Come, you fellow." Then Albrecht and Oestreicht left. The direct evidence by the Prosecution's witnesses leaves no doubt but that Michel gave the order, Kivitt assented, Albrecht received the order and passed it on to Moller. Oestreicht was there and went

along to assist. Albrecht had been at the Police Station and knew Eichal's full intentions concerning the flyer and yet he said he went along on the march only because he had no idea whatever and had no intention whatever. (Page 1544-1545). He knew, of course, that Moller was supposed to shoot the flyer and when the shots were fired he ran directly to him.

"Q And you ran straight to him as soon as you heard the shot?

A No, I didn't run it straight away. I ran first on the path and then through the woods."

In addition to killing of this particular flyer, Albrecht went on to talk about the killing of another flyer on that particular day. The flyer which had been brought in by a priest. He said definitely that that flyer was also shot. (Page 1549). Goehrendt, of course, by his testimony, clearly indicated that when Moller got to the woods he directed them to the proper place for the killing. (Page 1555) He also admitted that in his "Circle of Friends" they talked of the treatment of captured parachutists and flyers based on the Goebbles propaganda (Page 1560). Goehrendt also admitted that after this flyer had been shot two other flyers were shot within a few days of this incident. (1574) He described the shooting of the third flyer by a man named Zaiger. (Page 1601). Referring to the flyer who was supposed to have escaped on Bierbrauer way, according to Goehrendt while he was on the stand during Charge V, it seems apparent that if he wanted to escape he could have tried while being transported by the two little policemen Michel and Schneider. Goehrendt confirmed this by saying, "They are my two most harmless policemen. If the flyer would have escaped then he

would have gone away for good. Until they would have made up their minds who is to do the shooting he would have been far away." (Page 1582).

Now in Charge 7, Kiwitt definitely said he heard Eichel direct Albrecht to bring the flyer to the police station and, "He shall not arrive," or "He will be done away with." He also said he heard these remarks from the police director to Albrecht. "Do you understand this?" "Yes, I understand the flyer is to be bumped off or shall be killed." (Page 1592). It was apparent from witnesses called by the Defense, in Charge 7, that when they took the flyer from the police station they went in the opposite direction from Offenbach, where police headquarters existed. In this connection see the testimony of Schrod recalled by the defense, which indicates that they went in the opposite direction. (Page 1617). Peter Como, recalled by the defense said the flyer was killed at a place further from Offenbach than they were when they left the police station in Bieber. (Page 1633) Then the defense called Elizabeth Bluemel who did not testify about the shooting in Charge 8. Her only testimony was to this effect--that it concerned the shooting by Zager of the third flyer in Bieber (1640-46). Eichel's testimony was a desperate attempt on his part to evade the questions and avoid guilt. He admitted that in this police station he was furious and cursed the pilot. (page 1669 and 1671) He definitely admitted that he said, "This man is to be brought to headquarters of the Police director," and "He will be bumped off anyway." He gave as the basis of his remarks his instructions from Gauleiter Sprenger who had said, "All flyers will be shot and bumped off," and that he considered that an order. (Pages

1671 to 75). Then Eichel specifically denied having seen Moller before or having known him before that time or up until this time. (Page 1676). At this point the Court will recall that Moller was so purturbed by this that he had to be restrained in the prisoners dock from his attempt to lunge forward and get at Eichel on the witness stand. He admitted inciting the crowd in front of the police station and that he had intended to ride the flyer on the hood of the car but that he meant by that that he couldn't fit the flyer into his car and for that reason he would have ridden on the hood. (Pages 1680 to 1683).

At the request of the defense the sworn statement of Lt. Alt was received in evidence in which he said, definitely, that Kiwitt told him to shoot the flyer, on order of Kuhlenbeck, and that several weeks before that Eichel had informed the members of the police that all captured flyers were to be shot. (Pages 1689 to 1690). "Q You heard the statement that Kiwitt is supposed to have ordered a couple of flyers shot on the authority of Kuhlenbeck? Did you question the truth of that statement? A No, but I would like to give an explanation to it." Then followed a very ridiculous explanation about his difficulties with the kreisleiter. (Page 1692).

"Q These 600 men you had under you in Offenbach--how many allied flyers did they execute?

A They didn't execute any.

Q Nobody was executed?

A Officially and by orders, nobody was executed.

Q Are you sure of that?

A With the exception of the cases known here nobody was executed and anyway we can't talk about any

executions except these." (Page 1705.

This is Eichel talking again. Eichel spent much time on cross examination explaining why he was angry with the flyer and pulled a scarf off of his throat. (Pages 1714 to 1717) He tried to tell the Court that he was unfamiliar with the activities of the Gestapo and knew nothing about their treatment of flyers. He never heard that orders were issued that captured parachuted flyers should be turned over to the Gestapo until this trial. (Pages 1717, 1718) But he said that he knew the flyer would be bumped off, having assumed this from the remarks made by the Reichsstaatshalter. "At that time it was already known that in Stalag Number 3 fifty to seventy flyers had been shot on orders."

> "Q You knew that this flyer would be killed because you knew that every other flyer that had fallen in the hands of the Offenbach police force were killed, is that right?
>
> A No.
>
> Q As a matter of fact, they all were killed, were they not?
>
> A But not through my fault."

That's Eichel's testimony. Moller, of course, made a very convincing witness. His testimony was direct, truthful and not evasive. He made a complete judicial confession involving himself, Eihel, Kiwitt, Albrecht and Coehrendt. With such inconsistent testimony, certainly this Court can pierce the veil of sham and fraud and see what was in Eichel's mind and what he had actually done. Moller was sincere and truthful and a comparison of his testimony with Eichel's clearly indicates that Eichel was not telling the truth. Eichel said the following; when Captain Vance asked him this question:

> "Q Either you or Moller are telling a deliberate lie, aren't you?

A Yes, one of us must be lying." (Page 1730).

I am sure the Court knows that Moller freely admitted his guilt and told the truth, but the Court must remember that all the evidence I spoke of was supported and strengthened by the sworn statements of the accused themselves. Moller's statements were positive and convincing--being Exhibits P-110 and 111 and P-115 and 116.

Albrecht made a statement, Exhibit P-112, in which he said that Kiwitt said, referring to the flyer, "You ought to beat him into his mouth." Whereupon Eichel said to Albrecht, "This man will be killed."

Goehrendt's statement, Exhibit P-113, that according to his opinion Eichel and Kiwitt were guilty of the murder for they were both instigators of the deed.

Kiwitt's statement, Exhibit P-114 is clear and convincing and implicates himself together with Eichel and Albrecht without any questions. He admits, also, the knowledge of the Himmler Order.

Moller's statement, Exhibit P-116, clearly indicates that Goehrendt had been lying in his testimony before this Court. I quote from that statement, "I show you a sketch designated Moller's Exhibit A and will ask you to indicate that marsh on the sketch. (A) When I got to point X Goehrendt said to me, 'Where do you want to go? You should turn right now.' (Q) Did Goehrendt convey to you by this statement that you should go into the woods at this point and shoot the flyer? (A) Yes, I think Goehrendt meant that if we had kept along Halweg we would have come out of the woods into a settlement. (Q) Was it your intention to walk with the flyer to the settlement or dispose of him in the

woods. (A) My intention was to keep on going until some further order was given to me or something was said to me. (Q) By whom? (A) From my superior. (Q) What was Ceehrendt's position? (A) Ceehrendt was my superior. (Q) Would you say then that in the shooting of the flyer you acted under the general orders of Eichel and Kiwitt and the particular immediate orders of Albrecht and Ceehrendt? (A) Yes. I had received the order originally from Eichel and I believe that Eichel sent the other two along who were my superiors to make sure this flyer was shot. (Page 4 of the exhibit.) That's Moller's statement taken under oath and without any duress, which he reiterated on the stand and said was the truth.

Thus we have conclusively proven the commission of the crime in the first instance by the actual eye witnesses, Schrod, Heberer, Como and Lucek. Whereupon the accused Moller made a judicial confession in court admitting every essential element of the crime. The Court will recall that his testimony was positive, logical and obviously true. The Court will recall that his description of the facts were entirely consistent throughout the entire story and his demeanor and attitude on the witness stand is so positive and confident in tone and manner that it was without question a truthful recitation of the facts.

Albrecht and Eichel attempted desperately to avoid the issues but their testimony is so obviously evasive in many of the essential points that it became quite apparent while on the witness stand before this court they are attempting to deny the truth. From the evidence there can be no

doubt that Richel and Kiwitt positively influenced Albrecht and Moller to com it the crime and although Goehrendt tried to indicate to the contrary, it is certain that he was at the police station at the time Richel gave the orders to Albrecht and Albrecht passed them on to Moller, so that when he left the police station with everyone concerned he went along and aided and abetted the commission of the crime and, in fact, directed Moller to the suitable spot where the shooting could take place under the cover of a wooded area and out of sight of the crowd. This was far from doing anything as a superior officer of Moller to prevent the crime, and we say that he went to the extent of fully cooperating in lending his aid and influence to see that the deed was accomplished. Whether there was any doubt on these points or not, when the case was first investigated shortly after the war and without any duress or compulsion, all of these accused admitted the essential facts and confessed to their part in the crimes. When they were ready to tell their stories, all of these accused admitted the essential facts in their stories.

Thus we have an accumulation of direct and circumstantial evidence and extra-judicial confessions and judicial confessions all together cemented as a whole, all of this added to a proof of the corpus delicti. Reference is made to Prosecution's Exhibits P-117, 118, 119 and 120, photographs of the dead body, with their accompanying affidavits certifying to the discovery of the body of the flyer shot by the accused. This is to be considered in connection with Exhibit P-121 which was the pathologist's affidavit giving a description of the wounds found on the dead body and describing the cause

of death.

We come now to Charge 4, which is represented by this large wall chart. We began the testimony with Adam Jaeger, and he told us that an air raid alarm had been sounded, and a police captain drove by on his bicycle and said, "These flyers are going to be beaten to death", and all of Jaeger's comrades said that this police captain was Captain Kiwitt. This happened about 2 PM on 8 February 1945. In the evening between 8:30 and 9 another air raid alarm sounded and he and Zahn were standing guard when 2 policemen came by with a flyer.

He and Zahn were in the place marked "A" and "B" on the map, Exhibit P-126 (page 502). One of the policemen said, "He is supposed to be bumped off." Then Nahrgang came and he called Hammann. Nahrgang and Hammann were at the place marked bunker and the letter "B" on the charge P-126 (page 503). Hammann said "No" and then called "Guard". Then Fay enters the picture. Fay replied, "That is only a small matter. We will get it fixed up right away". One of the policemen then said, "Have you got a pistol?". The flyer was standing at the place marked "Bunker". The flyer started his march with Fay from the place marked "Bunker", (Page 505), and ending at an arrow at the place marked "E", Exhibit P-126. In describing the route of the flyer, the witness had previously said "And then went around here. There was a wooden shed here with a kitchen there and there was a shot" (page 504). Then suddenly somebody called out, "A parachutist is escaping". (page 506). Hammann came running

out to the point marked "B" on Exhibit P-126 and pulled the witness's carbine away from him. Then Hausmann ran after the flyer and killed him at close range. Quoting the witness again: "Hausmann was at a very close distance to the flyer when he shot him (Page 507). Then some people carried the flyer to a place where the trees were and put him down and the witness indicated that to be a place on Exhibit P-126 marked "Garden. Body brought here". The witness said that when Fay first took the flyer from the bunker up to point E on the Chart, Exhibit P-126, that the flyer was "just walking and he wasn't escaping any". (Page 508.)

The Defense cross examined him on that point, and this is what the cross examination brought out:

"Q You said that shortly after the cries "the parachutist is escaping" were heard that Hausmann came running out to you and took your carbine?

A HE DIDN'T ESCAPE." (page 514).

Then the man Zahn, the policeman who was also on guard duty with Jaeger, corroborated all this. He said that the policeman came up to the gate and said, "We have here one man who is to be killed". That was in the evening. (page 525). The witness went up to the house where the pilot was sitting with one of the policemen. Then Mahrgang came out of the guard room (page 524). The witness told Mahrgang that the policeman had a man to be killed. Mahrgang went back to the door of the guard room and Hausmann came out with him.

Mahrgang called for Fay and Fay came out of the room and said, "We'll have it right away" (Page 525). The pilot came up the stairs and one of the policemen and Fay followed

him.

Then the witness said this. Fay drove the pilot in front of him. In his right hand Fay had a pistol and he made signs "like when you drive cattle" (page 526).

Then Fay and the pilot went up to the staircase marked "E" on Exhibit P-126. A short while later he heard one or two shots and "Halt. Parachuted flyer escaped." The sound of the shots came from the place marked "E" on the map, P-126, so that we know that somebody did something up at point "E", and the second time from a place on the other side of the steps, at the first arrow as shown on Exhibit P-126. Then two men ran past the witness and along in a northerly direction. The witness pointed to the dotted line from "E" to the point "B" and then along Biesbrauer Weg in a northerly direction, as shown on Exhibit P-126. The witness went then to a place just next to the house Felsenkeller, at the south end of that place and heard two or three more pistol shots and three shots from a carbine (page 527). The witness then ran in a northerly direction to the spot where the shots had been fired and saw the pilot was lying on his knees and indicated the place on the map, P-126, marked with a star and with the words "Hausmann shot here".

Then a man by the name of Fabian came from the north and Police Director Kiehel came up. Kiehel said to the pilot "You son of a bitch" (page 528). That was repeated. What was the reason for that remark? It's quite obvious. Then four men picked up the pilot and carried him to the gate. The pilot was moaning at the time but the witness didn't know whether he was still alive or not. The pilot was then

carried in and put down at the place marked on exhibit P-126 "Garden. Body brought here". Police Director Eichel was standing there, too (page 529). At the time the flyer was shot Nahrgang and Hammann were around the flyer and there were three or four people all together there (page 530).

Fritz Fabian testified that in the evening of 22 February 1945, he was walking with two girls on Bierbrauer Weg between 8 and 9 PM. One of the girls said "Shots have been fired" or "Shot has been fired". A short while later another shot was fired (page 552). The witness said at that time he was standing at a point to the left of the map, P-126, which would be in a northerly direction off the map. He ran up the street and saw men running towards him (page 553). After the shots were heard, he ran up the street in a southerly direction and saw men coming towards him, and behind them a few men. He said that the flyer might have been at the place where, on exhibit P-126, appears the word "shot" near the place where it says "Hammann shot here" (page 554). His testimony indicates this "the people came running." Where did these people come from? Up there somewhere in the left-hand corner of this chart there was an air raid shelter--at least Eichel said 150 people might have been there--at any rate, people came running.

While the witness was on the way, two or three or maybe four shots were fired and when the witness came to the place shown on P-126 marked "Hammann shot here", the flyer was lying on the ground dead. Then people came running. Then the witness went over to the flyer and at that place was standing Hammann, Nahrgang, and Karl Gunther. The witness

and the other men picked up the flyer and carried him to the garden. Then Eichel came (page 555), and asked, "What has happened?" Hammann reported to him, "Flyer shot while trying to escape" and Eichel said "Good". (page 556).

The witness, of course, was quite excited because he was right in line of fire, in fact he said at the time the flyer was shot on Bierbrauer Weg to Hammann, "How could you shoot?" and Hammann answered "I saw you coming." (page 558.) Of course he saw him coming--he saw plenty.

Now all of this happened in a split second. Here we have a flyer standing. There are two policemen armed, others with carbines and pistols, talking and discussing the fact that he is going to be shot. Eichel orders, etc., "Let's get up this way," and drove him like cattle. Everybody knows his part like characters in a play. Why did Hammann run to the right spot? He knew where the flyer was going to be. He knew where they were going to shove him.

The witness Karl Gunter was also called to the stand. He says he remembers the 22nd day of February 1945 (page 560). On that date he was a Sergeant of the fire Protective Police and a flyer was shot (page 562). The witness says that he was standing at the gate as shown on exhibit P-126, and then from a northerly direction two policemen came with the flyer. One of the policemen asked "Who has something to say here?" Then Zahn went with the policemen to the guard room to tell the Sergeant of the Guard (page 563).

Then Hammann came out of the guard room and when the witness and Hammann were close together, a call was heard from

up front "He has escaped", and that was from the general area of the wood shack and the place marked 25 steps on the map, P-126. Then Hammann and the witness went out through the gate and Jaeger was standing there. There Hammann took Jaeger's rifle and ran down with the witness along Bierbrauer Weg in a northerly direction and the flyer was there where they came out there on the road (page 564).

Then several voices called "Halt" and then Hammann shot, and this calling of "Halt" and the shooting by Hammann occurred at a place shown on Exhibit P-126, which is the arrow at the end of the dotted line right near the place which says "Hammann shot here". After several shots the flyer fell to the ground. Then the witness passed Hammann and when he nearly reached the flyer, Hammann shot once more. The flyer was not armed (page 565). Then the witness went to hold the crowd back--now notice what Karl Gunther said, "the witness went to hold the crowd back--where did all this crowd come from? And Eichel arrived. Eichel asked what had happened and Hammann said "Flyer shot while trying to escape" and Eichel said, "Good". This flyer must have been a man with a very low IQ. I never heard of a flier in the American Army, piloting bombers, etc., with such lack of intelligence that when he is surrounded by 150 people, five armed policemen--one with a pistol in his back--he decides to escape. Well, maybe he had wings and was going to act as a helicopter. But the whole thing is utterly ridiculous--these actors are trying to stage a play here for us and tell us that that flyer had hit poor little Fay. First, I can see Fay standing there crying and a piece of candy

being taken away from him. I am sure this Court can see through all that nonsense. Then they all went over and picked up the flyer and carried him to the place marked on P-126 "Garden. Body brought here". Then one of the policemen said "The flyer is carrying a watch". Then the witness took off the flyer's watch and gave it to Eichel. Then Fay took off the flyer's ring and gave it to Eichel and Eichel gave these things to a Lieutenant or a 1st Lieutenant (page 566).

Now remember this--on cross examination that witness Gunther said Hansmann fired four shots from an Italian carbine.

Now we brought one of those "pee-wee" policemen in here that guarded the flier--Karl Schneider. If the flyer had really wanted to, he could have pushed Schneider over. Why didn't the flyer try to escape? He had plenty of time to do it while he was with that joker. The witness Karl Schneider said on 22 February 1945 he had a conversation with Goebrendt. The conversation was about a captured flyer, and he said we got the order from Goebrendt to bring the captured flyer from Bieber to Offenbach (page 571). In the evening he went with the flyer to the headquarters of the Order Police in Offenbach (page 571). Captain Kiwitt was called and said "How can you have the nerve to bring this man down here? Why didn't you do away with him?" (page 572). Kiwitt said, "These are the men who are killing your women and children" and further said, "The flyer has to be chained by you" and further "Get out. The flyer has to be shot" (page 573). Of course, little Schneider was going to carry this matter out, but down here there were men more capable of doing the job; so when they got to the Bierbrauer Weg and got up to these policemen, he said, "We have a captured flyer"

(page 574). "We tried to hand him over to headquarters but we couldn't get rid of him. We are supposed to shoot him" (bottom of page 574 and top of 575).

Schneider testified that when he and Michel brought the flyer to the Bierbrauer ' eg at one time he was alone with the flyer, Michel having walked ahead about 500 meters (1758). Schneider on cross examination, again admitted that Captain Kiwitt had told him and Michel to shoot the flyer (1763); and that when he got to Bierbrauer We. he told the guards that they were supposed to shoot the flyer and that Fay know about that (1764). It was obvious from the cross examination of Schneider who had previously testified for the prosecution, when he got on the stand for the defense, that he conveniently lost his memory and could not remember any more of the details about the shooting. See particularly the cross examination at the top of page 1766 of the record. He further stated that in Bieber he received the order from Goehrendt to turn the flyer over to the Protective Police, but that Kiwitt came into the headquarters of the Protective Police and said: "Why didn't you bump him off?" and further, "You are supposed to handcuff him and shoot him in Mainz Strasse." (page 1767).

Michel testified for the defense--we had never called him--that Goehrendt directed that the flyers be delivered to the police headquarters at Offenbach and that that was done; but that Kiwitt came in and said that they had taken the flyer six kilometers through the woods and still hadn't bumped him off (page 1775). He further said that when he brought the flyer to police headquarters, Goehrendt had given

him a note to give to Kiwitt, but that Michel didn't know what was in that note. You know what was in that note; we all know what was in that note. We don't have to see the note to know that. Michel further testified that, at no time while they were taking the flyer to the police station did the flyer try to escape (1776). Kiwitt then said: "Get out with the flyer and bump him off"; and that the flyer was in a position to hear that remark (1777).

"Q So the flyer was in a position to know that the high officials wanted him killed?

A Yes, he could hear it.

Q After you told them that you had a flyer that was to be bumped off and that you would not do it, what is the length of time that the flyer lived from then until the time he was dead?

A Approximately 15 minutes, I figured." (page 1778)

"Q If Goehrendt had told you to deliver this flyer to the Wehrmacht or the Luftwaffe, you would have taken him there?

A Yes.

Q And if he wanted to protect this flyer that would have been the place to take him, wouldn't it?"

I respectfully submit that the Court did not permit the answer to that question. I respectfully submit that we should have been allowed to elicit the answer to that question. We know what the answer is, however. (page 1784).

"Q What punishment have you received for the failure to kill that flyer?

A Nothing." (page 1785.)

Now Berthard Fay took the stand and testified that he was in the guard room on Bierbrauer Weg (1788); and was sleeping on his cot (1789); that Mahrgang had wakened him and said that 2 policemen had a flyer to be shot (1790). But

that on his own account, he took charge of the man, although he said he never believed that the flyer was going to be killed and had never heard of police executing flyers (1797). How can he have the nerve to stand before this Court and make a remark like that? He said that his part in the shooting of the flyer was purely voluntary (1798). His memory has completely failed because he said he can not remember who the 2 policemen were and only assumed that they were Schneider and Michel, who testified in this case (1799). On cross examination he was asked several times what Michel had said after the body had been brought to the garden, but he refused to answer (1809).

"Q In your original statement, Fay, you make the statement that Nahrgang said the flyer must be killed. You now say you didn't make that statement?

A No, that isn't correct. That's the English translation.

Q Then your statement is wrong?

A I didn't make that statement. I remember now that at that time when the interpret r was reading it to me he read to me the sentence and read "has to be" or "must" and then I said, "No, that is wrong." It should say "It is supposed to be" but the interpreter told me, "That's the same in English. That's one and the same word in English."

What's the difference?

"Q Furthermore, you have stated also that some policeman said that Michel gave the order, is that correct?

A Yes. I asked who said so and then one of the men who came in there said, "The Police Director." (page 1810).

Now the trigger man, Philipp Hamann took the stand and said that Jaeger and Zahn were on guard duty there that night (1822). He was in the guard room and came out when he heard the shots (1823).

"A With the call, "cut off his way", I could visualize that if someone runs down the stairs and keeps on running, there's only one place where he can come out again, if he didn't hide on the way out or if he didn't go through some half-finished buildings on the side."

I don't know--that testimony is rather confusing.

"Q Where was the spot where he had to come out again?

A Otherwise he could come out only at the Bierbrauer Weg.

Q You said there was only one way which he could come out again. Whom did you understand was "he"?

A I supposed -- I assumed the man that was escaping.

Q Did you know who was the one who tried to escape?

A No, I didn't know that. (page 1884)

"Q You went to the guard Jaeger, and what did you do then?

A Since I didn't know whether the man who had escaped was armed, I took Jaeger's carbine. (page 1827 and 1828)

Now did he know it, or didn't he know it? Then he talked about running down and plugging the flyer.

On cross examination, we have this--Hammann testified that he was in the guard room and heard some shouting, but it only took a moment for him to leave the building. (1851).

"Q You knew that if someone was running down the stairs there was not but one way of escape, that is the way the flyer traveled, is that right?

A No. In this area there were other possibilities to get away."

Now what is the truth about that as far as Hammann and Fay were concerned?

"A --There had been air raid attacks before and some buildings were destroyed and not entirely repaired yet, no doors, no windows, nothing in them.

Q Did you not say on direct examination in answer to a question, "I knew there was only one way for the man to go?"

A There was only one road to the Bierbrauer Weg. If somebody wanted to hide in the field he could hide around there.

Q Did you not know when you heard those shouts up there near the stairs that you were down at the gate where Jaeger was?

A No."

What did he run there for, if he didn't know that?

"Q Did you not know it would be physically impossible for you to take the route you marked on that map and ever catch up with that flyer?

A I didn't want to catch any flyer." (page 1854).

"Q You never did hear anybody holler, "Somebody was escaping", did you?

A I didn't hear that." (page 1858).

Q And you and Fay worked out a plan whereby Fay would take the man up the steps, drive him down the steps and you would be waiting to shoot him when he came down the Bierbrauer Weg, didn't you?

A No, I didn't work out any plan. I did my duty and nothing else." (page 1860)

See how the picture revolves--making a desperate effort to avoid the real facts?

"Q Did you see Fabian at the place where the flyer was?

A I didn't see him but I heard later on that he helped to carry back the flyer."

It's contrary to what other people say.

"Q Did you see Guenther there?

A The same. I didn't see him, but I heard later on that he helped to carry back the body." (page 1844)

He, for convenience, heard a lot of things later.

"Q Neumann, do you recall any conversation which you and Jaeger and Nahrgang were present, in which Nahrgang presumed to ask you something in regard to shooting this flyer and you refused and said "No"?

A No, I never had a conversation." (page 1845).

Now, Nahrgang took the stand and said:

"A In the later evening hours of the 22nd day of February, during an air raid, a sergeant of the protective police appeared and a guard of our quarters.

This sergeant said that he was trying to get cover from the shrapnel. I said that I was not the sergeant of the guard and that I could not do anything for the prisoner. Therefore, I called Hammann who was the sergeant of the guard. In this conversation Zahn told me that the policeman was supposed to shoot this prisoner and that they were not doing it. As we were having this conversation Fay came in or else he was standing under the doorway. I don't know exactly how it happened. He said, "What is the matter?" I told him that they had a prisoner and they wanted to get him in the air raid shelter, and that the policemen had this prisoner and had orders to shoot him, but they were not doing it and so Fay said, "I will be going over to see what the score is." I didn't see any prisoner nor did I see Jaeger. All I saw was Fay and the policemen. All I saw was Zahn and the policeman.

Q Did Fay leave them?

A A short time after this Fay went out.

A I picked up my coat and put on my boots. I wanted to go out too, to see what was going on. A short time afterwards I heard calls, "Halt! Halt!" and a short time after that a shot, so I started running in that direction.

"A I had not seen Hammann before that nor had I talked to him. All I had done was to tell the guard Zahn that Hammann is the sergeant of the guard and that he ought to take care of it—

Take care of what? Take care of shooting the flyer?

"A—and he actually did call Hammann, but Hammann was a slow sort of a guy and he didn't always get up right away when you called him.

Q You said that you went over to the spot where the dead flyer was lying. Did you see Hammann at that time?

A I did not see Hammann.

Q When did you see Hammann at all later on that evening? (1848 to 1851)

Then he comes back with an answer—then he gave another answer.

"Q Who carried the body back?

A The body was carried by myself, Guenther and Fay. In my statement I said that Hammann carried it, the body.

back but I want to take this back at this point because I assumed that Hamsmann did the firing so he will probably carry the body back too." (1851)

"When did you first know that they had an American flyer there?

A I only found that out when he was dead.

Q Didn't Zahn come to you and say, "We have a flyer in custody and we need some help"?

A That wasn't Zahn who said that. That was a policeman who asked for protection."

He didn't know that there was a flyer there until he was dead, and in the very last answer said that wasn't Zahn that was a policeman. That testimony appeared to me like a fencing encounter--he had one in his hand you had the other foil in your hand; and he was attempting to duel quite obviously.

"Q Did Fay tell you, "I am going out and see what is the matter", after he heard about a flyer being there?

A Well, I was still waiting for Fay's answer.

Q Did he tell you that?

A He said, "I will be going out to see what is the matter".

Q When did he leave?

A Fay went out. I didn't see him any more after that.

Q You admit you told Fay about it but you deny you told Hamsmann, is that right?

A I don't know whether I told Fay or not.

Q Well, you either know whether you did or did not, don't you?

A I don't remember that I told Fay anything that evening.

Q You put in your statement that you told both of them, didn't you?

A I didn't put in that I said anything to Hamsmann. All I said was I called Hamsmann because he was a sergeant

of the guard. Hammann didn't show up." (pages 1854 and 1855)

Now just remember a few minutes ago he said he didn't know the flyer was a flyer until he saw him dead. Referring to the written statement signed and sworn to by Wahrgang, he said:

"Q I want you to tell the Court what is wrong about that statement.

A In the first place, I didn't notify Hammann. I merely called Hammann. Nor did I tell Hammann that there was an American prisoner there, and that I was 5 meters away from where the shots were fired. That was out in the garden. When the first shots were fired, I was 30 yards away from it, from my shelter to that point. That is what it should say here."

Referring to the policeman he said:

"A The policeman was telling me that he was looking for cover from the shrapnel. Zahn just on the side sort of told me that the 2 policemen were to bump that flyer off but they didn't do it."

Now, if he would be consistent, he would again say he never heard about the flyer, but this is what he said:

"A --The policemen didn't say a word about such matters like shooting or anyone.

Q Zahn told you about it instead of the policemen, is that right?

A He just about whispered it in my ear. I didn't take the matter seriously." (pages 1857 and 1858).

"Q Do you know why they first explained it to you that they had the flyer?"

He didn't answer that question; he said:

"A He was looking for the superior there, and I said "Well, I am not the sergeant of the guard", and I called Hammann and Hammann got up. I called Hammann but Hammann didn't get up. He didn't get there.

Q What was the approximate length of time from the time you told Fay there was a flyer there until the time the flyer was killed?

A I didn't say anything to Fay.

Q You didn't?

A I didn't tell Fay anything. I didn't give him any order, either. He just said on his own, "I will be going out there to see what is the matter".

Q How did Fay lie in his bed asleep even though there was a flyer out there?

A I might have woke him up at the time when the air raid alarm started, but in this case, I did not call Fay.

Q You don't remember what you have just finished testifying at all, do you?

A Yes, I remember.

Q You can't remember telling the court 5 minutes ago that you did talk to Fay, can you?

A Fay was inside and he asked, "What is the matter?" and I told him in a low tone of voice, I didn't tell him to get out." (pages 1863 and 1864)

"A The first thing that happened is that the policeman told me they were looking for cover from the shrapnel and as he was walking by me, whispered in my ear they are going to shoot him and they are not supposed to do it.

Q Did he whisper in a normal tone of voice?

A In a normal tone of voice.

Q Then when Zahn spoke to you did he tell you they were supposed to shoot the flyer?

A Zahn didn't say at all we were supposed to bump off or kill the flyer. All he said was the policeman was going to do it, and --

Q I'll ask the question again. When Zahn told you that the policeman had a flyer out there that the policeman was supposed to shoot or bump off, did Zahn whisper that to you quietly?

A Yes, that was in a whispering tone of voice." (pages 1867 and 1868).

Now we have Hans Kiebel back on the stand in Charge 8. He admitted he was in command on Bierbrauer Weg when a policeman

came in and shouted "parachutist" but said nothing else. At the same time several shots were fired. He heard steps on the stairway marked "E" on the large wall chart, prosecution exhibit P-127, and running down to the command post (1874). There was a large number of civilians streaming along the path at that time. Now we have the civilians again. Perhaps this flyer had been an outstanding football star, because think of all the men he had to dodge on that so-called escape--people streaming in and armed policemen. That must have been the outstanding cross-country field run anyone has ever seen down that road. He noticed that when he came out of the command post. They were coming out of the public air raid shelter (1875). After the body was brought to the garden he gave the order to have the property on the flyer taken away from him. Then he picked up the flyer's fur jacket and took it to his command post and turned it over to the fire police later on (1877). He said that when a guard came in they had already heard the wild chase down the stairs. He said he heard nobody holler "Halt" but he did hear several people rushing down the stairs but he did not hear anybody shouting nor did he hear anything said (1880).

> "Q Then you rushed out of the bunker, I believe you said, and went in the direction towards the Bierbrauer Weg, is that correct?
>
> A Yes.
>
> Q How did you know to go in that direction?
>
> A Because all these people who were in the public air raid shelter, all the civilians, were speeding towards point "G".

Point "G"--they were all speeding down there. Maybe some of them were carrying the flyer with them--it's quite possible.

A —"Upon that I assumed that something must have been going on there. (page 1880)

"Q You had no idea they were going to bring an American flyer there?

A No.

Q It is just a coincidence that every time you were around there was an American flyer who got killed?

A That's no coincidence. That's the truth.

Q So it is the truth that every time you were around an American flyer was present and he got killed?

A I don't have to repeat that I said the truth, do I?

Q That happened twice on the same day?

A Two accidents the same day.

Q Two accidents? The man that died at the hands of Moller, was that an accident?

A Yes." (page 1882)

"Q You have heard the witnesses testify that Captain Kiwitt ordered this particular flyer to be executed, did you not?

A Yes.

Q You knew that you had instructed Kiwitt and all the other members of your command that all captured flyers would be executed, don't you?

A No, never.

Q Captain Kiwitt was present that day at Bieber when you talked to Lt. Albrecht about the flyer being bumped off, was he not?

A No. Nobody said that the flyer was to be bumped off."

Nobody except Eichel himself when he talked about Charge 7.

"Q Was Captain Kiwitt present in Bieber on that day when you did discuss the flyer with Lt. Albrecht?

A Yes, he was present in Bieber.

Q So Captain Kiwitt knew what your desires were with regard to the treatment of flyers?

A No. I did not have any desires concerning the

treatment of flyers." (pages 1888 and top of 1889). The Defense then brought some witnesses, but here is a strange thing that comes into this stage play. This witness, Ludwig Gruenheit, says there was no air raid in Offenbach or Bieber on that day. He also said that Nahrgang, Hammann and Fay were subordinates of Eichel and were under his command (1894).

Peter Brauweiler, a witness, said on the night in question he was in the air raid shelter (1901); that Eichel left for about 5 to 10 minutes and when he returned he had a leather jacket with him (1902). There was no air raid going on in Offenbach or at Bierbrauer Weg but the alarm was sounded and while all the civilians and people were in the cellars, an American flyer got killed (1903). Now what did happen? The civilians were streaming down there. They were definitely trying to get the civilians out of the way so they wouldn't see a murder--that was the reason for the air raid alarm.

Eichel said he heard all kinds of noises upstairs, and the witness Mia Brauweiler said that before the guard came downstairs to tell Eichel about the flyer she heard no shooting upstairs although her hearing is good (1906), and Eichel, away down below, is trying to give us a picture of a lot of noises with an escaping flyer.

Kiwitt took the stand and testified that on the 22nd of February, 1945, the 2 policemen, Michel and Schneider, came with the flyer to the police station in Offenbach (1906). I told him to get out. I reprimanded these corporals, Michel and Schneider. And after reprimanding him, I told the policeman Michel and Schneider to take him to the police jail and turn him over there. Lt. Alt got in the conversation and he said, "Captain, you can't do that. A major has already issued the order to get this flyer bumped off." Upon that I said,

"Well, if a major gave an order, I can't change it. I guess you will have to bump him off then." (page 1907). Then he said the only order he knew was the non-interference order and "I got to know about it when I was sent to Offenbach and I worked my way through all the secret files in order to find out about it. Among those I found the non-interference orders but nothing whatever of any other nature." (page 1916).

Now this evidence is strengthened again, as in Charge 7, by sworn statements of the accused. We didn't hear Nahrgang talk about any duress. We didn't hear Kiwitt or Hammann or Fay--nevertheless, Nahrgang's written statement says this: "He described the incident of February 1945 at Bierbrauer Weg. He said he was first notified by Zahn that an American pilot had been captured. He told Hammann to go out and see what was going on. Fay came in and turned and went out and said "I am going to see what is going on". Hammann, Fay and Zahn were his subordinates. Then he said Fay told him that he had shot in the direction of the flyer but did not see whether he had hit him. Then Fay told him that Hammann had shot the flyer. Nahrgang heard the shots from the direction of Bieber Strasse. Then he said Hammann, Guenther, Fabian and himself carried the body. Then he said: "Although I didn't actually fire the shot, I did nothing to prevent any one from doing the killing." (P-134).

Kiwitt made a statement admitting all essential facts (Exhibit P-135). He said he saw the flyer when he was brought into t e Offenbach police station. He had been called there at that time by Alt and that 2 policemen had

brought the flyer and that one of the policemen's name was Michel. He then called up Major Kuhlenbeck on the telephone (page 2). Then he said that Alt received a phone message from Kuhlenbeck to the effect that the flyer should be killed. Kiwitt also talked to Kuhlenbeck on the telephone and got the same instructions. Kuhlenbeck said: "Yes, the flyer has to be killed as Police Director Eichel has ordered it." Thereupon, Kiwitt told Alt that he had better carry out his orders and he told Michel the same thing. Then the two policemen took the flyer away. Later in the evening, Alt reported to Kiwitt that the flyer had been killed, but not by the two policemen but by another party and that Eichel had been present (page 3). This is in the written statement:

"Q So far as you understand then, it was Eichel's wish and order that all captured flyers should be killed?

A Yes, that was clear to all of us.

Q Do you know former policemen Hamann and Fay who were stationed in the Bierbrauer Weg that night?

A No, I do not believe that I do, but the day after this incident a policeman assigned to that fire shelter spoke to me and said that the men assigned to kill the flyer were too cowardly to do it so he had to shoot him.

Q Do you know the name of this man?

A No, it sounded something like Matratt or Martratt."

Hamann made a written statement which agrees with all the facts (P-136). In discussing the shooting of the flyer on Bierbrauer Weg he said he first knew that some one was trying to escape after he had heard some shots. Upon hearing the noise, he ran outside. He then described how he ran out. Knowing the surrounding territory very well, he took Jaeger's

rifle. He followed the flyer and shouted "Halt!" The flyer ran towards the woods where Lt. Fabian was and then Hammann shot the flyer. Eichel arrived so he had to report to him and did not help carry back the body of the American. Later, he wore the flyer's cloth jacket.

Hammann made another statement (P-137), in which he said he had not talked to Nahrgang at all that evening prior to the flyer incident and that Nahrgang did not come into his room at all and that he did not see Fay on the street at all (page 3). He described how he fired three shots at the flyer; also said that Eichel was running after the flyer.

Now Fay made a statement (P-138) under no duress in which he described the shooting of the flyer on Bierbrauer Weg. He said that Nahrgang came down into the shelter and said, "Fay, come out. The flyer must be killed" (page 2). Can you imagine making a statement like that? Then some one asked him who gave such an order upon which some policeman answered "The Police Director Eichel" and that Nahrgang and Guenther and 2 police officials and the flyer were present when Nahrgang said that the flyer must be killed on Eichel's orders (page 3). Then Fay said he was hit a blow in the chest by the flyer but that at that time there was gathered around the flyer Nahrgang, Guenther and the 2 other policemen.

> "Q You expect us to believe then that the American flyer, surrounded by 5 policemen, suddenly struck you a blow upon the chest? Is that correct?
>
> A Yes.

Q Did you attempt to stop the flyer when he began to run away?

A No."

But he said he did have his weapon in his hand at that time (page 4).

"Q Do you expect us to believe that the flyer deliberately made an attempt to escape from an armed guard of 4 men?

A I don't know."

He said he did not talk to Hammann before the attempted escape, nor did he see him (page 5). Then he described how he shot in the air after the flyer had gone down the steps. He learned later that Hammann killed the flyer. The flyer was dead when Fay arrived at the place where the flyer's body was lying.

"Q Did Wahrgang kick him in the face?

A I don't know. I did not see it.

Q Is it not a fact that this police officer received orders that the flyer be killed?

A Yes. This police officer knew the flyer was to be killed." (page 6)

The only significant fact about it is that he says at the end, "Furthermore, Eichel was to be blamed for the whole thing."

So, in Charge 8, we have eye witnesses, direct and circumstantial evidence. We have extra-judicial confessions which are the truth and have never been challenged, the judicial confessions on the witness stand, and proof of the dead body. That brings us to Charge 9.

We began the proof in Charge 9 by the witness Schornweber, who stated that she saw Michely with a wrist watch in Wallrabenstein and when she pressed him for an explanation

he said, "If you want to know it exactly, I did away with him and he is lying up there" (page 593). She remembered that the bracelet had the name "Jimmie" and some family name (page 596).

The witness Buhlman received an order from Goss to pick up a parachuted flyer (605). "After he was searched in the evening, about evening, I got the order to take the flyer to a camp at Bauer bach and on the way there, to do away with him." He said he got that order from Goss. That finally the flyer was brought to Idstein by 2 other men. The next day another flyer was captured by Michely (607). That flyer was searched and Goss talked to Buhlman about who should bring the flyer away and he said Michely would do it. When darkness set in, Michely left with the flyer and one hour later returned and said he had shot the flyer while he was trying to escape. Buhlman then said that Goss told him that he, Goss, had been bawled out because Buhlman had not shot the first flyer (606), and this call-down had been by Major Best and later that month Major Best complained to Goss about Buhlman and told him he should keep Buhlman out of the way of General Stroop (614).

Goss said that in Wiesbaden he was told by Stroop that if any A lied flyers would come into his hands they should be shot (965). He further said that after he assumed command of the Wehrwolf School, he was familiar with the "Non-Interference" order and the Goebbels propaganda (966). Referring again to the flyer shot by Michely, Goss called up Major Best for instructions (968), and said that the instructions or orders could be issued only by Stroop and that was why he was asking Best. Later, he met Best under

the oaks and Best transmitted to him the order that the flyer was to be shot and that the order had come from Stroop (989) (990). Goss admitted at that time they were practically surrounded by the American forces (993). When Best reported to Stroop that the first flyer had not been shot, Stroop said that he considered it cause for talking a few serious words with them (1000-1001). Then Goss went on to talk about Michely's shooting the second flyer which was done on his order. He said Michely returned from the shooting and said that he had carried out the order. He said that, at that time Wallrabenstein was the immediate front line area (1006). Goss testified that neither he nor Buhlman was punished by Stroop or any one else for failure to obey the order to shoot the first flyer. Referring to the second flyer, he said Michely was obeying Stroop's order transmitted by him. However, he also said:

> "Q If you had failed to receive the order from Major Best, the flyer would be alive, would he not?
>
> A I can't say because somebody else would probably have shot him." (page 1015).

In trying to explain why the report of the shooting indicated that the flyer was trying to escape, he said the following:

> "Q Why did you make a report which was contradictory to the truth since you had an order to shoot the flyer anyway?"

This is the answer to the fake reports that Trummler wouldn't admit:

> "A Because one would never know if this report would get directly in the hands of the superior officer for whom they were destined or in the hands of some other office for which they were not supposed to be." (page 1024)

There's your answer--that's why all this business is fake.

Michely took the stand and made a complete judicial

confession. He admitted shooting the flyer on orders from Goss and gave a clear description of just how the deed was accomplished and that it was followed by a report made to Stroop through Major Best.

"Q What did you put down on that report?

A I put down in this report the whole occurrence, how I captured the flyer. I also wrote that I had received the order from Goss to take him to Idstein, that he attempted to escape on the way and that I shot him while he was trying to escape.

Q Who told you to falsify the report to the effect that the flyer was shot while attempting to escape?

A 1st Lt. Goss." (pages 1048 and 1049).

"Q From then on you wore Jimmie Heathman's bracelet?
A Yes." (page 1049).

Best testified that he received the message from Goss that he had the flyer in Wallrabenstein and requested instructions from Stroop (page 1061). Stroop said "The flyer has to be shot." Best then gave Goss Stroop's order (page 1062), and it was at this point that the Defense recalled Else Hoecker, Stroop's secretary, who testified that Stroop had said to Goss: "You know what the treatment of parachuted flyers is supposed to be. That also is one of the tasks of the Wehrwolf." (page 1089).

Goss made a written statement, Exhibit P-141, in which he admitted all the essential facts. There was no duress whatever in making this statement. "I can definitely state the murder committed by Michely was a direct result of the orders given by Best and passed on by me. I am certain that the said order was received by Best from Stroop."

Best, in his written statement, Exhibit P-142, said: "About the beginning of March, 1945, a verbal report came to me from Goss that his unit had an Allied flyer in custody." He asked Stroop what should be done with him and Stroop gave me instructions to transmit the order to Goss that the flyer should be executed. I sent this order to Goss but shortly afterwards I received another report from Goss that the flyer had been delivered to the PW camp in Idstein. I reported this to Stroop. He was very surprised and said, "How is this possible?" I replied that probably too much time was lost while the order was transmitted. About the same time as this incident or shortly after, it was reported to me through Goss that a flyer had been executed by personnel of the Wehrwolf School while same tried to escape."

Of course, as the evidence indicated, Best was in command of the Wehrwolf School. To complete the evidence in Charge 9, we now refer to Michely's sworn statement, exhibit P-143, in which he makes a complete confession to the crime. He concluded the proof by making a very complete confession on the back of the photographs received in evidence as exhibits P-141A through J, inclusive.

The evidence in support of Charge 9 is clear and conclusive and leaves no doubt as to the guilt of the accused Best, Goss and Michely, and it rests upon direct and circumstantial evidence, judicial and extra-judicial confessions, the admissions against interest made by Michely to the witness Schornweber, and positive proof of the corpus delicti.

The defense of justifiable reprisal offered to some extent by the Defense is worthy of so little consideration

that we believe no comment is necessary except to point out that I argued that point at length before this Court, and gave some reasons why the Defense should not be permitted to introduce any evidence on that. This court took it for whatever value it might have and only in mitigation. Although the defense tried to deny it, every flyer that was murdered was murdered in a front line area; and, if it was impossible to evacuate the women and children, we feel for them, and it is unfortunate. All of us who are human would have tried to do that, but it was probably impracticable for them; and so in an isolated case some bullets fell and did hit some women and children. Regrettable as it is, it doesn't excuse these people for the slow, deliberate, calculated murders that they committed on our American prisoners of war. The Nuernberg Tribunal listened to that stuff for days and days in an effort to give them every opportunity, but at the end it had to be thrown away because you know and everyone knows what the results of that trial were.

Chief Justice Harlan Stone, U. S.Supreme Court, once made the statement that punishment of war criminals was a necessary part of warfare--that it was the second step and a necessary step. In proving that these men were war criminals, we first proved the conspiracy and then in Charges 3 to 10 we demonstrated to this Court the results of this conspiracy and the fruits of that criminal combine.

The only other Defense that they interposed was this oft told tale, the defense of Superior Orders. That is not

new, but it should be given little or not weight at all, even in mitigation. Certainly it is not a defense. That is absolute. In discussing Superior Orders, we talked of necessity of Superior Orders as a whole. A totally different picture is presented in the crimes committed by individuals who are not members or who were members of such criminal organizations as the Gestapo, SS or SD. Those who belonged to those organizations knew before they joined or learned soon after they joined and before they committed their criminal acts that these organizations were engaged on a large, systematic and planned scale of murder, torture, beatings and various violations of the rules of land warfare, yes, and the laws of humanity. As members of these organizations and by remaining members thereof and committing criminal acts, they can not be heard to say that their crimes were justifiable because they were done pursuant to Superior Orders. It is extremely doubtful whether any Superior Order constitutes any valid defense whatsoever. The Court realizes that the basic doctrine in American law is to exclude it entirely in defense. A person does not normally escape liability for an illegal act on a plea that he was acting on orders of a higher authority and I take that statement from an old United States Supreme Court decision, Little v. Barreme (1804) reported in 2 Cranch 170. Judicial authority has generally rejected superior orders as a defense where the orders were manifestly illegal or where the defendant knew they were illegal. U. S. v. Jones (Circuit Court District of Pennsylvania 1513), being Federal Case Number 653.

The defense of Superior Orders offers no sweeping

immunity. In the light of the case law rejecting the defense, there is a serious question as to whether the doctrine, even in its restricted form, is applicable to war crimes prosecutions.

While the basic doctrine of American law excludes a "Superior Order" as a defense, the United States Army provides in FM 27-10, par. 345.1, as follows:

> "Individuals and organizations who violate the accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to an order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. The person giving such orders may also be punished."

It should be noted very carefully that the Army doctrine is that Superior Orders may be taken into consideration. The fact that the accused knew or should have known that he was committing a crime --now I repeat that "knew or should have known"--should be determinative of his guilt.

The accused in this case were all men of mature age and are normal human beings to whom would come the normal reaction that accompanies the commission of a killing that is illegal. There is no human being of any race or creed, be he pagan or saint, that does not instinctively react to the violation on his part of the inborn, natural laws of humanity. We saw that demonstrated in this trial when the accused themselves, who were the so-called "trigger men", each in turn said that after the shooting of the flyers they were shaky and nervous and upset and in general felt shocked. They told you that themselves, either in written statements or on the stand. The only answer to that is that they were experiencing the same reaction that any criminal, no matter how low a

form of humanity he may be, experiences simply because he is a rational human being, and he experiences that when he commits what he knows is a violation of the laws of humanity.

In addition to all of that, the compulsion under which the accused follows orders may be taken into consideration--these orders that they are always talking about--whether he should have or could have avoided or evaded its commission by way of defense or in mitigation. Several witnesses produced by the prosecution and many by the defense told this court that they had been ordered to shoot the particular flyers and had refused and avoided the deed and as we have pointed out before, witnesses for both sides of this case have come into this court and have said that they were closely associated with and under the command of the various SS and Police Commanders and Party Leaders, who gave them orders, as early as 1944, but that they had refused and are still alive today to testify before this Court.

The members of Murder, Incorporated and Al Capone's gang and the notorious gangs that operated in prohibition times in the United States made a practice, for example, of taking people for a "ride" in somewhat the same fashion as the accused Fuehr and Koehler did. They are not excused from punishment on the plea that they followed their superior's orders. Germany was engaged in international brigandage. Its people knew or should have known that there would be punishment of the captured individual offenders. If these gangster policemen did not desire to be branded as war criminals, they should have deserted the gang as did Gunther, Kalesko and many other people who have come

before this Court, still free because they had courage of their moral convictions.

All right, for the sake of argument, let us assume that a deserter from Al Capone's gang would have risked assassination. Remaining in the gang, and this has always been the rule in any decent country, and committing its crimes, with or without orders, subjects him to punishment as a criminal.

In any jurisprudence, where logic and sensible and correct principles of law are advocated and enforced, we know for example that a man can not be excused for the commission of a crime because for example he has become intoxicated before committing the act. To grant that man such a defense would invite all future would-be murderers to become intoxicated before committing the act, as advance assurance of not being convicted. All right, this world will probably go on for many years. It's probably inevitable that there will be another war. We hope not, but to grant to these accused the right to Superior Orders would be an invitation to all future would-be war criminals to obtain an order that they can hang their hats on from a superior as an advance assurance that they would not be convicted.

The brutality of the Axis soldier is not justifiable, simply because he was a cog in a huge criminal machine. It follows that the plea of Superior Orders raised by individual non-members and members of the SS and other organizations, such as the Gestapo, SD and others, independent of the

German Army, who commit war crimes must be rejected. The German law on the subject--their own law--is clear that the defense of Superior Orders is not valid, even in mitigation, and in that connection I have to support that statement The Llandovery Castle case in Leipzig, in which the court stated: "The order does not free the accused from guilt...if such an order is universally known to be against the law."

Goebbels in his article in the Deutsche Allgemeine Zeitung, May 23, 1944, threatening to execute British pilots taken prisoner in Germany says: "The pilots cannot claim that they were acting under orders. There is no provision in the Laws of War that a soldier who has committed a disgraceful crime is exempted from punishment by his plea of having acted according to the orders of his superiors, especially when these orders are in glaring contradiction to every notion of human morality and to all customary international rules for the conduct of war". And Goebbels said the same thing in the article that we received in evidence in this case, Exhibit P-21.

In the Nuremberg Judgment on page 16988 of the copy of that judgment now available to this court, in considering the case of Keitel, the Court said: "Superior orders, even to a soldier, cannot be considered in mitigation where crimes as shocking and extensive have been committed consciously, ruthlessly and without military excuse or justification." In the case of Jodl, the court said: "His defense, in brief, is the doctrine of 'superior orders', prohibited by Article 8 of the Charter as a defense. There is nothing in mitigation. Participation in such crimes as these has

never been required of any soldier and he cannot now shield himself behind a mythical requirement of soldierly obedience at all costs as his excuse for commission of these crimes." That appears on page 17047.

It is interesting to note the article in the Reader's Digest of February, 1946, by Murray C. Bernays. The headnote of that fine article is significant: "The war crimes are being tried according to recognized law. True, what is happening in Nuernberg is revolutionary. But it is not a revolution in the law. It is a revolution in law enforcement."

Sheldon Glueck of Harvard, in the New Republic, 22 November, 1943, in his article said , and I would like to adopt it, "where, patently, the order is violative of the laws and customs of war as embodied in the rules of land warfare, or of elementary concepts of criminal law, it is illegal and the offender should not be excused even though his domestic law or the 'will of the Fuehrer' had declared such laws to be lawful. It would be a mockery of elementary justice for a German or Japanese soldier to claim as a defense that he did not know it was illegal to use children as a shield against the enemy; or to torture and slay surrendered prisoners of war....The Fuehrer, Hitler, had decreed that allied 'air gangsters'--that's the term he used--"and others should be killed when captured. If "Superior Orders" were a defense, the 'Fuehrer' decree would absolve every person except Hitler who, if captured alive, would be the only person subject to punishment for the murder and torture of millions of persons by several hundred thousand henchmen."

In conclusion, I might say that when I began the

preparation of this final argument I believed it proper and also believe it to be helpful to review the evidence in detail. The task, however, was colossal. The prosecution's evidence alone, both by witnesses and by document, is so extensive and overwhelming that a detailed restatement of the main part of the evidence would be unnecessary. This court without doubt has been impressed by the veritable mountain of evidence and consistent clear proof which was supported, corroborated and strengthened by the evidence of the defense.

Some of the accused have less blood upon their hands than others of the accused, but if there is upon their hands one slight stain, he should pay the penalty equally with the others. That always has been the law of humanity.

Accordingly, the Prosecution, in the name of the United States Government, prays this Court to deny the motions for findings of not guilty made by the defense and prays that this Court find each accused guilty of each and every charge as alleged and further the prosecution prays this Court that as punishment therefor, each and every accused be sentenced to death by hanging.

PRESIDENT: The Court will recess until 1:30.

(Whereupon at 1145 hours, the Court recessed.)

AFTERNOON SESSION

(Whereupon the court reconvened at 1330 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all the members of the court; all the members of the prosecution; all the members of the defense; all of the accused; the reporter and interpreter are present.

DEFENSE COUNSEL: May it please the court, the defense in presenting its argument will argue to the case as a whole, and will disregard any special address to this court with reference to the motions which were made the other day and will leave it to the court when to pick such portions of the argument as will be germane to the motions which I have in mind.

I should like to call the court's attention to the fact that the argument will be made by the seven of us. All the arguments will be in English. Because the German counsel do not have a sufficient familiarity with the English translations of their arguments, they will be read for them by the interpreter. It follows, therefore, too, that our argument cannot be divided by charges. Major Saxon, for instance, has represented in the trial of the cause certain individuals who are concerned with several charges. His argument will be in defense of those individuals, and consequently, our argument, I regret to say, may be a little bit more difficult to follow than if we were able to argue charge by charge.

It is my province on behalf of the defense, may it please the court, to bring to the attention of the court our interpretation of the legal principles which are germane to the issues in this case and which we believe to be binding upon the judgment of this court. However, before going into my argument proper, which has been reduced

to writing, there are certain matters referred to by the prosecution we feel called upon to discuss at more or less length, one or two of them which seem to be elemental and unnecessary to mention before a court made up of officers trained in the American tradition. However, I am going to trespass and refer to them because, in our opinion, the prosecution in the course of its argument, inadvertently or not, made references which contravene in one form or another what we believe to be basic principles.

The first, may it please the court, is the presumption of innocence. That fundamental law of Anglo-Saxon jurisprudence has not been changed at all. These men are presumed to be innocent unless and until the prosecution has proven beyond a reasonable doubt by the facts in the case, free from surmise, suspicion and presumption, that these men are so guilty. The facts in the case must be inconsistent with a finding of innocent. If the facts in the case are such that they support or could support a finding of innocent, then that finding of innocent must be made.

Now, I mention all of this because the prosecution, in referring to the letter or note or written message that Gochrandt is supposed to have sent to Offenbach, concerning the contents of which there is no testimony, said to this court, "Why, the court knows what was in that message. We all know what was in the message." My purpose is to inform the court most respectfully that in the absence of specific information as to what was in that note, the court has no right to engage in hypothesis of any kind as to what the contents of that note might be. This principle of law is applicable to a number of illustrations of the same kind referred to by the prosecution in its argument.

There has been some talk or some stress laid by the prosecution about these heroic individuals, these titans, who came into court and

said, "Yes, we got an order but we didn't obey it because it wasn't legal." Well, that is an illustration of just what I have been talking about, that we have no right to presume or surmise as to what the truth might be. But the court knows, from the existence of affairs in Germany, that no halfwit or no peanut individual such as these witnesses have been are going to tell somebody in Germany during the war years, "We are not going to carry out the order." Chances are that if they got an order, they carried it out and are lying about it. But I mention that because of one instance, and that is the case of this man Von Eberstein, who was a witness and has been mentioned by the prosecution.

He got the orders; he disobeyed them. The first order he got was with respect to an army colonel. He says, "I know I had no legal right to arrest him. I had no jurisdiction over that fellow." The second order was about killing everybody here in Dachau; the third order, about moving the defense line to Munich. He disobeyed, but he said, "It is a good thing for me" — and he emphasizes that — "It is a good thing for me that the war was almost over." But despite that fact, eight days before the capitulation he was removed from office. Himmler, despite the thousand and one things he had to do, still could take the time to remove a man from that high position, the higher SS and police leader, because he didn't suit some gauleiter and didn't carry out some order.

Now, in arguing the case on No. 4 with respect to Hoehler, an analogy is made of men going out on a bank robbery without any attempt or intention of committing a murder, and yet a murder is committed and so they are all guilty. That is fundamental law. We agree that is the law. Everyone who is engaged in the commission of a felony, actively engaged in the commission of a felony, is responsible for the actions of every one of his co-criminals. There is no question about that, but the point I want to make now is that those people who had been punished for

the murder were men who actively participated in the robbery, and not a person like Moehler, who stands by and witnesses it, so that if I were standing by and saw a gang going into the bank to commit a robbery, or rode on the same street car with them with no part, no active part in the robbery itself, I couldn't be held responsible for a single thing.

Later on in my written argument I am coming back to that, but I want to emphasize with this final word that that bank robbery is no analogy to these standing by cases, to these so-called consenting part cases, where all a man does is pass an order down or just doesn't interfere with somebody else perpetrating something.

Now, may it please the court, if knowledge of a conspiracy were enough to make a man a conspirator, then five million policemen in Germany must be conspirators. Ten million members of the Party must be conspirators, and they would all have to be conspirators with each other on this theory of one common design. I haven't any doubt that when Kaltenbrunner and his gang started this business of shooting people, however you want to characterize it, that that fact came to the knowledge of millions of people, so that they all would be guilty of conspiracy because of that knowledge, which is not the law. To be a conspirator, one must actually do something with the intent to further the conspiracy and not for any other reason. We can't emphasize that too often. If Dirks or Hallenbroich came to a meeting under an order and listened to Somann read this non-interference order, that couldn't possibly make them conspirators by itself, because by so listening there was no intent on their part to further any common design. And even in passing it down in obedience to an order, there is no general intent to engage in a common design with five million policemen and ten million civilians.

Now, there is one other thing, may it please the court. I can stand on the street corner and issue unlawful orders from morn till

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dusk. If nothing is done in consequence of those illegal orders or unlawful orders, there has been no offense committed. Somann got an order. He read it. What happened? Taking Hallenbreich's testimony, he added something to the order. Hallenbreich says that the whole business was superseded, that what he did, he did on the basis of the order to shoot, and Trummler said the same thing. If Somann's passing down the non-interference order resulted in no crime, then where is Somann's crime? I will come back to this non-interference business way further on.

It is not what a man knows, may it please the court, it is what he acts on. It is what makes him act, it is the motivating force behind what he does, which is the thing that counts.

Now, there has been a lot of reference to that chart. I am going to make one very brief reference to it, and that is this: That what happened on the right side, on the secret police side from inspector on down, never had any effect in any way whatsoever with what happened in the Ordnungs Police from the commander on down, and vice versa. And I stress that because Trummler, the fourth case in which he admits knowledge of, couldn't be held responsible for what the Wahrwolf did. He had nothing to say about the Wahrwolf, and the mere fact that he talked to Stroop and Stroop talked to Case doesn't make Trummler a conspirator with Case and Best.

And certainly Trummler and Somann and all the others mentioned on the right could have had nothing to do with Charge III, which is the Lasaak business; or VII, which is the Ordnungs Police, Albrecht, etc.; or VIII, which is on that side; or IX, the Wahrwolf. They just couldn't have anything to do with each other.

Now, the prosecution has talked about the unbridled despotism

of those in command. There just is no word available to me, at least, to express the degree of the unbridled despotism exerted by those men who ran Germany. It was unlimited beyond any conceivable bound of the human imagination before they reached the limits to which other people could go. But the sufferers of all that are these same puppets that are sitting in this dock at the present time on trial for their lives. They are just as much the victims of Himmler and Kaltenbrunner and Hitler as were the people of Poland and Russia. They got it in a different way. To say that this business applies to soldiers, of the law of superior orders applies to soldiers but not to police -- they were subjected to just as stiff a regimen of disciplinary control as any police. The German police force was built along military lines. Command was exercised along military lines and they functioned along military lines. The defense of superior orders applies not because a man wears a uniform of a soldier, but because of the position he finds himself in, because of the forces to which he is subjected, and that is the determining factor in this case.

Now, I would like to call this court's attention most respectfully to an obvious fact, and I do so again only because of certain portions of the prosecution's argument. This tribunal is not the Nuernberg tribunal and we are not trying before this court the four major organizations. I say that for this reason. A great deal of argument was spent showing the development in the minds of these higher ups so far as this order to kill is concerned. It shows how they speculated and conceived to give a color of legality to this order to kill. We admit that these men, that Hitler and Himmler and Kaltenbrunner conspired. We admit that, and we admit that the things they did were illegal, and we admit that the organizations to which they belonged were illegal. We have no choice. The facts are there. The decision is there, but the question for this court to decide is not

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the mental processes by which these men conceived this ugly scheme and gave it to the world. The important thing for this court is the fact that they did it and the fact that they did it so successfully that they convinced their own people it was legal, and that is the position we take in this case. It was a Machiavellian scheme, a dastardly thing to do, but it worked, and it worked on them, and that is the important thing in this case. [illegible] The language used by the prosecution -- I don't have it here or I would quote its very words -- had something to do with the fact that they schemed to make this thing look legal. I would be interested in having the court, when it gets a chance, look at the exact words used by the prosecution. But what they succeeded in stating for us, in language I personally can't improve upon, was that Hitler and that bunch were successful in throwing up a camouflage of legality, deliberately sought to do it. So far as we are concerned, they deliberately sought to do it and they succeeded, may it please the court. They fooled their own people. The rest of the world they didn't, but it doesn't make any difference. I will come again to it, and so will the rest of the accused. The court will come to it when it comes to make its final argument, were these men reasonable in their belief that the order they got was legal. [illegible] One of the things that the court will have to consider is the very effort mentioned by the prosecution made by their leaders to fool not only the outside world but their own people as well. [illegible]

Now, may it please the court, in addition to arguing the general law of the case -- and I am afraid I am going to have to repeat a little bit as I go along -- I am going to argue at the end in favor of Muller and Oechsendt, who are both mentioned in Charge VII, specifically for them, although of course I will refer from time to time to others as well. [illegible]

Much has been said during this trial about crimes worse than murder. There are murders which are more heinous and nefarious than others, but, may it please the court, the only crime known to mankind worse than murder is the crime of treason, faithlessness to one's country. That is the crime worse than murder recognized by all civilized nations. For treason, two witnesses are required; for murder, one. Furthermore, the killing of a human being is graded at the top as murder in the first degree, then down to murder in the second degree, down further to various forms of the crime of manslaughter.

In determining which crime involving a killing shall be charged, the law, and the conscience of mankind, require the consideration of a number of factors. Was the killing deliberate and premeditated? Was it done with malice aforethought? What were the motives for the killing? What was the compulsion behind the killing, with respect to these killings?

There are other factors the court must consider. What are the standards of the man charged and of the society to which he belongs? What has he been taught? What is the law of his land? In Sparta, to be caught stealing was the offense, not the stealing itself.

Times and customs change. New circumstances create new laws. In high school, in studying Latin, I remember the speech that Cicero made in which he talks about other customs and other times. In our own legal history, the deliberate killing of a few to save the many is permitted under some circumstances. I have in mind the permitted killing of some individual in a lifeboat where the lifeboat is overcrowded and one person has to be sacrificed to the many, though there are safeguards around that.

I would like to call attention to another fact, as stressed by Trumbler in his testimony: Under all times and under all circumstances,

loyalty to government or country where a common enemy was concerned has always been esteemed the highest virtue tied to and blood brother to loyalty to God. For the American Legion and for countless thousands of groups and untold millions throughout human history, it has been for "God and Country." It was Milton, I believe, in his poem, "Horatius at the Bridge," who said, "For how can man die better than facing fearful odds, for the ashes of his fathers and the temples of his gods." It was Stephen Decatur who said, "My country--may she be ever right, but my country right or wrong."

I should like to emphasize here, and I shall return to the subject. We have to keep factors of that kind in mind. When we, a victorious enemy, come to judge the actions of a defeated opponent, there are uses and laws and forces which must be concerned independent of abstract ethical legal concepts. What these men did here they did in the final violent death throes of a defeated nation. They did it after subjection to unbelievable punishment. They did it after seeing their homes, their churches, their cities and their families destroyed. They did it in times of war, in times where their localities were near front lines and our forces nearby, under the orders, chiefly in writing, of the government and the men in whose hands lay the destiny of their nation. These were new times, new customs were being created. Out of these times came the order of their government. Can it be said that men not only trained to obey, but stemming from a people like the Germans, notorious for their susceptibility to regimentation, goose-steppers all, subjected to propaganda for 15 years, men beaten and destroyed as they were, were guilty of premeditated killing with malice aforethought when they obeyed the orders of their government? Were they free agents? Can it be said that they acted without any reasonable belief in the rightness of what they did? Those are some questions for the court to consider, and

I think in passing judgment upon some of the things done here, the court might well consider the analogy of some of the things which have been done even in our own country. I hesitate to make these analogies because once I did it before and I was accused of disrespect for my own country, which really isn't so. There have been times within the recent years, during this period of strikes, when according to the daily press of our country, responsible police officials gave orders to their police not to interfere with strikers, to stand by, even when according to others the strikers were engaged in what were alleged to be illegal acts. Was that a non-interference order? Without going into the merits of unionism or otherwise, I think there is an analogy there to which we respectfully call the attention of the court.

In arguing before this court, I am not unmindful of the history of the origin of the late war nor of the origin of aerial bombardment. I know of Coventry and Lidice, of concentration camp, of Ghetto destructions and the murder of women and unborn babies. The German people have been and will continue to be punished. That is only right and as it should be. Those who led and made policies of destruction have been and shall continue to be punished.

But what we as lawyers contend before this group of American officers sitting as a Court is simply this. These accused were not the leaders of the people but subordinates of these leaders and in most cases very minor subordinates indeed. They were not creators but were instruments in the hands of these leaders. They were not free agents but were under continuous compulsion of the most compelling kind.

Now, always in the trial of every case, there comes a time when the court must evaluate conflicting testimony, and in this case there are many such instances. I should like to remind the court that where the necks of men are involved, chivalry slips through the noose

in the hangman's rope. Men will lie to save themselves, not only outside of court but in court as well, but not to save others. Men in fear, in confinement faced with hostile interrogators will lie and point the finger of suspicion at everyone they can, hoping to hide in the shadows of guilt cast upon others. That is evident in some of the statements some of these people made. Even when the chips are down and they face their judges, they may continue to lie to save themselves. If what they say then helps a fellow accused, the court can rely that they are doing it just because it is the simple truth. There is no chivalry here, nobody lying to help somebody else when they come before the court.

As the prosecution has said, Moller told the truth. Those are the words of the prosecution. They are to be believed. Moller says Goehrendt wasn't around until he and the flier started on the way from the police station. Albrecht says the same thing. That is what I mean, may it please the court. When Fuehr says that Koehler never got out of the automobile and Koehler says he doesn't know whether Fuehr fired or not, it was to the interests of Fuehr and Koehler both to lie. It wasn't to the interest of Moller or Albrecht to pull Goehrendt out of the picture. If anything, it was to the interest of both of them to keep him in the picture. And so I say, may it please the court, that when men before this court tell stories which happen to be favorable to the other accused, when it would be so easy to lie or to do something differently -- then these people must be believed.

When Trummler says yes he knew of certain cases but not of others, he is to be believed. When he says that he believed in the legality of his order, the court, we submit, has to believe that he did believe in the legality of his order.

It it remains, at this time, may it please the court, to comment briefly on inconsistencies which were emphasized by the prosecution in statements made in these statements which were introduced in evidence and the the testimony in open court. The ability of the court to see witnesses, to watch their facial expressions, the inflection of their tones, to judge what is said by seeing the man who said it--that has always in our law been considered a very valuable right. Because it is so, the supreme courts of our states will never reverse a court until it is plainly ruled where that court has had a chance to see and hear the witness. The Appellate Court, of course, does not have this chance. I am not going to argue it, but I have already commented on the fact of the circumstances under which some of these statements were written.

You have your accused here subject to cross examination by the prosecution, subject to cross examination by other defense counsel, subject, in some cases, to examination by the court. Everything he says is heard, and not, as Colonel Kohlers testified that he talked with one of these witnesses and a lot was said but only a part of it went down on paper. Here the court has everything. So, where there is this conflict, we ask the court to do just one thing. It isn't so important why a man lied. The question we urged and the position we urge upon the court is that the difference between whether a man is telling the truth now or was telling the truth then -- the odds are so strong that he is telling the truth in open court, that that is the evidence which should be controlling.

There is a charge of conspiracy here, may it please the court. We have admitted that there undoubtedly was a conspiracy among federal leadership. Conspiracy is a very dangerous offense. It is so easy to charge so that our

federal decisions have ruled consistently that because conspiracy is a dangerous charge it to be used with caution and scrutinized carefully. A conspirator is one who would actively, with intent so to do, contribute to a common purpose. What he does must be for the purpose of aiding the common plan and for no other reason. The big majority of these people didn't even know the existence of a general order to kill or of any general order affecting parachuted flyers. There existed not volition but only obedience. How could they be guilty of conspiracy? Others attended meetings under orders and without forewarning heard general orders. How could this act make them conspirators. Others like Seemann merely obeyed an order to pass down an order. How could Best, whose only act was to convey an order which was not carried out, be a conspirator? The fact that their actions may have contributed to the execution of the aim of the conspiracy does not make them conspirators. They were robots, automatons, men who carried out orders created for the purpose of getting the effects of the conspiracy and so assumed a mantel of the appearance of a conspirator, but we are asking the court to go behind the mantel and see just what the fact was. On the theory of the prosecution every stenographer who typed out a copy of that order and passed it down and handed it out would also be a conspirator.

Now, may it please the court, we come to a charge, which before the defense counsel came to Dachau, we never heard of. That is the charge of "taking a consenting part." What kind of a crime is this? What do the words mean. A citizen of the U. S. can stand up on any street corner and see any crime committed and either through fear or indifference not lift a finger and he can't be charged with any crime. He can be charged with a crime only when and if a police officer touches him on the shoulder and says, "I want some help." and then as a citizen he has to give it, but If I stand on a corner of Times Square and see a cold blooded murder or anything happen I am under no legal duty to interfere--none. Koehler, who was present at the commission of a crime, who even knew a crime was going to e committed, was under no legal

duty to stop it. It is unnecessary for me to tell the court that I am not arguing the morals of this business, it is just a strict legal principle. The same thing applies to Hewitt. Sure, he was present in charge ? when somebody gave an order--whoever did--but he was under no duty to stop it--none. That is one of the principles the defense stands on. We don't know what "consenting" is. If all it means is a standing by and not interfering, we submit it is not a crime--at least there is no definition of it.

We also ask the court this question: How many people through whom an order to kill--through whom these hands it goes--how many of these people can be killed in America? Kaltenbrunner gave the order to Brunnler who gave it to Birke who gave it to Hollenbreich who gave it to Stattman and Ruf. Are they all guilty of murder, is that where the consenting business comes in? If that is the position and that is the definition of "consenting", may it please the court, we argue that merely passing an order along is no crime.

We have a number of these defendants, may it please the court, who have admitted membership in some of these four criminal organizations and as such they are technically subject to punishment. We submit that it is like the case of a man who through his neglect causes damage. He is entitled to nominal damages even without proving specific damage, but for him to get any appreciable amount of money he has got to prove damage. To give the accused any sentence of consequence because of membership in a criminal organization there must be proof as to what his contribution to the worth of this organization was.

So far as Sauer is concerned, to prove my point, the evidence is only that he belonged but he took part in none of the work which was the basis for the foundation of criminality and in his case and in other cases we submit that the twenty months or almost two years confinement is plenty of punishment for a nominal criminal offense where that is all that can be proven against

an individual. Now there is just one other thing I would like to comment about with respect to this charge number 2.

The Nuremberg decision states that men who were guilty of membership in an organization can't be in, etc. It says further that men who were compelled to join and who had no volition should not be charged as members of the criminal organization, unless, despite the fact that membership was involuntary, they participated in the criminal nature of the work, and that is the basis for the last sentence or two which appears in charge two. It is the aim to get at these people who holler to high heaven, "They made us do it.", but they were in it just as enthusiastically, and putting the prod on people, just as the man who did it and joined voluntarily. So far as Koehler is concerned, let the court find, as it may, that he, in charge 4, cooperated with the Gestapo. Either that fact cannot make him a member--he either is or he isn't.

Now, I would like to come down and discuss with the court what is one of the most important parts of this case--probably the most important part, and that is this business of superior orders. We have heard in this case time and time again the statement that superior orders are not a defense. I am not personal in the slightest way when I say that that is an absolute misconception of the law. The citations which I am going to analyse for the court make it plain that superior orders is not an absolute defense but may be a defense or may be used in mitigation. They make a difference between an absolute defense and a defense and that difference, may it please the court, is not a question of language. It is a difference that goes throughout the law, the civil law and the criminal law. For instance, if a superior order was an absolute defense Spattmann, Ranf, Moller and Fuehr could come before the court to put in evidence that some superior order had them to do it. It is an absolute defense and out they go. Circumstances and conditions would have no weight at all. What these decisions say is not so. It is not an absolute

defense, but whether it is a defense or not depends on the circumstances of each case. That this court has to decide is not whether it is a defense, but whether the factors and circumstances of this case make it a defense. It is unfortunate that the authorities do not lay down a clear cut line as to when a superior order is a defense or not. But there is some occasion in the cases to which I should like to call the attention of the court, for instance this extract from the London Agreement in 1945, and all of my citations are taken from the manual--every single one of them. I would like to read a part of a quotation.

"The fact that a defendant acted pursuant to order of a superior or government sanction shall not constitute an absolute defense but may be considered either in defense or in mitigation of punishment if the tribunal before which the charges are being tried determines that justice so requires."

The language "but may be considered either in defense" must mean something or it wouldn't be there. The language "in mitigation" must mean something or it wouldn't be there. The fact that the language talks about absolute defense then talks about defense and then talks about mitigation proves beyond a doubt that these three things are totally indistinct leaving open three separate courses of conduct. That decision is interesting because it gives the court some hint as to when superior orders may be a defense. It is a big burden that it puts on the court, but the hint is plain. It says that the case may be considered a defense and in mitigation if the tribunal before which the charges are being tried determines that justice so requires, so that this court in reviewing the facts and the circumstances in these cases, individually and collectively determine the fields that justice requires--simple justice requires--that superior orders can be considered a defense, then that is a defense.

The same thing applies to our own field manual. It says that the fact that the acts complained of were done pursuant to orders may be taken into consideration in determing culpability either by way of defense or mitigation.

Mr. Justice Jackson stated: "There is doubtless a sphere in which the defense of obedience to superior orders should prevail. If a conscripted or enlisted soldier is put on a firing squad, he should not be held responsible for the validity of the sentence he carries out."

If a conscripted or enlisted policeman, subject to even a stiffer control than a soldier, is put on a firing squad it is not up to him to decide the legality of the order which he has to carry out. For him an order is just the same as a sentence. That is the size of the case of Stattmann, Knaf, Moller and Fuehr. They were all men commissioned enlisted soldiers; according to Mr. Justice Jackson's language, "conscripted enlisted personnel". What they did was to carry out an order or a sentence the same as any soldier who appears as a member of a firing squad.

Mr. Jackson continues and gives some more language which is helpful to this court in determining when an order is a defense. "But the case may be greatly altered where one has discretion because of rank or the latitude of his orders."

The language which helps is the language in which he says that rank is a factor and latitude of orders is a factor. If a man had enough rank and his orders gave him latitude in what he was to do and what he was not to do it would not be a defense. Take a look at the rank of these people. What latitude did they have. They had no rank and no latitude. They were told, "Go out and do this." No ifs, ands or buts about it. According to Mr. Jackson's language they come well within the purview of what he said.

Now our own good old manual for court martial. I am not going to quote the language in extenso. "The general rule is that the acts of a subordinate officer or soldier done in good faith and without malice in compliance with his supposed duty or of superior orders, are justifiable unless such acts are manifestly beyond the scope of his authority and such that a man of ordinary sense and understanding would know to be illegal."

I am not going to put myself in the position of the members of this court, but I know of a number of cases where an officer in the army gets an order to do something and somehow or another he thinks it isn't quite right. It is against some directive, against some regulation. So, under some circumstances he may say to himself, "I had better ask for this in writing.", and if he gets it in writing he no longer worries about it. I know of one such case where the commanding officer of a large field--well perhaps I shouldn't say this because I am arguing evidence not before the court, but the court of its own personal knowledge will know that such has often happened--received an order from his commanding general with respect to the use of PX funds--a very ticklish subject in the army. He asked for and received the order in writing. I was his executive officer. I didn't know the facts, but I knew the fact that the order was in writing relieved my commanding officer of a lot of worry. Having the order in writing he was absolutely safe even though he suspected the legality of that order.

You had orders in writing here from officers who got it from their superiors. If it is all right for us to take an order in writing which is illegal why isn't it all right for them to do so and further, imagine any of these people saying to their superior, "That doesn't look kosher to me. It doesn't look right. I would like to have it in writing." See how far he would get.

Now I would like to refer to just one more decision that is the opinion of our own Deputy Theatre Judge Advocate in the case of the United States versus Thomas. There was a superior order in that case and the review held that it wasn't a defense in that instance and the accused--I don't know what happened to him but it was held not to be a defense. Reference is made to the Dandovery Castle case as an authority and I am coming to that case in just a moment. I would like to call the court's attention to some language in that decision which is also held in determining whether a superior order is

a defense or not. I would like to point it out to the court now and come back to it later. I am quoting. "It is also noteworthy that Eich who gave the order was not present at the time accused carried it out, and that it was carried out sometime later and at a distance from the place where the order was given. In other words, accused was not acting under any sort of immediate compulsion."

Now that language makes it plain that it would be the opinion of the deputy theatre Judge Advocate that if the man who gave the order was present or nearby present and the order was carried out almost immediately after the receipt of the order and was carried out in the neighborhood of where the order was given and that there was compulsion to carry it out, then it could be a defense. That what we claim is here. Take every single one of these charges. 6 and 10 and 7 and 4 and 5. Either as in charge 4 Trumler's headquarters was next door to the Gestapo where Fuehr and Boehler worked or either like in 6 and 10 they were in the same office. In 7 the order was given in the headquarters of the police. The orders were carried out practically immediately. In some of these cases it was a question of minutes between the receipt of the order and the execution of the order and thirdly there was definitely an immediate compulsion. Moller testifies that he thought that his superiors were following behind him to make sure that he carried out the orders--the most obvious kind of compulsion.

Now I would like to take a few minutes and analyze that Dandovery Castle case.

That was a nonbelligerent vessel sunk by a German submarine. After the sinking of the ship the submarine floated to the surface and four men appeared on deck. Every other member of the crew was below deck. The four men were the Captain, two officers and the gunner. The hatches were battened down so that nobody below deck could come topside. The two officers argued with the Captain that the order was illegal. They knew it was illegal.

You have the difference between that case and our case right there. The rules governing conduct at sea are old and well established. This air warfare is something new. The two officers knew the order was illegal. These people believed it was legal.

The two officers, after their protests were overruled, used their glasses to find the life boats and direct the fire. These people didn't take a foot looking for the people who were shot.

Another fundamental difference is this: You had two men and the Captain out in the middle of nowhere. All they had to do was give him one little push and he would be out of the picture. Imagine Fuehr or Heller or somebody else trying to stop this sort of business. Furthermore the two men knew that that order to shoot at the lifeboats was the order of the Captain. These people knew the order came from their top government heads. So, without taking any more time, may it please the court, we submit that the Dandovery Castle case is not a precedent. Certainly the prosecution would not argue it as precedence from the point of view of the sentences. All these two junior officers got out of that was 4 years.

As we stated before may it please the court, there is no clearly defined set of rules which determines when a superior order is a defense or not. However, there are some eight situations in this case to which I would like to refer by way of summary.

1. There is first the undoubted fact that the order to kill was issued by Kaltenbrunner an had the highest government sanction. All this business about examination by the Gestapo at Frankfurt etc, is just digressing. There was an order to kill. That was the order carried out. That is what is being tried in this case. That order came from the very top.

2. These cases all happened during the closing months of the war when the crescendo of air attack reached an all-time high.

3. Wehrkreis 12, where these killings took place had more than its share of visitations because of its location across the air routes.

4. Rhein Westmark had been declared a near front area.

5. These men believed in the justice and legality of what they were doing. No one could listen to Trummler and question the sincerity of his belief. I say so most respectfully. I have questioned the sincerety of his basic conviction of the legality of what he did.

6. They were reasonable in their belief in the legality. This sort of warfare was a new thing. It was the decision of their government. It was directed against a special group of terror flyers described by Trummler. It is no reflection on our army or on our leadership to contend that among 100,000 recruited from all walks of life there were some who went beyond their instructions. There can be no doubt that the German people as a whole and the accused in particular were passionately and whole-heartedly convinced that terror flyers were criminals beyond the pale.

7. It is also argued on behalf of all of the accused and particularly on behalf of the enlisted, noncommissioned, and clerical personnel, that they had no choice. German law offered no appeal, no recourse to the courts or otherwise. Punishment was swift, often without the color of judicial process. You couldn't take Himmler into court the way an American citizen could take the president of the United States.

8. Finally following out the opinion of the Deputy Theatre Judge Advocate in the Thomas case, the orders were given by superiors on duty at Headquarters in the same city. Trummler's office was in Wiesbaden but he travelled. His office was next door to Gestapo Headquarters from which came Koehler and Fuehr. In some cases, as with Hellenbreich, Stattmann, and Graf they worked in the same office and were directly under the eye of their superiors. In all cases, the orders were carried out very shortly after their receipt. In some cases it was only a matter of minutes and always near the scene of the order. It follows that all these accused, at least the very big majority of them have the benefit to the full of the extenuating circumstances mentioned by the Deputy Theatre Judge Advocate in the Thomas case referred to above.

The court will have in mind these elements mentioned in the Thomas case. It follows that all of these accused or at least a very big majority of them, have the benefit to the full of the extenuating circumstances mentioned by the Deputy Theatre Judge Advocate.

Now, may it please the court, we have naturally looked for some factor which, if it were present, would put the clincher on this defense of superior orders. If we do dream up evidence what evidence should we dream up which would put on ice the question that this is a superior order and a defense under superior orders. The only thing we could think of would be a situation where all these other factors are present and somebody with higher rank stood with a gun behind the person who carried out the sentence and said "Say you shoot or else." That is the only thing we could think of. Actually and figuratively even if that were true--you heard what Moller believed was true in his case--in all these cases there is Trummler's evidence and the evidence of everybody else. They actually had a gun in their back. "Get out and do it. You know what the order is." The actual compulsion, the physical compulsion to obey was there.

Much headway of the fact that two of the Higher SS and Police Leaders deny receipt of such an order. My comment to that is that neither was in a position such as Rhein-Westmark was and consequently might not have received the order or else might have a reason to say they didn't get it. There just is no question that Trummler got it, and that seems to be the big thing.

I should like to close my argument by reminding this court that most of the directives, regulations and precedents which have weight with this court are new ones. The London Agreement of 1945. The change in their own manual, November, 1944. The opinion of Mr. Justice Jackson at the Nuernberg judgement. The opinion of our own Deputy Theatre Judge Advocate. These are all new opinions. To hold the rank and file to ethical concepts springing out of new situations is to give them credit for sociological and ethical intuitions they do not have. Leadership responsibility is one thing, but when

responsibility reaches down to people who had so little voice in the management of their lives as some of these accused did, it lays its hands not on a free people but on robots shaped like men. To see how far these new decisions, the product of new times, go, I suggest to the Court a glance at these citations from Winthrop which have been made a part of the record.

I would like to add, now, a few words on behalf of Moller and Goehrendt. Both have been found not guilty of charge 2. I am not going to argue that the whole name "guilty of conspiring" requires the widest possible stretch, well I would say, even of the imagination. To call them conspirators is to make a farce of such a charge. Even with not so big a shot as General Streep. I limit myself to discussing only charge 7.

Goehrendt and all the witnesses with one possible exception say he appeared on the scene when the flyer was already out of the station. Lueck, the one possible exception, testified both ways. Even Lueck was not certain. At one time he testified Goehrendt was not at the police station while the flyer was there and later on he changed his testimony. I think the court has that change in mind. Kiwitt and Eichel say they didn't see him and Moller, the man whose testimony should be believed according to the prosecution, says that he was on the way out with the flyer when Goehrendt showed up from somewhere down the street. Albrecht, who is definitely involved in the case, said Goehrendt knew nothing about it. I need only refer to my original argument. If Goehrendt is in this thing so is Gano. Just the same hard luck made Goehrendt present there on an errand which took him past his home as made Gano. Personally I don't know why one got nailed in this charge and the other one got off.

There is no doubt that somebody gave Moller an order. I am not going to argue for this court who gave him that order but let us follow the sequence of events having in mind the opinion of the Deputy Theatre Judge Advocate. The order was given to him personally in his own headquarters. It was to be

carried out at once along a route near the scene of the order. This man of inferior intelligence, according to the testimony of the medical expert, this man of low rank, could very reasonably have believed that the pistol on the person of his superior was being held at his back to compel obedience. What choice did he have. What element is missing to make superior orders a defense in his case. Certainly there was no premeditation with malice aforethought, no freedom of choice and action necessary to constitute murder. Then in this case so far as Meller is concerned and because of the facts in Meller's case, the complete absence of any evidence in justifying a conviction of Goehrendt, I respectfully ask for a finding of not guilty as to both of them.

PROSECUTION: May it please the court, the prosecution is required to present their argument first and the defense last except where it is necessary that prosecution call attention to error on the part of the defense in quoting from the record. In connection with Meller's testimony to the effect that he saw Goehrendt for the first time on the street will the court please keep in mind the cross examination on pages 1655 and 1656.

"Q Did Goehrendt go into the cellar with you?
A No.
Q So you do not know where Goehrendt was after you went into the cellar, do you?
A No.
Q You did not see Goehrendt any more until you saw him out in the Street, is that correct?
A The first time I saw him again was when I was in Rebstock Street.
Q So you do not know where Goehrendt was from the time you went to the cellar until the time you saw him in Rebstock street, is that correct?
A Well, if he had been in the police station I would have had to see him.
Q You could not see him if you were in the cellar, could you?
A When the flyer was brought in I went up from the cellar to the police station."

DEFENSE COUNSEL: I would like to say right now with respect to a possible reappearance of this sort of interruption that I object to it. I certainly, on behalf of myself and my co-defense counsel disclaim two things. In the first place, of course, we claim that when we refer to the record we sincerely hope we are telling the truth but we don't claim what we say is the evidence is the evidence. I think we ought to be allowed to continue the argument.

Dr. Rau's argument is the next one, may it please the court. All these German arguments have been translated into English. It is about to be read.

PRESIDENT: The court will recess for a half hour.

(Thereupon the court recessed until 3:30)

(Whereupon the court reconvened at 1530 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court let the record show that all personnel of the court, all personnel of the prosecution, all personnel of the defense, all the accused, the interpreter and reporter are present.

DEFENSE COUNSEL: May it please the court argument of Dr. Rau for the accused Stroop and Albrecht will be read by Mr. Rosenstock, the interpreter.

(Whereupon the English translation of argument by Dr. Rau was read by Mr. Rosenstock as follows.)

"The curtain is down. We have been bombarded by a large number of impressions of all sorts; a part of those impressions have not ceased yet. Defense counsel have not found it easy to do their duty in view of conflicting interests. Every case depends upon the determination of truth and justice. The striving for truth and justice is like all other striving for the exalted, a fight, a battle for justice and law. We must not fail. Now what is the truth, the whole truth and nothing but the truth? Are we humans at all able to determine the pure absolute truth? In accordance with the words of the poet, is this determination not one of God's own privileges?

We must deliberate upon everything calmly one more time, tempered by the wisdom of life of the old philosophers, "scio ut nescio" (I know that I know nothing).

We read something about a flier slaughter case somewhere. Murder! That word has been occupying human emotions ever since Cain slew his brother Abel. Murder is the deliberate unlawful killing of a human being with malice aforethought, according to the police officials who otherwise are the guardians of law and order in every city. Is that possible?

It is my duty to work in behalf of two of the accused.

Stroop, says the charge sheet, is a perpetrator in every charge. He gave us orders and we carried them out, say the accused Best, Goss and Trummler; we are not ones to forget what we ordered two years ago they say. Does that accusation sound convincing? Is Stroop trying to evade responsibility today? Goss and Trummler were very pompous. Do we not have a feeling telling us that he who is pompous also is not honest? The witnesses Trummler, Best and Goss come to us from the dark where they sit next to Stroop. Does that not make us somewhat wary? Can we evaluate the testimony of one accused higher than that of another? Are not all of the accused personally interested in their testimony? Do they not expect their total defense to derive from that?

What do the court psychologists tell us? Do they not tell us that the witnesses who are concerned with the result of a case are the ones that are least likely to be objective? The court psychologists and physician, Dr. Plant, in his book "The Witness and His Testimony in Criminal Cases", published in 1931, has reached the conclusion, after thorough investigation, that the accusation of a personally interested witness can not suffice for a verdict of guilty because, in his case, the burden of proof and the burden of experience do not usually coincide. Usually that becomes obvious by the utterance of a multitude of annoyances, extrinsic and intrinsic contradictions, improbabilities and variance in his testimony.

Let us visualize the testimony of the witnesses one more time. Stroop says: "I have not received any order to shoot fliers. I have not transmitted any such order, nor did I know of any such an order or the carrying out of any such an order".

Goss says: "I received from Stroop a general order to shoot all fliers that come into my hands". (Page 1079 and 1020 of the record.) "It was not just an expression of opinion, it was in the form of an order".

(Page 1021 of the record). "About the middle of March I met Best under the oaks and he brought me an order of Stroop's to shoot a flier in my custody anew". Best confirms this on (Page 1022 of the record). Goss continues on (Page 999 of the record) "I had the order, the order came from Stroop personally". "With Best I discussed the best method of carrying out the order. Best and I agreed on Buhlmann, for he was an old soldier". Best says the same thing on (Page 1070 of the record). Goss continues on (Page 990 of the record), "I then went to Hellrubenstein and transmitted to Buhlmann the order I had received from Stroop by way of Best. Buhlmann then received the order to take the flier to Easterbush and to shoot him on the way" but after forty-five minutes Buhlmann came back. The flier had not been shot. Buhlmann reports to me (Page 993 of the record) that it had been impossible on account of the presence of civilian population. [illegible]

I do not wish to burden the Court by further quotations but I should like to request it to reread the testimony of Goss on (Page 991 of the record) where Goss discusses the matter of the fears he had for himself and Buhlmann on account of the failure to carry out the order, at length. I only want to quote (Page 1015 of the record) one more time, there he says, "Had I not had the order of General Stroop, by way of Best, which I would not have ordered the execution either" (also Page 1016 of the record). [illegible]

Now what has Buhlmann to say? (Page 2015 of the record). "I refuse to shoot the flier and replied to Goss, 'that the only person who can give me such an order was General Stroop'. Goss replied, 'I shall take him there anyway'." Note well: "Anyway". Question: "Did he say I have an order from General Stroop, or did he not? Answer: 'No, he did not say that. [illegible]

Did we hear and read correctly? The flier was not shot by Buhlmann.

not because civilians interfered, but because Buhlmann refused to carry out Goss' order and called upon Stroop to support his refusal. How does not Goss say, I did receive such an order from General Stroop and if we do not carry out the order, we will both be court-martialed, but rather he accepts the refusal.

The next day somebody other than Buhlmann carries out the shooting of a flier.

We must get this point clear in our minds: Goss and Best today use Stroop to justify Goss's taking the life of a flier. Buhlmann, at that time, used Stroop to justify not the taking, but the saving of the life of a flier.

But the undeviating speech of the truth has not come to an end; let us read the former statement of Goss found in Prosecution Exhibit P-141

and (Page 1025 of the record), "I can definitely confirm", mind you definitely, "that the murder committed by Micholy at that time was the direct result of the orders which reached me from Best", mind you, "from Best". So, at that time, on the 4th of June 1945, it was not an order from Stroop as Goss claims today. He then continues on (Page 1026 of the record) "On account of my knowledge of the organization of the SS in Wehrkreis XII, I am sure that this order mentioned above was given from Stroop to Best". On account of his knowledge of the organization, on account of a conclusion, therefore, and not on account of the clear facts as they are stated today, that Best had inquired at Stroop's and that he had relayed the order to him under the oath.

Thus, did not Goss make Best's statements lies? What does Micholy have to say (Page 1039 of the record) "On 15th of March 1945, I took a report from Goss to Best and related that we had captured a flier. Upon that, Best asked me why that man was still alive". So at that time, he didn't even make sure what General Stroop's opinion was.

We know his opinion. We know it from the order of which Best told us on (Page 1061 of the record), that great caution should be exerted when fliers who had made an emergency landing were captured and that a gun should be kept ready and off-safety. That order dates from the end of February 1945. Why did General Stroop order fliers to be captured with danger to one's own life if they were to be shot in the end anyway? Why didn't he simply say that fliers are to be given no quarter and were to be shot on the spot?

Compare that to what is the significance of the vague speculations in the indefinite testimony of the witness Hoecker, that she heard how Stroop told Goss 'you know/the what treatment of parachuted fliers is to be'. "That too is one of the missions of the Werewolf". That could not have been an important or secret conference, as the witness Kaleski reports on (Page 2304 of the record), for the witness would not have been able to attend it otherwise.

Furthermore, the entirely wrong impression of the witness also strikes us from her interpretation of this entirely indefinite statement of Stroop as an excitement for lynching. Here we see a confirmation of the old forensic saying, "Female witnesses forget less, but falsify more". And we again find justification for the above mentioned conclusion of legal psychology that no findings can be based upon statements of witnesses interested in the case.

Stroop is further incriminated by the accused Trumpler. Trumpler, it is true, says that he received the order to shoot terror fliers in its original form in Berlin, and that Stroop confirmed it in a general manner only and that the individual cases were not discussed. (Page 2168 of the record).

Again we have the testimony of one accused against the testimony of another accused, Vestigia terrent. The traces in the case of Goss make us fearful.

Suppose I concede the testimony of Trumpler for the moment in order to follow through with legal argument: What is an order? It is the expression of the will of the superior, given in a commanding manner with the invocation of the authority of the State. In that manner, we have gained a clear separation between it and private comments, perhaps, comments expressing annoyance and bitterness as they became audible from all sides towards the end of the war.

As Trumpler himself, and Eberstein (Page 2054 of the record) Wuensenberg (Page 2082 of the record) and Stroop have stated, he was a superior of Trumpler's only in the case of internal disturbances, otherwise the Reich Main Security Office remained Trumpler's headquarters. There was no case of internal disturbances at that time, so there was no superior - subordinate relationship between them either.

But let us not worry about that, the following seems more important to me. In its general legal nature an order is a corollary of encouragement. Former criminal law already knew the concept of omnimodo seu alius facturus, ie., the concept of the third person determined to take action under any conditions, and in that case it denies the culpability of the encourager, on account of the missing causal connection between the act and the will of the person encouraging. In other words, a person already thoroughly determined to do certain acts can no longer be encouraged to do these. So if Trumpler did receive the binding order to shoot terror fliers in Berlin and if, as he says, he was willing and compelled to carry out that order, then any further statement of anybody, as for instance Stroop, is of no significance, neither factually nor legally.

But Stroop, as we have said, denies ever having known of such orders. It is, therefore, my duty as the defense counsel to examine Trumpler's testimony critically. Not the least of the reasons for that is in order to refute the prosecution's theory of a conspiracy. That is not to say that the other accused could not be of the bonafide opinion that, on the

basis of Trummler's orders there was an order from Berlin and that they were duty bound to obey that order.

One factor in contradiction to Trummler's explanation that he received an order in Berlin to shoot terror fliers is the Nuernberg sentence of the International Military Tribunal, which I believe the Court has taken judicial notice of. The sentence is very thorough and of a universal applicability and the non-interference order, the Bormann decree and the command group order are mentioned. On the other hand, it doesn't say a word about a Kaltenbrunner order claimed now by Trummler to have existed. I think one can hardly correct the judgment of Nuernberg.

In the second place, two higher SS and Police Leaders, namely, Baron von Oberstein and Prince Waldeck did not receive an order to shoot terror fliers, or have such an order transmitted to them. But since, according to Trummler, (Page 2161 of the record) it was a government measure for the energetic combatting of air warfare, these offices would have had to be notified of it too, it seems.

In the third place, the same holds true for General Kuennsberg, the commander of the regular police for the whole Reich with about three and a half million policemen and auxiliaries under him.

In the fourth place, the same holds true for Colonel Niemann. He was not informed by Colonel Trummler either.

In the fifth place, Trummler apparently did not transmit the order even to all his subordinates, for instance not to Breder or Berger in Frankfurt.

In the sixth place, about one thousand fliers were captured in Wehrkreis XII after September 1944, most of them by the police, and were sent to the IV camp Oberursel.

In the seventh place, the commanding officer of the police anti-aircraft organization, Feyhrauch, did not receive a shooting order.

In the eighth place, when Breder reported to General Muller in

December 1944, that fliers were being turned over, he was not surprised at all and was in fact in agreement with this.

In the ninth place, in Stroop's staff, there was no one who knew about a shooting order. Neither Stroop's deputy Schluma nor the adjutant, Kaleske, nor his O-3 Guenther, and all that in spite of the fact that Kaleske was always very curious as he has confirmed to us on (Page 2906 of the record).

In the tenth place, Trummler did not announce the order in the command conferences of Stroop, in accordance with his own testimony in spite of the fact that that was an important matter of government of all Wehrkreis XII.

In the eleventh place, Breder is asked by Buth in March 1945 what he was to do about an order of Trummler's enjoining him to shoot fliers. So Buth found out about such an order as late as March 1945, and Trummler wants us to believe he received this order as early as September 1944.

In the twelfth place, Trummler states that he had mentioned the order to Stroop only when they were alone, upon express instructions of Kaltenbrunner. But he contradicts himself on (Page 2192 of the record) where he states that he knew that it had been Stroop's desire to shoot terror fliers. That was the reason he said he made the report, and, therefore, not upon orders of Kaltenbrunner. One could continue this series of expressed and implied discrepancies. I should only like to point at the semi-darkness about the question of whether Kaltenbrunner or Trummler ordered the method of shooting, and whether Trummler belongs to the Waffen SS or not.

Trummler claims he informed Stroop of part of the shootings, but he himself, cannot say (Page 2175 of the record) whether the phone calls were taken by Stroop or a member of his staff.

Kaltenbrunner is dead. Müller is probably dead. They speak no more, but Stroop speaks. In view of the facts described, his word must be at

least as good as Trummler's. One cannot prove a case against Stroop with Trummler. The prosecution witnesses against Stroop themselves feel that their credibility is shaken. For that reason, they made the witness Stemmler show up. I have to add nothing to the excellent examination Colonel Hunter conducted for the Court (Page 2137 of the record and following) in order to prove that the accused Goss and Trummler did not do themselves a favor with that witness.

Now I should like to point briefly to the peculiar similarity of coinciding circumstances in the cases of Goss, Trummler and Stemmler: Nobody was present when they received the order and they talked about it to nobody. Stemmler adds that no shootings took place on account of the order.

Now the case of Lassak remains. I assume that one of my colleagues will argue that Lassak did not give an order to shoot fliers, what orders he did receive and which orders he transmitted. But, if there is no order of Lassak's to shoot fliers, then neither he nor Stroop can be made responsible for any possible shooting. Lassak made his first statements under the influence of severe mistreatment and duress. The witnesses Niemann and Coates confirm this. Lassak says, that he did not repeat the order in its entirely for that reason and that the statements had been put into his mouth. The order had read that fliers who were spies or agents or saboteurs were to be shot. (Page 196 of the record). That is different from what he said at first and is not declared criminal in international law. Stroop comments that the order which he transmitted to Lassak was the so-called "command group order" of the supreme commander of the armed forces which had been addressed to the armed forces and sent to the police only in the form of information copies, and for that reason Lassak destroyed it promptly. The witness Hoecker confirms in her statements on (Page 200 of the record and the following) that the order

concerned was not a general shooting order for fliers but as can be gathered unambiguously from Prosecution Exhibit 1-26 which was submitted to her, the command group order against saboteurs.

Critical examination of the evidence presented, therefore, in the case that a conclusive proof against Stroop beyond a reasonable doubt has not been presented in any of the charges from 3 to 10. If, however, he did not participate in the shootings, and that has not been proven either, or have knowledge of them, then charge 1 and 2 also collapse.

I shall now turn to Albrecht.

Albrecht has never been accused of having issued or carrying out a shooting order. I therefore suppose that what he is charged with is going along, knowing that the shooting of the flier was intended and not preventing it in a culpable manner. Albrecht denies having known that the flier was to be shot by Moller upon orders of Eichel.

But do not all conditions seem to contradict that statement? Did not Kiwitt, Lueck and Como tell that the police director had said, "The flier will be bumped off"?

We heard that Albrecht permitted the flier to sit down and had water given to him before the police director came in. Smoking in the police station was generally prohibited to prisoners, Como says. (Page 1631 of the record) Albrecht permitted him to smoke, all the witnesses say.

This man who is evidentally easy-going, is then supposed to have deliberately condoned the killing of this flier half an hour later, or even encouraged it. That man who has served the police for a quarter of a century and whose hair has turned grey in that service? There is some feeling within us that objects to that assumption.

Let us calmly consider further: When was that statement, "He will be bumped off", made? Kiwitt, Lueck and Como say it was made shortly after the arrival of the police director, and Kiwitt says "Before I had a look at the room." What did Albrecht say upon this comment of Eichel, "He will be bumped off"? "Not by me, though", "I refuse to do that." Compare Lueck (Page 461 of the record and Kiwitt (Page 1502 of the record and 1602)

That would be the first confirmation to our vague feeling that Albrecht might not have anything to do with the matter. What did the

other police officials do when they heard about the bumping off? They disappeared says Lueck and even Koller, (Pages 462 and 1411 of the record). Koller received the order from the police director, with nobody present but the two. Eichel denies having issued the order, completely. Koller walked out with Como. He did not talk to Como, particularly he said nothing about a shooting order and Como did not know about it. Koller did not talk to Albrecht either; but didn't Albrecht know? Had he not told Koller personally: "You know the order of the police director". What order? Did not Kiwitt say on (Page 1595 of the record) that the police director had suggested to Albrecht that the flier be shot, but that Albrecht refused categorically and that "I, therefore, considered the matter closed." This particular, in view of the fact that the police director told a police official as he left (Page 1592 of the record), "Take him to the police headquarters". Is it not then the last order that would be generally applicable, namely the one "Take him to the police headquarters"? (On Page 1595 of the record) Kiwitt continues, "My impression was that the flier would be turned in". Could it then not be also Albrecht's impression that the police director had given up the idea of shooting the flier in view of the opposition he was meeting? I do not have to remind the Court of the further conversation which Albrecht claims took place but which Eichel denies, to the effect that Eichel wanted to take the flier along to Offenbach in his own car even.

Why did Albrecht come along at all? Why did they walk along a back way and not the direct road? All witnesses affirm that there was a crowd outside the building, that the crowd was excited and it followed the flier. Was it, therefore, wrong for Albrecht to state even then according to the witnesses testimony that he did not want

to go through the excited crowd and town, but rather use the almost uninhabited back way which also took you to Offenbach, as the witnesses confirm? Was it, not in fact, not practically his duty to avoid that danger? And was it not also his duty in view of the danger the flier was subjected to, to accompany him to the limits of his district? As Moller picked the wrong way, Goehrandt runs after him upon the urging of Albrecht. Moller turned back and while Albrecht is talking to the witness Behrod and tells him that this flier would be duly sent to Offenbach, the shots are fired. Why? Moller says, "Suddenly it flashed through my mind, you have to fire here, and I fired because I had the definite order" (Page 1501 of the record). Did he not also say (Page 1507 of the record) "I wanted to go along until I got an additional order or until something else would be said to me"? He never received any such additional order and nobody ever told him anything about things flashing through his mind.

So, we have some more doubts, but are not entirely convinced yet that Albrecht had no knowledge of anything. Now, how did Albrecht act after the deed? Let us again listen to the report of others. Lueck and Como. "Der hat uns eine geschafft", which means "He did something undesirable to us". What else did Albrecht do? On the same day, he issues the order, "I don't want to see any flier in the police station any more." "They are to be turned over to the Army promptly", as Lueck says (Page 1621 of the record and the following) and Goehrandt (Page 1570 of the record). But the tragic development has not come to its end yet. When another flier comes to the police station, taken in by a civilian, while Albrecht was gone, he gives the order by telephone that the flier is to be taken to the headquarters of the Protective Police by the shortest route.

e hear, "Promptly, by the shortest route, to the superior headquarters." We say the accompanying guards picked by Goehrendt, namely, Michel and Schneider. And I think we are all convinced that these two were not capable of harming a fly, much less a flier. In spite of all precautions taken, the flier is still shot in the end, At any rate without any participation by Albrecht. The details and the tragic chain of events I assume be described to you by my co-counsel Mr. Machael. The tragic fate initiated by Koller is not at its conclusion yet. A few days later another flier comes up to the police station again while Albrecht is gone, and again taken there by a civilian. Albrecht, at once sees to it that the Luftwaffe is notified. A captain and a sergeant of the Air Corps come to pick up the flier soon later. The flier is turned over to them. Compare Goehrendt (page 1581 of the record) Bluemel (page 1643 of the record). All seems to go well. Then Unger comes in and has the flier turned over to himself by the Air Corps officer for a receipt. A short time later, he secretly shot him.

Did Albrecht try, carefully and by every conceivable means, to prevent a repitition of the bitter experiences he had with Koller? He did. And that permits us to set aside the last doubts that he did not try to do the same thing in the case of Koller. He did not succeed in any of the cases. That is his tragic misfortune, but not his guilt. Is it not striking that the two men who present the most impressive contrast with each other, Michel and Koller, agree in stating that Albrecht is free from guilt. Did not Koller practically say (page 1492 of the record) that Albrecht could not have prevented the shooting of the flier, "I had my order from Michel and that is the one I carried out". I have already pointed to the

significance of the animodo sed alius facturus. Koller was such a person. That excludes any criminal responsibility of Albrecht's for he was in no position to prevent Koller's act. Albrecht may be guilty, but he is not necessarily guilty, and it is better to acquit a guilty person than to sentence an innocent one. Albrecht can actually be innocent.

At the beginning and in the course of my argument I opened up the question how it was possible for police officials to permit themselves to perform these extraordinarily regrettable killings. I can answer this question for you (in a translation) with the statements of the American Captain Willis C. Rowe in the American periodical "The Infantry Journal" of April 1946; "Citizens and civilians are shocked at the idea of having enemy soldiers who have surrendered, killed. But how can one who never saw his comrades mangled or shot pass judgment?"

Did Beat not see it and did he not loose his father on account of the airwarfare?

A further quotation, "The British as well as the Germans felt bitter hatred towards enemy fliers who had come down during a bombing attack. On both sides, there were many places where such fliers were lynched or beaten by civilians. Only through interference, many of them were saved. How can we condemn a man who has just seen his child lose its sight or his wife become a cripple because he attempts to take revenge on those he feels responsible?"

To the many questions which this case has brought up I should like to add the one Shakespeare has his Julius Caesar utter, "Who is here so vile, that will not love his country! If any speak for him I have offended." And, with Shakespeare, I want to continue, "I call for a reply". We are all pausing for a reply. The dead and the living, on both sides.

Tr 524-arh-8/17-1

DEFENSE COUNSEL: Major Saxon will now argue for various accused, whose names he himself will give to the court.

MAJOR SAXON: May it please the court, in the preparation of the defense of this case, it was decided and ordered by Lieutenant Colonel William Bernen, Chief of the Defense Counsel, that the above named accused, Hans Trummler, Julius Lassak, Georg Best, Erwin Goss and Heinrich Matthias Micholy be represented by this officer as one of the duly appointed American counsel. The accused Trummler, Best, Goss and Micholy, in addition to the appointed American counsel, requested the services of Dr. Max Buerger, and he likewise appears as counsel for these four. In presenting this argument, Dr. Buerger and I have agreed that in addition to these five, he will also present a short argument at the end on behalf of the accused Rauf. In order to present this argument properly, I prepared part of it as counsel for these accused and he prepared a part, and we will read mine first and Dr. Buerger second. Therefore, this closing argument is devoted mainly to the five above named accused and is presented to this court by counsel as their names appear in the sequence given heretofore. It is submitted to the court that none of the above accused is in conflict with one another. Trummler, for example, as Chief of the Security Police of Wehrkreis 12, exercised no command function over any of the other four named accused and had no contact with them. (2171, 2177).

I might state to the court that in preparing this written argument from which I am reading to you, we have inserted various references to the record, which I will not burden the court with reading at this time.

Trummler took his orders directly from Dr. Kaltenbrunner in Berlin and his secondary orders from General Juergen Stroop, Police Commander of Wehrkreis 12.

Colonel Lassak, as the Director of Police over the cities of Giessen, Friedburg and Bad Nauheim, was part of the Order Police, who through a successive chain of command, received his orders through

General Wunnenberg in Berlin.

The three accused Major Best, 1st Lieutenant Goss and Private Michely were directly under the command of General Stroop. None of these last three were a part of the police system of Germany but were members of the Waffen SS and in varying capacities connected with the Werewolf School at Wallrabenstein, Germany, a few kilometers outside of the city of Wiesbaden (R1055).

Therefore, we find these five accused in three separate categories: Colonel Trummler as Chief of the Security Police, Colonel Lessak as Director of the Order Police, Major Best, 1st Lieutenant Goss and Private Michely as members of the Waffen SS.

The first part of this argument is devoted to Colonel Hans Trummler. Colonel Trummler is a native born German who, as a boy 17 years of age, fought in the field of battle on the western front in the first World War, returning thereafter to complete his high school education and then served as a German soldier until 1920, helping to supress internal revolt in the German Reich. Thereafter, he graduated from the University of Leipzig with a degree in Political Science and graduated from the Business University of Leipzig, with a degree in Economics. Then after ten years, until 1933, he participated in the economic and political affairs of his country in the banking and automotive industry. He joined the NSDAP in 1928, when this political party was a minor one of some twenty odd parties striving for control of the German Reich and he did so as an idealist. He successively thereafter belonged to the various NSDAP Sub-organizations, mainly as a paying member or as an instructor without any executive or command function until the time around 1941 when he became the Commander of the Security Police School in Furstenburg.

On the 5th of September 1941, he received a summons to appear before Dr. Kaltenbrunner in Berlin, to which place he went on the 18th day

of September 1944 and after spending the day with Dr. Kaltenbrunner and General Mueller, received his instructions and orders to take over the position of Commander of the Security Police in Wehrkreis 12 with his Headquarters at Wiesbaden, Germany. The developments of the war made Wehrkreis 12, at this time, the aerial roadway for allied air assaults on Germany. It also at that time was obvious to the German High Command that this would be the main point of assault on the part of the allied ground forces. Colonel Trummler was informed by Kaltenbrunner and Mueller of the magnitude and seriousness of his new command, he was given great and extensive powers of command and was, amongst other things which are pertinent to the issues in this trial, told in substance that so-called allied terror fliers were to be summarily executed upon capture. Kaltenbrunner explained to Trummler that a terror flier was one who bombed and strafed defenseless civilians and non-military objectives. Colonel Trummler dared to question Dr. Kaltenbrunner on the advisability of this action because he thought it would bring the German Reich into conflict with foreign powers for violations of the usages of land warfare and put the German Reich in conflict with the precepts laid down at the Geneva Convention. Kaltenbrunner's reply was sharp and to the point and to the effect that the German Government had already considered these features and determined its future action and that he, Trummler, was in no position to question the orders of his government. (R 2159-2163)

On the 20th of September 1944, Colonel Trummler took over his duties in Wiesbaden. On instructions from Kaltenbrunner, he reorganized the various sub-branches and personnel of the Security Police im Wehrkreis 12 and found that in addition to his own headquarters in Wiesbaden, he had approximately 120 sub-offices and 6200 personnel under his command. (R 2165-2166)

Among his other instructions and orders that he received from Dr. Kaltenbrunner, were orders to the effect that he was under the command of General Juergen Stroop and that he must coordinate his efforts and cooperate to the fullest with the three gauleiters of Wehrkreis 12.

A few days after assuming his new command, he reported to General Stroop and the evidence discloses that Trummler and Stroop immediately were incompatible to one another and Trummler called Kaltenbrunner and asked to be relieved and Kaltenbrunner ordered him to carry on. The evidence thereafter discloses that although Trummler and Stroop were not always in accord, Trummler followed the orders given him by Kaltenbrunner, attended command conferences of General Stroop's approximately once a week and performed the duties he was ordered to do until the end of the war. (R 2167-2168)

Thereafter and on the 19th of October, 1944, the gendarmerie brought to Colonel Trummler's office in Wiesbaden, an American flier that they designated as a terror flier. The flier was examined by Captain Wreda, Trummler's adjutant, and this interrogation of the alleged terror flier sustained the gendarmerie that he was actually a terror flyer. Thereupon, Colonel Trummler ordered Kriminalrat Luckart to send him "two men" to perform the execution. The details of this execution are set out in Charge 4 and need no further explanation here. Trummler, in so doing, was following out the direct order given him by his government. (R 2172-2173)

Substantially as to facts, a similar execution was ordered by Colonel Trummler on the 30th of December 1944, the details of which are set out in Charge V. (R 2174-2175)

As to Charges VI and X, Colonel Trummler has frankly told this court as to the sixth, he has no personal recollection and as to the tenth, it

would have been physically impossible for him to have been contacted. Nevertheless, he frankly tells this court that the executions had in these two charges, he assumes the full responsibility for because they were performed in compliance with the order he received from the German government through Dr. Kaltenbrunner and which he passed on to certain of the lower echelons of his command. (R 2176)

The above is a statement of facts covering the charges against Colonel Trummler and from which he must be found either guilty or innocent.

For counsel to say to this court that the orders given by Colonel Trummler for the execution of terror fliers were justifiable, lawful and proper would be a subterfuge and to beg the question. It would be an insult to the United States Government and all countries who have attempted to carry on war in accordance with the law of land warfare and would be a reflection upon the intelligence of this court. Since the facts in Colonel Trummler's case are clear, counsel desire to call to the court's attention certain premises of fact and certain substantive law that governed the action of this accused.

On the 1st of September 1939, the following exchange of communications were had between President Roosevelt and Adolf Hitler, relating to war. These are taken from the so-called White Book No. 6, which was introduced in evidence before the International Tribunal in Nuernberg in the so-called Nuernberg trials. Without the official headings, I would like to read briefly the two exchanges of correspondence. The first is from President Roosevelt addressed to Adolf Hitler, dated the first of September 1939.

"Your Excellency, I have the honor to inform your Excellency that my government has asked me to give the German National Government the following message in the name of the President of the United States. During the armities which are raging on various places of the earth in the last years, merciless bombing attacks from the air upon civilians in unfortified areas have brought about the mutilation and the death of thousands of defenseless men, women and children. They have caused the greatest horror among all

civilized men and women and have horrified all of humanity to a great extent. If this form of inhuman barbarism will again be used in the tragic war which the world now faces, hundreds of thousands of innocent human beings will lose their lives, people who have absolutely no guilt in the enmities which have just broken out and who are not in the least involved in them. Therefore, I direct the urgent appeal to all governments who are involved in these hostilities to publicly declare that they are decided to allow their armed forces under no conditions and at no time to make bombing attacks from the air upon civilian populations or unfortified cities and that all their opponents will abide by these rules of warfare. I beg you for an immediate answer.

Franklin D. Roosevelt."

Following that in the same letter is this short paragraph by Alexander Kirk:

"I have the honor to add that I have been requested to send an answer to the above message by telegraph immediately and for that reason have placed myself at the disposal of your Excellency and my government in order to bring about the transfer of this answer and I use this opportunity in order to again assure his Excellency of my highest respect.

Alexander Kirk"

Adolf Hitler's reply on the same date was as follows:

"Mr. Representative!

I have the honor to give you the following answer of the German National Counselor in regard to your note of today in which you gave me a message from the press of the United States of America in regard to the dropping of bombs upon nonmilitary objectives: "the opinion which is raised in the message of Mr. Roosevelt that it is a commandment of humanity to avoid dropping bombs on nonmilitary objectives under any conditions during military actions corresponds completely to my own point of view and it is a point of view which I have always represented. I, therefore, agree to this proposal in every form that the governments which are now involved in hostilities publicly make a corresponding declaration. For myself, I have already made official public notice in the speech which I held today in the Reichstag in the Parliament; that the German Air Force have received the order that during enemy maneuvers they must restrict themselves to military objectives. It is, of course, a condition which is self-understood that if this order is to be maintained, the enemy air forces will have to abide by the same rule.

Adolf Hitler"

Continued by Von Ribbentrop:

"I would be very thankful if you would immediately hand over to President Roosevelt the answer which is stated above.

At the same time, I use this occasion in order to tell you, Representative, that you can be assured of my highest respect.

Von Ribbentrop."

I have indulged on the patience of the court to read these two exchanges of communications between the two representatives of the United States and Germany. The purpose, I hope will be hereinafter made plainer.

Now, after this exchange between President Roosevelt and Adolf Hitler, World War 2 actually came into being and gained momentum until all belligerents were referring to World War 2 as "Total War." These phrases were used repeatedly by President Roosevelt, Prime Minister Churchill, Mussolini, Stalin and Hitler. Modern destructive devices came into being and use by both sides except the use of poison gas and of this instrument of war, both sides had huge quantities ready for action and had made elaborate and extensive preparation for the defense against it but, for reasons unknown to this counsel, it was never used.

As regards aerial warfare, the Geneva Conference stated as follows: I am taking this from Field Manual 25-10, page 12:

> "Bombardment of undefended places forbidden. - The attack of bombardment, by whatever means, of towns, villages, dwellings or buildings which are undefended, is prohibited." (H.R. Art. 25).

Regardless of this prohibition, both sides in World War 2 bombed indiscriminately prohibited places and defenseless civilians.

As regards punishment for violations of the laws of war, the Geneva Conference provided as follows:

> "Liability of offending belligerent. - A belligerent party which violates the provisions of said regulations (H.R.) shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces. (H.IV,Art.3)." See Page 86, FM 27-10.

Further than that, and in Field Manual 27-10, the following is provided:

> "Individuals of the armed forces will not be punished for these offences in case they are committed under the orders or sanction of their Government or Commanders. The Commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

On November 1st, 1944, the War Department of the United States attempted to amend the last quotation by stating in substance that individuals who violated the rules of land warfare on the direct order of their commanders were not immune to punishment as war criminals but such a command having been given and obeyed which was in violation of the rules of land warfare, would mitigate the offense of the accused and be taken into consideration in determining degree of guilt and in mitigation. This change reads as follows:

"FM 27-10
C1

RULES OF LAND WARFARE

Changes)
No. 1) War Department,
Washington 25, D.C., 15 November 1944.

FM 27-10, 1 October 1940, is changed as follows:

345.1. Liability of offending individuals (Added).--Individuals and organizations who violate the accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. The persons giving such orders may also be punished.

347. Offenses by armed forces.- The principal offenses ... inhabitants in occupied territory.

(AG 300.7 (11Nov44).)

BY ORDER OF THE SECRETARY OF WAR.

G. C. MARSHALL,
Chief of Staff.

Official:
J. A. ULIO,
Major General,
The Adjutant General."

It is the contention of defense that Change 1, above quoted, is illegal and contrary to the established rules of the Geneva Convention because the United States, on its own volition and without the concurrence of some thirty odd signatory nations, did, in the midst of a war, attempt to change the rules of land warfare.

I desire to call to the court's attention a few citations in regard to conspiracy, taken from JAG of the Army. I want to call the following to the court's attention. This is cited as the law:

454 (24) "A soldier, not engaged in criminal practices, was incited and lured into the commission of a criminal offense by a military police officer, acting through an assistant. The soldier was convicted of conspiring with the assistant to commit the offense. Held, that the conviction was illegal as the offense of unlawful conspiracy requires a combination or meeting of minds and since the assistant to the military police officer had no intention of committing the offense himself there could not be that combination or meeting of minds. Held further, that there was a failure of proof as to the overt act, for since accused was incited or lured into committing the deed alleged as the overt act it could have no legal significance in its relation to the offense charged.

I call this to the court's attention, taken from Underhill's Criminal Evidence in regard to burden of proof relating to crime:

772 "Burden of proof -- One who alleges a conspiracy has the burden to prove it by sufficient testimony consisting of substantive facts. Mere suspicions, speculation, relationship or association and companionship, do not establish a conspiracy. But association for an illegal purpose may establish a conspiracy. The proof must establish the conspiracy beyond a reasonable doubt, and must show that accused did something other than participate in knowledge of the illegal agreement or common design, he participated therein. However, if a conspiracy is established, slight evidence of one's participation therein is all that is required to connect him with the conspiracy.

1671 "But it needs something more than a proof of mere passive cognizance of fraudulent or illegal action of others to sustain conspiracy. There must be shown some sort of active participation by the parties charged."

In addition to that, on behalf of these accused, I call the court's attention to Wheaton's International Law, page 351, 1944 Edition, to a somewhat extensive citation there that I will not read to the court but which will be furnished in the record.

"In some cases allied airmen, as opposed to Germans, seem to have abandoned bombing expeditions lest they should injure civilians, but the idea that this forbearance can be looked for as a rule seems utterly idle, and it appears clear that the German practice must be expected to be generally adopted in any future war if bombing is allowed at all. It was widely practiced in the war of 1939 onwards. It is not surprising, therefore, that no enthusiasm has been felt for the draft code elaborated at the Hague in 1923, but not ratified. Aerial bombardment for the

purpose of terrorizing the civilian population, or of destroying or damaging private property not of a military character, or of injuring non-combatants, is prohibited. (Article 23.) Aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions of money is prohibited. (Article 23.) (1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent; (2) such bombardment is legitimate only when directed exclusively at the following objectives:- military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communication or transportation used for military purposes; (3) the bombardment of cities, towns, villages, dwellings, or buildings not in the immediate neighbourhood of the operations of land forces is prohibited. In cases where the objectives specified in para. (2) are so situated that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment; (4) in the immediate neighborhood of the operations of land forces, the bombardment of the operations of land forces, the bombardment of cities, towns, villages, dwellings, or buildings is legitimate, provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population. (Article 24). Breach of these limitations renders a belligerent State liable to pay compensation for injury to person or property. There are the usual provisions for protection of buildings dedicated to public worship, art, science or charitable purposes, hospitals, hospital ships, and even public monuments, but the probability of the rules being effective in practice is obviously negligible; they seem open to as many objections as the older distinction between defended and undefended areas."

In conclusion, so far as the accused Colonel Trumler is concerned, I want to state as follows:

1. The offenses charged to this accused in Charges I, III, VII, VIII and IX are fully without foundation or proof as a matter of fact or law.

2. The offenses charged to the accused in Charges II, IV, V, VI and X have foundation in fact both by proof and admission of the accused.

3. It is uncontroverted, I believe, that total war existed and that unquestionably the rules of land warfare were violated by all participants.

4. It is also an uncontroverted fact that the accused Trumler had a direct order from his government to direct the execution of the

allied airmen termed "terror fliers."

If the court will permit me to briefly comment on what I have termed "Proposition No. 1." -- It seems unnecessary for counsel to burden the court with argument regarding the charge of conspiracy in Charge I, in which this accused is named. However, this brief statement should be made. If a conspiracy existed to violate the laws of land warfare, it was conceived and born in Berlin by the men who ran the German Government and who were, as a matter of fact, the German Government and who are now either dead or in hiding and none of whom are named as conspirators in this charge. There certainly is no evidence that Colonel Trumpler conspired with any of the named accused. It was shown conclusively by the evidence that he merely passed on the direct order of his government to his subordinates and neither he nor they had in any way initiated, formulated or carried into execution a personal plan of their own conception to violate the laws of land warfare. Colonel Trumpler has not been connected by one iota of evidence in Charges III, VII and VIII and further, it should be noted by this court that the above named accused thereunder were all members of the Order Police (Ordnung Polizei) over whom he had no command, no contact or intercourse and whom he did not so much as even know until long after the end of the war and, of course, after the dates on which these offenses are alleged to have been committed.

Further than that, it is conclusively shown that Colonel Trumpler had nothing to do with the Werewolf School, nor the offense charged in Charge IX, under the date of March 18th, 1945, and that he did not so much as even know the accused Best, Goss and Michely until after the end of the war. Further argument on Proposition 1 seems to this counsel to be superfluous.

Now as to Proposition No. 2, it could not be denied that the executions enumerated in Charges IV, V, VI and X either emanated by

the direct transmittal of Kaltenbrunner's order by Colonel Trumpler or by the fact that Colonel Trumpler transmitted Kaltenbrunner's order for the execution of terror fliers as a manner for future disposition of such fliers. It is the contention of the accused that under the law cited above he obeyed the direct order of his government as given to him by Kaltenbrunner on the 18th day of September 1944, and that he had no alternative except to obey it and that he believed that this was a lawful and legal order because both sides had violated the laws and rules of land warfare. Kaltenbrunner defined what constituted terror fliers and this definition was clear to Colonel Trumpler to this extent, that terror fliers certainly were violating the rules of land warfare, that they were criminals in so doing and that it could not be expected that they would be entitled to the protection of surrendered prisoners of war of a belligerent state. In this connection, it should be noted that Colonel Trumpler was strictly a soldier, that the prosecution has admitted that he was a soldier. The court should take into consideration in this connection his general demeanor, his utter frankness and candor on the witness stand and the fact that he told this court the truth and he frankly told the court the truth regarding some of the accused who did not have the courage to tell this court the truth.

As regards Charge II, Colonel Trumpler, by virtue of the Nuernberg decision is, of course, automatically guilty of being a member of organizations determined by that decision to be criminal in nature. Further in defense of Colonel Trumpler, it should be noted that no evidence of facts have been introduced that show that he was guilty of any of the crimes personally for which these organizations were found guilty and the court's attention is called to Prosecution's Exhibit No. P-18, which in detail therein gives the substance of what constituted the crimes these organizations were found guilty of.

That is what I have to say on behalf of Colonel Trummler except a brief summary at the end. Now I come to Colonel Julius Lassack.

This accused, the evidence discloses, was a railroad man from 1931 up until the time he was drafted to become the Director of Police on the 11th of January 1944. He had held for some time the honorary title of Colonel in the Allgemeine SS but held no function and made no contribution to the SS other than to being a dues paying member at the rate of fifty pfennigs a month up until September 1939, from which date he did not so much as pay dues. He did not seek this job but due to the stress of the war and the shortage of manpower in Germany, he was drafted from his railroad job to this one in Giessen (R 871) and the only monetary gain being an increase in pay of eighteen marks a month. The evidence is clear as to the facts regarding this accused. He was, as a matter of fact, so poorly informed as to the work he was about to do that they had to send him to a training school near Regensburg to inform him on the duties he was to perform. He was, as a matter of fact, extremely "small fry" in the Police System of Germany, having under his command the small cities of Giessen, Bad Nauheim and Friedburg, with a total personnel of approximately one hundred. (R 874-875). The uncontroverted evidence of both the prosecution and the defense discloses that he personally received the so-called Bormann "non-interference" order. Then he received the order directing that captured fliers be turned over to the Gestapo for interrogation (R 883) and subsequently he received an informational copy of the so-called "Terror Flyer Shooting Order" (R 884) (R 895). He secretly destoyed these orders and never passed on the information contained therein to any of his subordinates. (R 877). It is further uncontroverted that no allied flier was ever so much as harmed in his jurisdiction by either himself or any of his subordinates but that quite to the contrary, he gave definite instructions that captured allied airmen were to be protected and aided. (See evidence of Captain

Rust on page 857-859-858-860 of the transcript.) The evidence is clear that the flier in question in Charge III was first captured by Gestapo men who did not want to disclose their identity, that the Policemeister Mannah relieved the unidentified Gestapo men of the flier because of the threatening gestures of the crowd, in following out the orders of Colonel Lassak to protect all fliers (R 898), that Mannah brought the flier to the air raid shelter in order to determine his proper disposition. That Lassak, who had been out in the area checking up on the bombing damage, then returned to Headquarters and received a call from Gestapo Chief Winzer stating that the Gestapo had first captured this flier and that they wanted him back for interrogation and that Winzer would send a man over to bring him to Gestapo Headquarters, that Winzer did this and that Lassak directed Mannah to accompany the

flier to Gestapo Headquarters so that the flier would not be injured en route by the populace. (R 889)

It is obvious that Colonel Lassah is in no way guilty under Charge 1 because there is no evidence that he conspired with any of these named accused, none of whom he so much as even knew or even had even a speaking acquaintance, although General Streep and Major Girke had on one occasion each paid him an official call after he took this official position. (Record 896-899). As to Charge II, while it is true he was a member of the Allgemeine SS and held the honorary title of Colonel, it cannot be said that any evidence discloses that he held any function or position of authority of any kind, nor that he was guilty of any of the crimes charged to the SS organizations and as determined by the Nuernberg decision heretofore cited to the court. (NOI-902).

It seems nothing further need to be said as to Charge 3 because he was in no way a participant in the final disposition of this flier as clearly shown by the evidence.

I further call the court's attention to the fact according to the

Prosecution's own evidence, the so-called "confession", which as a matter of fact was a statement against interest, was obtained from Lassak by cruelties, threats, beatings and general intimidation and that the witness Coates for the Government testified that when Zinn got through with the so-called question and answer statement of Lassack, dated the 5th of August 1946, that this statement was to quote Coats as follows: "This statement was the way Zinn wanted it and in his words and not those of Lassak."

The uncontroverted evidence is that previous to that time Lassak had been interrogated regarding concentration camps, which he had nothing whatever to do with, and that he was unmercifully beaten, one tooth was knocked out and he was under medical care for a week or ten days and that he showed black and blue marks for at least two weeks thereafter. The manner of treatment of this accused was strictly un-American and in direct violation of all of the concepts of democracy and certainly is a sad commentary on some of the methods to secure evidence of war crimes. The only excuse I can see for the conduct of Zinn and Coates is that both of these gentlemen, prior to 1939, lived in Germany or Austria, and both of them are of German or Austrian origin.

The worst thing that can be said against Colonel Lassak is the mere fact that he was a member of the Allgemeine SS. He has now been in prison twenty-two months and has, in the judgment of this officer, been more than adequately punished.

I desire now to go to Charge IX, which involves Major Best, 1st Lieutenant Goss, and Private Heinrich Matthias Richely. The evidence here discloses that Major Best was an officer of the German armed forces who had fought on the front in Africa, Sicily, Italy and in France. That he was sent to General Stroop's Headquarters by General Preitzmann to organize and to put into operation a training school known as "W-12".

commonly known as Werewolf. (R 1053-1054) That when arrived at General Stroop's Headquarters, General Stroop told him in no uncertain terms that only he was in charge of the Werewolf School, and he relegated Best to a staff position at his Headquarters without any authority or command function and made him a sort of a liaison officer between Stroop's Headquarters and the Werewolf School. (R-1055)

1st Lieutenant Goss, the record discloses, was a highly educated and intelligent individual who fought with the German Wehrmacht for years on the eastern front against the Russians and suffered some sixty odd wounds, the result of which crippled him for life. That he carries many steel fragments in his body still, including three in his brain and that he lost one eye. That he suffered these injuries in combat and he was discharged from the service after a year or so in the hospitals and then was drafted into the Waffen SS in October 1944 when the war became so crucial in Germany. (R 962) That by virtue of his former rank as a Wehrmacht soldier and officer, he was given his same rank as 1st Lieutenant. (R 962) He was originally intended to act as Stroop's Adjutant but Stroop determined that he would command the Werewolf School at Wallrabenstein and would also act as security commander in that area. (R 983-985) Among other orders given him by General Stroop in a personal conference in Stroop's office in February 1945 and in the presence of Elisa Hoecker, the personal secretary of General Stroop, Stroop gave him the order that Terror Fliers were to be executed (R-985, R-2143).

Private Michely, the record discloses, was a soldier of the Wehrmacht, in the Spring of 1939, and in June 1939 while still serving in the Army, was gravely injured in a motorcycle accident, which, among other things, caused him to lose one eye. He was a school teacher by profession and after spending a couple of years in the hospitals, he was released unfit for military duty and resumed his profession until the

Fall of 1944, when due to the crucial shortage of manpower in Germany, he was drafted into the Waffen SS and sent to the Werewolf School at Wallrabenstein (R 1030-1031). The pertinent facts to this charge are as follows:

On the 15th of March 1945, a captured flier was brought to Lieutenant Goss' headquarters in Wiesbaden. Goss telephoned Best, asking that he, Goss, be given orders from General Stroop as to what disposition should be made of this flier. It should be borne in mind that while Lieutenant Goss had specific orders in February "to do away" with parachuted fliers and terror fliers, that this was the first one that he had captured and that he wanted specific instructions from his commander, General Stroop, as to actual disposition. Best was not in when Goss called, so Goss left a message that one of Best's subordinates should, in turn, inform Best upon his return of the request of Goss and thereupon Best went to General Stroop and asked for instructions. Stroop told Best to tell Goss that it was his order that the flier should be executed. Best met Goss "under the oaks", that being their common meeting place in Wiesbaden, that evening around six or seven o'clock and transmitted General Stroop's order to Goss. Goss in turn directed that one Ruhlmann, an SS man under his command, perform the execution. Further, as disclosed by the evidence, this execution was not performed. (R 988-991) R 1000-1001)

Following that up, on the 18th of March 1945, Goss learned through some children that an allied flier was in the fields adjoining the town of Wallrabenstein and he directed Private Michely to apprehend him. This was about two o'clock in the afternoon, and Michely, after pursuing the flier for about onehalf hour did apprehend him. The flier was armed. He carried money of several different European countries. He had maps of Europe and a quantity of rations on his person. When returned to Goss' headquarters and interrogated by Goss, the captured airman was

evasive except to admit that he had been in the area for two or three days and declined to tell more of his activities. (R 1002-1004) R 1034-1037). Having heretofore been threatened by a severe punishment by General Stroop for having failed to execute the flier captured on the 15th of March (R 1000-1002; 1005-1005), Goss ordered the flyer to be executed by Private Michely who accomplished the fact the night of the 18th. The flier having been executed, was buried in a coffin in the cemetery of the town of Wallrabenstein (Prosecution Exhibit 1144-J) and his personal effects were turned over to the Burgomeister. It is clear from the evidence that General Stroop was the direct commanding officer of Lieutenant Goss and that he gave Lieutenant Goss a direct order to execute parachuted fliers and terror fliers and he followed that with a subsequent order on the 15th of March, which when not complied with, he threatened severe punishment to Lieutenant Goss, which Lieutenant Goss understood to mean the death sentence. In this charge, it seems obvious that Major Best was not a participant or a consenting party. He merely was the courier or message bearer regarding one flier who was not executed and it is clear that he had nothing to do with the flier that was executed. It is further a positive fact that Goss, in ordering the shooting of the flier on March 18th, followed the direct order of General Stroop, that Michely followed the direct order of General Stroop and that neither had an alternative or recourse to other procedure (R 1040-1042).

Clearly under Charge 1, none of these accused, and I refer to Best, Goss and Michely, could be said to be conspirators and further argument is unnecessary. Under Charge 2, Best, it is true was a member of the Waffen SS but at no place in the evidence was any accusation made against Best that he was guilty of any of the crimes charged against the SS organizations. As to Goss and Michely, they were drafted into the Waffen SS in the late fall of 1944 and therefore as heretofore decided, are not to be found as voluntary members or organizations of the

SS found to be criminal in nature. Each of these accused, if guilty of a crime or participation in a varying degree are entitled to the protection afforded them under the arguments and statutes of law heretofore cited in behalf of Colonel Trumbler.

The attention of the court is called to the fact that on the 18th of March 1945, at Wallrabenstein, Germany, the allied armies were only 12 to 15 kilometers away. This was strictly the front line so far as these men Goss and Michely were concerned. Wallrabenstein was abandoned by these accused and all their German armed forces, five days later. Private Michely has told you that he left the front line area when the American soldiers were only a thousand meters away. The court should remember that Goss and Michely were both trained German soldiers to whom an order must only mean one thing, to-wit: it must be executed. I would also say to the court, you must remember also that Goss was merely a 1st Lieutenant and that Michely was a Private and that they had a direct order from a Lieutenant General of the German army, one which they had to obey. It is unconceivable that any American soldier of their rank would have challenged or questioned any order given by a General of the American Army in the front line.

Now, on behalf of particularly these last accused and for any of these accused here in the box, I do not mean to be facetious about what I am about to say, but I know it is a fact, having been an officer that served with troops throughout this war, our basic construction was that the main thing that a junior officer and a soldier had to do was first to receive an order and second, to execute the order. I know we never questioned these orders. No soldier carries around with him a law library or a lawyer to keep him advised upon his legal and statutory rights nor to keep him advised upon the rules and regulations of land warfare. I can say in utter candor myself that about all I knew as an officer of the American Army during the days of the war, regarding rules of land warfare and the Geneva Conference was that if I happened to get

captured, I was to give my name, rank and serial number and to stand mute thereafter. I have never had the privilege of having talked to any other officers or soldiers that knew much more about the Geneva Conference than that and I certainly knew nothing more until I got into this case. If our enlightened democratic army did not know any more about the rules of land warfare than I have just stated, is it not reasonable to suppose that the German junior officers and soldiers knew about the same and certainly not more? To understand the state of mind that the members of the German armed forces were under when in what was the emergency zone and subsequently the front line in Wehrkreis 12, I beg the court to take into consideration the tremendous pressure that was exercised upon all personnel in this area, starting with the Goebbels propaganda in May and June 1944 and continuing with the various and varying "pressure" Government orders, pressure from the party, pressure on the mind from the witnessing of the terrific effects of bombing and strafing, and pressure from the general public themselves who were daily sufferin: daily before their own eyes the loss of their property, bodily injuries and even death.

In conclusion, may I call the following propositions to the court's attention, which I believe the court should give consideration in their findings:

First, Colonel Trummler, I realize cannot be acquitted, even though having received the order from the source that he received it I personally think he ought to be, but he should not lose his life because as a soldier, he obeyed the direct order of his government which he could not refuse.

Second, it is my opinion that Colonel Lessak should be immediately set free and acquitted because he is guilty of nothing here except being a non-functional member of the Allgemeine SS and he has already suffered

two years imprisonment awaiting this trial.

Third, the puny little soldiers, Lieutenant Goss and Private Nichely, should be acquitted because they obeyed only the order of their commanding general and it was the order of their government. They followed out this order at the time they were on the front line and with the knowledge that they could not resist such an order.

It should be noted throughout this trial that only once has there come before this court any evidence of cruelties, physical mistreatment of captured fliers, or that indignities were perpetrated upon them. Whether the executions were ever such that may be called legal or lawful is not the point. To the German mind, these executions by shooting were honorable, that this was an honorable way to be killed. They were buried in coffins and their graves were marked and their identification tags were turned over to the proper German authorities so that their bodies could be found. All of these things, at least, show something in favor of these accused in determining their culpability and at least in mitigation. I might possibly correct that statement slightly as two fliers that were shot here. If the court will recall, they were shot after the Americans were advancing and they were buried in the garden of the Gestapo and the taking care of their personal effects was not possible.

It does not seem to me that the United States Government, certainly could not at this time go beserk on this question and hang everybody that had anything to do with any of these executions. If we are going to carry out these executions to the last man, these girls who were part of the Gestapo headquarters might as well be executed too. The persons who are really to blame are either now dead or in hiding and these comparatively small fry, that is, the above named accused, should have the full benefit that each one of them directly or indirectly followed the order of his government with the exception of Lassak, who is not guilty of anything.

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MAJOR SAXON: As I mentioned to the court earlier, as a matter of trying to properly present this to the court, German counsel and American counsel prepared separate arguments. What I am about to read to you is the English translation of Dr. Max Buerger's argument on behalf of these accused of whom I have just spoken. (Reading):

"May it please the court, I would like to bring out a few points to the court briefly in order to get through in the time allotted to me, those points being the ones that in my opinion are of significance to the case now concluded. Their purpose is to point out in a general manner only the ideas the accused consider significant for their defense.

"During the trial you have heard a lot about subject to the superior orders and in order to make this absolute subject somewhat comprehensible, I think it is necessary to elaborate on the development of the German system of government briefly.

The German Reich became a democracy after the first world war. The constitutional head of the state was Reich President, the Reich chancellor was the chief of the government and the Reichstag represented the people and participated in legislation materially. No Reich Chancellor with his government was able to carry out his governmental duties without the confidence of the Reichstag. When Adolf Hitler took the reins of the government in 1933, a fundamental change took place. The empowering act alone gave the government headed by Adolf Hitler the authority to decree laws and regulations without the approval of the representatives of the people. Even before that, after the Reichstag fire in February, the fundamental laws guaranteed by the Weimar constitution of 1919 were partially invalidated. For practical purpose, the citizens rights of personal freedom and utterance of opinion did not exist any longer. Laws were issued in the form of fuehrer orders or of laws and regulations signed by Hitler or the particular minister in charge and at first still published by the official Reich legal bulletin. As long as the last president of the German Reich, von Hindenburg, was still alive, he could still make use of his war veto power towards all decrees of the governments. But, after

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his death this right became void since Hitler took the job of Chief of State as well carried out the legal duties of the Reich President. The connection with the NSDAP which was the only party existing after all others were outlawed was maintained by having the deputies of Hitler at the head of the party, namely Hess and later Bormann, appointed Reich Ministers. Thus a democracy had become a fuehrer state. The will of Adolph Hitler had become law to the state. No authority or parliamentary institution which might have given protection against abuses of a persons rights by fuehrer orders existed any longer (see Dr. Pinter, record page 2339).

As common law developed, fuehrer orders which were not published in the Reich legal bulletin were also considered laws since no legal or parliamentary authority dared doubt their legality.

This method of issuing laws and orders became stricter during the second world war, particularly when that war changed in the favor of Germany's enemies. As is common knowledge, the most severe penalties were put on the most trivial violations and were actually pronounced, and everybody tried, reluctantly as it might have been, to follow these decrees in order not to come in conflict with existing laws and decrees. Only thus, can it be understood that we are today trying acts of the type as the ones which formed the basis for this case.

The population of Germany was guided into a very definite line of thought by unlimited propaganda, the purpose of which was always reduced to the biblical proverb that everyone is subject to his superior who has power over him.

Now we must examine the question whether a citizen had a chance to examine and determine whether laws and orders were or were not illegal. That question must be answered with a "no" as can be seen from the above argument. All a citizen could do was to rely on the fact that powers

leading him would not expect him to commit illegal or punishable acts and that his government would take the full responsibility for its measures.

Thus we can understand that the order or orders issued from above concerning the treatment of parachuted fliers were actually carried out. I am sure we must consider the fact that such orders from above existed as definitely proven.

The accused Trummler in his testimony (record page 2161) has repeatedly pointed to the order issued him by Dr. Kaltenbrunner. We can conclude that such orders existed even before the time he took office from the testimony of the witness Koenn (record page 2235). That witness was called to Berlin specifically to receive such an order. As a matter of fact, even the non-interference order shows what policies were followed by the leading elements of Germany. I should further like to point to the testimony of Trummler that he dared to mention possible difficulties in international law and that Kaltenbrunner replied, "we have already examined this and that is none of your business", (record page 2161). The fact that the orders became more severe until the order mentioned by Dr. Trummler was issued verbally is due to the influence of total war. The willingness to carry out these orders is a corollary of the Prussian education of subordinates as it was preached for centuries; that education had its last effect in the fuehrer state as I have described it. At the same time, the effect of air warfare upon the emotional state of the individual citizen became in that way willing to recognize the hints of the German propaganda concerning the illegality of this air warfare as justified and was, therefore, inclined to consider the order concerning the treatment of enemy flyers as a legal deterrent measure.

In the case of the accused who served in an area particularly endangered by air raids, we have the additional factor that all of them were working under the stricter regulations of military law, at least since 1941, and were daily reoriented about absolute obedience being the prime duty of a soldier. It is true that German military law did have a clause stating that the responsibility for the carrying out of a criminal order rests not only with the person issuing the order but also with the man who carries it out, but only in the case when the person carrying it out did realize or was in a position when he had to realize that the order concerned was an illegal one. But it has already been shown that this realization was impossible to the individuals concerned under the conditions existing.

The accused are charged with murder, or encouraging murder or participating in murder. But an element of murder is the intent of killing or consent thereto with the realization that the act is a punishable one, and it is being carried out knowing and deliberately as a punishable act. Was this realization of illegality present in the minds of the accused as they carried out the individual acts? That is the question which I ask you, gentlemen of the court, to consider particularly as you pass judgment on the acts of these accused. The defense doubts whether it was in view of the fact that, since the accused were available, the illegality of these acts could be understood by the accused as has been shown above. That can be very clearly seen from the testimony of the accused Rasf, (record page 1304 and 1308) who stated that he did not like to carry out that order but that he relied on the fact and had to rely on the fact that his superiors would not give him orders which could not be upheld under criminal or international law.

If in the Nurnberg decision the matter of superior orders was discussed, and if it was decided whether it could be used as a defense

proper or only in mitigation, or should not be considered at all, then it should be pointed out that we have another situation involving superior orders here then in their case the persons involved in Nuernberg were members of the former Reich government and men as close to Adolph Hitler as anybody. They were the men who would have been the only ones to prevent laws and orders which were legally untenable from being issued by using their influence. They did not do that but rather participated in the issuance of these orders.

The Reich government itself has not been branded a criminal organization in Nuernberg, but if even these men approved and issued orders which were illegal, then how could a person in a subordinate position, such as Rauf or Wicholy or even Goss and Rost understand that they were now committing acts which would cause them to be hauled into court later as common criminals.

In the defense of Dr. Trummler, which will probably be presented primarily by Major Saxon, I should merely like to point out that he has stood up for his acts honorably before this court and that he made his position unambigiously at the head of his men. He himself has made his reasons for transmitting the order and for seeing that it was carried out in such an unambigious manner before this court that I do not think there is any need of my adding to it.

I should like to state the following briefly on behalf of Rost, Goss and Wicholy. Rost, in his testimony before this court, (record page 1061-1062) stated that upon the inquiry of Goss about the fate of the flyer he had called General Stroop to make a decision and had transmitted the direct order of a superior to Goss. It has been attempted to attack the credibilityof the accused Rost. The personal impression made by Rost in his examination on the stand, and the character testimony brought before this court by Schlums, Kelaske (record page 2298) and other witnesses are however so clearly in his favor that

there can be no doubt as to his veracity or the truthfulness of his testimony. According to all these descriptions, Best was an honorable man whose whole personality would have made him stand up and admit that he had given that order on his own initiative had he actually done so, as the witness Kaleske (record page 2303) has told this court. Furthermore, Best was in no position to issue such an order since General Stroop did not give him or any other of the members of his staff any power of command, as Colonel Schlume (record page 1087) has stated. It should be further pointed out that the order transmitted by Best was not carried out and that he found out about the second case only after the act had been committed.

Dr. Gess states in his testimony (record page 985 and 1008) that he had received a perfectly general killing order from General Stroop. He had just come back into the service again from civilian life and had not known about flyer orders in his school; hence the order of General Stroop. His credibility is not subject to question either, for the witness Moecker (record page 2113) confirms having heard part of the conversation between General Stroop and Dr. Gess, that very part of the conversation, in fact, where General Stroop in conclusion, told Dr. Gess that now he knew what was to be done with flyers. Gess had to consider that statement a definitive order since in the course of this conversation, General Stroop had also submitted the written powers of authority from Heinrich Himmler to him which stated clearly and unambigiously and without limiting itself to any specific cases that the orders of General Stroop were to be obeyed unconditionally. The testimony of Stemmler (record page 2127) demonstrates that Stroop did give orders along that line. Kaleske (record page 2297) also confirms that visit took place and that Stroop used to give orders at such visits. Gess, in his part could not determine that the order was illegal. The highest ranking of his superiors who had absolute power of command had issued that order to him.

But that superior officer was, as he admits in his own testimony, the higher commander of prisoners of war in his area after 1 October 1944. It was, therefore, up to him to decide what measure should be taken concerning prisoners of war. So if he did make the decision he did make, then Goss had to assure that any difficulties in international law had been considered and eliminated. If he made an inquiry in spite of this in the case of the first flyer, then the reason for his doing so was that he as an experienced front line soldier knew that prisoners of war were to be interrogated in order to gather enemy intelligence. He himself testified to that (record page 989-1015). He too takes the responsibility for transmitting this order to Micholy without question. He too is a man who would not incriminate others in an attempt to save himself.

The person who carried out the order was Micholy. He was a newly drafted SS private. When he was sworn in, he and the other men were told by General Stroop that anyone who would not do as he was bid would disappear without a trace (record page 1040) testimony of Micholy. He, as a little soldier, had no other choice but to carry out the order issued him, particularly since he was told by Goss when he gave him the order that the order came straight from General Stroop. The accused were under the pressure of these orders and subjected to the fear that if the order was not obeyed not only themselves, but their families would have to suffer. That was, as the accused Micholy has said (record page 1040) the very time when the severe punishment of the officers who had failed to blast the Pemagem Bridge had been publicly announced, when every one in Germany knew of the severity of punishment, and was desirous of carrying out all orders to the letter.

The following should be said about the accused Paaf: If there is any typical example for the effects of obedience to superior orders, then Paaf is this typical example. I should like to remind the court of the

impression Raef made on the witness stand and how he is suffering under the burden imposed upon him by this affair even today. He was acting in good faith, thinking that he was doing his difficult but, in view of the situation justified, duty as he was carrying out his orders. That he did not even like to stay with the Gestapo has been shown by the witness Gelbrich (record page 1335). He volunteered to get away, and did that repeatedly but never with any success because his applications were disapproved on account of a general order and on account of the fact that he was threatened with punishment if he tried to get away again. Thus he did everything in his power to avoid serving in the job he did not like.

One of my co-counsel will argue concerning the question of a conspiracy, and I concur with this. I should merely like to say that the accused Trummler, West, Goss and Michely were transferred into the area of Rhine-Westmark as late as the end of 1941, and that Raef has tried to be relieved from serving in the Gestapo, and that West and Goss also made unsuccessful attempts to be transferred. Furthermore, in my opinion, the prosecution has failed to prove that the accused participated in the formulation of a plan to commit criminal acts.

Charge Number II is a charge concerning collective guilt. The Nuernberg judgment states that for collective guilt to exist, the organization must have had criminal intentions in the performance of its work. The attitude of the individuals and particularly of the leading individuals must be directed towards the achievement of anti-social results and the members must be conscious of these deletorious tendencies. Anybody not conscious of guilt cannot be part of the collective guilt. This determination of collective guilt, therefore, does not give cause for the guilt of every individual member but merely forms a basis for

evidence to be presented. Just like the objective acts of individual persons join to form collective injustice, the individual consciously criminal desires of the individual members join in forming collective guilt subjectively. I should like to ask the court to consider this concerning Charge No. II and to consider it also in their findings concerning that charge.

I have now reached my conclusion, it is not the intention of the defense to make wrong appear right, but rather to help in determining the objective truth by their arguments and to serve justice in that manner. I am now trustingly placing the fate of the accused in the hands of the court.

PRESIDENT: Court will recess until 0900 hours tomorrow morning.

(Whereupon at 1700 hours the court recessed until 0900 hours 18 March 1947.)

Camp Dachau, Germany

25 March 1947

MORNING SESSION

(Whereupon the court reconvened at 0900 hours.)

PRESIDENT: Court will come to order.

PROSECUTION: Let the record show all the members of the court, all the members of the prosecution, all the members of the defense, all the accused, the reporter and interpreter are present.

PRESIDENT: Let the record show that Colonel Walker has advised the President of the court he has read the testimony which transpired on Wednesday, March 12th, on which day he was properly absent from court.

DEFENSE COUNSEL: May it please the court, I will now read for Dr. Hoster an English translation of his argument for Hans Michel and I will follow that up with an English translation of his argument on behalf of Sommer and Fischer. First, his argument with respect to Michel in Charge VII.

In Charge VII Michel denies vehemently to have given an order for the execution of the flier. Contrary to this the accused Müller claims that he received the order to execute the flier from the accused Michel. Uninvolved reliable witnesses who could verify the correctness of Müller's statement or the correctness of Michel's denial do not exist. Therefore the court will have to decide whether the testimony of Michel in denial or the testimony of Müller in affirmation without the assistance of such other facts to aid the court in its deliberation has to be believed according to all circumstances.

In the first instance I point out that Michel beginning with his first interrogation and also during this trial has always taken the same position that he did not give an order for the execution of the flier. On the other hand, Müller's statements have changed in some very

important respects and Moller has made contradictory statements. On May 29, 1945 during his first interrogation, Prosecution Exhibit 115, Moller testified that the accused Albrecht had given him the order for the execution. To this testimony Moller stuck until he was together with Albrecht and Cochrendt in Hersbruck, and it was known that Eichel was dead. What was more obvious than to put the blame on the supposedly dead Eichel. From this time on, from the time Eichel was supposed to be dead, from that time on, the assertions that not Albrecht but Eichel had given the order were made, and at the same time, Moller heard that Superior Court Justice Jackson had said that the one acting on orders had to be punished in a milder fashion, therefore it is perfectly obvious why and for which reasons Moller changed his testimony. From additional circumstances, more clear proof can be had that Moller did not give his statements in the same manner, as he changed from Albrecht to the name of Eichel as the one who gave him the order. He claimed on the 29th of May 1945, Prosecution Exhibit 115 that the accused Kiwitt had been the one with whom he had gone to the place of the crime. On this point also Moller had to change his statement that it was not Kiwitt, but Lieutenant Blum who had been the one with whom he had gone to the place of the crime. It is especially interesting that during the interrogation, Moller mentioned the name Kiwitt, he had seen Kiwitt at the police station, a mistake in identity is therefore unbelievable. In other words, the substitution of Kiwitt for Blum was not an error, but deliberate. That is, the circumstances alone in view of the testimony of Eichel would be enough for the court to come to the conclusion that no verdict can be based on Moller's statement or his testimony. It can be proven that he really did not receive an order from Eichel. It is absolutely impossible that a police director while other officers are present issues an execution order in a by office of the police station

without the officer in charge, that is, Albrecht, receiving any knowledge of it. It is furthermore impossible that Moller, supposing that he did receive the order did not discuss with his superior officer, that is, Albrecht, the execution of this order or ask how he should carry it out. Moller himself admits that such a discussion would have been necessary to make his testimony believable. Moller, therefore on page 4 of his interrogation of May 8, 1946, Prosecution Exhibit 116 claims: "It was my intention to keep on walking until I would receive an additional order or until I would be told something." Moller therefore was well aware that he did not have to shoot until something more would have been said to him. On this point also Moller realized that through this testimony he is defending himself poorly, therefore in this point too he changes his testimony and testified on the witness stand, it came to his head like lightening that he had to shoot now. If one adds to these many changes in Moller's testimony the fact that at the beginning of the trial he declared that he considered himself insane, it should not be difficult for the court to decide whether the testimony of Eichel has to be believed more, or the testimony of Moller. At that time it was generally known that the highest authorities of the Reich had ordered the killing of fliers. Moller therefore obviously thought out of his own initiative that he could take the responsibility for the killing of the flier.

Under these conditions it seems impossible that Eichel can be found guilty based on Moller's statements. In addition Eichel's testimony can be confirmed through the testimony of his secretary Mrs. Schwab. Mrs. Schwab testified as a witness that Eichel said the flier would be brought to police headquarters. Eichel's statement is furthermore confirmed by Albrecht and Kiwitt.

I think I have given sufficient reasons that Eichel cannot be found guilty based on the statement of a man who considers himself [illegible]ane and who had changed his statements on very important points.

I will now proceed, with the court's permission to give Dr. Wacker's argument on behalf of Fuehr and Somann. This apparently is a joint argument.

It is to the highest credit of the United States of America that the accused are given the chance to present their viewpoints before a court. The philosopher Spinoza once said, "Everybody in the world has as much right as is given to him. There is no doubt that the United States would have had the power to sentence the accused without trial. When the United States did not choose this alternative but expressed the desire that in each case justice should be done so the difficult question has to be decided which law system is applicable. In accordance with German law, all the accused could refer to paragraph 47 of the Military Criminal Code and would go out unpunished. But, also in accordance with Article 347, The Rules of Land Warfare, the attitude is the same, since here too only the man who issues an order is responsible when a superior order has been given. In the case of the accused Fuehr, we have the typical case of a superior order. He received the order for the execution of the flier from Colonel Trumler and he has carried out this order. I would like to interpolate at this point that he got the order directly from the horse's mouth itself - from Trumler, under the most innocuous circumstances, right in Trumler's personal office.

The argument of the prosecution sees the guilt of Fuehr in the fact that, as the prosecution has explained, Fuehr too knew or at least should have known that by shooting the flier, he was committing a crime. I think I can prove that this is not correct. I refer to the Nuernberg Judgment. Before the Nuernberg Tribunal, the Reich Government was charged as a criminal organization. The judgement did not declare the Reich Government a criminal organization. However, there cannot be any doubt that the Nuernberg Tribunal knew about the orders which were of importance in the trial here before the court. If to the Nuernberg Tribunal, the

issuance of these orders would have been considered to be a crime, so certainly the Reich Government which had issued these orders would have been declared a criminal organization. However, if the Nuernberg Judgment does not find the Reich Government guilty, nobody can expect from Fuehr that he during the war should have recognized these orders to be criminal. Without repeating, I can merely refer once again in this man's special behalf to the effort referred to by the prosecution, exercised by the German Government to establish the legality of these orders. If now two years after the war a decision is made by a neutral German court on the question as to whether these orders were legal or not, how then could Fuehr during the war get the idea that an order of the Reich Government was criminal. It is my personal opinion that the air warfare as it was conducted could not be objected to. Every means to win the war has to be considered permissible. The United States has won the war through the air warfare and, therefore, the United States rightly will object to a statement that this means of warfare should not have been permitted. If the air warfare was legal, then after the war one cannot wonder about the steps which the German Government took against it. In view of the total war on both sides, this is a war measure and as a war measure, Fuehr considered the shooting of the flier. I have full understanding that the court thinks with regret of the killed fliers and their families, but at the same time, I beg the court to think at the same time of the many hundred times larger number of civilians who became victims of the air warfare. This sentiment perhaps makes it easier to understand my point of view that the shooting of the fliers was an act of war and not a crime. In conclusion, I come to the result that Fuehr in no way realized it was something wrong when he carried out the order to shoot the flier and I therefore ask the court to find him not guilty.

I would like also by way of interpolation to remind the court that not only did Fuehr get the order from the sanctum sanctorum, right from the horse's mouth, but instructions when it was to be carried out,

where it was to be carried out and what was to be done after the execution. The place of execution was nearby, the time was practically immediate, it was only a question of hours and then the whole business was done exactly as ordered, and Fuehr carried out this order under these circumstances and helps us come to the conclusion that the execution of a superior order is a valid defense.

The argument which I made on behalf of Fuehr applies partly also to the accused Semann. Semann had to do only in one point with the orders regarding parachuted fliers. In accordance with his orders, he passed down the non-interference order by reading it orally, that was the way his written instructions told him so to do. That, may it please the court was the only order of any consequence with respect to parachuted fliers with which Semann had to do, and there was one other which said they were to be examined by the Gestapo and then sent to Oberursel, I am not sure of the exact language so don't want to attempt a quotation, but that is the only order which could be considered to be of an illegal nature.

And what is the evidence on Semann? As far as Prosecution Exhibit 20 is held over his signature, that was nothing but a easy inspection, if the court will read it, it will find that it is a recital of a number of facts which dealt with the business of the organization and there was one reference only to parachuted fliers and again I quote with reservations, "that order had to do with keeping the civilians from coming too close to the flier." That is all, and was just passed down for information. What is the evidence in this case? First, Prosecution Exhibit 20, second reading of non-interference order, which he admits and third this statement by Hollenbreich as to what Semann added after reading the order, which he interpreted to mean an order that every flier should be killed, and that is partly supported by the

testimony of Christmann, who was as mean an individual as anybody in Germany, and he, instead of facing his accusers has gone nobody knows where and so the evidence which this court has on Somann rests on a statement of a fugitive from justice, on the statement of Hellenbroich who Somann himself says is an honorable individual and on Somann's reading that non-interference order.

I am going to leave out of consideration in my argument anything which has to do with Christmann. It is Hellenbroich's interpretation against Somann's statement he made no such statement as Hellenbroich understood it. The other people, Reiser and Breder and Berger got no such impression as Hellenbroich got. Somann gives a reasonable interpretation of what he might have said which could reasonably have been understood by Hellenbroich the way he did. We don't say that Somann said nothing, Hellenbroich made it up, all we say is that he didn't say it the way Hellenbroich said it and to give a reasonable explanation of it and in the absence of supporting testimony, that is, testimony to support Hellenbroich's interpretation, having in mind that neither person is accusing the other of being a liar, actually what happened, and not a question who honestly believes what happened, the court could very well find that Hellenbroich honestly understood that to be what Somann said, at the same time believe Somann when he says that is not what he said and not what he meant. All we are asking the court to do with respect to that small portion of the testimony -- the main thing is this: So far as charges VI and X are concerned, or charges III, IV and V, the prosecution makes no attempt to bring Somann in at all. Charges IX, VII, VIII and III, for which he is down here, he could not have had anything to do with, yet Hellenbroich definitely said he asked him; in charge VI, so far as he was concerned he was carrying out the order to kill. In my opinion that superseded the non-interference order, and Trumbler had only said the same thing, but he knew the non-interference order before he came to Wiesbaden. Now, may it please the court, how in God's name can you hang a man for something which came out of his mouth, which was never

translated into action, and never asked or induced or persuaded to the slightest degree the conduct of a man who confessed to the offenses charged. It is Hellenbroich and Cirkc and Trumpler and Stattmann and Raaf who have to answer for VI and X, and they say Somann had nothing to do with what they did. Are you going to hang him because the prosecution attempts to say "Yes, they did," the men whose necks are in the noose say, "No, he didn't." The man is gone long before these things happened. Sure, he didn't rescind an order, how could he, it wasn't his order. He went away to an innocuous place and I want to add that all the effort of the government, and the court knows, it has been trained in investigation of Rhein-Westmark, has been unable to produce even an intention of violence against Allied personnel by the Schutz Polizei when Somann was in charge and that ought to be very persuasive. I am going to skip Charge II, as I have argued that for him before. I would like to say just this. There has been some talk in this case that every drop of American blood has to be avenged. This is not a court of avenge. It is a court of justice and its function is a very serious one — it is not only to punish, but for setting a lesson and guide for the future, not only of what future law breakers might expect, but of the type of even handed justice which we want to set as an example for the rest of the world to follow, in case it becomes necessary at some future time for other courts to sit in judgment on other people. The amount of punishment which should be handed out for a crime should be just enough to accomplish that purpose, to show that wrongs will not go unpunished, and also to show that a victor can sit in judgment as judges and not as avengers. The court will exact retribution where retribution is called for. Where one man can pay the penalty and satisfy the just demands of society, that man should pay it and no one else. Just because four or five people are mixed up into a picture, every-

body does not have to be borned down, that we submit is the attitude upon which we know this court will hand out its punishments.

DEFENSE COUNSEL: May it please the court, argument of Dr. Aheimer will be read by Mr. Nathanson, the interpreter.

(Whereupon the English translation of argument of Dr. Aheimer was read by Mr. Nathanson as follows.)

"May it please the court, in the particulars to Charge I, the charge sheet speaks of a common plan or design to violate the laws of war. This term "common design" has been discussed frequently before the courts of War Crimes Group here in Dachau. So far, it has been used only in the Charge Sheets of the big concentration camp trials. For instance, in the records of the first Dachau trial, one finds already at the beginning an argument about the so-called "common design". There, the chief defense counsel, in a motion had objected to this formulation of the charge sheet and requested a statement whether under this "common design" a conspiracy was meant or something else. The prosecution, at this time, replied very clearly that a conspiracy was something which it was not. In fact, the word "conspiracy" deliberately has never been used in these concentration camp trials by the prosecution in distinguishing the acts with which the accused were charged. How does this happen?

A conspiracy, in the legal sense, does exist only (1) if somebody either formulates a plan to commit certain criminal actions or when he cooperates in any capacity on such a plan or when he joins in a plan already existing: (2) in each of these three possible cases, the accused has to act not only wilfully, but also deliberately. However, for instance, does a man wilfully and deliberately participate in a conspiracy to mistreat prisoners, if in the spring of 1944 without being asked beforehand he has been transferred to a guard company in Dachau as a soldier and there outside the protective custody camp does guard duty without ever touching a prisoner or having reported for punishment or shooting of any prisoner, the answer is "no". And, in spite of that, a guard is being sentenced under those conditions even if nothing else could be proven against him. He could not be punished under the viewpoint of a conspiracy because his activity was not a voluntary one. The result, therefore, is: "common design" is an entirely new concept of law which distinguishes itself from the

conspiracy. The conspiracy is a crime in itself. Whenever the conspirators remained passive, they still can be punished. As far as they became active, they can first be found guilty for the conspiracy and furthermore secondly for the individual acts committed, as for instance killings, etc. The acting according to common design on the other hand - correctly understood in this sense - is an enlarged form of participation on so-called mass atrocities. It takes in all participants beginning with the guard post who has never harmed a prisoner, over the non-commissioned officer who carried out ten executions, up to the Camp Commander who is made responsible for hundreds of death cases. This form of participation at the same time, however, takes in all individual acts with which these persons can be charged. All these persons are found guilty only in accordance with this one charge, that is namely to have acted under common design; the non-commissioned officer and the camp commander are not charged and sentenced in addition to this for ten or a hundred individual cases of murder or anything like that. Is it now possible to apply this new concept of common design which was developed for the particularities of the concentration camp trials, simply to flier cases by combining a number of individual cases? The charge sheet is trying to do so because the formulation of Charge I is similar to the formulation of the charge sheets in the large concentration camp trials. However, I think that this procedure is untenable since the conditions for these two types of cases are basically different. One might be able to say that everybody who for a long period of time was part of a concentration camp organization, which had to realize the existence of a certain system according to which prisoners were treated there; his punishment for acting in common design can be justified because the man exercised his functions - whether large or small - day for day - in the concentration camp, although he had to know and see daily what happened to the prisoners and that, therefore, he supported the mass atrocities. If, with the German police, certain special commands would have been organized which would have attended day for day exclusively to the search for enemy fliers, to their treatment and perhaps even their

torture or killing, in this case perhaps the members of such a special command and their officer in charge would be charged just for acting in accordance with a common design. This, then would be a correctly understood parallel to the persons employed in the running of a concentration camp. However, such a charge cannot be made against persons as the accused who had to fulfill entirely different, that is, police duties. They had to do with orders concerning enemy fliers, only besides their other duties.

Under no condition the elements of a real conspiracy, that means of an independent crime, are given as the prosecution has claimed in this trial on several occasions. In this case, the prosecution should have proven that the accused wilfully and deliberately in any way participated on the claimed plan of a crime or that they joined also wilfully and deliberately the plan worked out by hi her authority. Against none of the accused, the prosecution has made such proof. Let's take for instance men of the medium level as for example Cirke or Hellenbroich or men of the lower level, as for instance Hoehler and Stattmann. Cirke, as he was ordered, only passed down to the departments of his headquarters orders regarding enemy fliers which he had received from higher up. Hellenbroich only once, in the absence of Cirke, informed Cirke of such a hi her order and the other orders he just took knowledge of. Stattmann took knowledge only of the orders which had been passed down by the commanding officer of his headquarters. And Hoehler has not even done this because he never received any knowledge of such general orders. All these people have acted neither wilfully nor deliberately. They had nothing to do whatsoever with any planning. We have not even to mention Mahrgang of the fire protection police and Hamann of the air raid protection police, they worked in such special fields of the Order police so that not even their superior officers received any general orders regarding enemy fliers, not even for information only.

If the prosecution should argue that these men, although not participating in the establishing of the plan, joined such a plan through their participation in the individual cases under Charges III - X, and, therefore, had to be punished for conspiracy this argument would not be tenable either. Because here too, the prosecution would have to prove that this had been done wilfully and deliberately. It is a problem of its own, whether they have to be punished under the charges of the individual cases III - X. However, they cannot be punished for conspiracy. I ask, therefore, for a finding of not guilty of Charge I.

Mahrgang and Hamann were already acquitted of the Charge II - membership in a criminal organisation - but the Charge is still applicable to the four other accused, whom I represent. As to Girke, Hellenbroich and Stattmann, nothing has to be said any more in regard to the principle question since they were members of the Gestapo and furthermore members of the Waffen SS, with the assimilated rank. For Stattmann, it has been proven further more that he tried unsuccessfully on several occasions to come to the front lines as a soldier, and that, therefore, he had to remain with the Gestapo only against his will. (See Record Page 1237, 1238, 1323, 1324, 1338, 1339, 1356, 1357).

If these applications, the last one of which was made around the turn of the year 1944 to 1945, would not have been rejected, Stattmann would not have been at headquarters Bensheim any more in February 1945 and so he would not have been involved in the cases VI and X. It is customary to make a charge for membership to a criminal organization only in connection with another charge; Stattmann, therefore, would not have been charged in accordance with Charge II, if his repeated requests for transfer to the front lines would not have been rejected. Therefore, I ask the High court to consider this as much as possible in his favor.

Anyway, it has to be pointed out for all the accused that during the war in Germany nobody could pick his place of work or could change his

present work assignment; everybody had to do his job, wherever the Government authorities had ordered him.

For Hoehler, the defense has proven through the testimony of Kramer and Richard (Record Page 1132-1140) that during the entire time in question he had been a member of the Criminal Police and that he had been ordered only for temporary duty with the Gestapo without his active cooperation and against his own will. The applicable article of the Control Counsel Law No. 10 threatens with punishment expressively only "The Members" of the so-called criminal organizations. An official like Hoehler, however, who remained a member of the criminal police from the first to the last day, who received his papers, his identification mark, his weapon, his pay and his promotion only from the criminal police and who fought unsuccessfully just such a transfer to the Gestapo, for this reason never became a member of the Gestapo. This is shown most clearly through the fact that he was not a member of the SS and never wore a uniform. It is known that all regular members of the Gestapo automatically received a rank in the SS. He, Hoehler, may it please the court, should be acquitted of Charge II also.

Before I start with the particulars, I would like to add a few fundamental words:

The Charge III - I are being signified as cases of murders. Each of the accused including those which even shot an American flier stated under oath that theydid not feel guilty of any murder. This is not a mere fight for words because each one of them states:

1) I had to act under superior orders.

2) I had to depend that my government would give me only legal orders.

3) I also saw and experienced daily the air warfare against the civilian population in Germany in the years of 1944 and 1945; therefore, I was convinced that with this kind of warfare the other side had already renounced its ties of International Law which forbids such a warfare against the civilian population. Therefore, I did not have any doubts whatsoever about the legality of orders which had come from my government, or my superiors respectively in regard to so-called "terror fliers".

Let us take for example a soldier who upon orders of his superior at the front denies a pardon to an enemy who wants to surrender, because prior to that this enemy had not adhered to the International usages of war, for example by hindering the saving of badly injured soldiers and thus killing them. If this soldier according to his orders then shoots this enemy, it appears outwardly and superficially considered to have been a murder. No military court martial will consider this soldier or his superior to be a murderer and punish them for murder. No court martial will expect from this soldier that he should have disobeyed this order and rather had himself shot for disobedience of orders. Exactly the same is applicable for the accused in our trial.

What, for instance, was the accused Hoehler to do, whose only activity in Charge IV was that according to the orders of his superior he drove along in the back seat of the vehicle at the transport of this flier and only left it after the execution of the flier so ordered by Trumpler to Fraundt had already taken place? Had he not obeyed the order to drive along, the ordered execution of the flier would have taken place just the same. Hoehler would have been punished for disobedience of order; nothing would have changed the fate of the flier. One thing, of course, he could have done: He could have driven along and then pointed his pistol at his own comrades in order to try in this manner to stop the execution. Then, either:

1) Fraundt, who had to accomplish Trumpler's order, would have shot Hoehler or

2) Hoehler would have had to shoot Fraundt and possibly also Fuehr, or

3) In the most favorable case Fraundt could have been restrained from the execution under the threat of a weapon.

Considering possibilities 2 and 3, Hoehler would not have remained alive much longer because undoubtedly he would have been sentenced to death

before a summary court (standegericht) or the SS and police court and in addition to that, he would have been stigmatized as a traitor to the Fatherland. It would be completely absurd to request from Hoehler to risk his own life. As he stated under oath (Record Page 1101) he had first refused Fraundt to go along. Only upon a specific order of his superior, Criminal Counselor Luckhardt, he finally rode along, but he did not participate in the execution at all; he, therefore can only be punished very mildly, if at all.

As to Charge VI, the facts here are very plain. This is the typical case of a superior order. The chain of command runs clearly from THUMMLER via GIRKE to STATTMANN and through him, at the same time, to BAAF. I refer to this fundamental point in order to avoid repetition of what has been said by my co-counsel or what will be said. The trial has shown clearly that HELLENBROICH should be eliminated. He only interrogated the flier and checked the accompanying files and reported the results to GIRKE. He, of course, according to the directives of GIRKE called STATTMANN. The order for the execution itself which GIRKE received from THUMMLER was given to STATTMANN directly by GIRKE.

In principle, however, Charge I is the same as Charge VI. It differs only insofar as the direct connection to THUMMLER is missing and GIRKE ordered the execution based upon the general orders. In addition to that, HELLENBROICH transmitted GIRKE'S order for the execution to STATTMANN and BAAF.

For both cases together, the following is applicable: The executions were not kept secret at the headquarters in Densheim. All identification marks of the executed American soldiers were put into the graves with them. They were buried in Densheim itself, namely, the first flier in the Public Cemetery, the two others in the garden of the headquarters building because at that time the Nastapo headquarters was already in a process of departure. Therefore, it can be seen again that all accused that have participated must have considered the executions completely lawful. Because it would have been very easy for them to conduct the executions 10 or 20 kilometers away from Densheim and bury the corpses there, if they had wanted to hide anything from the advancing American troops.

The accused acted also insofar in good faith as they checked previously whether the fliers were so-called "terror fliers" towards

whom the actual execution order was directed. Insofar as they referred to findings of other authorities namely in Charge VI to those (findings) of the Rural Police Worms and in Charge X to findings of a German Anti-Aircraft-Unit, this was in accordance with the then usual procedure in Germany.

The prosecution tried in rebuttal to attack the testimony of GIRKE, HELLENBROICH and STATTMANN. This attempt did not succeed.

The prosecution, at first, called General Wunnenberg and Schuls on the witness stand to debilitate the testimony of these three accused that at a certain time the members of the Security Police were transferred to the German Army. General Wunnenberg as Chief of the Order Police did not hear anything about it. But as it came out in cross-examination, he had no opportunity at that time to speak to the Chief of the Security Police, Kaltenbrunner, about such questions. General Schuls was only in the Reichs Security Main Office until April 1944; since May 1944 he was as Higher SS and Police Leader away in the area of Salzburg which became front territory only in the last five days of the war. So, if he does not know about these things, it does not exclude at all that the explanations of GIRKE, HELLENBROICH and STATTMANN are correct. On the contrary, it has been proven by numerous defense witnesses and also by General Schuls that the members of the Security Police had pay books of the Waffen SS at least since the end of 1944. Since the pay book is the identity paper of the soldier in Germany and the Waffen SS formed a part of the German Army, the correctness of the statements of GIRKE, HELLENBROICH and STATTMANN is, therefore, further proven.

Neither the additional rebuttal witness Goetz, nor the witnesses Rechel, Geis and Appel have testified that except for the cases VI and X, there ever was an American flier at the Gestapo headquarters in Darmstadt or Bensheim. So, if, therefore, GIRKE said on

(record Page 1466) during cross examination and HELLENBROICH on (record Page 1407-1408) that except for Charges VI and X, they had no American flier or soldier at their headquarters, they spoke the truth.

I did not mention so far Charge VIII in which MAHRGANG and HARMANN are co-defendants. The defense has decided with the approval of the accused that all direct participants of Charge VIII will be handled in the final argument of Mr. Bachael. This manner of separate and coordinated treatment is justified by the fact that Charge VIII is the only one where there is no "superior order" but where the reason for the shooting was the escape of the American flier.

May it please the court, the case which is about to be concluded is generally called the superior orders case. That shows that questions of a very fundamental nature must be decided. The verdict will decide not only the fate of the twenty-one accused sitting in the dock; it might also have importance as a precedent for numerous other Germans who were involved in similar flier cases on account of the miserable orders and decrees of offices of the German government and the Nazi Party.

The whole series of incidents can be understood only if the totality of conditions is taken into account as they existed in Germany at the time. The defense has demonstrated those conditions in its case as far as it was permitted to do so. The air warfare which increased in intensity constantly is part of those conditions. Only a person who was forced to experience this warfare on German soil can picture properly the extent of that warfare after spring of 1944 and of its effect upon the individual German. It was only this unlimited air warfare against Germany that caused the well-known propaganda and later the orders concerning the so-called terror fliers as they were issued by the German

government. The German defense in this case has limited itself to giving a general picture of the air warfare by means of a few accused on the witness stand. A number of witnesses were available, and they could have described numerous occasions of bombing and strafing of purely civilian objectives and of the unprotected civilian population; and it would have been easy to get many times that number of witnesses. Those witnesses, it is true, could have served to prove specifically what the facts then existing actually were; but not a one of the tens of thousands of civilian victims of air warfare in Wehrkreis 12, nor a one of the American fliers who had to give their lives there on account of orders of the highest of German authorities would have been called back to life. The reason the defense voluntarily refrained from calling these witnesses to the stand was that they wanted to avoid breaking open old wounds.

The incidents that occurred during the last twelve months of the last war in the air above German soil and on German soil proper were unfortunate effects of the war, as it was conducted by both sides. In order to do justice to both sides one cannot fairly measure these incidents with the measuring rod of international agreements, the latest of which is dated 1926. When, twenty and more years ago the various nations agreed upon those conventions, they never considered that type of air warfare possible. The development of the technique of warfare simply by-passed those old agreements; the best proof for that fact is the invention and use of the atomic bomb.

The war in Europe has ended almost two years ago. Even today the victorious nations are discussing in Moscow how defeated Germany can be pacified by a peace treaty in order to put a definite conclusion to everything that happened during the last war. The accused as they were forced to obey the orders of their government during that war were acting under the belief that they were doing their duty to their country and in

the very same manner as the American fliers who were sent out against Germany and had to give their lives.

Gentlemen of the Court, please do consider all of this as you deliberate upon the guilt of these accused.

DEFENSE COUNSEL: We have one more argument, may it please the court, one part of which we can finished before ten o'clock. However, there are one or two other matters which I will have to raise with the court. We might use the time remaining now for that purpose, whichever the court wishes.

PRESIDENT: Either one.

DEFENSE COUNSEL: As we understand it, when the final arguments are made, then all the prosecution's arguments and all the arguments of the defense will have to be read in German to the accused. I have been trying to estimate how long it will take to read this argument to the accused. We have spent six or seven hours in delivering it and estimate that it will take approximately three hours to read it. There is a possibility that this court might be ready to announce its findings before we finish this reading. So, I was going to suggest that when the court recesses for findings, the court announce, at least unofficially, approximately what time it will be back. Then, there is another question on which we would like information. Is the Court going to pass on the three motions before it recesses for deliberation as to findings or will it make its findings on the motions when it makes its other findings?

PRESIDENT: The court will rule on the motion before it makes its findings.

DEFENSE COUNSEL: Is it proper to assume that the court will recess for findings and then come in and announce the findings on the motions?

PRESIDENT: That is right.

DEFENSE COUNSEL: That answers everything I have in mind to ask. Mr. Rachael says that he has time to deliver part of his argument before recess. It will take about five minutes.

PRESIDENT: Proceed.

MR. RACHAEL: My final argument on behalf of the accused in this case is divided into two parts. The second part will deal exclusively with Charge VIII and will cover all the defendants in that Charge. The first part will cover just that portion of Charge VII wherein the accused Kiwitt is named as defendant. Charge VII has been discussed at length and the various counsel for the defense have omitted, except by casual reference, to refer to the part which the defendant Kiwitt played.

Aside from the defendant Kiwitt's own testimony, the references made to him in the record concerning the incident alleged in Charge VII are as follows:

One: The witness, Peter Como, testified as to who was in the police station at Bieber and did not state directly that Kiwitt was there, and he does not state what Kiwitt did there.

Two: The witness, Oscar Lueck, testified that Kiwitt was in the police station at Bieber; that he had said nothing to the flier and that Kiwitt had talked only to him, Oscar Lueck, during which he stated, and I quote, "you are a fine man", and "it seems that you, too, haven't lost anything yet." That can be found on pages 460 and 461 of the record. I don't know what those words mean, but those are the words that Oscar Lueck said that Kiwitt uttered.

Three: The accused Hermann Heller, testifying in his own behalf, placed the defendant Kiwitt in the police station and said that Kiwitt was at the scene of the killing with a bicycle and that a conversation concerning a ring on the flier's hand occurred and he further testified that Kiwitt received the ring and placed it in his pocket. That can be found at pages 1497 in the record. He then went on and at page 1499 says that he knew Kiwitt by name only and that he did not know Kiwitt personally at all prior to seeing him at the police station. (Pages 1497 and 1500 of the record.) and then he went on to admit that he confused Captain Blum for the defendant Kiwitt (Page 1502), so that except for the placing of Kiwitt in the police station, Heller's testimony with regard to Kiwitt is a nullity because he has admitted confusion and besides it is perfectly obvious that the witness' testimony indicated a lack of Kiwitt's presence in the woods at the scene of the killing.

Four: Wilhelm Albrecht, the accused, taking the stand in his own behalf, testified and he also placed the defendant Kiwitt in the police station (Page 1513) and at that time testified that Kiwitt said "You play host to the flier and you let him sit down". That is on page 1535, and he also said "Kiwitt did not participate in any discussion", and "was a few steps away" when Eichel said the flier was to be done away with. That is on page 1536 on the record.

Five: Hans Eichel took the stand and he said this. "Kiwitt had nothing to do with the case. Kiwitt followed me, was always behind me like a young dog, and whenever his boss was yelling, Kiwitt felt obliged to do so, too". That is on page 1731. He also said "Kiwitt was cursing too, but I don't know what he said any more". (Page 1741.) and further, when the question was shed of Eichel, "You do recall that he (meaning Kiwitt) made some remarks, do you, in addition to the

cursing?" the answer by Michel was "No.". That is on page 1742.

Six: The only other testimony with regard to Kiwitt came from Adam Jaeger. He is the witness who testified in Charge VIII and asked that the chart be turned upside down because he couldn't understand it the other way. He testified that in the early afternoon of the 22nd of February 1945, at about 2:00 PM, he saw a police captain drive by on his bicycle, stating, "all these fliers are going to be beaten to death." He then stated that he did not know who was driving the bicycle, and that the individual was a captain and that his information as to whether or not the rider of the bicycle was the defendant Kiwitt came from comrades who said it was. That is on page 502. The testimony by Adam Jaeger that the bicycle rider was Captain Kiwitt is evidently a mistake, in view of the testimony of all the other witnesses in the case that Kiwitt came to the police station at Bieber together with the accused Michel in an automobile and afterwards left in an automobile to return to Offenbach. That is the sum total of the prosecution's claim that Kiwitt is a murderer in Charge VII.

In view of the lack of evidence as to any activity by the defendant Kiwitt with regard to the flier in that particular Charge, it is respectfully submitted to the court that the defendant Kiwitt should be found not guilty in Charge VII.

DEFENSE COUNSEL: This is the break I mentioned.

PRESIDENT: Court will recess for twenty minutes.

(Thereupon at 1005 the court recessed until 1035 hours.)

(Whereupon Court was opened at 1025)

PRESIDENT: Court will come to order.

PROSECUTION: May it please the court, let the record show that all personnel of the court, all personnel of the prosecution, all personnel of the defense, all the accused, the interpreter and reporter are present.

DEFENSE COUNSEL: Mr. Rachael will now complete his argument, may it please the Court.

MR. RACHAEL: If the court please, as I recall at the close of the prosecution's main case, I argued a motion on behalf of the accused in Charge VIII and stated at that time that in my opinion I did not believe that the prosecution had made out a prima facie case against the accused, Eichel, Kiwitt, Wahrgang, Hermann and Fay, respectively, as they were named in that Charge. I made no reference to the defendants Stroop, Trummler or Somann, because at that time it was my opinion and it still is that Stroop, Trummler and Somann had absolutely no connection with what transpired in the Bierbrauer Weg on the evening of the twenty second of February, 1945, and I will make no further reference to those three defendants with regard to what took place on that small street.

I said that I didn't believe that the prosecution had made out a prima facie case. Since that time many witnesses, including the accused, have taken the witness stand and have added to my opinion so that now not only do I believe that there was not a prima facie case, but at this point there is no question in my mind but that a reasonable doubt positively exists as to the guilt of these defendants. Bearing in mind Colonel Berman's argument as to what is a "reasonable doubt", I will proceed with my analysis of the facts in Charge VIII.

It is not too difficult to analyze the evidence adduced by both the prosecution and the defense to determine the factual situation as it existed up to the time when the flier met his death during the evening of the twenty second of February 1945 on the Fierbrauer Weg in Bieber. The evidence shows that sometime in the afternoon the police station in Bieber received custody of a flier and that he was turned over to the two policemen, Schneider and Michel, with orders to deliver him safely to the police station in Offenbach. After walking approximately six kilometers with the flier, the two policemen and the flier came to the police station and reported to Lt. Alt. Lt. Alt was the duty officer at that time and he represented the commanding officer of the Shutzpolizei. It seems that Lt. Alt evidently knew what to do with the flyers. It seems that Lt. Alt may have had an order as to how to dispose of this flyer and it seems also that these two policemen had conflicting orders, with the orders that Lt. Alt had. Michel and Schneider had orders to see that the flier was safe. Lt. Alt evidently on the other hand had orders to another effect. At any rate Captain Kiwitt was called down. The testimony shows that he drove them from the office. Michel and Schneider both said that he practically threw them out with the flier. At that point the evidence is in dispute as to whether or not Kiwitt issued an order to shoot the flyer. At any rate, when Schneider took the stand he said that the language that Kiwitt used at that time he understood to have been an order. However, his friend Michel the otherpoliceman, says that what Kiwitt said he would not consider to be an order, so we have the two policemen with Kiwitt and Alt -- one says he considered it to be an order and the other did not so consider it. Kiwitt himself says that he told the policemen that if

they had an order to shoot the flyer, there was nothing else they could do about it but obey it and the order Kiwitt was talking about, evidently was an order from Major Kuhlenbeck, which was in conflict with the policemen's orders, which they received from Goehrendt in the police station in Bieber. No matter what conversation was had, when the two policemen, when Schneider and Michel, left that police station in Offenbach, they most certainly did, in no uncertain terms, tell Kiwitt and Lt. Alt, who was there, that they were not going to shoot the flyer and thereupon they were driven out, as I said before. Something was said about shooting them on Mainzstrasse. To indicate that even if there was an order given in that police station these policemen were not going to carry it out, they went the entire length of Mainzstrasse and made no attempt or effort to shoot the flyer and to be sure that Lt. Alt would have something to report to his superior officer, he ran out of the police station a few minutes later, down the street and just caught up to them at the railroad station and asked them what they were going to do and Michel and Schneider both said that they were taking the flyer back to Bieber and when they said "back to Bieber", they said "back to the police station in Bieber", and they proceeded to Bieber.

Just about that time the airraid siren came. Now, it was very amusing to me sitting at the table listening to arguments of the prosecution, especially that point where they tried to say that the air raid siren was sounded to get the people off the streets. Certainly it was sounded for that reason. Those air raid sirens can be heard for miles and that siren was sounded in Frankfurt which is the headquarters of that area and how the people in Frankfurt could know that a flyer was walking along the street in a suburb of Offenbach, strikes me as amusing. But, the prosecution is grabbing

at straws in order to pull out a theory in this case. What is more, there was an air raid or at least a threat of an air raid because Schneider says that Michel ran ahead at that point because he was afraid of falling flak and that Schneider and the flier proceeded about three hundred meters behind him. At any rate, they got to the gate. There they were met by two guards, Jaeger and Zahn. There was a third person there too. A man by the name of Guenther. What happened at that particular point or right inside the gate is in dispute. The witness Zahn said he spoke to Nahrgang; that Nahrgang called for Hammann and that Hammann didn't come, but he says that Fay came. As to what occurred there, some of the witnesses state one thing and other state something entirely different. Nahrgang is a defendant, Zahn is not. Nahrgang is charged with murder, Zahn is a free man. Did Nahrgang do anything more than Zahn did?

As I say, some witnesses said one thing and others another. At any rate, we have two disinterested witnesses to go by. Two people who do not know personally any of the defendants or any of the witnesses and they are Michel and Schneider. They have no interest whatsoever in this case and their testimony is to be believed. They say that they walked in through the gate with the flyer and prodeeded through that courtyard and part of the way through they were joined by Fay. Now, this is all during an air raid and people have rushed out of their houses and to the cellars and others are still hurrying and they have only one thing in mind and that is to get to that air raid shelter. So, we have going through the courtyard four men, Michel, Schneider, Fay and the flyer. Now Fay says that the two policemen were unarmed, that only the guards were armed and they were armed with Italian carbines and as they approached

the place near the wooden shack, what happened? The flier made his mistake. Maybe at that time he didn't think so. The people were all off the streets, he saw that while walking through the streets. He saw that the streets and roads were clear -- that nobody was on the street. That was his intent. He couldn't do it at the railroad station because all the people had come out of their houses and there were many people in the streets, but at that time in the courtyard the streets were clear and if he could make a break then, he was free and he did. There he was with two policemen who wouldn't harm a fly and with Fay who was unarmed and so he broke away. He threw his arms like this (indicating). He didn't reach the policemen because they were a little behind him but he struck Fay on his left side and he ran, and there was only one way for him to run and that was down that stairway and through the path. What was going to happen -- if I were there I would have done the same thing as Fay did. If I were there I would have done the same thing as the policemen did. They yelled "The flier is escaping". Fay got one of the guns and fired a shot in the air. He couldn't see the flier. He had gone down the stairway. Then Fay says he chased the flyer. It is very amusing, the next bit of testimony, because Fay says there was a flight jacket on the stairs and he fell down the stairs and then he got up and chased the flier some more and that there were still people coming to the air raid shelter. They were late comers and he fired another shot in the air. That is just what I would have done to avoid hitting any of the people who m ight have still been on that path and then the prosecution says something about "broken field running". I think it was the most beautiful piece of "broken field running" that ever existed, except for one thing. Nobody knew there was a flyer there. Nobody knew the person running

was a flyer. How were they to know? The flyer got out on the road and there he was on the road turning to the right and he knew that if he ever got to the cross-path the woods were there to his right and he was free.

Hammann was Sergeant of the Guard. He was in his guard room when he heard the shouts and the shots. He ran out and did what any Sergeant of the Guard would do. When he ran out to the gate he saw Jaeger standing there and as these guards were unarmed, so was Hammann and he grabbed the gun from Jaeger and went out into the Bierbrauer Weg. He saw that the flyer had a head start, quite a head start because they ran a hundred and fifty yards before the flyer was shot and he was shot as he was turning to the woods and he was shot at the third shot. The prosecution would want this court to believe that this whole thing was a stage -- the everything was being played -- that Hammann was standing there with his gun waiting for the flyer to come out the gate and shot him. If this was a stage the flyer would have been shot in the court-yard by Fay. Why did Hammann miss twice if he were waiting for the flyer to come through the gate. At any rate, it was very unfortunate that those things happened. Unfortunate for the flyer because he is dead and unfortunate for the defendants because the flyer put into action by his conduct a series of natural acts by the defendants, which resulted in the flyer's death and which are causing them to be defendants here. It is unfortunate for everybody because of a misjudgment by the flyer.

To get back to Bierbrauer Weg, Hamman says he shot three times. Why wasn't he at the flyer's body first? There was noone

between him and the flyer. Fabian was off on the side. If there was nobody between Hammann and the flyer, why wasn't he first at the body? The answer is very logical. At the end of the third shot, when Hammann tried to shoot the fourth round, the gun jammed. He tried to open it and in opening it the fourth round flipped out. He drove the fifth round in and the fifth round went off accidentally right down in front of his feet. He finally got the sixth round in but by that time the people following him had passed and that is why Hammann says he never got to the flyer's body.

Now, let's come to Eichel. Eichel is named as a defendant. I don't know why. I suppose the only reason is because he was named in the seventh charge. But, during the entire time of this case he was in his air raid shelter. Between seven and eight o'clock he had been at the police station and from eight to ten o'clock he was in his air raid shelter until Hammann came to him and reported to him and he came out for some ten minutes, just long enough to walk from his shelter down that dirt path, meet Hammann and asked him what happened. Hammann told him and he then walked back to the court yard where the flyer's body was placed and then went back to the shelter and as having issued instructions or having a conversation at that spot, Eichel is named as a defendant in this case. If there is a stage here at all, the stage was prepared a year and a half ago, when statements were gotten and this is where the theater is. Can the prosecution say that there was a stage on Bierbrauer Weg and this thing went on without rehearsals?

If the court please, I have been getting all warmed up about this case but I have my own ideas of what happened there and I am

firmly convinced of what happened at that place. I am sure the court has listened very patiently to me because the court has heard the witnesses and I am sure the court knows as much about this case as I do. I respectfully submit to the court that from the evidence in this case, Charge VIII, that there is no doubt, no doubt, not a question of reasonable doubt -- there is no doubt that the defendants mentioned in Charge VIII are to be found not guilty.

DEFENSE COUNSEL: May it please the court, that ends the arguments by the defense. I am very happy to see that we made it in the time alletted us.

PRESIDENT: Court will be closed.

(Whereupon at 1050 hours the court was closed.)

(Thereupon the court reconvened at 1330 hours.)

PRESIDENT: The court will come to order.

PROSECUTION: May it please the court, let the record show, that all the members of the court, all the members of the prosecution, all the members of the defense, all of the accused, the reporter and interpreter are present.

PRESIDENT: The motion by each and all of the accused made March 12, 1947 for a finding of not guilty as to charge 1 and the particulars thereunder is denied.

The motions of certain named accused made March 12, 1947 for a finding of not guilty with respect to charges 5, 6, 7, 8, 9 and 10 and the particulars under each of said charges are each and all denied.

The motion of Jurgen Stroop, Wilhelm Koehler, Fritz Cirbs, Heinz Hellenbreich and Wilhelm Albrecht, made March 12, 1947 for a finding of not guilty of the crime of murder in each instance where such offense is charged is denied.

DEFENSE COUNSEL: There was just one question concerning which I would like to invite the attention of the court. The interpreters tell me that at the rate they are reading these speeches back it is going to take a very long time. The suggestion was made by the interpreters that perhaps we start reading the addresses of defense counsel as being of more interest to the accused. Has the court any instructions in the matter?

PROSECUTION: There is no objection by the prosecution.

PRESIDENT: The court desires that all of the argument be read to the accused.

DEFENSE COUNSEL: We will do that in the same sequence in which they were delivered.

PRESIDENT: That is correct.

DEFENSE COUNSEL: Does the court desire to set a time before which it will not reconvene?

PRESIDENT: The court desires that when you finish the reading of all of the arguments you notify the court that it is finished.

DEFENSE COUNSEL: The estimate is unanimously that it will take the entire rest of the afternoon at the minimum.

PRESIDENT: There is no need for rushing it. I want it read to them and read properly.

DEFENSE COUNSEL: That includes, of course, the extemporaneous remarks which were part of the record?

PRESIDENT: Yes.

The court will be closed.

(Whereupon, at 1840 hours the court was closed.)

Legal Form No. 8

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

CHARGE SHEET
ANKLAGESCHRIFT

Place .....
Ort

Date .....
Datum

Name of accused .....
Name des Angeklagten

is hereby charged with the following offences:
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: .....

.....

.....

Particulars: .....

.....

.....

Erste Anklage: .....

.....

.....

.....

Einzelheiten: .....

.....

.....

Second Charge: .....

.....

.....

.....

Particulars: .....

.....

.....

.....

Zweite Anklage: .....

.....

.....

.....

Einzelheiten: .....

.....

.....

.....

The above charges are referred for trial to the *Summary / *Intermediate Military Court to be held / *General

Die Verhandlung wird vor dem *Einfachen / *Mittleren Militärgerichte / *Oberen

at ..... on ..... 194.....
in (Address of Court) am
(Anschrift des Gerichtes)

at .....
um Uhr stattfinden.

By Order
Im Auftrage von

.....
(Signature of person preferring charges)
(Unterschrift des Vertreters der Anklagebehörde)

*Strike out words not applicable.
*Nichtzutreffendes ist durchzustreichen.

Copy of above served on accused ..... 194.....
Abschrift dem Angeklagten zugestellt am

.....
(Signature of person making service)
(Unterschrift des Zustellers)

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

2 September 1947

UNITED STATES)
)
v.) Case No. 12-2000, etc.
)
Jurgen STROOP, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 10 January 1947 to 21 March 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE 1: Violation of the Laws of War.

Particulars: That the accused, Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Arthur FÜHR, Wilhelm HÖHLER, Hans EICHEL, Josef Johann KITTT, Wilhelm ALBRECHT, Hermann MÖLLER, Wilhelm Friedrich GOEHRENDT, Paul NAHRGANG, Philipp HAMMANN, Bernard FAY, Georg BEST, Erwin GOSS, Heinrich Matthias MICHELY, Leonard BRANNER, Julius LASSAK, Fritz GIRKE, Heinz HELLENBROICH, Karl Franz STATTMANN and Michael RAAF, German nationals, between the 9th day of December 1941 and the 8th day of May 1945, at sundry places within the then German Reich, individually and collectively, as principals, accessories, leaders, organizers, instigators and accomplices, did engage in, formulate and participate in a common plan or design to commit, or cause to be committed, violations of the Laws or War and pursuant thereto did, wilfully, deliberately and wrongfully encourage, aid, abet, order and participate in, or took a consenting part in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, including killings, beatings, tortures, abuses and indignities.

CHARGE 2: Violation of Par. 1(d), Article 2 of Control Council Law No. 10.

Particulars: That the accused, Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Arthur FÜHR, Wilhelm HÖHLER, Hans EICHEL, Josef Johann KITTT, Wilhelm ALBRECHT, Hermann MÖLLER, Wilhelm Friedrich GOEHRENDT, Paul NAHRGANG, Philipp HAMMANN, Bernard FAY, Georg BEST, Erwin GOSS, Heinrich Matthias MICHELY, Leonard BRANNER, Julius LASSAK, Fritz GIRKE, Heinz HELLENBROICH, Karl Franz STATTMANN and Michael RAAF, German nationals, were members of organizations declared criminal by the International Military Tribunal in Case No. 1, i.e., the Leadership Corps, Die Geheime Staats Polizei (commonly known as the Gestapo), Die Sicherheitsdienst der Reichsfuehrer SS (commonly known as the SD), or Die Schutzstaffeln der National Socialistischen Deutschen

Arbeitspartei (commonly known as the SS), after 1 September 1939, with knowledge that the said organizations were being used in the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, annexed to the agreement establishing the Tribunal, dated 8 August 1945, or were personally implicated in the commission of such criminal acts.

CHARGE 3: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Julius LASSAK and Leonard BRANNER, German nationals, did, on or about 3 October 1944, at or near GIESSEN, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 4: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Wilhelm HÖHLER and Arthur FÜHR, German nationals, did, on or about 19 October 1944, at or near WIESBADEN, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Sgt. Willard F. PERRY, ASN 36591162, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 5: Violation of the Laws of War

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN and Arthur FÜHR, German nationals, did, on or about 30 December 1944, at or near DELKENHEIM, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be T/Sgt. Robert W. GARRISON, ASN 33355463, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 6: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Fritz GIRKE, Heinz HELLENBROICH, Karl Franz STATTMANN and Michael RAAF, German nationals, did, on or about 15 February 1945, at or near BENSHEIM, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Ray R. HERMANN, ASN 0-695168, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 7: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMMLER, Otto SOMANN, Hans EICHEL, Josef Johann KIWITT, Wilhelm ALBRECHT, Hermann MÖLLER, and Wilhelm Friedrich GOEHRENDT, German Nationals, did, on or about 22 February 1945, at or near BIEBER, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be William A. DUKE, 2nd Lt., Air Corps, AUS, ASN 0-825602, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 8: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMPLER, Otto SOHLMANN, Hans EICHEL, Josef Johann KITTT, Paul MAHRGANG, Philipp HAMMANN and Bernard FAY, German nationals, did, on or about 22 February 1945, at or near OFFENBACH, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Archibald B. MONROE, Jr., 2nd Lt., Air Corps, ASN O-834852, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 9: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMPLER, Otto SOHLMANN, Georg BEST, Erwin GOSS and Heinrich Matthias MICHELY, German nationals, did, on or about 18 March 1945, at at near HALLRABENSTEIN, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Jimmie R. HEATHMAN, ASN 37630603, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

CHARGE 10: Violation of the Laws of War.

Particulars: In that Jurgen STROOP, Hans TRUMPLER, Otto SOHLMANN, Fritz GIRKE, Heinz HELLENBROICH, Karl Franz STATTMANN and Michael RAAF, German nationals, did, on or about 24 March 1945, at or near BENSHEIM, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of two members of the United States Army, believed to be Lt. William H. FORMAN, T.D., AGO Card No. 652973, and Pvt. Robert T. McDONALD, ASN 32773939, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich.

All accused pleaded not guilty to all charges and particulars in which they were named.

III. FINDINGS AND SENTENCES:

The findings of the Court and sentences imposed are as follows:

(The numbers preceding the names are those assigned by the Court to the respective accused. These numbers will be used hereinafter to facilitate reference to the various accused.)

FINDINGS

ACCUSED	NOT GUILTY OF CHARGES NOS.	GUILTY OF CHARGES NOS.	SENTENCES
1. STROOP, Jurgen	7, 8, 10	1, 2, 3, 4, 5, 6, 9	Death by hanging
2. TRUMPLER, Hans	3, 7, 8, 9, 10	1, 2, 4, 5, 6	Death by hanging
3. SOHLMANN, Otto	3, 4, 5, 6, 7, 8, 9, 10	1, 2	4 years, commencing 30 May 1945
4. FUHR, Arthur		1, 2, 4, 5	Death by hanging
5. HOHLER, Wilhelm		1, 2, 4	Death by hanging

FINDINGS

ACCUSED	NOT GUILTY OF CHARGES NOS.	GUILTY OF CHARGES NOS.	SENTENCES
6. EICHEL, Hans	2	1, 7, 8	Death by hanging
7. KIWITT, Josef Johann	2	1, 7, 8	Death by hanging
8. ALBRECHT, Wilhelm	2	1, 7	15 years, commencing 29 May 1945
9. MOLLER, Hermann	1, 2	7	Death by hanging
10. GOEHRENDT, Wilhelm Friedrich	1, 2, 7		
11. NAHRGANG, Paul	1, 2	8	5 years, commencing 6 December 1945
12. HAMMANN, Philipp	1, 2	8	15 years, commencing 12 May 1945
13. FAY, Bernard	1, 2	8	5 years, commencing 22 May 1945
14. BEST, Georg		1, 2, 9	15 years, commencing 8 May 1945
15. GOSS, Erwin		1, 2, 9	Death by hanging
16. MICHELY, Heinrich Matthias	1	2, 9	Death by hanging
17. BRANNER, Leonard	Trial in absentia commenced--no findings or sentence.		
18. LASSAK, Julius	3	1, 2	3 years, commencing 6 May 1945
19. GIRKE, Fritz		1, 2, 6, 10	Death by hanging
20. HELLENBROICH, Heinz		1, 2, 6, 10	Death by hanging
21. STATTMANN, Karl Franz		1, 2, 6, 10	Death by hanging
22. RAAF, Michael		1, 2, 6, 10	Death by hanging

IV. SUMMARY OF EVIDENCE:

1. Common Plan and Design: Orders and directives to kill unarmed prisoners of war were conceived and passed down by various persons holding high official positions in the hierarchy of the then German Reich. These orders were transmitted through official channels to accused STROOP, SOMANN, and TRUMPLER in Wehrkreis XII. STROOP was the Higher SS and Police Leader in said Wehrkreis, SOMANN was the Inspector of the Security Police and Security

Service and was later succeeded by accused TRUMMLER. These accused held conferences at various times concerning these orders among themselves and w th their subordinates, and they passed them on through official channels to lower commands. Acting in accordance with these orders, their subordinates killed unarmed and surrendered American prisoners of war.

Most of the accused in this case admitted their guilt and the respective parts played by each in this common plan and design to violate the laws of war. Such confessions of guilt appear in the extrajudicial sworn statements made by them and in their testimony given during the trial. Most of them contended that they acted pursuant to superior orders emanating from higher civil and military authority. This and other legal questions raised during the trial will be discussed in Section VI, post.

2. Organization of German Police: Himmler, as Reichsfuhrer SS and Chief of the German Police, by decree dated 26 June 1936 reorganized the German Police into two separate branches, i.e., Ordnungspolizei (ORPO, meaning Order Police or regular police) and the Sicherheitspolizei (SIPO, meaning Security Police).

The Order Police was composed of the uniformed forces consisting of the schutzpolizei (protection police), the gendarmerie (rural police), and the administrative police. The Security Police was made up of the Criminal Police (short title KRIPO) and the State Secret Police (Gestapo). The Security Service (SD) was consolidated with the Security Police (SIPO) by decree of 27 September 1939. The consolidation placed both the Security Police and Security Service under the Reich Security Head Office (RSHA), which was at the same time both one of the principal offices (Hauptamter) of the SS under Himmler as Reichsfuhrer SS and an office in the Ministry of the Interior under Himmler as Chief of the German Police. The SD was the intelligence agency of the SIPO. This change, above referred to, necessitated the appointment of certain high police officers to supervise the work of the ORPO and SIPO in their respective spheres and also to act as liaison officers with the local governments and the central police departments in Berlin. To each wehrkreis or military district was assigned an inspector of ORPO and of SIPO. The accused SOMANN was appointed to the latter position in Wehrkreis XII and was subsequently succeeded

by accused TRUPPLER. Their tasks were to co-operate with the gauleiters and commander of the wehrkreis to which they were appointed as well as with the administrative authorities. Subsequently, in order to concentrate police power in the hands of a trusted few, Himmler elevated the inspectors of ORPO and the inspectors of SIPO to the positions of befehlshaber der ORPO (BDO) and befehlshaber der SIPO und des SD (BDS). They were then commanders. As commanders, they had complete command of their respective forces and were responsible for their training, preparedness, equipment, etc.

Later, Himmler appointed a police leader in each wehrkreis, who was his personal representative. For this job he chose the SS fuhrer or leader of the SS forces in the SS oberabschnitte. (The oberabschnitte was the territorial division of the SS in the German Reich coextensive with the wehrkreis or military district.) As such, he was the head of all police forces. In Wehrkreis XII he appointed the accused STROOP, who was at that time SS leader, as Higher SS and Police Leader. By virtue of his rank and position, he was the "Little Himmler" in the wehrkreis. At his disposal he had Allgemeine SS regiments, units of the Waffen SS in local garrison and all branches of Regular Police, Security Police and Security Service in the wehrkreis. His job was to assure co-operation between the regional SS, police officers, and the local military and civil authorities and in the event of emergencies was to take over command of the combined SS and police forces in his area. Himmler gave STROOP this extraordinary authority in September 1944.

3. Chain of Command:

a. From the Nazi Hierarchy: Himmler, as Reichsminister of the Interior and Commander-in-Chief of the SS and German Police, was the supreme commander. He had a direct channel of command to the Reichssicherheitshauptamt (RSHA), Reichs Security Head Office, headed by the Chief of the Security Police and Security Service, General Kaltenbrunner, and to the Hauptamt Ordnungspolizei (ORPO), Head Office, Order Police, headed by the Chief of the Order Police, General Kummenberg. Both of these head offices were located in Berlin. Included in the organization of these head offices were the "Amts", i.e., the departments similar to our general staff sections. From these head offices there existed a channel of command to the Higher SS and Police Leader and to

the commander of the Security Police and Order Police in Wehrkreis XII. There was also a direct channel of command from Himmler to the Higher SS and Police Leaders (R 61; P-Ex 9).

b. From the Higher SS and Police Leader: From the Higher SS and Police Leader in the wehrkreis there was a direct channel of command to the commander of the Security Police and Order Police in the wehrkreis. The Higher SS and Police Leader was the commander of all police forces in the wehrkreis. STROOP's territorial command consisted of Wehrkreis XII and that part of Wehrkreis IX known as Hessen. The entire area under his command was called the Rhein-Westmark area. By virtue of his rank of lieutenant general, he was the appointing and reviewing authority of the SS and police courts and in charge of the prisoners of war in the wehrkreis. He was also commander of the SS in his area, maintaining SS offices at Frankfurt, Saarbrucken and Koblenz. His area was comprised of three gaus, Gau Westmark, Gau Hessen-Nassau, and Gau Moselland, the last named included Luxembourg. Each gau was governed by a gauleiter. In the performance of his duties STROOP was assisted by a chief of staff and a staff organized into "Amts". These "Amts" were similar to those in the head offices of both branches of the police in Berlin. The wehrwolf undertaking, sabotage activities behind enemy lines, in his wehrkreis was under his command and the accused BEST aided in the supervision thereof (R 61, 71; P-Exs 9, 13). Accused GOSS was in charge of the wehrwolf school located at Vallrabenstein. Accused MICHELY was an instructor in the school (R 1032).

c. From Inspector and Commander of the Security Police and Order Police: The inspector or commander of the Security Police and Security Service in Wehrkreis XII, the accused SOMANN and his successor the accused TRUMMLER had a direct channel of command to the branch offices in the wehrkreis, viz., the Criminal Police (KRIPO), the State Secret Police (Gestapo), and the Security Service. The Gestapo headquarters for this wehrkreis maintained offices at Darmstadt, Frankfurt, Koblenz, and Saarbrucken. The Darmstadt office was under the command of the accused GIRKE assisted by the accused HELLENBROICH. These branch offices in turn had a channel of command down to the suboffices in their respective areas.

The channel of command for the Order Police followed the same pattern.

The commander of the Order Police had a channel of command to the higher police authorities and state governments, the lord mayor, national police administration headquarters, and district police authorities. The higher police authorities and state governments were of wehrkreis level and the last three of regional and local level.

The national police administration headquarters had jurisdiction over the SCHUPO (protective police) in large cities with channels of command to police law enforcing agencies subordinate thereto. The district police authorities had jurisdiction over police agencies in small towns and administered police protection through the gendarmerie (R 61, 71; P-Exs 9, 13).

4. Incidents: The incidents covered by charges 3 through 10 will hereinafter be referred to as "incident number 3", "incident number 4", etc. There follows a description of these incidents:

a. Incident Number 3: On or about 3 October 1944 in the vicinity of Giessen, Germany, the accused LASSAK turned over a captured American flyer to the Gestapo. The flyer was shot by BRANNER in conformity with orders issued by his immediate superior Wintzer. The shooting was done in the Philosophen forest, near Giessen, Germany, on or about 3 October 1944.

b. Incident Number 4: On or about 19 October 1944 accused TRUMMLER ordered accused HOHLER and FUHR and one Fraund, Gestapo agents under his command, to kill a captured American flyer who was in the Gestapo headquarters in Wiesbaden. In conformity with this order, HOHLER, FUHR and Fraund drove the flyer in an official car toward Frankfurt. On the Wiesbaden-Frankfurt road, the flyer was ordered out of the car and shot by Fraund.

c. Incident Number 5: On or about 30 December 1944 accused TRUMMLER ordered accused FUHR and one Fraund, both Gestapo agents under his command, to kill a captured American flyer who was in the Gestapo headquarters in Wiesbaden. That evening, in conformity with this order, FUHR and Fraund drove the flyer in the direction of Frankfurt, Germany. On the Wiesbaden-Frankfurt road the flyer was ordered out of the car and they both shot him, resulting in his death.

d. Incident Number 6: On or about 15 February 1945 a captured

American flyer was brought to the Gestapo headquarters in Bensheim, Germany. Accused GIRKE was in charge of the headquarters. He telephoned accused TRUMMLER, his superior, for instructions regarding the disposition to be made of this flyer. Upon being informed by TRUMMLER that the flyer had to be shot, he ordered his assistant, accused HELLENBROICH, to have accused STATTMANN and RAAF, Gestapo agents under his command, kill the flyer. In conformity with this order, accused STATTMANN and RAAF walked the flyer to a forest in the vicinity of Bensheim where they both shot the flyer, resulting in his death.

e. Incident Number 7: On or about 22 February 1945, a captured American flyer was brought to the police station in Bieber, Germany. Accused ALBRECHT, a police lieutenant, was the commanding officer of the police station. Accused MOLLER and GOEHRENDT were policemen under his command. Accused EICHEL, a lieutenant colonel of the police, was the police director of the area and accused KIWITT, a police captain, was one of EICHEL's assistants. While the flyer was being interrogated by ALBRECHT and others, EICHEL and KIWITT entered the police station. EICHEL tore the scarf from the flyer's neck and hit a cigarette out of his mouth. Both EICHEL and KIWITT reprimanded ALBRECHT and the others present for showing consideration to the flyer. In ALBRECHT's office EICHEL gave him an order to shoot the flyer. ALBRECHT refused to do this, whereupon EICHEL ordered MOLLER to kill the flyer. Outside the police station both EICHEL and KIWITT incited the crowd by making inflammatory remarks directed at the flyer. The flyer left the police station with MOLLER, accompanied by ALBRECHT and a policeman named Como. ALBRECHT ordered accused GOEHRENDT to follow them. In a forest near Bieber, MOLLER shot the flyer to death.

f. Incident Number 8: On or about 22 February 1945, accused GOEHREN turned over a captured American flyer to policemen Michel and Schneider in the Police station in Bieber, Germany, with instructions to deliver him to police headquarters in Offenbach. They took the flyer to Offenbach and reported to accused KIWITT who ordered them to kill the flyer. On the return trip an air raid alarm sounded and the policemen together with the flyer went to an air raid shelter on Bierbrauer Weg for cover. The air raid shelter consisted of

an open area and an underground shelter at one end which was used as a command post by accused EICHEL. EICHEL was present in this underground shelter at the time. With the exception of the main gate the only other exit from the area was on Bierbrauer Weg. Near the main gate one of the policemen told accused NAHRGANG they had a flyer who was to be shot. NAHRGANG called for accused HAMMANN and FAY. They engaged in a whispering conversation and FAY was heard to say that this was an easy matter. Thereupon, FAY shoved and pushed the flyer toward the stairway accompanied by NAHRGANG and one of the policemen. In the meantime a policeman had given FAY his pistol. Suddenly, FAY fired the pistol into the air and shouted that a flyer was escaping. The flyer ran down the stairway toward the secondary exit. HAMMANN, who remained behind, ran to the main gate, took a carbine from the guard who was standing there and ran down Bierbrauer Weg to head off the flyer who could only come out of the secondary exit. Shortly thereafter the flyer came out and HAMMANN fired three shots, killing him.

g. Incident Number 9: On or about 18 March 1945 a captured American flyer was brought to the wehrwolf school in Wallrabenstein, Germany, by accused MICHELY. MICHELY was an instructor in the school and accused GOSS was the director. GOSS ordered MICHELY to take the flyer to Idstein and kill him on the way. The order given by GOSS to MICHELY was in conformity with an order from accused STROOP through accused BEST. That evening, in conformity with this order, MICHELY took the flyer toward Idstein and shot him on the way.

h. Incident Number 10: On or about 24 March 1945 two captured American prisoners of war were brought to the Gestapo headquarters in Bensheim, Germany. Accused GIRKE ordered accused HELLENBROICH to have accused STATTMANN and RAAF kill the two prisoners of war in the garden in the rear of the headquarters. In conformity with the order STATTMANN and RAAF shot the two prisoners.

V. EVIDENCE AND RECOMMENDATIONS:

1. JURGEN STROOP

Nationality: German

Age 51

Civilian Status:	Unknown
Party Status:	Nazi party since 1 September 1932
Military Status:	SS Major General of the Waffen SS; Chief of the SS Main District Rhein-Westmark; Lieutenant General and Higher SS and Police Leader, Rhein-Westmark, from 9 November 1943; Allgemeine SS since 1 July 1932; Waffen SS since 1936
Plea:	NG Charges 1 through 10
Findings:	G Charges 1 through 6 and 9 NG Charges 7, 8 and 10
Sentence:	Death by hanging

Evidence for Prosecution: Accused was the Higher SS and Police Leader for the Rhein-Westmark area with the rank of lieutenant general in the SS since 9 November 1943 (R 239, 1947; P-Ex 41). As Higher SS and Police Leader, he was in command of the Order Police and Security Police in said area (R 227; P-Ex 354, p. 9). The area was comprised of Wehrkreis XII and that part of Wehrkreis IX known as Hessen (R 65; P-Ex 11). The headquarters for the area was located in Wiesbaden, Germany (R 1947).

About the middle of September 1944, accused received an order, hereinafter referred to as the "noninterference order, from Himmler to the effect that the police were not to interfere in actions by the civilian population against captured Allied flyers. The order was passed down from Himmler's office. This order contained a request that he transmit it to the commanders of the Regular Police and Security Police (R 91; P-Ex I9). The accused subsequently transmitted it to the commander of the Order Police in his area. Later, at a conference held in his office, the order was read to the commanders of the Order Police and Security Police (R 98, 100; P-Exs 27A, 28A). He also discussed the order at a conference of the heads of the Order Police for Rhein-Westmark area held in Metz in 1944 (R 100; P-Ex 28A). At another conference held in his office in about October 1944, attended by accused TRUMMLER, commander of the Security Police, STROOP complained that the Order Police were not complying with Himmler's order (R 184-186, 202, 203, 215). He threatened to punish severly any members of the Order Police who protected captured flyers. At that time he directed that captured flyers should be turned over to the Security Police (R 126, 216). STROOP insisted

upon strict obedience to his orders. In November 1944, he recommended severe punishment for a police official who gave aid to a captured flyer (R 129, 187). He also voiced approval of Goebbel's article published in a party newspaper inciting the German people against Allied flyers (R 92, 132; P-Ex 21). STROOP received his orders and directives from Himmler, Kaltenbrunner and Wunnenberg (R 199). In about September 1944, he received an order from Kaltenbrunner to the effect that captured parachuted flyers would be turned over to the SIPO and shot (R 96; P-Ex 26). He passed this order to the commanders of the Security Police, Regular Police and SS Colonels in command of SS Regiments (R 200, 201). During 1944 he received Bormann's order to the effect that no police action would be taken against the civilian population who lynched flyers (R 93, 201, 202; P-Ex 22). The Bormann order and all other principal orders were discussed by STROOP with commanders of the Order Police and Security Police (R 202).

STROOP passed these orders to agencies under his command. In the summer of 1944 it was known among police officials under his command in a kreis surrounding Koblenz that STROOP had passed down the noninterference order (R 227, 230; P-Exs 35A, pp. 14, 15, 37A, p. 7). In February 1945 this order was discussed in a conference of the commanders of the gendarmerie and schutzpolizei of the Koblenz area. It was agreed that captured flyers were to be turned over to the Gestapo and that the police should not interfere in clashes between the civilian population and the flyers (R 227; P-Ex 35A, pp. 15, 16). A written order from STROOP to the effect that all captured flyers be shot was also read at this meeting (R 230; P-Ex 37A, pp. 3-6). The shooting order and the order that flyers be turned over to the Gestapo were transmitted by STROOP to police presidents and police directors. This occurred in August or September 1944. These orders were marked "Secret" and were to be destroyed immediately after they were read (R 266, 267; P-Exs 56A, 57, p. 3). In June or July 1944, the shooting order was verbally transmitted by STROOP to the SS colonel in command of the Allgemeine SS in Saarbrucken (R 2127). In September 1944, at a conference of the leaders of the Allgemeine SS at his headquarters, STROOP reminded those present of the order to shoot flyers (R 2128, 2132). During a police conference of the

schutzpolizei of the Koblenz area in Wehrkreis XII held in August or September 1944 in Koblenz, those present were informed of the order issued by STROOP that flyers would be turned over to the Gestapo instead of the Wehrmacht. About two weeks later, the police officials received this order in writing, through channels, from STROOP's headquarters (R 230; P-Ex 37A, pp. 2-4).

As a result of these orders passed down by STROOP to the agencies under his command, captured American flyers were illegally killed by his subordinates. On or about 3 October 1944 three American flyers were turned over to a kreisleiter and another flyer was turned over to the Gestapo in compliance with these orders, in the Giessen area, incident number 3. These flyers were shot (R 267; P-Ex 57, pp. 3-5). On or about 19 October 1944, accused TRUMMLER ordered his subordinates to kill a captured flyer, incident number 4. This flyer was killed in conformity with the shooting order from Kaltenbrunner to TRUMMLER (R 2173). An order in the same form as the Kaltenbrunner order was also passed by STROOP to TRUMMLER (R 2161, 2169). In December 1944, after a captured flyer was killed near Wiesbaden pursuant to an order from TRUMMLER, the latter telephoned STROOP and informed him of this fact, incident number 5 (R 312; P-Ex 65A). On or about 15 February 1945 accused GIRKE ordered his subordinates to kill a captured flyer near Bensheim, Germany, incident number 6. GIRKE gave this order in conformity with a similar order received from TRUMMLER over the telephone (R 1449). The order to GIRKE originated from Kaltenbrunner and was transmitted by STROOP to TRUMMLER (R 2169-2176). In March 1945, an American flyer was killed by a member of the wehrwolf school in Wallrabenstein on orders from STROOP, transmitted by accused BEST, incident number 9 (R 616, 618; P-Exs 141A-143, p. 6).

Evidence for Defense: The accused testified under oath. He denied the receipt of any general order to kill captured enemy flyers (R 1954). He denied issuing any such shooting orders, as well as any connection with or knowledge of the incidents set forth in charges 3 through 10 (R 1977, 1978, 2006). He admitted receiving written orders concerning treatment of captured flyers, either from Himmler or from the main office of the Order Police (R 1953). The first order was received in 1944 to the effect that

flyers were to be turned over to the Wehrmacht. Later, he received an order that flyers were to be turned over to the Security Police. In July or August 1944 he received the noninterference order (R 1954). He transmitted all these orders to his subordinates (R 1955). On one occasion, the accused TRUMMLER informed him that three or four flyers were killed while attempting to escape (R 1960). On another occasion, the accused expressed the opinion that captured flyers should be shot. This utterance was induced by the suffering and misery caused by incessant bombings (R 1976). He testified that he attended conferences with Himmler and Kaltenbrunner but never discussed treatment of Allied flyers with either of them (R 1980-1982). Orders were received by him from Himmler, or direct from his headquarters, from Bormann and his staff, from the main office of the Order Police, and sometimes from the main office of the Security Police (R 1988, 1989). He transmitted all orders which he received (R 1989). He denied he ever saw an order issued by Keitel dealing with captured flyers (R 94, 1990; P-Ex 24). However, he admitted knowledge of an order issued by Hitler dealing with the same matter (R 89, 1991; P-Ex 17). The noninterference order received from Himmler in June or July 1944 was passed on by him to his subordinates at a conference attended by commanders of the Order Police and the Security Police (R 1992). He admitted receiving the Bormann order (R 93, 1994; P-Ex 22)

STROOP's chief of staff testified that he never saw an order directing that captured flyers be shot and particularly that he never saw any such order leave in the mail (R 2094). There was further evidence that the Gestapo headquarters in Frankfurt, the Higher SS and Police Leader in Wehrkreis IX, and the Police President of Saarbrucken never received any such shooting order (R 2115, 2325, 2332, 2333).

Sufficiency of Evidence: There is considerable evidence as to accused STROOP's membership in the SS and as to his being implicated in incidents numbers 3 through 6 and 9. The evidence is clear that the accused received orders regarding the illegal treatment of captured Allied flyers. It is also clearly established that these orders were transmitted by STROOP to all agencies under his command. It was proven that his subordinates, acting in

conformity with such orders, illegally killed unarmed and surrendered American flyers throughout the area under his command, and the Court was warranted from the evidence concerning the vigorous manner in which he transmitted the various orders to all his agencies and his efforts to enforce them that he encouraged and provoked the killings involved in incidents numbers 3 through 6 and incident number 9.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Two Petitions for Review were filed by Dr. Max Rau, German defense counsel, 19 April 1947, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1945. One of the petitions filed by Dr. Rau urges a new trial upon the ground that the accused was convicted upon the perjured testimony of accused TRUMMLER to the effect that he had received the shooting order from STROOP. The fact is that TRUMMLER did not so testify. He testified that he received the shooting order from Kaltenbrunner in Berlin at the time he was assigned to Wehrkreis XII. He further testified that STROOP gave an order during a conference which was identical in content. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. HANS TRUMMLER

Nationality:	German
Age:	46
Civilian Status:	Banking and Automobile Industry; Colonel, Security Police, 1 August 1937 to 1945; Commander of the Security Police and Security Service, Rhein-Westmark area, since 15 September 1944.
Party Status:	Nazi party since 1928
Military Status:	SS Colonel from 1 July 1935 to 1945; SA since 1928.
Plea:	NG Charges 1 through 10
Findings:	G Charges 1, 2, 4, 5 and 6; NG Charges 3, 7, 8, 9 and 10
Sentence:	Death by hanging

Evidonce for Prosecution: Accused TRUMMLER was a member of the SS (R 239, 2155; P-Ex 42) and the SD (R 167, 213, 811, 2170). The accused was Commander of the Security Police and Security Service in the Rhein-Westmark area with the rank of SS colonel from 15 September 1944 (R 2154). He succeeded accused SOHANN (R 153). On one occasion he told the Gestapo chief of the Frankfurt office who was under his command that he thought it proper to shoot captured Allied flyers (R 157). In March 1945, a commissioner of one of the suboffices of the same Gestapo chief reported to the latter that accused TRUMMLER had ordered that captured Allied flyers be shot (R 157, 158). In December 1944, at a conference of the Security Service in Frankfurt, the head of the agency announced an order that all captured enemy flyers were to be rendered harmless on the spot (R 167, 168). The witness as to this believed the order came from TRUMMLER (R 169). Toward the end of the war, at meetings of inspectors, the accused said that all captured flyers turned over to or apprehended by the Gestapo were to be shot (R 181; P-Ex 34A, p. 2). The accused was also present at a conference with STROOP when the shooting order from Kaltenbrunner (R 96; P-Ex 26) was discussed. At that time STROOP said the order was to be strictly enforced (R 202, 203). The order that captured flyers were to be killed was known at the Gestapo headquarters and at the office of the Security Service in Koblenz. The witness who testified as to this thought that the order came from superior authority, accused TRUMMLER (R 228; P-Ex 36A). The Gestapo headquarters at Darmstadt, as well as other Gestapo headquarters, constabulary headquarters, and the offices of all other leaders under TRUMMLER's command, received the same order (R 383; P-Ex 106A, pp. 3, 4). In conformity with these orders transmitted by accused TRUMMLER, subordinates under his command illegally killed unarmed and surrendered American flyers.

In October 1944, the accused ordered Fraund, and accused FUHR and HOHLER to drive a captured American flyer in an official car toward Oberursel after darkness and shoot him at an opportune moment, incident number 4. They were also ordered to notify the local gendarmerie to arrange for the flyer's burial. After darkness, these three drove the flyer in the direction of

Frankfurt. Near an inn on the Wiesbaden-Frankfurt road the flyer was killed. They then drove to Wallau and notified the local gendarmerie to bury the victim. Upon their return to Wiesbaden they reported the execution of the order to TRUMMLER (R 312; P-Ex 65A). The next day HOHLER made a written report to TRUMMLER to the effect that the flyer was shot while trying to escape. TRUMMLER then handed out a box of cigars (R 314; P-Ex 66A). The victim was identified as an American soldier, one Willard F. Perry (R 309; P-Ex 62).

On about 28 or 29 December 1944, an American flyer, believed to be Robert Garrison, parachuted to safety in the vicinity of Langenhain, Germany (R 270, 272). This flyer was taken to accused's headquarters located on Paulinenstrasse, Wiesbaden, Germany (R 280). TRUMMLER then ordered one Fraund and the accused FUHR, both employees of the Gestapo in Wiesbaden, to shoot the flyer that night after dark, incident number 5. Pursuant to this order, Fraund and FUHR drove the flyer toward Frankfurt, and on the Wiesbaden-Frankfurt road they both shot the flyer resulting in his death. They then notified the gendarmerie at Wallau to bury the body. They returned to Wiesbaden and reported the accomplishment of the mission to TRUMMLER. Thereupon, in their presence, TRUMMLER telephoned STROOP and informed him the flyer had been done away with (R 311, 312; P-Exs 64A, 65A).

On 15 February 1945, an unarmed and surrendered American flyer was shot by members of the Gestapo headquarters in Bensheim, commanded by accused GIRKE and HELLENBROICH, in conformity with orders issued by the accused TRUMMLER, incident number 6 (R 387; P-Ex 107A).

Evidence for Defense: TRUMMLER testified that on 15 September 1944 he reported to Berlin and received the assignment of Commander of the Security Police and Security Service for the Rhein-Westmark area (R 2159). On 13 September 1944, in a conference with Kaltenbrunner concerning his new duties, the latter gave him an order that captured flyers were to be shot (R 2161). He later received a similar order from Major General Muller, Chief of Office No. 4, Reich Head Security Office (R 2162). Since these orders had been decided upon by the Reich government, he accepted them as

legal orders (R 2161). He took over his duties at Wiesbaden on 20 September 1944 (R 2165). The accused STROOP held conferences of his subordinate commanding officers about once a week (R 2167). During these conferences, STROOP transmitted the order to the accused and others present, that captured flyers were to be shot. This order was in the same form as the previous order the accused had received from Kaltenbrunner (R 2169).

He denied any guilt concerning charges 1, 2, 3, 7, 8, 9 and 10, but admitted full responsibility for the killings mentioned in charges 4, 5 and 6 (R 2169-2178). Regarding charge 4, he testified that on 19 October 1944, he was informed that the rural police had turned over a flyer. He telephoned the Gestapo chief in Wiesbaden, one Luckhard, and ordered a detail of two men to shoot him. Fraund and accused FUHR reported to him for this purpose, and he thereupon gave them the order to shoot the flyer. The shooting took place that evening and both Fraund and FUHR reported that the order had been executed (R 2171-2173). He testified that, if these men had refused to carry out his order, they would have been severely punished (R 2174). As to charge 5, he testified that on 30 December 1944 Luckhard reported to him that the rural police had turned over a captured enemy flyer. He ordered Luckhard to furnish a detail of two men to shoot the flyer. Fraund and FUHR reported for this purpose and he thereupon gave them an order to shoot the flyer. They returned that evening and reported that the order had been executed. On his order, the execution of this flyer was reported by telephone to STROOP's office (R 2174, 2175). Concerning charge 6, he testified that it was quite possible that on 15 February 1945, the accused GIRKE told him by telephone that the Gestapo headquarters in Darmstadt had a flyer and that he thereupon ordered the flyer shot (R 2176). He testified that had he failed to carry out Kaltenbrunner's order he would have been shot (R 2179). Throughout his testimony concerning incidents 4, 5 and 6, he emphasized that the victims were "terror flyers".

Sufficiency of Evidence: There is considerable evidence as to accused TRUMMLER's membership in the SS and SD and as to his being implicated in incidents numbers 4, 5 and 6. By his testimony, the accused freely admitted his

part in the common plan and design to violate the laws of war; that he received the so-called shooting order from higher authority and transmitted the same to his subordinates; and that, in incidents 4, 5 and 6, he ordered his subordinates to kill unarmed and surrendered American flyers pursuant to the order. With regard to the evidence offered in support of his plea of superior orders, the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post. While his actions may have been in conformity with orders from superiors, it appears that he willingly co-operated and it does not appear that his actions in incidents 4, 5 and 6 were under immediate compulsion.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Dr. Buerger, German defense counsel, 24 March 1947, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. A recommendation, 21 March 1947, was submitted by six members of the Court which heard the case urging that his death sentence be commuted to life imprisonment because of his honesty and truthfulness in accepting full responsibility for his acts. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

3. OTTO SOMANN

Nationality:	German
Age:	47
Civilian Status:	Agriculturist. Security Service from 1936 to 1944; Inspector of Security Police and Security Service, Rhein-Westmark area from January 1943 to 28 July 1944; Inspector of customs police from 1944 to 1945.
Party Status:	Nazi party since March 1927
Military Status:	SS Colonel of police, date unknown; Allgemeine SS from 1937 to 1945; Waffen SS from August 1943 to November 1943
Plea:	NG Charges 1 through 10
Findings:	G Charges 1 and 2; NG Charges 3 through 10
Sentence:	4 years, commencing 30 May 1945

Evidence for Prosecution: Accused SOMANN was a member of the SS (R 239, 2246; P-Ex 43) and the SD (R 239, 2246; P-Ex 43). The accused was Inspector of the Security Police and Security Service with headquarters located in Wiesbaden, Germany, from January 1943 to the end of July 1944 (R 2246). During his tenure of office, the accused received orders directing illegal treatment of captured Allied flyers from the Nazi hierarchy. He passed down these orders to agencies under his command. In June or July 1944 at a conference held in his headquarters at Wiesbaden attended by all leaders of the Gestapo, Criminal Police and Security Service in the Rhein-Westmark area, he read the noninterference order from Himmler (R 155, 160). He directed that this order be made known to all the members of the Security Police and Security Service (R 155, 161). In discussing the noninterference order, he made a statement which could only be interpreted to mean that captured enemy flyers turned over to the Security Police were to be shot (R 104, 181, 383; P-Exs 30A, p. 3, 34A, p. 3, 106A, p. 4). After the publication of Goebbel's article in the summer of 1944 branding Allied flyers as murderers, SOMANN announced the order to shoot captured flyers (R 387; P-Ex 107A).

About August 1944, the accused or his successor transmitted an order to the police directors and police presidents under his command that captured flyers were to be turned over to the Gestapo (R 266, 267; P-Exs 56A, 57, p. 3).

Evidence for Defense: The accused, in his testimony, denied any guilt regarding the matters set forth in charges 3 through 10 (R 2268). He denied that he discussed or planned any violation of the laws of war with any of the other accused as alleged in charge 1 (R 2272, 2273). He testified that he was never involved in any of the criminal activities of the organizations declared criminal by the International Military Tribunal (R 2275, 2276). He testified that his duties were limited to inspection of the offices of the Security Police and Security Service (R 2254). At the time he took this assignment, several orders were passed down to him concerning treatment of Allied flyers. The original order was that captured flyers were to be turned over to the army. In the beginning of 1944, he received an order from

"Amt" 4, Reich Head Security Office, that captured flyers in the hands of the Security Police were to be sent to Oberursel through the Gestapo at Frankfurt (R 2257). This order was received verbally and was transmitted verbally to the offices of the Gestapo, Criminal Police and Security Service in his area (R 2258). Toward the end of June 1944, he received the noninterference order (R 2258). This order was received from Himmler with instructions by Kaltenbrunner that it was to be transmitted verbally (R 2259). In June or July 1944, he transmitted this order to the chiefs of his agencies during a conference held in his office in Wiesbaden (R 2259). He denied that he ever made any explanation of this order which could be interpreted as an order to shoot captured flyers (R 2260, 2263). He admitted that he might have stated an opinion concerning this order which might have led to some misunderstanding (R 2264, 2265). He also admitted receiving an order in the middle of 1943 from Kaltenbrunner to the effect that enemy agents had to be turned over to the Gestapo for final decision (R 2266, 2267) and receiving one from Adolf Hitler to the effect that parachuted commando units, agents, etc., were to be killed on the spot (R 2268). During the time he held the position of Commander of the Security Police and Security Service, not a single case of a murdered flyer was called to his attention (R 2268). The punishment for failure to carry out an order during war time was death (R 2272). All orders received by him from proper authority were transmitted to chiefs of Gestapo, Criminal Police and Security Service (R 2284). However, he denied that he ever issued orders to his chiefs that captured flyers were to be shot (R 2289). During his tenure of office, no captured flyer was ever killed in the area under his command (R 2289).

Sufficiency of Evidence: There is considerable evidence as to accused SOHANN's membership in the SS and SD and as to his being implicated in the common plan and design to violate the laws of war. The evidence is clear that the accused received orders from higher German authority directing illegal treatment of captured flyers, which orders he transmitted to subordinates under his command. His participation in the common plan and design to violate the laws of war is thus established.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review, 24 March 1947, was filed by Lieutenant Colonel William Berman, Chief Defense Counsel. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. ARTHUR FUHR

Nationality:	German
Age:	37
Civilian Status:	Chauffeur and mechanic; Secret State Police (Gestapo) from April 1937, with the rank of SS Master Sergeant since 1944; Security Service from 1939 to 1945
Party Status:	Nazi party from 1931 to 1945
Military Status:	SA from 1931 to 1932
Plea:	NG Charges 1, 2, 4 and 5
Findings:	G Charges 1, 2, 4 and 5
Sentence:	Death by hanging

Evidence for Prosecution: Accused FUHR was a member of the SS (R 1143, 1183); the SD (R 239; P-Ex 44); and the Gestapo (R 239, 288, 298, 306, 1183, 1216, 1218; P-Ex 44). The accused was employed as a driver and mechanic at the Gestapo headquarters in Wiesbaden, Germany (R 1142).

On 19 October 1944, the accused, HOHLER, and one Fraund, employees of the same Gestapo headquarters, were ordered to report to accused TRUMLER (R 1145, 1146). TRUMLER ordered them to drive a captured American flyer after darkness in an official car in the direction of Frankfurt, shoot him at an opportune moment and direct the local gendarmerie to bury the body, incident number 4 (R 1147). After darkness, FUHR drove the flyer with HOHLER and Fraund in the direction of Frankfurt. On the road between Wiesbaden and Frankfurt, they stopped near an inn. HOHLER and Fraund got out of the car with the flyer, and while accused was turning the car around, he heard shots and saw the dead flyer two or three meters from the edge of the road. All [illegible] drove to [illegible] and directed the gendarmerie to bury

the road. All three drove to Wallau and directed the gendarmerie to bury the body. They returned to Wiesbaden and reported to TRUMPLER that the order had been executed (R 312; P-Ex 654). The flyer was buried in the cemetery at Wallau (R 296, 302, 304). The body was exhumed on 14 December 1945 and identified as that of an American soldier, Willard F. Perry (R 309; P-Ex 62).

On or about 30 December 1944, an American flyer, believed to be Robert Garrison, was brought to the Gestapo headquarters in Wiesbaden, Germany, incident number 5. After an unsuccessful attempt to interrogate him, accused FUHR was ordered to take him to the cellar of the headquarters (R 286, 312; P-Exs 61, pp. 13, 14, 65A). That afternoon FUHR and Fraund were ordered to report to accused TRUMPLER who ordered them to shoot the flyer after dark. That night FUHR drove Fraund and the flyer in the direction of Frankfurt and on the road between Wiesbaden and Frankfurt stopped the car near an inn. Fraund ordered the flyer out of the car and each fired a shot at him. The flyer collapsed, dead. They then drove to Wallau and directed the gendarmerie to bury the body. They returned to Wiesbaden and reported the accomplishment of the mission to TRUMPLER (R 311, 312; P-Exs 64, 65A). The victim was later buried in the cemetery at Delkenheim, Germany (R 297). In December 1945 or January 1946, the body was exhumed (R 307). It was identified as that of an unknown American soldier (R 310; P-Ex 63).

Evidence for Defense: In his testimony the accused admitted that he participated in the incidents covered by charges 4 and 5 in substantially the same degree as indicated by the evidence for the prosecution (R 1145-1155). He testified that he assumed the orders he received from his superior, accused TRUMPLER, who held the rank of SS colonel, were proper and that he was duty bound to obey them (R 1157). Disobedience of such an order in war time meant death (R 1158).

Sufficiency of Evidence: There is considerable evidence as to accused FUHR's membership in the SS, SD and Gestapo and as to his being implicated in incidents numbers 4 and 5. The guilt of this accused is satisfactorily established. He admitted his guilt both in extrajudicial sworn testimony

and from the witness stand under oath. His allegation that he thought the acts were proper is overcome by the very nature of the acts, the secret manner in which they were executed and the general intelligence one must infer that he of necessity possessed. By his compliance with the illegal orders to kill the unarmed and surrendered flyers involved in incidents 4 and 5, he took part in the common plan and design to violate the laws of war. His guilt under charge 1 is clear. With regard to the evidence offered in support of superior orders, it appears that he took a consenting part in the common design and incidents 4 and 5. The killings were accomplished at points remote from superiors and he is not shown to have acted under immediate compulsion. He failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Dr. Richard Wacker, German defense counsel, 27 March 1947, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. A Petition for Clemency was filed by his parents, Wilhelm and Gertrude FUHR, May 1947.

Recommendation: That the findings and sentence be approved.

5. WILHELM HOHLER

Nationality:	German
Age:	37
Civilian Status:	Protective Police from 4 April 1929 to 15 March 1933; 6 March 1936 to 31 December 1937; Criminal Police from 1 January 1938 to 4 April 1945. Gestapo from September 1939 to 4 April 1945
Party Status:	None
Military Status:	None
Plea:	NG Charges 1, 2 and 4
Findings:	G Charges 1, 2 and 4
Sentence:	Death by hanging

Evidence for Prosecution: Accused HOHLER served as a Gestapo agent from

1939 till the end of the war (R 239, 1093, 1094, 1114, 1133, 1134; P-Ex 45). On 19 October 1944, the accused, together with accused FUHR and one Fraund, were ordered to take a captured American flyer to Oberursel and shoot him, incident number 4 (R 1099-1101). According to the plan made known to the accused, the car was to be brought to a stop, the flyer asked to get out on some pretext and then shot. All three, together with the flyer, drove in the direction of Frankfurt. The car was stopped near an inn on the Wiesbaden-Frankfurt road. Fraund and the accused got out and asked the flyer to leave with them. FUHR turned the car around and several pistol shots were fired in rapid succession. The three then drove to Wallau and notified the gendarmerie to bury the body. The next day HOHLER made a written report of the incident to accused TRUMMLER to the effect that the flyer was shot by Fraund while attempting to escape. TRUMMLER then gave him a box of cigars to distribute among the members of the Gestapo in Wiesbaden (R 312, 314, 1937; P-Exs 65A, 66A, 146A).

Evidence for Defense: The accused took the witness stand and testified under oath. By his extrajudicial sworn testimony and by his testimony in court he insisted that he remained in the car at the scene of the killing (R 314; P-Ex 66A). Otherwise, his testimony was substantially to the same effect as the evidence for the prosecution (R 1099-1113). He admitted that the report he made to TRUMMLER to the effect that the flyer was shot by Fraund while attempting to escape was false (R 1126). He was of the opinion that the order received from an SS colonel was legal (R 1128). Refusal to obey the order would have meant death (R 1131). He admitted that his extrajudicial sworn testimony containing an account of his report to TRUMMLER was false (R 1937, 1940, 1941; P-Ex 146A).

Sufficiency of Evidence: There is considerable evidence that accused HOHLER served as a Gestapo agent from 1939 till the end of the war and that he was implicated in incident 4. While the evidence is not too clear, the Court might well have concluded that he was a member of the Gestapo. The evidence clearly indicates that the accused was guilty of participating in the killing of an unarmed and surrendered prisoner of war as alleged in

charge 4. He knew the flyer was to be killed according to a pre-established plan and played his part in carrying it out. Whether he fired the fatal shot is not shown by the evidence. However, it appears that he accompanied the others on the trip and actively participated throughout the incident. Acting jointly with the others he was liable for all the consequences that naturally flowed from their acts, i.e., all who join in a common design to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are responsible for a homicide committed by one of them while acting in pursuance of or in furtherance of the common design, although not specifically contemplated by the parties (United States v. Hartgen, et al., October 1945, 29 Corpus Juris, Sec. 46, p. 1073). It was shown that he took a consenting part in the common plan and design to violate the laws of war as alleged in charge 1. With regard to the evidence offered in support of superior orders, it appears that he took a consenting part in and freely participated in incident number 4 at a point distant from superiors. It was not shown that he acted under any immediate compulsion and the Court would have been warranted in not giving weight to his testimony to the effect that he thought the order was legal and proper. Consequently, the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947, and Dr. Trost, German defense counsel, 7 July 1947. Petitions for Clemency were filed by his wife, Luise Hohler, 22 March 1947; his parents, Mr. and Mrs. A. Hohler, 28 March 1947; Leonhard Wilke, 26 March 1947; Lena Fercke, 19 June 1947; Johannes Budde, 15 June 1947; Franziska Fourman, 24 June 1947; Erna Debus, 24 June 1947; Karl Rudolf, 6 June 1947; Luise Vogt, 21 May 1947; Maria Kohlhof, 27 April 1947; Lieselotte Pfeil, 30 May 1947; Edith Weckman, 9 June 1947; Wilhelm Wahn, 16 June 1947; Ernest Richhardt, 7 June 1947; Alexander Hoffman, 27 June 1947; Reinhard Breder, 14 July 1947; Karl Knapp, 8 June 1947; Angelika Seidel,

15 June 1947; Josef Kramer, 22 June 1947; Max Gerisch, 19 June 1947; Irma Kuhn, 19 June 1947; Georg Zammert, 19 June 1947; Mura Lenzen, 20 June 1947; A. Bruch, 4 July 1947; Fritz Schneider, 1 July 1947; Mateus Rudolph, 7 July 1947; Paula Schmidt, 24 June 1947; Safia Drogmoller, 10 December 1946; Karl Hohler, 19 December 1946; Margarethe Romeis, 9 April 1946; Hans Schmitz, 30 August 1946; Josef Przybzla, 8 April 1946; Mr. and Mrs. Stein, 15 June 1947; Maria Lang, 20 June 1947; Bernhardini Winkler, 20 June 1947; Natalie Noack, 20 June 1947; Elizabeth Horn, 18 June 1947; Jakob Schneider, 15 June 1947; and Johann Lutz, 20 June 1947.

Recommendation: That the findings and sentence be approved.

6. HANS EICHEL

Nationality:	German
Age:	56
Civilian Status:	Police Director at Offenbach, Germany since 1 July 1941, with the rank of Lieutenant Colonel
Party Status:	Nazi party since 15 December 1931
Military Status:	Colonel in SA
Plea:	NG Charges 1, 2, 7 and 8
Findings:	G Charges 1, 7 and 8 NG Charge 2
Sentence:	Death by hanging

Evidence for Prosecution: The accused was police director of the protective police, Offenbach, Germany, following 1 July 1941 (R 1664). In September 1944 at a conference of police officials in Offenbach, Himmler's noninterference order was read by Major Kuhlenbeck, Commander of the Protective Police in Offenbach. The accused was his immediate superior (R 484; P-Ex 122, p. 3). The accused had issued orders that captured flyers were to be shot (R 585, 1690; P-Ex 135, p. 3).

On or about 22 February 1945, a captured American flyer was taken to the police station in Bieber, Germany, incident number 7 (R 441, 442). An identification card found on the person of the flyer indicated his name to be William Duke (R 457). In the police station the flyer was permitted to

smoke (R 442). Shortly thereafter, the accused and accused KNITT arrived (R 442, 460). At the sight of the flyer smoking, the accused tore the scarf from the flyer's neck and knocked the cigarette out of his mouth (R 442). Accused KNITT and ALBRECHT testified that EICHEL ordered ALBRECHT to kill the flyer but that he refused (R 1514, 1602, 1603). Accused MOLLER testified that accused EICHEL gave him an order to shoot the flyer (R 470, 475, 1482; P-Exs 111A, 116, p. 3). EICHEL stated that he was considering putting the flyer on the radiator of his car and driving him through the town (R 470, 1515; P-Ex 112A). He directed that the flyer be brought before the crowd (R 484; P-Ex 122, p. 7). Outside the police station he vigorously incited the crowd against the flyer (R 470, 484, 1515; P-Exs 112A, 122, p. 5). Pursuant to the accused's order, accused MOLLER, together with accused ALBRECHT, GOEHRENDT, and a policeman by the name of Como walked the flyer to a forest in the vicinity of Bieber (R 445, 446, 475; P-Ex 116, p. 4). In the forest, accused MOLLER shot the flyer twice, resulting in his death (R 470, 471, 1519, 1520; P-Exs 111A, 113A).

The same evening, an American flyer was taken to the police headquarters in Offenbach from the police station in Bieber by two policemen, Michel and Schneider, incident number 8 (R 1774, 1775). They reported to accused KNITT, who reprimanded them for not having killed the flyer (R 1775, 1776). By his extrajudicial sworn statement KNITT asserted that he ordered them to kill the flyer in conformity with a previous specific order relayed to him from accused EICHEL (R 585; P-Ex 135, p. 3). The flyer was shot to death an hour or so later near an air raid shelter on Bierbrauer Weg, Offenbach, by accused HARMANN with the co-operation, if not the aid, of Michel and Schneider (R 507, 523, 524).

Evidence for Defense: The accused took the stand and testified under oath. He admitted that in the summer of 1944, he received Himmler's noninterference order either from Berlin or from the commanding officer of the regular police in Wiesbaden (R 1664). He testified that on 22 February 1945, he saw flyers parachuting to earth (R 1665). He left in his car, together with accused KNITT, to check up on security measures (R 1666). He drove through

the town of Bieber, where he was told that there was a flyer in the police station. He proceeded to the police station with KNITT (R 1668). He saw the flyer in the police station but denied that he slapped the cigarette out of his mouth and testified that he merely took the scarf from the flyer's neck and laid it on the table, incident number 7 (R 1671). He told accused ALBRECHT to take the flyer to police headquarters stating that, "he will be bumped off anyway" (R 1672). He testified that he made this remark because the gauleiter had once said while surveying bomb damage that all flyers would be shot (R 1672). He did not consider this remark as an order but merely meant that others would do it because of the propaganda and the general feeling of the civilian population (R 1672, 1673). He also denied that he gave accused HOLLER an order to kill the flyer (R 1677). He further testified that a few hours later on the same day accused ALBRECHT personally reported to him that the flyer had been shot while trying to escape. That evening he received a written report to the same effect (R 1684). He denied that he ever informed members of the police that captured flyers were to be shot (R 1690).

He also denied that he had anything to do with the orders given to the policemen Michel and Schneider concerning the captured flyer who was killed on Bierbrauer Weg, incident number 8 (R 1873). He admitted he was present in his command post near Bierbrauer Weg the evening of 22 February 1945 (R 1873). While at his command post, a policeman rushed in and told him about a parachutist. He then heard several shots and a wild chase ensued down the staircase toward his command post (R 1874). He ran out toward Bierbrauer Weg and saw three or four men carrying a corpse (R 1875). A person with whom he was not familiar told him that he had shot the flyer while trying to escape. He later found out that the person in question was accused HAMMANN (R 1876).

Sufficiency of Evidence: The evidence, a substantial part of which is supported by his own admissions, indicates that the accused issued orders to his subordinates to kill captured flyers involved in incidents numbers 7 and 8 and that in conformity with these orders unarmed and surrendered

the town of Bieber, where he was told that there was a flyer in the police station. He proceeded to the police station with KLITT (R 1668). He saw the flyer in the police station but denied that he slapped the cigarette out of his mouth and testified that he merely took the scarf from the flyer's neck and laid it on the table, incident number 7 (R 1671). He told accused ALBRECHT to take the flyer to police headquarters stating that, "he will be bumped off anyway" (R 1672). He testified that he made this remark because the gauleiter had once said while surveying bomb damage that all flyers would be shot (R 1672). He did not consider this remark as an order but merely meant that others would do it because of the propaganda and the general feeling of the civilian population (R 1672, 1673). He also denied that he gave accused HOLLER an order to kill the flyer (R 1677). He further testified that a few hours later on the same day accused ALBRECHT personally reported to him that the flyer had been shot while trying to escape. That evening he received a written report to the same effect (R 1684). He denied that he ever informed members of the police that captured flyers were to be shot (R 1690).

He also denied that he had anything to do with the orders given to the policemen Michel and Schneider concerning the captured flyer who was killed on Bierbrauer Weg, incident number 8 (R 1873). He admitted he was present in his command post near Bierbrauer Weg the evening of 22 February 1945 (R 1873). While at his command post, a policeman rushed in and told him about a parachutist. He then heard several shots and a wild chase ensued down the staircase toward his command post (R 1874). He ran out toward Bierbrauer Weg and saw three or four men carrying a corpse (R 1875). A person with whom he was not familiar told him that he had shot the flyer while trying to escape. He later found out that the person in question was accused HAMMANN (R 1876).

Sufficiency of Evidence: The evidence, a substantial part of which is supported by his own admissions, indicates that the accused issued orders to his subordinates to kill captured flyers involved in incidents numbers 7 and 8 and that in conformity with these orders unarmed and surrendered

American prisoners of war were killed by subordinates under his command. That he participated in the common design involved in charge 1 is also satisfactorily established.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947 and by Dr. Richard Wacker, German defense counsel, 27 March 1947 and 22 April 1947. Petitions for Clemency were filed by his son, Helmuth Eichel, 4 April 1947; Buchner, 25 March 1947; Dr. Fruhauf and Dr. Kallab, 29 March 1947; A. Herold, 2 April 1947; Philipp Hechler, 4 April 1947; and one Schultheis, 28 March 1947.

Recommendation: That the findings and sentence be approved.

7. JOSEF JOHANN KITTT

Nationality:	German
Age:	52
Civilian Status:	Captain, Order Police, Offenbach, Germany
Party Status:	Nazi party since 1 May 1933
Military Status:	None
Plea:	NG Charges 1, 2, 7 and 8
Findings:	G Charges 1, 7 and 8; NG Charge 2
Sentence:	Death by hanging

Evidence for Prosecution: The accused was a captain in the Order Police in Offenbach, Germany. One Major Kuhlenbeck was his immediate superior and accused EICHEL was his next higher superior (R 1589).

In January 1945, the accused knew of the existence of Himmler's noninterference order. He also knew of a direct order from Himmler to the effect that all captured flyers were to be killed by the police (R 473; P-Ex 114, p. 4). In about December 1944, he told a French deportee that captured American flyers were to be shot and a report then made that the flyer was shot while attempting to escape (R 495; P-Ex 124). He also received an order from his superior, accused EICHEL, that captured flyers were to be shot (R 585, 1690; P-Ex 135, p. 3).

On about 22 February 1945, three American flyers parachuted to safety in the vicinity of Bieber, Germany (R 441, 473; P-Ex 114). One witness testified that at about 1400 on 22 February 1945 during an air raid in Offenbach, Germany, a police captain who was identified as Captain KNITT, drove by his guard post and said, "All these flyers are going to be beaten to death"; and that just prior to this, the crew of a four motored bomber had parachuted to earth nearby (R 501, 502). The accused, together with accused EICHEL, went to the police station in Bieber, incident number 7. One of the flyers was already there (R 442, 460, 473; P-Ex 114). Accused ALBRECHT and four or five other policemen were also there (R 473; P-Ex 114, p. 2). The accused reprimanded the policemen and called them cowards, for permitting the flyer to remain alive. He told them that the pilot should be beaten (R 470; P-Ex 112A). He also instigated the crowd that had gathered outside the police station against the flyer (R 471, 473; P-Exs 113A, 114, p. 5). While still in the police station EICHEL, in the presence of KNITT, ordered ALBRECHT to kill the flyer (R 1514, 1602, 1603). The flyer was taken out of the police station by accused ALBRECHT and two or three other policemen. ALBRECHT, the flyer, and the other policemen walked away. The accused then returned to his office in Offenbach. That afternoon a written report from ALBRECHT, to the effect that the flyer was shot while attempting to escape, passed through the office of the accused (R 473; P-Ex 114, p. 5).

During the evening of the same day another captured flyer was brought to police headquarters in Offenbach from the police station in Bieber in custody of policemen Michel and Schneider, incident number 8 (R 571, 572). They reported to the accused KNITT, who reprimanded them for not killing the flyer while walking him six kilometers through the woods (R 572, 1775, 1776). KNITT then ordered them to get out and kill the flyer (R 573, 1777). The accused, in his extrajudicial sworn statement, asserted that he ordered them to kill the flyer pursuant to a previous specific order relayed to him from accused EICHEL that the flyer be killed (R 585; P-Ex 135, p. 3). He testified in Court that he ordered them to kill the flyer after Lieutenant Alt told him that a major had ordered that the flyer be killed (R 1907). He [illegible] left his office,

further testified that, after the two policemen and the flyer left his office, he called up Major Kuhlenbeck to confirm the shooting order and that he received a confirmation of the order from the major (R 1908). Lieutenant Alt, in his extrajudicial sworn statement, said that the accused ordered the two policemen to shoot the flyer and that accused ordered him to accompany them and supervise the execution of the order (R 1689, 1690; D-Ex 19). Later that night this flyer was killed on Bierbrauer Weg, near an air-raid shelter, by accused HAFFMANN with the co-operation, if not the aid, of Michel and Schneider (R 507, 523, 524). Policemen Michel and Schneider testified that nothing was said to them indicating this accused had received an order from a superior relative to the shooting of the flyer (R 1768, 1780).

Evidence for Defense: The accused took the stand and testified under oath. He admitted that he grumbled a bit and made a few silly remarks in the course of the discussion concerning the flyer who was in the police station in Bieber on 22 February 1945 (R 1591). He testified he then left the police station and drove to Offenbach with the accused EICHEL. That afternoon he received a report from the police in Bieber that the flyer had been killed while attempting to escape (R 1593, 1594). During the evening of 22 February 1945, two policemen came to his headquarters in Offenbach with another captured flyer (R 1906). He asserted that he reprimanded them for not taking the flyer to a nearby anti-aircraft unit, and told the policemen to take the flyer to the police jail. He asserted that Lieutenant Alt, duty officer, who was present at the time informed him that a major had ordered that the flyer be killed. The accused admitted that he then ordered the policemen to shoot the flyer. He asserted that he ordered the policemen out of the office when they told him they would not carry out the order, but would return the flyer to Bieber (R 1907). Later the accused called Major Kuhlenbeck, his superior, regarding the order. The major informed him that the order had to be carried out. During this conversation, the major also informed the accused that Lieutenant Alt should carry out the order (R 1908). Accused asserted that he sent Lieutenant Alt after the flyer and the two policemen with instructions to have the army pick up the flyer. The next morning he was

notified by Lieutenant Alt that the flyer had been shot. He denied the existence of any orders in the headquarters of the Protective Police concerning the shooting of flyers (R 1909).

Sufficiency of Evidence: The accused received and passed on an order to kill illegally surrendered and unarmed flyers. He took a consenting and voluntary part in the common plan and design to violate the laws and usages of war and his guilt under charge 1 is thus established. His participation in incident number 7 warrants the findings of guilty, however, whether he was involved therein to a sufficient degree to warrant the death sentence is not free from difficulties. Concerning incident number 8, the appropriateness of the death sentence depends somewhat on whether the accused acquiesced in the assertion of the policemen that they would return the flyer to Bieber. In his testimony, he asserted that he acquiesced in the plan. However, his testimony conflicts with the testimony of Michel and Schneider on the question of his acquiesence in their refusal to shoot the flyer. Under the circumstances the Court would have been warranted in condluding that the accused ordered the flyer involved in incident number 8 shot pursuant to general orders issued prior to the capture of the flyer and that the accused did not indicate that he approved of the policemen's suggestion that the flyer be returned to Bieber, but that on the contrary he ordered them to get out of his office and kill the flyer. He played a vital and voluntary part in incident number 8.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Dr. Buerger, German defense counsel, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Maria Kiwitt, wife, 20 April 1947; Anton Passmann, 25 April 1947; Otto Schmidt, 26 April 1947; Alfred Hild, 23 April 1947; H. Heinrichsbauer, 4, 11 and 24 April 1947; L. Nachstein, 10 April 1947; and Maria Kiwitt, sister, 28 July 1947.

Recommendation: That the findings and sentence be approved.

8. WILHELM ALBRECHT

Nationality:	German
Age:	57
Civilian Status:	First Lieutenant, Order Police and Chief of Police in Bieber, Germany
Party Status:	Nazi party since 1940
Military Status:	None
Plea:	NG Charges 1, 2 and 7
Findings:	G Charges 1 and 7 NG Charge 2
Sentence:	15 years, commencing 29 May 1945

Evidence for Prosecution: The accused was a first lieutenant of the Order Police and chief of police in charge of the police station in Bieber, Germany (R 475; P-Ex 116, pp. 2, 3). In September 1944 at a conference of police chiefs held in Offenbach, Himmler's noninterference order was read by his superior, Major Kuhlenbeck (R 484; P-Ex 122, p. 3). On about 22 February 1945, three American flyers parachuted to safety in the vicinity of Bieber, Germany. One of them was captured and taken by a policeman to the police station in Bieber where he was searched by the accused and a policeman named Lueck (R 441, 442). An identification card found on the flyer indicated his name to be William Duke (R 457). Shortly thereafter, accused EICHEL and KNITT arrived (R 442, 460). EICHEL, KNITT, and ALBRECHT all entered ALBRECHT's office (R 475; P-Ex 116, pp. 2, 3). KNITT testified that he did not enter the room, but that the door was open and that he heard most of the conversation (R 1592). Accused EICHEL then told ALBRECHT that the flyer must be killed. The latter replied that he would not do it whereupon EICHEL said, "Well then, somebody else will do it." (R 484; P-Ex 122, p. 4). ALBRECHT testified that he then went to change his uniform (R 1514). Accused MOLLER testified that EICHEL ordered him to kill the flyer (R 470, 475, 1482; P-Exs 111A, 116, p. 3). Accused ALBRECHT ordered accused MOLLER to get his steel helmet and weapon. ALBRECHT or MOLLER then took the flyer out of the police station. A policeman named Como followed them out (R 475, 1483; P-Ex 116, p. 4). MOLLER walked the flyer to a forest in the vicinity of Bieber (R 470; P-Ex 111A).

ALBRECHT, together with accused GOEHRENDT, followed them and they in turn were followed by policeman Como (R 445). It may be that ALBRECHT walked with rather than followed MOLLER (R 469; P-Ex 110A). Accused ALBRECHT and GOEHRENDT were armed with pistols (R 445, 475; P-Ex 116, p. 5). In the forest, accused MOLLER shot the flyer twice killing him (R 470, 471, 475; P-Exs 111A, 113A, 116, p. 4). Accused ALBRECHT then ordered Como to guard the body (R 447, 471; P-Ex 113A). The body was later buried in the cemetery in Offenbach (R 471; P-Ex 113A). Later that same day ALBRECHT ordered policeman Heberer to make a written report of the incident (R 484; P-Ex 122, p. 7). The body was disinterred on 27 February 1946, and the victim identified as an American, William A. Duke (R 482; P-Ex 121).

Evidence for Defense: The accused took the stand and testified under oath. He testified that on about 22 February 1945 a captured flyer was brought to the police station in Bieber. The flyer was an American, William Duke (R 1511, 1512). The accused ordered the policemen Lueck and Como to take the flyer to the headquarters of the Order Police pursuant to an existing order. Before the flyer was taken away, accused EICHEL and KITTT arrived (R 1513). EICHEL and KITTT reprimanded the accused for showing consideration to the flyer. Then EICHEL gave the accused an order to do away with the flyer, The accused replied that he would not do it to which EICHEL said that someone else would. The accused decided to go along with the flyer (R 1514). The accused ordered Como to go with the flyer and, when Lueck another policeman who the accused intended should go along failed to appear, the accused ordered accused MOLLER to go (R 1516). Outside the police station the accused saw accused GOEHRENDT and ordered him to go along to aid in keeping the people back (R 1518). MOLLER and Como walked some 20 to 30 meters in front of the accused (R 1518). The group walked to the forest and when MOLLER took the wrong path, that is a path into the forest and not the one to Offenbach, the accused ordered GOEHRENDT to run up and direct MOLLER as to the correct one (R 1518, 1519). At this point the accused stopped to talk to a passer-by, and while so engaged in a conversation, the accused heard two shots (R 1519). He ran toward MOLLER and asked him why he had shot the flyer. MOLLER told him

the flyer tried to escape. The accused ordered Como to stand guard over the body. The accused and MOLLER returned to the police station (R 1520). Because of this incident he ordered the policemen under his command to take captured flyers to the air force instead of bringing them to the police station (R 1521). With the exception of the noninterference order issued by Himmler, the accused knew of no other orders regarding the treatment of flyers (R 1525).

Sufficiency of Evidence: If he was not ordered to accompany MOLLER to the scene of the shooting, he must have done so through a desire to assist or because of curiosity. Furthermore, the Court might well have concluded that the accused had no intention of taking the flyer to Offenbach.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Dr. Max Rau, German defense counsel, 4 April 1947 and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

9. HERMANN MOLLER

Nationality:	German
Age:	45
Civilian Status:	Clerk, Master Sergeant of the police in Bieber, Germany
Party Status:	Nazi party since 1937
Military Status:	None
Plea:	NG Charges 1, 2 and 7 by reason of insanity
Findings:	G Charge 7 NG Charges 1 and 2
Sentence:	Death by hanging

Evidence for Prosecution: The accused pleaded not guilty to the charges by reason of insanity (R 36). The Army psychiatrist who examined him at the request of the Court testified that there was no history indicating that the accused was at any time insane. He further testified that the accused was fully capable of understanding the proceedings of the trial (R 110). The

psychiatrist testified that in his opinion the accused was sane on 22 February 1945, the date of the incident covered by charge 7 and that the accused was then able to distinguish between right and wrong (R 111). He further testified that the accused had a chronic, moderate tension state; that he was of average intelligence; and that the chronic tension had been present all his life (R 110)

The accused testified that on 22 February 1945, while a captured American flyer was in the custody of the police in Bieber, Germany, he was given an order, by accused EICHEL, to shoot the flyer. When he indicated his unwillingness to carry out the order, accused EICHEL threatened him with courts-martial. The accused then left the police station with the flyer accompanied by policeman Como. The accused was armed with a carbine. He walked to the woods with the flyer accompanied by accused ALBRECHT and GOEHREHDT (R 469, 474, 1482, 1483; P-Exs 1104, 1154, pp. 3, 4). Accused EICHEL vigorously denied giving the order to the accused and insisted that he had never seen him prior to being brought to Dachau and that the accused did not know him at that time (R 1675-1677). In the woods the accused fired two shots at the flyer, killing him (R 469-471, 474; P-Exs 1104, 1114, 1134, 1154). Como was ordered to guard the body. The accused returned to the police station and later went to his home. While at home, a policeman appeared with a written report prepared at the police station, which the accused signed. The report was to the effect that the flyer had been shot while trying to escape (R 469, 474, 475; P-Exs 1104, 1154, 116, p. 5). The victim was buried in the cemetery in Offenbach (R 471; P-Ex 1134). The body was disinterred on 27 February 1946 and identified as that of an American, William A. Duke (R 482; P-Ex 121).

Evidence for Defense: The accused took the stand and testified under oath. His testimony was in most respects substantially to the same effect as the evidence offered by the prosecution. He denied knowledge of any general orders concerning the illegal treatment of flyers, but admitted receiving an order from the accused EICHEL to kill the flyer (R 1482). The accused testified that the order given to him by accused EICHEL was given while the two were alone in a room. This was stated by the accused to have happened immediately after ALBRECHT had asked for volunteers. The accused asserted

that EICHEL told him he would be courts-martialed if he refused (R 1482). Failure on his part to carry out the order would have meant death (R 1488,. Pursuant to the order, he, policeman Como and the accused ALBRECHT and GOEHRENDT walked the flyer toward the woods. Twenty meters in the woods, the accused fired two shots at the flyer, killing him (R 1484-1486). While at home later that day, he signed a written report, which had been previously prepared in the police station, to the effect that the flyer was shot while trying to escape. He admitted this report was false (R 1488).

Sufficiency of Evidence: That the accused participated in incident number 7 by firing the fatal shot is admitted by him. However, there is evidence from which the Court might have concluded that it was with some degree of reluctance that the accused participated after receiving an order from one greatly his superior. Furthermore, while the real purpose of ALBRECHT's accompanying the group to the scene of the shooting is not too apparent, the Court might well have concluded that he went to supervise or to assure effective execution of EICHEL's order. This presence of a superior during the shooting by a somewhat unwilling inferior created a degree of immediate compulsion. With regard to the evidence offered in support of superior orders, the accused met the burden of proof required by pertinent authorities discussed in Section VI, post, and proved that he acted under immediate compulsion to a comparatively small degree.

The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: Petitions for Review were filed by Dr. Buerger, German defense counsel, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Rudolph Heckelmann and Philipp Krill, 25 March 1947; Anton Lippert and Anton Glas, both undated; Gustav Woell and three other persons, undated; and Josef Sommer, 24 March 1947.

Recommendations: That the findings and sentence be approved, but that the sentence be commuted to life imprisonment.

10. WILHELM FRIEDRICH GOEHRENDT

This accused was acquitted (R 2578).

11. PAUL HAHRGANG

Nationality:	German
Age:	46
Civilian Status:	Locksmith and Master Sergeant, Fire Protection Police, Offenbach, Germany
Party Status:	None
Military Status:	None
Plea:	NG Charges 1, 2 and 8
Findings:	G Charge 8; NG Charges 1 and 2
Sentence:	5 years, commencing 6 December 1945

Evidence for Prosecution: Accused HAHMANN and FAY were subordinates of this accused (R 583; P-Ex 134A). During the evening of 22 February 1945, accused GOEHRENDT turned over a captured American flyer to the policemen Michel and Schneider in the police station at Bieber, Germany, with instructions to deliver him to police headquarters in Offenbach, incident number 8 (R 571, 1774, 1775). In Offenbach the policemen reported to accused KNITT, who ordered them to kill the flyer (R 573, 1777). The policemen indicated their refusal to carry out the order and suggested to KNITT that they would return the flyer to Bieber (R 1777, 1907, 1908). During an air raid the two policemen with the flyer entered an air raid shelter area on Bierbrauer Weg (R 574, 1756). The air raid shelter area consisted of an open space with an underground shelter at one end. A stairway led to this underground shelter. With the exception of the main gate, the only one other exit from the area was on Bierbrauer Weg (R 500; P-Ex 126). A portion of the underground shelter was used by EICHEL as a command post. The guard at the main gate to the shelter area was informed by the policemen that they had a flyer who was to be shot (R 574, 575, 1778). The accused appeared from the guard room on the shelter area and was told that the policemen had a flyer who was to be killed (R 524, 525, 542). The accused called for accused HAHMANN who was sergeant of the guard, and both engaged in a whispering conversation (R 503, 525, 1043, 1867, 1868). The accused then called for accused FAY and informed him by whispering that the flyer had to be killed (R 525, 588, 1867, 1868; P-Ex 138, p. 2). FAY who then heard to say

that this was a small matter and would get it fixed up right away (R 504). Accused EICHEL was in his command post at the time of the incident (R 1873). FAY pushed and drove the flyer toward the stairway. This accused also accompanied FAY (R 504-506, 526, 588; P-Ex 138, p. 4). Accused FAY stated in his extrajudicial sworn testimony that, although the flyer was then surrounded by three or four policemen, the flyer hit him and started to run, whereupon FAY fired a shot into the air and yelled halt (R 538; P-Ex 138, pp. 4; 5). The guards heard the shot and then shouts to the effect that a flyer was escaping (R 506, 512, 526, 527). Accused HAMMANN took the guard's carbine, who was standing at the main entrance, and ran to the secondary exit, there being only one in addition to the main entrance (R 500, 513, 564; P-Ex 126). HAMMANN fired three shots at the flyer at close range, killing him (R 507, 1827). Two or three pistol shots were also heard (R 527). Accused NAHRGANG and HAMMANN were seen standing by the body of the victim very soon after the shots were fired (R 527, 530). The body was brought back by NAHRGANG, HAMMANN and others and laid in the air raid shelter area (R 507, 508, 583, 1851; P-Ex 134). The next day a policeman assigned for duty at the air raid shelter told accused KNITT that the policeman who had been assigned to kill the flyer acted cowardly and that he had to shoot the flyer. This policeman was identified as "Nartrat" (R 585; P-Ex 135, p. 4).

Evidence for Defense: The accused took the stand and testified under oath. He was the platoon leader of the extinguishing platoon and was stationed at the air raid shelter on Bierbrauer Weg (R 1748). During the evening of 22 February 1945, a police sergeant and one of the guards at the air raid shelter appeared in front of his office. The policeman told him he was seeking cover with a captured flyer. The accused called the accused HAMMANN, who was the sergeant of the guard. In the meantime the guard at the gate, one Zahn, told the accused that the policemen with the flyer had an order to shoot him but were not going to carry it out. When accused FAY appeared, this accused gave him the information he had received from the guard (R 1846-1848). FAY remarked while leaving that he was going to examine the situation. The accused then started to pick up his coat and boots to go out. A short time

later he heard someone yell "halt" and a short time after that a shot. He ran into the yard where he heard another shot. Consequently, he went toward the secondary exit. On the way he heard that accused HAMMANN had fired at the flyer. He went to the spot where the flyer lay dead (R 1848-1850). Together with FAY and one Gunther, he helped carry the body to the garden (R 1851). He testified that he did not see accused HAMMANN at the spot where the flyer lay (R 1850) and was mistaken regarding the statement in his extra-judicial sworn testimony to the effect that he had seen him there (R 1851). He further testified that he had never heard of any general orders from higher authority concerning the treatment of enemy flyers (R 1852).

Sufficiency of Evidence: The Court might well have concluded that the flyer was shot during a simulated escape planned by the accused and others to give the killing a color of legality.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

12. PHILIPP HAMMANN

Nationality:	German
Age:	51
Civilian Status:	Carpenter, Sergeant, Air Raid Police, Offenbach, Germany
Party Status:	None
Military Status:	None
Plea:	NG Charges 1, 2 and 8
Findings:	G Charge 8; NG Charges 1 and 2
Sentence:	15 years, commencing 12 May 1945

Evidence for Prosecution: During the evening of 22 February 1945, in Offenbach, Germany, two policemen approached the guard at the main gate to

the air raid shelter area located on Bierbrauer Weg with a captured American flyer, incident number 8 (R 502). One of the policemen informed the guard that the flyer was to be killed (R 503). Accused NAHRGANG appeared from the guard room (R 503, 504, 524). The guard told what the policemen had said (R 525). NAHRGANG called for accused HAMMANN and they engaged in a whispering conversation (R 503, 525). Accused FAY was also called. He engaged in a short whispering conversation and then was heard to say, "That is only a small matter. We will get it fixed up right away".(R 525, 504, 1867, 1868). The accused FAY, with a pistol in hand, pushed and drove the flyer toward the stairway which led down in the direction of a bunker (R 526). The guards heard a shot and then shouts that a flyer was escaping (R 506, 512, 527). Accused FAY stated in his extrajudicial sworn testimony that, although the flyer was then surrounded by three or four policemen, the flyer hit him and started to run, whereupon FAY fired a shot into the air and yelled halt (R 588; P-Ex 138, pp. 4, 5). Accused HAMMANN ran past the guard at the main gate, grabbed the latter's carbine, and ran to the secondary exit to the air raid shelter area, there being only one in addition to the main entrance (R 500, 513, 564; P-Ex 126). This accused fired three shots at the flyer at close range, killing him (R 507, 1827). Two or three pistol shots were also heard (R 527). Accused NAHRGANG and HAMMANN were seen standing by the body of the victim very soon after the shots were fired (R 530, 555). NAHRGANG, HAMMANN, and others picked up the body and carried it to the air raid shelter area (R 507, 508, 555, 583; P-Ex 134A). Accused EICHEL appeared and HAMMANN reported that he had shot the flyer while attempting to escape (R 556, 588; P-Ex 138, p. 6).

Evidence for Defense: The accused took the stand and testified under oath. On 22 February 1945, he was sergeant of the guard of the air raid police stationed at the air raid shelter on Bierbrauer Weg (R 1822). While in his room, he heard some shots followed by shouts as a result of which he went outside (R 1823). He assumed that someone was escaping and, inasmuch as the individual could only leave by the secondary exit, he ran to that point (R 1824). Enroute he took a carbine from the guard at the main gate. When he arrived at

a point a few meters from the secondary exit, the flyer ran out on the street (R 1825). He called, "Halt", several times. The man kept running and he chased him for 80 to 100 meters (R 1825). He then fired one shot at him from a distance of 40 to 50 meters. The man appeared to turn to the right to escape into the woods. He fired two more shots and the man disappeared from view (R 1827). When he arrived near where the victim fell, some others were carrying back his body. On the way back he met accused EICHEL and reported the incident to him (R 1828). The next day he appeared at the police headquarters in Offenbach and made a written report (R 1829). He further testified that he had never received any general orders from higher authority regarding the treatment of Allied flyers (R 1830).

Sufficiency of Evidence: The Court might well have concluded that the flyer was shot during a simulated escape planned by the accused and others in order to give the killing a color of legality.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. A Petition for Clemency was filed by Margarete Hammann, wife of accused, 26 March 1947.

Recommendation: That the findings and sentence be approved.

13. BERNARD FAY

Nationality:	German
Age:	52
Civilian Status:	Skin and Leather Merchant; driver and machinist with Air Raid Protection Police, Offenbach, Germany
Party Status:	None
Military Status:	None
Plea:	NG Charges 1, 2 and 8
Findings:	G Charge 8; NG Charges 1 and 2
Sentence:	5 years, commencing 22 May 1945

Evidence for Prosecution: During the evening of 22 February 1945, two policemen brought a captured American flyer to the air raid shelter on Bierbrauer Weg, Offenbach, Germany, incident number 8 (R 571, 574). They informed the guard at the gate that the flyer had to be killed (R 574, 575). Accused NAHRGANG, platoon leader of the extinguishing platoon stationed at the shelter, appeared from the guard room. The guard gave him the information received from the policemen (R 524, 525, 542). NAHRGANG called for accused HAMMANN, sergeant of the guard, and engaged in a whispering conversation with him (R 503, 525). NAHRGANG then called accused FAY and told him by whispering that the flyer had to be killed (R 525, 588, 1867, 1868; P-Ex 138, p. 2). FAY said that this was only a small matter and it would be fixed up right away (R 504, 525). With a pistol in hand, which he received from one of the policemen, accused FAY pushed and drove the flyer in front of him toward the stairway which led down in the direction of a bunker (R 504, 506, 526). NAHRGANG and the policemen were with FAY (R 588; P-Ex 138, p. 4). At the stairway, a shot was heard followed by shouts that a flyer was escaping (R 506). Accused FAY stated in his extrajudicial sworn testimony that, although the flyer was then surrounded by three or four policemen, the flyer hit him and started to run, whereupon FAY fired a shot into the air and yelled halt (R 588; P-Ex 138, pp. 4, 5). Pistol and carbine shots were heard. The flyer was killed near the secondary exit by accused HAMMANN (R 500, 507, 527, 1827; P-Ex 126). Policeman Michel testified that he did not see the flyer hit anyone immediately prior to the time he began to run (R 1789).

Evidence for Defense: The accused took the stand and testified under oath. He testified that during an evening toward the end of February 1945, while in the guard house at the air raid shelter area on Bierbrauer Weg, he was awakened either by NAHRGANG or some other person and told that a captured flyer had to be shot (R 1792-1794). Upon inquiry as to who ordered the shooting, he was informed it had been ordered by accused EICHEL who was the police director (R 1794). He suggested going to the police director whose command post was in the rear of the courtyard. He walked with the flyer, followed by the policemen, toward the stairway leading to the underground bunker. In front

of the stairway he suddenly received a blow on his chest and fell backwards. He made a grab and had a pistol in his hand. He yelled "stop" and fired one shot in the air. He ran after the flyer and fell down the steps. He fired another shot in the air and continued up the street. He heard three or four shots. When he reached the spot where the flyer lay, he observed he was dead (R 1795).

Sufficiency of Evidence: The Court might well have concluded that the fl flyer was shot during a simulated escape planned by the accused and others in order to give the killing a color of legality.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947 and by Dr. Max Rau, German defense counsel, 19 April 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

14. GEORG BEST

Nationality:	German
Age:	39
Civilian Status:	Engineer, NSV, 1936 to May 1945; Reichs Security Main Office, July 1935 to June 1943; Higher SS and Police Chief, France, October 1943 to November 1944; Higher SS and Police Chief, Rhein-Westmark Area, December 1944 to May 1945
Party Status:	Nazi party, 1 August 1932 to 8 May 1945
Military Status:	Major and Commanding Officer of Wehrwolf school for Wehrkreis XII; Allgemeine SS (Major, 1 June 1931 to 8 May 1945); Waffen SS (Major, 5 December 1944 to 8 May 1945)
Plea:	NG Charges 1, 2 and 9
Findings:	G Charges 1, 2 and 9
Sentence:	15 years, commencing 8 May 1945

Evidence for Prosecution: Accused BEST was a member of the SS (R 239, 606, 1053; P-Ex 46). The accused was in charge of the Wehrwolf school for Wehrkreis XII (R 606). About 15 March 1945, one Buhlmann, an instructor in

the Wehrwolf school at Wallrabenstein was ordered by accused GOSS, the director of the school, to kill a captured American flyer (R 605, 607, 990). GOSS gave this order in conformity with an order previously received from this accused to the effect that STROOP had ordered the flyer shot (R 617, 988, 989; P-Ex 142A). Because of interference by civilians, the order was not carried out and the flyer was taken to Idstein (R 607, 991). Later, on 17 March 1945, BEST told GOSS that STROOP was quite angry over the failure to carry out the order and advised GOSS to keep Buhlmann out of sight should STROOP appear (R 609, 1001, 1063). About 18 March 1945, GOSS ordered accused MICHELY to shoot a captured American flyer, indident number 9 (R 1002, 1004). Thereupon accused MICHELY executed the order and made a written report (R 1005). The report was transmitted to accused BEST for STROOP (R 1005, 617; P-Ex 142A). The order to kill the flyer carried out by accused MICHELY was given in accordance with an order previously transmitted by this accused that Allied flyers were to be shot. BEST passed on the order in conformity with an order from STROOP (R 616; P-Ex 141A). In his testimony on the stand, GOSS strongly implied that he directed the shooting solely because of the general order he had received direct from STROOP (R 1005, 1006).

Evidence for Defense: The accused took the stand and testified under oath. His testimony was substantially similar to the evidence introduced by the prosecution. He testified that he was assigned to the Higher SS and Police Leader, Rhein-Westmark area, as commanding officer of the Wehrwolf school for Wehrkreis XII in December 1944 (R 1053). On 15 March 1945, personnel in his office informed him that accused GOSS had called and left a message that he had a flyer in Wallrabenstein and requested orders from STROOP regarding the flyer (R 1061). The accused reported this matter to STROOP, who ordered the flyer to be shot (R 1062). Later that day the accused met accused GOSS and gave him the order (R 1062). Still later, but prior to incident number 9, GOSS reported to the accused that the order was not carried out due to interference by civilians. The accused so informed STROOP who was irritated about the failure to carry out the order. On 17 March 1945, the accused informed GOSS as to STROOP's reaction to the failure to carry out the order (R 1063).

The accused further testified that he knew nothing about the murder of the American flyer, which occurred on 18 March 1945, incident number 9, and denied that he had anything to do with the incident before the shooting (R 1063). He personally never gave an order to kill any prisoner of war but merely conveyed the one order from STROOP to GOSS (R 1064). He denied that he ever conspired with any of the other accused to commit violations of the laws of war (R 1066). He specifically denied any guilt under charge 9 (R 1066).

Sufficiency of Evidence: There is considerable evidence as to accused BEST's membership in the SS and as to his being implicated in incident number 9. The evidence as to the accused's guilt under charges 1 and 9 is clear. The accused failed to establish that he acted under immediate compulsion as an incident of superior orders to a material degree, thus failing to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Lieutenant Colonel William Berman, Chief Defense Counsel and Dr. Buerger, German defense counsel, 24 March 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

15. ERWIN GOSS

Nationality:	German
Age:	41
Civilian Status:	Economist; adjutant to Gauleiter Sprenger, Frankfurt a/m, from 15 September to December 1942
Party Status:	Nazi party, 1939 to May 1945
Military Status:	First Lieutenant, Waffen SS from August 1944, and director of Wehrwolf school at Wallrabenstein, Germany, Cav. SS (Sergeant) 1938 to May 1945
Plea:	NG Charges 1, 2 and 9
Findings:	G Charges 1, 2 and 9
Sentence:	Death by hanging

Evidence for Prosecution: Accused GOSS was a member of the SS (R 239, 605, 606, 962; P-Ex 47). The accused was director of the Wehrwolf school in Wallrabenstein, Germany (R 605). About 15 March 1945, Buhlmann, an instructor in the school, brought in a captured flyer (R 605, 606). The accused called accused BEST for instructions regarding the flyer. BEST inquired of accused STROOP concerning such instructions and the latter ordered the flyer to be shot. BEST relayed the order to the accused (R 617; P-Ex 142). That evening the accused ordered Buhlmann to kill the flyer (R 607). Because of interference by civilians, the order was not carried out (R 990, 991). The flyer was then taken to Idstein (R 607).

About 18 March 1945, accused MICHELY captured an American flyer and brought him to the school in Wallrabenstein, incident number 9 (R 607, 608, 618; P-Ex 143, pp. 2, 3). That evening GOSS gave MICHELY an order to take the flyer to Idstein and shoot him on the way. MICHELY left with the flyer and returned later to report the accomplishment of the mission (R 608, 616, 618; P-Exs 144, 143, pp. 4, 5). GOSS gave this order to MICHELY in conformity with an order previously received from accused BEST to the effect that Allied flyers were to be killed. BEST received a like order from STROOP (R 616, 618; P-Exs 144, 143, p. 6). GOSS ordered Buhlmann and four others to take the body to the cemetery (R 608). The body was identified as that of an American, Jimmie R. Heathman (R 618; P-Ex 143, p. 5).

Evidence for Defense: The accused took the stand and testified under oath. He testified that in February 1945, at a conference held in Wiesbaden, accused STROOP told him that captured Allied flyers were to be shot (R 985). After he assumed charge of the school, he became familiar with Bormann's order, as well as Goebbel's propaganda relating to flyers (R 986).

About 15 March 1945 on his order, Buhlmann brought a flyer to the school (R 986, 987). The accused called BEST for instructions regarding the flyer. That evening BEST ordered the accused to shoot the flyer. The order was transmitted by BEST from accused STROOP (R 989). They both agreed upon Buhlmann as the person to carry out the order. GOSS then returned to Wallrabenstein and ordered Buhlmann to shoot the flyer. Later Buhlmann reported

that he had failed to carry it out due to interference by civilians (R 990, 991). The flyer was taken to Idstein (R 991).

On 13 March 1945, accused MICHELY brought another captured flyer to the school on orders from the accused (R 1002, 1003). That evening he directed MICHELY to take the flyer to Idstein and shoot him on the way (R 1004). MICHELY left with the flyer and later returned and reported the execution of the order. Accused directed MICHELY to make out a report which was sent to STROOP through BEST. The flyer was shot on the direct order previously received by the accused from STROOP (R 1005, 1006). The accused denied that he conspired with any of the other accused to commit violations of the laws of war (R 1075, 1076).

Sufficiency of Evidence: There is considerable evidence as to accused GOSS' membership in the SS and as to his being implicated in incident number 9. Concerning incident number 9, there was no superior present requiring him to issue the order to kill the flyer. A few days before the accused had obviously not considered the general order to kill flyers too binding or he would not have inquired as to STROOP's wishes. A specific order was received in the former case directing the killing of the flyer, but no punishment was imposed for failure to carry it out. In the incident at hand no inquiry was made of any superior. It is apparent that it was STROOP's desire that all captured flyers be killed but it also appears that the accused's desire to please STROOP was stronger than other considerations and had that not been true a method of avoiding directing the killing of the flyer might well have been devised. Thus the accused failed to establish that he acted under immediate compulsion and failed to meet the burden of proof as to superior orders required by pertinent authorities discussed in Section VI, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Lieutenant Colonel William Berman, Chief Defense Counsel, and Dr. Buerger, German defense counsel, 24 March 1947; Dr. Trost, a German lawyer, 23 July 1947; and by accused, 23 June 1947. Three Petitions for Clemency were filed by Irmgard Goss, wife of

accused, 10 June 1947, 7 July 1947, and 1 August 1947; and one by Rudolf Velte and ten other former officers who served with him in the same regiment, undated.

Recommendation: That the findings and sentence be approved.

16. HEINRICH MATTHIAS MICHELY

Nationality:	German
Age:	33
Civilian Status:	School teacher
Party Status:	Hitler Youth (Technical Sergeant) May 1944 to November 1944
Military Status:	Waffen SS (Private) instructor at Wehrwolf school, Wallrabenstein, Germany. Waffen SS, (Private) November 1944 to May 1945
Plea:	NG Charges 1, 2 and 9
Findings:	G Charges 2 and 9; NG Charge 1
Sentence:	Death by hanging

Evidence for Prosecution: Accused MICHELY was a member of the SS (R 1030, 1032; P-Ex 48). On 18 March 1945, the accused brought a captured American flyer to the Wehrwolf school in Wallrabenstein, Germany, incident number 9 (R 607, 608, 616, 618; P-Exs 144, 143, pp. 2, 3). That evening he received an order from accused GOSS to take the flyer to Idstein and shoot him on the way (R 616, 618; P-Exs 144, 143, pp. 4, 5). He left the school on foot with the flyer in the direction of Idstein. He directed the flyer on a little road off the highway and fired several shots, killing him. He returned and reported the execution of the order to GOSS. He kept and wore the flyer's bracelet which bore the name of Jimmie R. Heathman (R 616, 618; P-Exs 144, 143, pp. 4, 5). The flyer was buried in the cemetery at Wallrabenstein (R 618; P-Ex 143, p. 7).

Evidence for Defense: The accused took the stand and testified under oath. He testified he was an instructor in the Wehrwolf school, which was under the command of accused GOSS (R 1032). On 18 March 1945, upon GOSS' order, he brought in a captured American flyer (R 1034, 1036). That evening GOSS

directed him to take the flyer to Idstein and shoot him on the way (R 1035). He executed the order and reported the same to GOSS. He further testified that he kept the flyer's bracelet (R 1038). Subsequently, he made a written report of the incident, which report was sent to Wiesbaden (R 1038). He testified that failure on his part to obey the order would have meant death (R 1042).

Sufficiency of Evidence: There is considerable evidence as to accused MICHELY's membership in the SS and as to his being implicated in incident number 9. The accused was not required to nor did he kill the flyer in the presence of a superior. The Court might well have concluded that the accused took a consenting part in the incident and that his desire to co-operate with and please his superior was stronger than other considerations; that he did not act under immediate compulsion; and that he failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Dr. Buerger, German defense counsel, and Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Anna Michely, mother of accused, 6 May 1947; Nikolaus Hiell, 12 and 25 May 1947; Wilhelm Eberle, 12 April 1947; Police Kommissar of Dudweiler, 10 April 1947; Parson Bersch, 29 July 1947; and Catholic Pastorship Relchingen - Hanweiler, 15 July 1947.

Recommendation: That the findings and sentence be approved.

17. LEONARD BRANNER

The accused escaped from confinement prior to being served with charges (R 19, 20). In conformity with Section 5-327.7, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, United States Forces, European Theater, 30 November 1945, his trial in absentia was commensed, but no attempts were made to make any findings or to impose any sentence as to the accused. The accused was the

criminal secretary in the Gestapo office located in Giessen, Germany. In his extrajudicial sworn testimony, the accused admitted that on 3 October 1944, he killed a captured American flyer in Philosophen Forest on the order of his superior Kriminal-Rat Wintzer, incident number 3 (R 269; P-Ex 58A).

18. JULIUS LASSAK

Nationality:	German
Age:	59
Civilian Status:	Railroad Inspector; Police Director, Protective Police, Giessen, Germany, 11 January 1944 to May 1945
Party Status:	Nazi party, 1925 to May 1945
Military Status:	Allgemeine SS (Colonel) 1926 to May 1945
Plea:	NG Charges 1, 2 and 3
Findings:	G Charges 1 and 2 NG Charge 3
Sentence:	3 years, commencing 6 May 1945

Evidence for Prosecution: The accused was a colonel in the Allgemeine SS and Police Director, Giessen, Germany (R 239, 870, 903; P-Ex 49). In August or September 1944, he received three orders regarding the treatment of captured enemy flyers. One order was received from accused STROOP and Gauleiter Sprenger to the effect that the police were to turn over captured flyers to the Gestapo. The second order was received from STROOP to the effect that captured enemy flyers were to be shot. The third order was received from the commanding officer of the Security Police and was to the effect that captured enemy flyers would be turned over to the Gestapo. These orders were all marked "Secret" and were to be destroyed upon acknowledgement. On about 3 October 1944, in the vicinity of Giessen, Germany, the accused, in conformity with the above mentioned orders, delivered a captured American flyer to the Gestapo with the belief that he would be killed under the order issued by accused STROOP. The flyer was reported to have been killed (R 266, 267, 269; P-Exs 56A, 57, pp. 2, 5, 58A).

Evidence for Defense: The accused took the stand and testified under

oath. He admitted receiving the three orders concerning the illegal treatment of allied flyers (R 875, 883, 884, 907). He denied ever passing these orders to his subordinates or ordering them to mistreat or shoot captured Allied flyers or prisoners of war (R 890). He further testified that his statements in his extrajudicial sworn testimony regarding his knowledge that the flyer would be shot were made under duress and were not true (R 267, 891-893; P-Ex 57, p. 5). The accused contended that he was abused by unnamed CIC investigators during an interrogation in Camp No. 5, Natternberg, Germany, in August 1945, and again by a CIC investigator in Giessen, Germany, in early July 1946 (R 879-881, 884, 885). No attempt to test the truth of these assertions with the testimony of other witnesses was made. The accused also contended he was pressed against a wall and told not to lie during an interrogation in Wiesbaden, Germany, in August 1945, by a war crimes investigator, Mr. Zinn (R 924, 925). This was conceded on the stand by Mr. Coates, War Department civilian war crimes employee who was present acting as an interpreter (R 967). However, it appears that Mr. Zinn, the investigator in the Wiesbaden interrogation, expressed no general threats and merely admonished the accused not to lie (R 967-980). When Mr. Zinn pressed the accused against the wall Mr. Coates said to Mr. Zinn, "Joe, come back. Don't do a thing like this. We don't touch prisoners" (R 970).

Sufficiency of Evidence: There is considerable evidence as to accused LASSAK's membership in the SS and as to his being implicated in the common plan and design to violate the laws of war. While the testimony taken in Giessen was introduced, it was duplicated in most pertinent respects by the Wiesbaden extrajudicial sworn testimony. Although the action of the investigator at Wiesbaden is to be frowned upon, the Court might well have concluded that it was not such as to put the accused in fear of physical violence, particularly in view of the immediate admonition of Mr. Zinn by Mr. Coates in the presence of the accused, and that it was not shown that the accused was in such a state of fear as might induce him to state untruths.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

19. FRITZ GIRKE

Nationality:	German
Age:	35
Civilian Status:	Lawyer; Gestapo, 1 December 1940 to May 1945; Chief of Gestapo office, Bensheim, Germany, 1944 to 1945
Party Status:	Nazi party 1 May 1937 to May 1945
Military Status:	SS Major; SA (Staff Sergeant) 1 May 1933 to 1937
Plea: -	NG Charges 1, 2, 6 and 10
Findings:	G Charges 1, 2, 6 and 10
Sentence:	Death by hanging

Evidence for Prosecution: Accused GIRKE was a member of the SS (R 336, 1232, 1448) and a member of the Gestapo (R 163, 239, 326, 1448; P-Ex 50). He was chief of the Gestapo office located in Bensheim, Germany (R 326, 350). This office was originally located in Darmstadt. After the office was bombed out in September 1944, it was moved to Bensheim (R 335 336). In August or September 1944, he received an order marked "Top Secret" from the Reichs Head Security Office directing the police to shoot captured Allied flyers. He made known the contents of this order to the men under his command (R 102; P-Ex 29A). This secret state order was then entered in a special book kept for that purpose (R 318, 319). He also knew of the two orders issued by Himmler, the noninterference order and the order that the police would turn over captured flyers to the Gestapo to be shot (R 181; P-Ex 34A, pp. 3, 4).

On two occasions, 15 February 1945 and 24 March 1945, incidents numbers 6 and 10, respectively, the accused gave orders to accused HELLENBROICH, STATTMANN, and RAAF, Gestapo agents under his command, to shoot captured flyers (R 387; P-Ex 107A). On 15 February 1945, the accused ordered HELLENBROICH, STATTMANN, and RAAF to kill a captured American flyer. Acting in conformity with directions by the accused, accused STATTMANN and RAAF walked

the flyer to the woods outside the village of Bensheim where STATTMANN killed him with his pistol. The flyer was buried in the cemetery in Bensheim (R 374, 380; P-Exs 103A, pp. 2, 3, 104A). The body was disinterred on 2 April 1945 and identified as that of an American, Ray F. Hermann (R 358, 363; P-Exs 73, 90, pp. 11, 12).

Similarly, on 24 March 1945, he ordered accused HELLENBROICH to have accused STATTMANN and RAAF kill two captured American soldiers then in the Gestapo headquarters in Bensheim. HELLENBROICH relayed the order to STATTMANN and RAAF, who thereupon killed the two prisoners of war in the garden in the rear of the Gestapo building. Upon HELLENBROICH's order, the victims were buried in the garden by STATTMANN and RAAF. On 27 and 28 March 1945, the bodies were disinterred and identified as those of Americans, Lieutenant William H. Forman and Pfc. Robert T. McDonald (R 358, 374, 382, 383; P-Exs 73, p. 26, 103A, 105A, 106A, p. 1). The identifications were made from the pay books and other papers found on the bodies of the victims (R 369; P-Exs 94-98).

Evidence for Defense: The accused took the stand and testified under oath. He testified that he became the chief of the Gestapo in Darmstadt on 2 June 1944, with the rank of SS major (R 1448). He admitted that he issued an order to HELLENBROICH in the middle of February 1945, to shoot a captured American flyer. He issued the order pursuant to a shooting order previously received by him from accused TRUMMLER, his superior. The shooting order was confirmed during a telephone conversation which the accused had with TRUMMLER immediately prior to the issuance of the order in question to HELLENBROICH (R 1449, 1450). He also admitted that on 24 March 1945 he gave HELLENBROICH an order to shoot two captured American flyers who were then in the Gestapo headquarters in Bensheim (R 1454, 1455). He later received a report that the mission had been accomplished and that the flyers were buried in the garden. He further testified that failure upon his part to carry out these orders would have meant death (R 1456).

Sufficiency of Evidence: There is considerable evidence as to accused GIRKE's membership in the SS and Gestapo and as to his being implicated in

incidents numbers 6 and 10. No superior was present requiring the accused to issue the orders. They were merely issued in conformity with general instructions of a superior stationed at a distant point. Thus, the Court might well have concluded that the accused's desire to co-operate with and please superiors was stronger than other considerations; that he did not act under immediate compulsion; and that with regard to superior orders he failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Lieutenant Colonel William Borman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Luzi Girke, wife of accused, 24 March 1947; the accused, 23 April 1947, and 2 July 1947; and Rudi Gabelmann, Heinrich Gabelmann and Martha Gelbrich, 23, 24 and 29 July 1947.

Recommendation: That the findings and sentence be approved.

20. HEINZ HELLENBROICH

Nationality:	German
Age:	31
Civilian Status:	Lawyer; Criminal Police (Criminal Commissar) 15 April 1932 to January 1935; Gestapo (SS Major) January 1935 to May 1945; Assistant Commander of the Gestapo headquarters, Bensheim, Germany
Party Status:	Nazi party, 1 May 1933 to May 1945
Military Status:	SS Major
Plea:	NG . Charges 1, 2, 6 and 10
Findings:	G Charges 1, 2, 6 and 10
Sentence:	Death by hanging

Evidence for Prosecution: Accused HELLENBROICH was a member of the SS (R 239, 336, 1232, 1360, 2263; P-Ex 51) and a member of the Gestapo (R 239, 336, 1360; P-Ex 51). He was second in command in the Gestapo headquarters in Bensheim, Germany, and a principal assistant to the chief of that h
quarters acc[illegible] (R 336). [illegible]56. [illegible], various [illegible]
[illegible] ties [illegible] types of illega

headquarters, accused GIRKE (R 326). Following 1943, various orders were issued by higher party and police authorities directing various types of illegal treatment of captured flyers. By virtue of these orders a plan was created to violate the Geneva Convention relating to the treatment of prisoners of war (R 104; P-Ex 304, p. 5). On two occasions the accused ordered accused STATTMANN and RAAF, Gestapo agents under his command, to shoot captured American flyers.

On 15 February 1945, the accused ordered STATTMANN and RAAF to kill an American flyer then in the Gestapo headquarters in Bensheim, incident number 6. This was in conformity with a specific order he had received from accused GIRKE. After the flyer was killed, STATTMANN and RAAF reported the execution of the order to the accused. The accused ordered the body to be buried. It was buried in the cemetery in Bensheim (R 374, 380; P-Exs 1034, pp. 2, 3, 1044).

On 24 March 1945, in conformity with orders received from accused GIRKE, the accused ordered accused STATTMANN and RAAF to kill two American prisoners of war who were then in the Gestapo headquarters in Bensheim, incident number 10. In conformity with the order, STATTMANN and RAAF took both prisoners of war to the garden in the rear of the Gestapo building and shot them. The victims were buried in the garden (R 358, 374, 382, 383; P-Exs 73, p. 23, 1034, p. 4, 1054, 1064, pp. 1, 2).

Evidence for Defense: The accused took the stand and testified under oath. He testified that on about 15 February 1945 an American flyer was delivered to the Gestapo headquarters in Bensheim by the police from the Worms area. A report was received to the effect that the prisoner was a terror flyer who had strafed civilians (R 1365, 1366). Papers found on the flyer's person indicated his name to be Hormann (R 1368). The accused then reported the matter to accused GIRKE, who ordered the flyer to be shot in accordance with existing orders. The order was to be carried out by accused STATTMANN and RAAF in the vicinity of the woods near Bensheim. This accused so directed the two men. Sometime later they reported to him the accomplishment of the mission (R 1369, 1370).

During the evening of 24 March 1945, two flyers were delivered to the Gestapo headquarters in Bensheim, while the office was in the process of moving (R 1372). An interrogation report prepared by the unit which had delivered the flyers indicated that they were terror flyers who had strafed civilians (R 1374). The report also contained an endorsement by a major requesting that existing orders be carried out (R 1375). The accused reported the matter to GIRKE, who ordered that the flyers be shot. The accused then ordered STATTMANN and R[illegible]F to shoot the flyers in accordance with GIRKE's orders. He also informed the flyers that they were to be shot (R 1376, 1377). STATTMANN and R[illegible]F left with the flyers. They later reported to him that the order had been executed (R 1378, 1379). He denied any guilt under charges 1, 6 and 10 (R 1386, 1418), but admitted that he was a member of the Gestapo (R 1418).

Sufficiency of Evidence: There is considerable evidence as to accused HELLENBROICH's membership in the SS and Gestapo and as to his being implicated in incidents numbers 6 and 10. The accused relayed orders to those who were to perform illegal killings in accordance with the directions of a superior of virtually the same rank who it appears was present. Under all the circumstances, including the evidence as to his rank and positions held in vital Nazi organizations, the Court might well have concluded that his desire to co-operate with and please superiors in those organizations was stronger than other considerations; that he did not act unwillingly or under the immediate compulsion of superior orders; and that with regard to superior orders the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Klare Hellenbroich, wife of accused, 22 April 1947; Josef Hellenbroich, his father, 10 May 1947; and accused Fritz Girke, 2 July 1947.

Recommendation: That the findings and sentence be approved.

21. KARL FRANZ STATTMANN

Nationality:	German
Age:	37
Civilian Status:	Dental assistant; Security Service (Technical sergeant) February 1940 to May 1945; Gestapo (criminal assistant) 1 February 1945 to May 1945; Gestapo, criminal assistant in Gestapo headquarters, Bensheim, Germany
Party Status:	Nazi party, 1 May 1938 to May 1945
Military Status:	Allgemeine SS (staff sergeant) 17 September 1939 to February 1940; SA, April 1937 to September 1937 and 1 May 1938 to February 1945; SS Technical Sergeant
Plea:	NG Charges 1, 2, 6 and 10
Findings:	G Charges 1, 2, 6 and 10
Sentence:	Death by hanging

Evidence for Prosecution: Accused STATTMANN was a member of the SS (R 1230; P-Ex 52); a member of the SD (R 239, 1232; P-Ex 52); and a member of the Gestapo (R 239, 326, 327, 337, 1230, 1236; P-Exs 52, 67, pp. 3, 4). On about 15 February 1945, the accused, together with accused RAAF, received an order from accused HELLENBROICH to kill a captured American flyer who was then in Gestapo headquarters in Bensheim, incident number 6. The accused and RAAF walked the flyer to the woods outside the village, where this accused shot him to death. The victim was buried in the cemetery in Bensheim (R 358, 374, 380; P-Exs 73, pp. 10, 12, 103A, pp. 2, 3, 104A). On 24 March 1945, the accused and RAAF received an order from accused HELLENBROICH to kill two captured American prisoners of war who were then in the Gestapo headquarters in Bensheim, incident number 10. The prisoners of war were to be killed in the garden in the rear of the headquarters (R 382, 383; P-Exs 105A, 106A, pp. 1, 2). They took the two prisoners of war to the garden and shot them (R 358, 374, 382, 383; P-Exs 73, pp. 18-21, 103A, pp. 3, 4, 105A, 106A, p. 1). They reported the execution of the order to HELLENBROICH, who ordered the bodies buried. STATTMANN and RAAF thereupon buried the bodies in the garden (R 383; P-Ex 106A, pp. 1, 2).

Evidence for Defense: The accused took the stand and testified under oath. He testified that on about 15 February 1945, a flyer was delivered to the Gestapo headquarters by the rural police from the Worms area (R 1239). The rural police also transmitted a report that the flyer was a terror flyer (R 1243). The accused was ordered to report to accused HELLENBROICH, who told him that accused GIRKE had directed that the accused shoot the flyer in the woods in the vicinity of Bensheim (R 1244, 1245). The accused was ordered to take accused RAAF along (R 1245). The accused and RAAF walked the flyer to the forest where the accused shot him. RAAF also fired a mercy shot at the flyer (R 1247). They returned to Bensheim and reported the execution of the order to HELLENBROICH and GIRKE (R 1247, 1248). Shortly thereafter, the accused made a written report to the effect that the flyer was killed in accordance with orders. The victim was identified as Captain Ray Hermann (R 1248). During the evening of 24 March 1945, the accused was again ordered to report to HELLENBROICH. HELLENBROICH told him that GIRKE had ordered that the accused kill a captured American flyer then in Gestapo headquarters, in the back yard (R 1249, 1250). The accused took the flyer out to the garden and shot him (R 1250). Thereupon, he returned to the building and reported the execution of the order to HELLENBROICH (R 1251). Accused RAAF then came in and reported that he had also shot a flyer. RAAF was then ordered to bury the bodies in the garden (R 1251, 1259). The accused denied any guilt under charge 1 but admitted knowledge of some of the orders regarding the treatment of flyers which he had received at official meetings (R 1255, 1256).

Sufficiency of Evidence: There is considerable evidence as to accused STATTMANN's membership in the SS, SD and Gestapo and as to his being implicated in incidents numbers 6 and 10. In view of the place where incident number 10 occurred, i.e., the close proximity of the superior, the question of whether mitigating factors are in favor of the accused is not free from difficulties. However, concerning incident number 6, the order required that the killing take place at a distant point with no superiors present.

Under all these circumstances, including the responsible positions held by him in vital Nazi organizations, the Court might well have concluded with regard to the accused's state of mind in connection with incident number 6 that the accused's desire to co-operate with and please superiors in these organizations was stronger than other considerations; that he did not act unwillingly or under the immediate compulsion of superior orders; and that with regard to superior orders the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Lieutenant Colonel William Berman, Chief Defense Counsel, 24 March 1947. Petitions for Clemency were filed by Wilfriede Stattmann, wife of accused, 23 March 1947; Gustav Hartwig, 27 April 1947; Heinrich Werner and two other persons, 12 May 1947; Willy Krause, 22 April 1947; Heinz Neuberg, 17 April 1947; Werner Bunte, 14 April 1947; Ingart Bunte, 17 April 1947; Heinrich Tatte, 9 April 1947; and accused Fritz Girke, 2 July 1947.

Recommendation: That the findings and sentence be approved.

22. MICHAEL RAAF

Nationality:	German
Age:	41
Civilian Status:	Member of police force; Protective Police (staff sergeant) 1 September 1924 to 1 January 1941; Gestapo (criminal secretary) 1 January 1941 to May 1945; criminal secretary in Gestapo headquarters, Bensheim, Germany
Party Status:	Nazi party, 1 May 1940 to May 1945
Military Status:	SS Master Sergeant
Plea:	NG Charges 1, 2, 6 and 10
Findings:	G Charges 1, 2, 6 and 10
Sentence:	Death by hanging

Evidence for Prosecution: Accused RAAF was a member of the SS (R 1245) and a member of the Gestapo (R 239, 324, 327, 337, 1293; P-Exs 53, 67, pp. 3,4

The evidence introduced against the accused is the same in all pertinent respects as that introduced against accused STATTMANN. Reference is hereby made to the evidence for the prosecution introduced against the latter accused.

Evidence for Defense: The accused took the stand and testified under oath. He testified that on about 15 February 1945, a captured enemy flyer was in Gestapo headquarters in Bensheim, Germany (R 1302). While he was in his office, the accused STATTMANN came in and told him that accused GIRKE had ordered the accused along on an execution. The accused and STATTMANN walked the flyer outside of the town in the direction of the woods (R 1303). In the woods, STATTMANN fired one shot at the flyer. Inasmuch as the victim still showed signs of life, the accused also fired a shot at him (R 1304). They returned to the office and reported the execution of the order to HELLENBROICH. On HELLENBROICH's order, the accused arranged for the burial of the body in the cemetery in Bensheim (R 1305).

During the evening of 24 March 1945, the accused and STATTMANN were ordered to report to HELLENBROICH in the guard room. Two captured American flyers were there. HELLENBROICH told the flyers that they were to be shot and then gave the accused and STATTMANN an order to shoot them in the garden next to the building (R 1307). He and STATTMANN each took a flyer and went in the direction of the garden where they killed them (R 1308). They then reported the accomplishment of the mission to HELLENBROICH, who ordered the accused to bury the bodies. He helped bury them in the garden (R 1309, 1310, 1314, 1315). He denied his guilt under charge 1 (R 1312).

Sufficiency of Evidence: There is considerable evidence as to accused RAAF's membership in the SS and Gestapo and as to his being implicated in incidents numbers 6 and 10. In view of the place where incident number 10 occurred, i.e., the close proximity of the superior, the question of whether there are mitigating factors in favor of the accused is not free from difficulties. However, concerning incident number 6, the order required that the killing take place at a distant point with no superiors present. Under all these circumstances, including the responsible positions held by him in vital

Nazi organizations, the Court might well have concluded with regard to the accused's state of mind in connection with incident number 6 that the accused's desire to co-operate with and please superiors in those organizations was stronger than other considerations; that he did not act unwillingly or under the immediate compulsion of superior orders; and that with regard to superior orders the accused failed to meet the burden of proof required by pertinent authorities discussed in Section VI, post.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by Lieutenant Colonel Berman, Chief Defense Counsel and Dr. Buerger, German defense counsel, 24 March 1947. Petitions for Clemency were filed by Hanz Heizmann, 21 March 1947; Johannes Jorg, 1 April 1947; Josef Hammele and 32 other persons, 27 March 1947; Ann- Kirchbach, March 1947; and accused Firtz Girke, 2 July 1947.

Recommendation: That the findings and sentence be approved.

VI. QUESTIONS OF LAW:

1. Jurisdiction: The Military Government Court which heard this case was properly constituted and had jurisdiction of the accused and the offenses. Near the outset of the trial the defense moved to quash the charges and particulars on the grounds that certain of the accused were members of the German armed forces at the time of the alleged offenses, that certain accused were not only members of the German armed forces at the time of the alleged offenses but also at the time they were captured, and that one was a member of the German armed forces not only at the time of the alleged offenses and his capture but also at the outset of the trial (R 30). It was argued in support of the motion that by virtue of the Geneva Convention, apparently the defense relied upon Article 63, the Court did not have jurisdiction of certain of the accused, that a trial of them by the Court under the prescribed procedure for Military Government Courts would be illegal, and that they were entitled to be tried by the same courts and under the same procedure as in the case of members of the armed forces of the capturing power (R 30, 31). This

question arose in United States v. Altfuldisch, et al., February 1947, known as the Mauthausen Concentration Camp case. The question was thoroughly discussed therein and was resolved in favor of the jurisdiction of the Court and reliance was placed upon the Yamashita case, 66 Supreme Court Reporter 340, At page 350 the Court was considering Article 63 of the Geneva Convention which provides:

> "Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power."

In disposing of the contention that the accused war criminal could not be tried before a Military Commission, the Supreme Court of the United States said:

> "But we think examination of Article 63 in its setting in the Convention plainly shows that it refers to sentence 'pronounced against a prisoner of war' for an offense committed while a prisoner of war, and not for a violation of the law of war committed while a combatant."

The motion to quash was properly overruled.

It is well settled by accepted international law that members of an enemy armed force, or civilian nationals of an enemy country, may be punished by properly constituted courts established by the occupying power for crimes against the laws and usages of war committed prior to the cessation of hostilities. (See War Department Basic Field Manual 27-10, "Rules of Land Warfare", paragraph 345.1 set forth in Change 1, 15 November 1944, and paragraphs 346 and 347, as the latter is amended by said Change 1; In re Yamashita, supra; United States v. Wiegand, November 1945, and authorities cited therein, which case is digested in Section 122, "Manual for Trial of War Crimes and Related Cases", 15 July 1946; and the Mauthausen Concentration Camp case, supra).

2. Membership in Criminal Organizations: The accused STROOP, SOMANN, TRUMMLER, FUHR, HOHLER, BEST, GOSS, MICHELY, LASSAK, GIRKE, HELLENBROICH, STATTMANN, and RAAF were found guilty under charge 2 of membership in criminal organizations, i.e., the Gestapo, the SD, or the SS. Article 9 of the Charter annexed to the London agreement of 8 August 1945, Concerning Prosecution

and Punishment of Major War Criminals of the European Axis, provided that at the trial of any individual member of any group or organization the International Military Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization. Article 10 of the Charter provides that the declaration of criminality against an accused organization is final and cannot be challenged in any subsequent criminal proceeding against a member of the organization in national, military or occupation courts. In view of these provisions of the Charter, Law Number 10 of the Control Council of Germany, 20 December 1945, specifically recognized as a crime membership "in categories of a criminal group or organization declared criminal by the International Military Tribunal". Among others, the Tribunal found the Die Geheime Staatspolizei (commonly known as the Gestapo), Der Sicherheitsdienst des Reichsfuhrer SS (commonly known as the SD), and Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SS) to be criminal organizations. With regard to the three organizations, the Tribunal included all local Gestapo officials, all local SD representatives and agents, and all persons who had been officially accepted as members of the SS including members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbande, and members of any of the different police forces who were members of the SS, when it appears that they became or remained members of any of the three organizations with knowledge that they were being used for the commission of war crimes, or who were personally implicated as members of those organizations in commission of such crimes, within the groups declared to be criminal.

3. Motions: After the prosecution had rested, the defense made several motions, the first being a motion on behalf of all of the accused to quash charge 1 and the particulars thereunder on the ground that it when read together with the particulars thereunder, disclosed more than one offense, i.e., conspiracy, assault, murder, etc., (R 635). This motion was properly overruled (R 647). The particulars under the charge are, in all pertinent respects, like the common designs alleged in United States v. Weiss, et al., March 1946,

known as the Dachau Concentration Camp case and the Mauthausen Concentration Camp case, supra. The prosecution aptly pointed out that only one offense is alleged which when reduced to its simplest terms is that the accused engaged in a common design to commit violations of the laws of war. It is true that formal words precede the vital ones stating the offense, which are descriptive for the Court and the accused as to roles the accused are alleged to have taken. Also formal words follow those stating the offense, which merely describe acts done pursuant to the common design.

The next motion by the defense sought findings of not guilty as to all the accused under charge 1 and the particulars thereunder for the reason that the prosecution "has failed to sustain its burden of proving the guilt of the accused beyond a reasonable doubt" (R 647). The evidence theretofore adduced by the prosecution, which linked the accused with a series of similar criminal acts, had established a prima facie case of concerted action as to those acts and that the incidents were but parts of a common whole. (See Wharton's Criminal Law, Volume II, page 1939.) It is not error for a war crimes tribunal to overrule a motion for a finding of not guilty made at the close of the case for the prosecution if it believes there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, US Forces, European Theater, 30 November 1945 and Section 501, page 409, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). A similar practice is followed in Courts-Martials (Paragraph 71, d., "Manual for Courts-Martial, U.S. Army", 20 April 1943). The motion was properly overruled (R 655).

The third motion by the defense following the close of the prosecution's case sought findings of not guilty on behalf of accused EICHEL, KIWITT, ALBRECHT, MOLLER, GOEHRENDT, NAHRGANG, HAMMAN, FAY, BRANNER, and HOHLER as to charge 2 and the particulars thereunder on the ground that the prosecution had "failed to prove beyond a reasonable doubt that they or any of them was a member of any of the organizations for the period in question as stated in the

particulars as to charge 2". The motion was sustained as to all but accused BRAUNER and HOHLER (R 665). A prima facie case having been established as to those two, the motion was properly denied as to them.

The fourth motion by the defense sought (R 655):

a. To strike certain exhibits from the record on the ground that the prosecution had failed to sustain its burden of proof that the accused or any of them had "conspired in any way wilfully and deliberately with any of the persons named in any of the exhibits".

b. To strike from the record all references to the Wehrwolf on the ground that the prosecution had failed to sustain its burden of proof that the organization was actually formed or that it participated in any war crime.

c. To strike from the record all references and testimony with respect to Stoll on the ground that the prosecution had failed to sustain its burden of proof to connect any of the accused with Stoll.

d. To strike a number of specified exhibits from the record on the ground that the prosecution had not sustained its burden of proof as to the confessions, i.e., that they were voluntary and obtained without duress.

In final analysis, the defense sought to strike the evidence covered by the first, second, and third portions of the motion on the ground that it was too remote, not directly related to the charges against the accused, and in fact involved crimes by individuals not named. While this is not a conspiracy, in Anglo-American practice concerning a true conspiracy, the evidence is permitted to take wide range and all facts or circumstances which taken together show a common plan or purpose are admissible (Underhill's Criminal Evidence, Fourth Edition, pages 1406-1409). In any event it is sufficient answer that tribunals trying violations of the laws of war may admit any evidence which they deem to have probative value, i.e., helpful in arriving at a true finding (In re Yamashita, supra, and Section 270, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). It may have been the position of defense counsel that the evidence should have been stricken because it involved crimes by persons not identified in the charges. The common designs

alleged in the Dachau and Mauthausen Concentration Camp cases, supra, did not identify by name or class all of the other numerous individuals who obviously participated in those huge mass atrocity operations. However, by the charges in those cases and in this one, the accused were fully apprised of the nature, character, and purpose of the common designs and the results effected in pursuance thereof, as well as the names of some of the individuals with whom they were alleged to have acted in concert.

As to the fourth portion of the motion, there is some authority in American criminal law to the effect that confessions are presumed to be voluntary and are admissible without foundation evidence in the absence of reason to suspect the use of violence, threats, torture, etc. (See 20 American Jurisprudence, Evidence, Section 536). The regulations in connection with the trial of war crimes cases by Military Government Courts in this Theater have never required such foundation evidence. In this connection it is of interest to note that Regulation 5 d (7) of the SCAP Regulations, supplemented by Rules of Procedure and Outline of Procedure for Trial of Accused War Criminals, issued by Headquarters, United States Eighth Army, 5 February 1946, and amended by a letter of General MacArthur, 27 December 1946, provides that all confessions or statements of accused shall be admissible in evidence without any showing that they were voluntarily made, and, further, that, if it is shown that they were procured by means which the commission believes to have been of such character that the accused may have been caused to make a false statement, the commission may strike out or disregard any portion thereof as was so procured. While probably not binding on the Court in the trial of these cases, the "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended 1 February 1947, provides by subparagraph c (4), Section 270, that war crimes tribunals will not require foundation evidence to establish that sworn statements offered in evidence were voluntarily procured, but on the other hand will presume subject to be rebutted by competent evidence that the sworn statements were voluntarily made.

The Court did not err in overruling the fourth motion in its entirety and no injustice resulted to the accused (R 691).

The fifth motion made by the defense at the end of the prosecution's case was a motion on behalf of certain accused for findings of not guilty under charges 3 to 10, inclusive, and also for findings of not guilty as to the [illegible] of illegal killings as to certain accused under any of the 10 charges (R 692). It was properly overruled (R 716).

4. Superior Orders: As indicated in Section V, supra, accused TRUPPEL, FUHR, HOHLER, HOLLER, BEST, GOSS, MICHELY, GIRKE, HELLENBROICH, STATTMANN, and RAAF sought to justify their actions by offering evidence to show they were acting in compliance with superior orders. Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Dominikus Thomas, December 1945; United States v. Alfons Klein, et al., (Hadamar Murder Factory Case), February 1946; and French Republic v. Wagner, et al., Court of Appeals, July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1, Change 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case

cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rule of the Law", by Ernst Fraenkel; and opinions of the Deputy Theater Judge Advocate for War Crimes in United States v. Bury, et al., September 1945, United States v. Dominikus Thomas, supra, and United States v. Beck, et al., December 1946).

5. Special Findings: In addition to the findings respecting each accused, the Court made special findings of fact regarding the existence in the Third German Reich, on and after 13 March 1940, of certain memoranda, directives, orders, decrees, and propaganda concerning the treatment by the German armed forces, police, and civilian population and the civilian population of countries occupied by Germany during World War II of Allied commandos, saboteurs, parachutists, and captured flyers (R 2595-2637). The findings are amply supported by documents and evidence adduced in the trial. It could be contended that the Court, in making these findings, exceeded the allegations in the charges, and particulars and that, therefore, the findings are improper. However, there is ample authority for additional findings by military courts (Winthrop's "Military Law and Precedents", Second Edition, Reprint 1920, at page 385, and the Mauthausen Concentration Camp case, supra). The Court may well have thought that its findings would clarify its views as to the evidence covered by the findings and that such clarification would aid in the trial of later cases involving the killing of surrendered flyers.

6. Swearing of Court: The Court overruled a motion by the defense to set aside the death sentences imposed on the ground that the members of the Court were not sworn (R 2587-2589). No error was committed. Members of Military Government Courts specially appointed for the trial of violations of the laws and usages of war are not sworn (Section 501, page 402, "Manual for Trial of War Crimes and Related Cases", 15 July 1946).

7. Conduct of Trial: The case was well and thoroughly tried and accused were all represented by competent American and German counsel. One member of the Court was a legally trained officer. Sufficient interpreters were provided at all times. A full right of cross-examination was extended throughout

the trial. All accused were given an opportunity to testify in their own behalf and all convicted accused chose to do so. Both the findings and sentence as to each accused were approved by a two-thirds vote of the members present. The trial was conducted with fairness to all accused.

VII. CONCLUSIONS:

An examination of the entire record of trial fails to disclose any error or omission which resulted in injustice to the accused and discloses that the evidence is legally sufficient to support the findings of the Court. Accordingly, it is recommended that the findings of the Court be approved as to all the accused and that the sentences to death by hanging as to accused STROOP, TRUMLER, FUHR, HOHLER, EICHEL, KIVITT, GOSS, MICHELY, GIRKE, HELLENBROICH, STATTMANN and RAAF be approved and ordered executed; that the sentence to death by hanging as to accused MOLLER be approved, but commuted to imprisonment for life and as commuted ordered executed; that the sentences to imprisonment for fifteen (15) years as to accused ALBRECHT, HALLMANN and BEST be approved and ordered executed; that the sentences to imprisonment for five (5) years as to accused NAHRGANG and FAY be approved and ordered executed; that the sentence to imprisonment for four (4) years as to accused SOMANN be approved and ordered executed; and that the sentence to imprisonment for three (3) years as to accused LASSAK be approved and ordered executed.

Legal Forms Nos. 13 and 16 to accomplish these results are attached hereto, should it meet with approval.

Ronald Dadamio
RONALD DADAMIO
2nd Lt., Inf.
Post Trial Branch

Having examined the record of trial, I concur this 19th day of September 1947.

C. E. Straight
C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes

CA G[18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc.
Strafsache Nr. 12-2000, usw.

Order No.
Verfügung Nr.

Whereas one

Wilhelm Keitel
(Name of Accused) (Name des der Angeklagten)

was convicted of the offence of participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten

by the *~~United States~~ Military Court
*General
*~~Zivil~~
*~~Militär~~ Militärgerichte
*Oberen

at Nuernberg, Germany
in Nuernberg, Deutschland
(Address of Court) (Anschrift des Gerichts)

and sentenced to imprisonment for fifteen years, commencing 20 May 1945
schuldig erkannt und zu fünfzehn Jahren Gefängnis verurteilt, mit Wirkung ab 20 Mai 1945

by Judgment dated the 13 October 1946
durch Urteil vom 13. Oktober 1946 194 and
(date) (Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine Wilhelm KEITEL in the Criminal Prison No. 1, Landsberg, Germany, for a period of fifteen years, commencing 20 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, vom Militärbezirk 1, wird die Inhaftierung von Wilhelm KEITEL in Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, für die Dauer von fünfzehn Jahren, mit Wirkung ab 20 Mai 1945, veranlassen.

Dated this 22 October 1946
Gegeben am 194

A CERTIFIED TRUE COPY:
Herbert F. [illegible]
Colonel AGD

/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Title)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

CA G1 13 — Legal Form No 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc.
Strafsache Nr. 12-2000, usw.

Order No.
Verfügung Nr.

Whereas one **Georg LEST**
(Name of Accused) (Name des/der Angeklagten)

was convicted of the offence of **membership in criminal organizations and participation in common design to kill and killing surrendered prisoners of war**
wegen der folgenden strafbaren Handlung **Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten**

by the [redacted] Military Court
*General
*[redacted]
vom *[redacted] *Militärgerichte*
*Oberen

at **Dachau, Germany**
in **Dachau, Deutschland**
(Address of Court)
(Anschrift des Gerichts)

and sentenced to **imprisonment for fifteen years, commencing 8 May 1945**
schuldig erkannt und zu **fünfzehn Jahren Gefängnis verurteilt, mit Wirkung ab 8 Mai 1945**

by Judgment dated the **21 March 1947**
durch Urteil vom **21 März 1947** 194 and
(date) (Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhalts und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine Georg BEST in War Criminal Prison No. 1, Landsberg, Germany, for a period of fifteen years, commencing 8 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, von Militärbezirk I, wird die Inhaftierung von Georg BEST im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, für die Dauer von fünfzehn Jahren, mit Wirkung ab 8 Mai 1945, veranlassen.

Dated this 21 March 1947
Gegeben am 194

A CERTIFIED TRUE COPY:
HOWARD F. BREESE
Colonel AGD

/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

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CA/Cl 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc. Order No.
Strafsache Nr. 12-2000, usw. *Verfügung Nr.*

Whereas one Hans KICKL
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten

by the *[redacted] Military Court
*General at Dachau, Germany
**Fünfachen* *in* Dachau, Deutschland
vom *[redacted] *Militärgerichte* (Address of Court) *(Anschrift des Gerichts)*
**Oberen*

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date) *(Datum)*

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, von Militärbezirk I, wird die Vollstreckung des Urteils im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this
Gegeben am 22 März 1947

(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General, USA
Commander-in-Chief
(Title)

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CA G-13 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc. Order No.
Strafsache Nr. 12-2000, usw. *Verfügung Nr.*

Whereas one Bernard FAY
(Name of Accused) *(Name des/der Angeklagten)*

was convicted of the offence of participation in killing a surrendered prisoner of war
wegen der folgenden strafbaren Handlung Teilnahme an der Tötung eines Kriegsgefangenen, der sich ergeben hatte

by the ~~*Military~~ *General ~~Military~~ *Oberen Military Court at Dachau, Germany
vom ~~*Militärgerichte~~ *Militärgerichte* *in* Dachau, Deutschland
(Address of Court) *(Anschrift des Gerichts)*

and sentenced to imprisonment for five years, commencing 22 May 1945
schuldig erkannt und zu fünf Jahren Gefängnis verurteilt, mit wirkung ab 22 Mai 1945

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date) *(Datum)*

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine Bernard FAY in the Criminal Prison No. 1, Landsberg, Germany, for a period of five years, commencing 22 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Inhaftierung von Bernard FAY im Kriegsverbrecher-Gefängnis Nr. 1, Landsberg, Deutschland, für die Dauer von fünf Jahren, mit wirkung ab 22 Mai 1945, veranlassen.

Dated this 22 Nov 194 /
Gegeben am

A CERTIFIED TRUE COPY:
HOWARD F. BRESEE
Colonel AGD

/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Title) *(Titel)*

9 FEB 1948
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*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

CA/Cl 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc. Order No.
Strafsache Nr. 12-2000, usw. *Verfügung Nr.*

Whereas one Arthur FÜHR
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of membership in criminal organizations and participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten.

by the *Summary / *Military Court / *General / *[illegible] / *Militärgerichte / *Oberen
vom

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947
(date) *(Datum)* 194 and

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Vollstreckung des Urteils im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this
Gegeben am 14 Jan 1948

(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Title)

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CAGL 13 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc.
Strafsache Nr. 12-2000, usw.

Order No.
Verfügung Nr.

Whereas one Fritz GIRK
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of membership in criminal organizations and participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten

by the *~~[illegible]~~ Military Court
*General
*~~[illegible]~~
vom *~~[illegible]~~ *Militärgerichte*
Oberen

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Vollstreckung des Urteils im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this 22 Juni 1947
Gegeben am

(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General, USA
Commander-in-Chief
(Titel)

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CA/Cl 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc. Order No.
Strafsache Nr. 12-2000, usw. *Verfügung Nr.*

Whereas one Erwin GOES
(Name of Accused) *(Name des (der) Angeklagten)*
was convicted of the offence of membership in criminal organisations and participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten

by the [redacted] Military Court
*General
[redacted]
vom [redacted] *Militärgerichte*
*Oberen

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich: —

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Vollstreckung des Urteils in Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this 22 Mar 1947
Gegeben am

(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Titel)

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CAGI 18 A

Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. *12-2000, etc.
Strafsache Nr. 12-2000, usw.

Order No.
Verfügung Nr.

Whereas one Philipp HAUSMANN
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of participation in killing a surrendered prisoner of war
wegen der folgenden strafbaren Handlung Teilnahme an der Tötung eines Kriegsgefangenen, der sich ergeben hatte

by the *[redacted] Military Court
*General
*[redacted]
vom *[redacted] *Militärgerichte*
**Oberen*

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for fifteen years, commencing 12 May 1945
schuldig erkannt und zu fünfzehn Jahren Gefängnis verurteilt, mit Wirkung ab 12 Mai 1945

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine Philipp HAUSMANN in War Criminal Prison No. 1, Landsberg, Germany, for a period of fifteen years, commencing 12 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, von Militärbezirk I, wird die Inhaftierung von Philipp HAUSMANN in Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, für die Dauer von fünfzehn Jahren, mit Wirkung ab 12 Mai 1945, veranlassen.

Dated this 12 Nov
Gegeben am 194 7

9 FEB 1948

/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

LUCIUS D. CLAY
General (Title) USA
Commander-in-Chief

A CERTIFIED TRUE COPY:
[redacted]
[redacted] F. BRETT
Colonel AGD

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CA/Cl 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc.
Strafsache Nr. 12-2000, usw.

Order No.
Verfügung Nr.

Whereas one Heinz HELLENBROICH
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of membership in criminal organizations and participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten

by the *[illegible] Military Court
*General
*[illegible]
vom *Militärgerichte
*Oberen

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Vollstreckung des Urteils im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this 21 May 1947
Gegeben am

(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

CA/GI 18 — Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 12-[illegible] etc. — Order No.
Strafsache Nr. 12-2000, usw. — *Verfügung Nr.*

Whereas one Wilhelm HÖHLER
(Name of Accused) (*Name des, der, Angeklagten*)

was convicted of the offence of membership in criminal organizations and participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten

by the ~~[illegible]~~ Military Court
*General
~~[illegible]~~
vom ~~[illegible]~~ *Militärgerichte*
*Oberen

at Dachau, Germany
in Dachau, Deutschland
(Address of Court) (*Anschrift des Gerichts*)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(Date) (*Datum*)

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des*

exercise of the powers conferred upon me, I hereby order:
Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved but the sentence is commuted to imprisonment for life. The Commanding General, First Military District, will confine Wilhelm HOHLER in War Criminal Prison No. 1, Landsberg, Germany, for the duration of his life.

Dass der Befund und das Urteil bestätigt werden, dass Urteil jedoch in eine lebenslängliche Gefangnisstrafe veradert werd. Der Kommandierende General, vom Militarbezirk I, wird die lebenslängliche Inhaftierung von Wilhelm HÖHLER im Kriegsverbrechergefangnis Nr. 1, Landsberg, Deutschland, veranlassen.

Dated this 2 [illegible] 194
Gegeben am

[illegible]
Colonel AGD

/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(*Unterschrift der nachprüfenden Behörde*)
LUCIUS D. CLAY
General USA
~~Commander-in-Chief~~

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

1057

CA/Cl 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc. Order No.
Strafsache Nr. 12-2000, usw. *Verfügung Nr.*

Whereas one Josef Johann KIMITZ
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten

by the ~~Subordinate~~ Military Court
*General
~~Oberfeldkommandantur~~
vom ~~Militärgerichte~~ *Militärgerichte*
**Oberen*

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Vollstreckung des Urteils im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this 22 NOV 1947
Gegeben am

Lucius D. Clay
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Co. mander-in-Chief
(Titel)

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CA GL 13 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc.
Strafsache Nr. 12-2000, usw.

Order No.
Verfügung Nr.

Whereas one Julius LASSAK
(Name of Accused) *(Name des oder) Angeklagten)*
was convicted of the offence of membership in criminal organizations and participation in common design to kill surrendered prisoners of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan, Kriegsgefangene, die sich ergeben hatten, zu töten

by the *Military Court
*General
*
*Militärgerichte
*Oberen

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for three years, commencing 6 May 1945
schuldig erkannt und zu drei Jahren Gefängnis verurteilt, mit Wirkung ab 6 Mai 1945

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

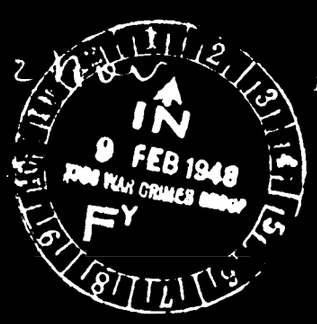
That the findings and sentence are approved. The Commanding General, First Military District, will confine Julius LASSAK in War Criminal Prison No. 1, Landsberg, Germany, for a period of three years, commencing 6 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Inhaftierung von Julius LASSAK im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, für die Dauer von drei Jahren, mit Wirkung ab 6 Mai 1945, veranlassen.

Dated this 22nd day of February 194 1
Gegeben am

A CERTIFIED TRUE COPY:
Howard F. Bresee
HOWARD F. BRESEE
Colonel AGD

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*



/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General, USA
Commander-in-Chief
(Title)
(Titel)

GA GI 18.2 — Legal Sec No 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc. — Order No.
Strafsache Nr. 12-2000, usw. — *Verfügung Nr.*

Whereas one Heinrich Matthias MICHELY
(Name of Accused) *(Name des oder der Angeklagten)*

was convicted of the offence of membership in criminal organizations and participation in killing a surrendered prisoner of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an der Totung eines Kriegsgefangenen, der sich ergeben hatte

by the *[redacted] Military Court — at Dachau, Germany
*General — *in* Dachau, Deutschland
*[redacted] *Militärgerichte* — (Address of Court) *(Anschrift des Gerichts)*
*Oberen

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date) *(Datum)*

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved but the sentence is commuted to imprisonment for life. The Commanding General, First Military District, will confine Heinrich Matthias MICHELY in War Criminal Prison No. 1, Landsberg, Germany, for the duration of his life.

Dass der Befund und das Urteil bestatigt werden, dass das Urteil jedoch in eine lebenslangliche Gefangnisstrafe veradert werd. Der Kommandierende General, vom Militarbezirk I, wird die lebenslangliche Inhaftierung von Heinrich Matthias MICHELY im Kriegsverbrechergefangnis Nr. 1, Landsberg, Deutschland, veranlassen.

Dated this 14 Jan 194 8
Gegeben am

A CERTIFIED TRUE COPY:
Howard F. Bresee
HOWARD F. BRESEE
Colonel AGD

FEB 19

/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Title)

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CA/Cl 18 Legal Form No 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc.
Strafsache Nr. 12-2000, usw.

Order No.
Verfügung Nr.

Whereas one Hermann MÖLLER
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of participation in killing a surrendered prisoner of war
wegen der folgenden strafbaren Handlung Teilnahme an der Tötung eines Kriegsgefangenen, der sich ergeben hatte

by the *~~Summary~~ *~~Intermediate~~ Military Court
*General
*~~Einfachen~~
*~~Mittleren~~ *Militärgerichte*
*~~Niederen~~
*Oberen

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved but the sentence is commuted to imprisonment for life. The Commanding General, First Military District, will confine Hermann MOLLER in War Criminal Prison No. 1, Landsberg, Germany, for the duration of his life.

Dass der Befund und das Urteil bestätigt werden, dass das Urteil jedoch in eine lebenslängliche Gefängnisstrafe verändert werd. Der Kommandierende General, von Militärbezirk I, wird die lebenslängliche Inhaftierung von Hermann MOLLER im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, veranlassen.

Dated this 22 JAN
Gegeben am 194 1

A CERTIFIED TRUE COPY:
HOWARD F. BURSLEY
Colonel AGD

FEB 1948

/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
(Title)
Commander-in-Chief

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

CA Gl 13[1] Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Oberprüfung

Case No. 12-2000, etc.
Strafsache Nr. 12-2000, etc.

Order No.
Verfügung Nr.

Whereas one Paul HAHRGANG
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of participation in killing a surrendered prisoner of war
wegen der folgenden strafbaren Handlung Teilnahme an der Tötung eines Kriegsgefangenen, der sich ergeben hatte

by the *Summary/*Intermediate/*General Military Court
vom *Standort-/*Militär-/*Militärgerichte
Oberen

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for five years, commencing 6 December 1945
schuldig erkannt und zu fünf Jahren Gefängnis verurteilt, mit Wirkung ab 6 Dezember 1945

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-

exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine Paul HAHRGANG in War Criminal Prison No. 1, Landsberg, Germany, for a period of five years, commencing 6 December 1945.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Inhaftierung von Paul HAHRGANG in Kriegsverbrecher-gefängnis Nr. 1, Landsberg, Deutschland, für die Dauer von fünf Jahren, mit Wirkung ab 6 Dezember 1945, veranlassen.

Dated this 22 Mar 194 7
Gegeben am

[illegible]
Colonel [illegible]
*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

6 FEB 1948

/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General (Title) USA
Commander-in-Chief

CA/Cl 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc. Order No.
Strafsache Nr. 12-2000, usw. *Verfügung Nr.*

Whereas one Michael MAAT
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of membership in criminal organizations and participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten

by the *Summary / *Subsequent Military Court
*General
*Supreme
vom *Militärgerichte
*Oberen

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194..... and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Vollstreckung des Urteils in Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this
Gegeben am 14 Jan 1948

Lucius D. Clay
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General, USA
Commander-in-Chief
(Rank)
(Titel)

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CA GI 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc.
Strafsache Nr. 12-2000, usw.

Order No.
Verfügung Nr.

Whereas one Otto SOMANN
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of membership in criminal organisations and participation in common design to kill surrendered prisoners of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan, Kriegsgefangenen, die sich ergeben hatten, zu töten

by the *[redacted] Military Court
*General
*[redacted]en
vom *[redacted] *Militärgerichte*
**Oberen*

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for four years, commencing 30 May 1945
schuldig erkannt und zu vier Jahren Gefängnis verurteilt, mit Wirkung ab 30 Mai 1945

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine Otto SOMANN in War Criminal Prison No. 1, Landsberg, Germany, for a period of four years, commencing 30 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Inhaftierung von Otto SOMANN in Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, für die Dauer von vier Jahren, mit Wirkung ab 30 Mai 1945, veranlassen.

Dated this 12 Nov 194 /
Gegeben am

CERTIFIED TRUE COPY:
[signature]
EDWARD F. BRESEE
Colonel AGD

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

9 FEB 1948
1708 WAR CRIMES GROUP
FY

/s/ LUCIUS D. CLAY
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Title)

CA/CI 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No 12-2000, etc. Order No.
Strafsache Nr. 12-2000, usw. *Verfügung Nr.* .....

Whereas one Karl Franz STARZMANN
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of membership in criminal organisations and participation in common design to kill and killing surrendered prisoners of war
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten

by the [redacted] Military Court at Dachau, Germany
vom [redacted] *Militärgerichte* *in* Dachau, Deutschland
**Oberen* (Address of Court) *(Anschrift des Gerichts)*

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 ..... 194 ..... and
(date) *(Datum)*

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, von Militärbezirk I, wird die Vollstreckung des Urteils im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this
Gegeben am 14 Jan 1948

(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Title) *(Titel)*

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CA/Cl 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc. Order No.
Strafsache Nr. 12-2000, usw. *Verfügung Nr.*

Whereas one Jurgen STROP
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of membership in criminal organizations and participation in common design to kill and killing surrendered prisoners of war.
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten.

by the *~~Summary~~ ~~Subordinate~~ Military Court
*General at Dachau, Germany
*~~Divisional~~ in Dachau, Deutschland
vom *~~Militärischen~~ *Militärgerichte* (Address of Court) *(Anschrift des Gerichts)*
**Oberen*

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date) *(Datum)*

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Nuernberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, Militärbezirk I, wird die Vollstreckung des Urteils im Kriegsverbrechergefängnis Nr. 1, Nürnberg, Deutschland, zu einer von ihm festgesetzt n Zeit, veranlassen.

Dated this 22 Nov 1947
Gegeben am

(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
(Title) *(Titel)*
Commander-in-Chief

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

CA/CI 18 — Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2000, etc. — Order No.
Strafsache Nr. 12-2000, usw. — *Verfügung Nr.*

Whereas one Hans TRUBLER
(Name of Accused) *(Name des (der) Angeklagten)*

was convicted of the offence of membership in criminal organizations and participation in common design to kill and killing surrendered prisoners of war.
wegen der folgenden strafbaren Handlung Zugehörigkeit in verbrecherischen Organisationen und Teilnahme an einem allgemeinen Plan zu töten, und Tötung von Kriegsgefangenen, die sich ergeben hatten.

by the *[redacted] Military Court
*General
*[redacted]
vom *[redacted] *Militärgerichte*
**Oberen*

at Dachau, Germany
in Dachau, Deutschland
(Address of Court) *(Anschrift des Gerichts)*

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang verurteilt

by Judgment dated the 21 March 1947
durch Urteil vom 21 März 1947 194 and
(date) *(Datum)*

Whereas the case has now come before me by way of review and after due consideration and in *Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-*
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Militärbezirk I, wird die Vollstreckung des Urteils im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this 22 May 1947
Gegeben am

Lucius D. Clay
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief
(Title) *(Titel)*

*Strike out words not applicable.
**Nichtzutreffendes ist zu durchstreichen.*

MEDITER[illegible] OPERATIONS
[illegible] ARMY

GENERAL ORDERS)

NUMBER 159)

6 October 1947

Before [illegible] which convened at Leghorn, Italy on 3, 4, [illegible] pursuant to paragraph 2, Special [illegible]ers [illegible] Port of Leghorn, dated 22 July 1947 [illegible] which [illegible]l Virgil N. Cordero was President and Lieutenant [illegible]onel Clyde W. Wellen, Infantry, Judge Advocate, was arraigned [illegible] tried:

[illegible]O RONCAGLIA, An Italian National

[illegible]RGE: Violation of the Law of War.

Specification: In that Roncaglia, Tito, then a member [illegible] Fascist Federazione of Terni, Italy, acting with and in suppo[illegible] or [illegible]tant forces of the German Reich, a belligerent enemy nation, [illegible] Polino, Italy, on or about 24 January 1944, wrongfully, [illegible], and contrary to the law of war, summarily kill S/Sgt [illegible]ing, a member of the Military Forces of the United States [illegible]rica by shooting him with a gun.

PLEAS

To the specification of the Charge: Not Guilty
To the Charge: Not Guilty

FINDINGS

Of the specification of the Charge: Guilty
Of the Charge: Guilty

SENTENCE

To be hanged by the neck until doad.

The sentence was adjudged on 8 August 1947.

The action of the Convening Authority after review of the record is:

"HEADQUARTERS
PORT OF LEGHORN
UNITED STATES ARMY
APO 512

19 September 1947

In the foregoing case of Tito Ronca[illegible] an Italian National, the sentence is approved and the r[illegible] of trial forwarded for action under paragraph 15, Circular 114, [illegible]uarters MTOUSA, 23 September 1945.

S/ [illegible]on Orsinger
[illegible]TON ORSINGER
[illegible]l, Infantry
[illegible]ommanding"

CONFIDENTI[illegible]

CONFIDENTIAL

..ral Orders No. 159, Hq MTOUSA, dated 4 October 1947 (Cont'd).

The record of trial was forwarded to the Commanding General, Mediterranean Theater of Operations, as confirming authority, for action pursuant to paragraph 15, Circular 114, Headquarters MTOUSA, dated 23 September 1945.

The action of the confirming authority after review of the record of trial is:

"HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

4 October 1947

In the foregoing case of Tito Roncaglia, the appeal submitted on behalf of the accused is denied. The sentence of the commission is approved and confirmed but commuted to imprisonment at hard labor for life (ergastolo). As thus commuted, the sentence will be duly executed. In accordance with the agreement of 19 April 1947 entered into between the United States and the Italian Governments, Casa Penale di Procida, on the Island of Procida, an institution of the Italian Government, is designated as the place of confinement.

S/ L. C. Jaynes
L. C. JAYNES
Major General, U. S. Army
Commanding".

BY COMMAND OF MAJOR GENERAL JAYNES:

C. F. COLSON
Colonel, G. S. C.
Chief of Staff

OFFICIAL:

Ralph C. Tilley

RALPH C. TILLEY
Colonel, AGD
Adjutant Gen.

IAL

R7/05/20

(376)

C O N F I D E N T I A L

RECORD OF TRIAL

by

MILITARY COMMISSION

of

RONCAGLIA TITO, an Italian National

tried at

Leghorn, Italy

C ON F I D E N T I A L

(3rd carbon copy)

CONFIDENTIAL

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

GENERAL ORDERS)
:
NUMBER 159) 6 October 1947

Before a Military Commission which convened at Leghorn, Italy, on 3, 4, 5, 7 and 8 August 1947, pursuant to paragraph 2, Special Orders Number 24, Headquarters Port of Leghorn, dated 22 July 1947, of which Colonel Virgil N. Cordero was President and Lieutenant Colonel Clyde W. Wellen, Infantry, Judge Advocate, was arraigned and tried:

TITO RONCAGLIA, An Italian National

CHARGE: Violation of the Law of War.

Specification: In that Roncaglia, Tito, then a member of the Fascist Federazione of Terni, Italy, acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, did, near Polino, Italy, on or about 24 January 1944, wrongfully, unlawfully, and contrary to the law of war, summarily kill S/Sgt Dale E. King, a member of the Military Forces of the United States of America by shooting him with a gun.

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To the Charge: Not Guilty

FINDINGS

Of the specification of the Charge: Guilty
Of the Charge: Guilty

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PORT OF LEGHORN
UNITED STATES ARMY
APO 512

19 September 1947

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S/ Remington Orsinger
REMINGTON ORSINGER
Colonel, Infantry
Commanding"

CONFIDENTIAL

General Orders No. 159, Hq MTOUSA, dated 6 October 1947 (Cont'd).

The record of trial was forwarded to the Commanding General, Mediterranean Theater of Operations, as confirming authority, for action pursuant to paragraph 15, Circular 114, Headquarters MTOUSA, dated 23 September 1945.

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MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

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S/ L. C. Jaynes
L. C. JAYNES
Major General, U. S. Army
Commanding"

BY COMMAND OF MAJOR GENERAL JAYNES:

C. F. COLSON
Colonel, G. S. C.
Chief of Staff

OFFICIAL:

Ralph C. Tilley

RALPH C. TILLEY
Colonel, AGD
Adjutant General

CONFIDENTIAL

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

GENERAL ORDERS)
:
NUMBER 159) 6 October 1947

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PORT OF LEGHORN
UNITED STATES ARMY
APO 512

19 September 1947

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S/ Remington Orsinger
REMINGTON ORSINGER
Colonel, Infantry
Commanding"

CONFIDENTIAL

General Orders No. 159, Hq MTOUSA, dated 6 October 1947 (Cont'd).

The record of trial was forwarded to the Commanding General, Mediterranean Theater of Operations, as confirming authority, for action pursuant to paragraph 15, Circular 114, Headquarters MTOUSA, dated 23 September 1945.

The action of the confirming authority after review of the record of trial is:

"HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

4 October 1947

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S/ L. C. Jaynes
L. C. JAYNES
Major General, U. S. Army
Commanding"

BY COMMAND OF MAJOR GENERAL JAYNES:

C. F. COLSON
Colonel, G. S. C.
Chief of Staff

OFFICIAL:

Ralph C. Tilley

RALPH C. TILLEY
Colonel, AGD
Adjutant General

HEAD QUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
Office of the Theater Judge Advocate
UNITED STATES ARMY
APO 512

29 September 1947

U N I T E D S T A T E S	)	REVIEW OF THEATER JUDGE ADVOCATE
	)	
V.	)	ON
	)	
Tito Roncaglia, an Italian national	)	RECORD OF TRIAL BY
	)	
	)	MILITARY COMMISSION

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1. The above named accused was tried by a Military Commission appointed by the Commanding Officer, Fort of Leghorn, Leghorn, Italy, on 3, 4, 5, 7 and 8 August 1947 on the following charge and specification:

CHARGE: Violation of the Law of War.

Specification: In that Roncaglia, Tito, then a member of the Fascist Federazione of Terni, Italy, acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, did, near Folino, Italy, on or about 24 January 1944, wrongfully, unlawfully and contrary to the law of war, summarily kill S/Sgt Dale E. King, a member of the Military Forces of the United States of America by shooting him with a gun.

The accused was found guilty and sentenced to be hanged by the neck until dead. The sentence was approved by the reviewing authority on 19 September 1947 and forwarded, together with a brief submitted on behalf of the accused, to this headquarters for action of the Commanding General as confirming authority.

2. Briefly, the evidence shows that Staff Sergeant Dale E. King, a member of the crew of an aircraft of the 319th Group, 440th Squadron, 15th Air Force, had been shot down following a raid on Foligno, Italy, on 19 December 1943. Dressed in civilian clothes he worked his way to Folino, Italy where he was finally taken in by Matteucci. On 23 January 1944, two Italian Fascists were killed by Italian partisans in Folino. A unit of the 104th Legion of the Republican National Guard and Fascist Federazione of Terni, under the command of a German officer, were ordered to Folino. The accused, a member of the Guard and detached to the Federazione accompanied the unit to Folino on 24 January 1944. Subsequent to his arrival it was rumored that there was an American airman in hiding in the home of Matteucci. The accused and another soldier, both of whom were armed with pistols and guns, entered the home of Matteucci. Upon entering the house Sergeant King was observed sitting in a chair before a fireplace opposite the door leading into the house. Immediately upon seeing Sergeant King, then dressed in civilian clothes, the accused and his companion called "Halt" and fired at King, called "Halt" a second time and fired again. Sergeant King rose from the chair in which he was seated on the second shot and fell to the floor. The accused then approached Sergeant King and fired another shot at him. Shortly after the shooting, Sergeant King died, and the accused asserted he had killed him. This assertion was made on later occasions. Witnesses testified they had been told by the accused and his companion that at the time of the incident Sergeant King had been hiding behind a cupboard armed with a dagger and had lunged at them whereupon the accused shot Sergeant King. A dagger had been found in the room where the incident occurred. The only eye witness present before the Commission denied that King was hiding behind a cupboard or that he was armed, but firmly maintained that at the time of the shooting King was unarmed; that he

was seated in a chair before the fireplace and that the dagger which had been found was his and had fallen behind a bread box on 1 January 1944 and had not been seen from that date until it was shown him after King had been removed from the house.

The accused denied admitting he had killed Sergeant King and testified he entered the Mattenucci house after he heard two shots, and then saw Sergeant King lying on the floor in a dying state.

Further detailed evidence will not be set forth here, but the recapitulation of evidence and discussion of the brief filed on behalf of the accused contained in the review of the Acting Staff Judge Advocate, Port of Leghorn, contained in the papers accompanying the record of trial is adopted herein.

3. Trial was had by a Military Commission appointed under authority delegated by the Commanding General, Mediterranean Theater of Operations (Ltr. Hq. MTOUSA, 21 July 1947), which is proper under the provisions of War Department Field Manual 27-5. In my opinion, all conditions of the letter of delegation have been met in this case and the Theater regulations relating to the trial of war crimes have been followed. Therefore, I conclude that the trial in this case was conducted under appropriate authorization, and that it conformed to the terms of the delegation of power and to the standards of international law for a fair trial.

4. The charge in this case is not laid under any Article of War but under the laws of war. It is alleged that accused, then a member of the Fascist Federazione of Terni, Italy, acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, wrongfully and unlawfully summarily kill Staff Sergeant Dale E. King, a member of the military forces of the United States by shooting him with a gun. Under a charge of this nature, it is upon the prosecution to prove that the accused killed a certain person by certain means as alleged. This involves proof that the person alleged to have been killed is dead; that he died in consequence of an injury received by him; that such injury was the result of the act of the accused and that death took place, normally, within a year and a day of such act.

From a consideration of the entire record, including the brief submitted in behalf of the accused, there is indisputable evidence that Staff Sergeant Dale E. King is dead and that he died on the 24th day of January 1944. The evidence, except for the testimony of the accused and his counsel, clearly shows that on 24 January 1944, a man, identified as the accused, after questioning one Mattenucci and demanding to know the whereabouts of an American alleged to be hidden in Poling, entered a house in that town in company with the owner thereof and another soldier; that accused was armed with a pistol and a gun; that upon entering the house, Staff Sergeant King was seen to be seated in a chair before the fireplace, unarmed; that apparently accused and his companion immediately called "Halt" twice and fired twice, whereupon Sergeant King rose from his chair and then fell to the floor; that thereafter the accused, knowing King to be wounded, stated that he must be killed and thereupon fired another shot at Sergeant King; that Sergeant King was then carried from the house and died a few moments later; and that accused asserted he had killed the American. There is a conflict of evidence with respect to how the accused was dressed and armed, although it is clear from the witnesses present that accused was armed with a pistol and rifle and that the accused fired at Sergeant King with the pistol. This conflict is not, in my opinion, material when considered in the light of all the positive evidence, and the Commission after considering the evidence was quite competent to give such weight to the evidence as the circumstances warranted. In my opinion, the accused was adequately identified.

The evidence, in my opinion, is also clear that the accused knew that the individual who he shot was an American and, at that time, an enemy. There is likewise little doubt from the evidence that the court could infer the accused intended to summarily kill Sergeant King. This inference assumes a factual status

when considered in the light of the evidence that immediately upon seeing Sergeant King, who was at the time seated and turned so that he was unable to observe the entrance of the accused, the accused fired at him and thereafter, knowing Sergeant King was wounded and against the admonition and plea of his companion, shot him again. While intent, premeditation and malice aforethought are not considered essential elements of proof under the specification to the charge in question, it is my opinion such proof is existent in the record.

Medical and other testimony introduced at the trial shows beyond doubt that while the accused may have been and now is suffering from nervous disorders, he was and is mentally competent.

From the foregoing, I am of the opinion that all elements of the offense charged were established beyond a reasonable doubt.

5. The defense has submitted a brief and an appeal on behalf of the accused. The Acting Staff Judge Advocate, Port of Leghorn, has adequately discussed the brief and statements included therein, hence such matters will not be reiterated here. I fully concur with his views that the brief considered as a whole is little more than an argument of the law and evidence considered by the Commission, and that the same presents no grounds for a disapproval of the findings and sentence of the Commission based thereon.

The appeal referred to is in the form of a letter dated 23 September 1947. Special defense counsel asserts that with the coming into force of the Treaty of Peace on 15 September 1947 a new juridical situation has arisen which deprives the United States of any jurisdiction over this case. His assertion is based upon the following points:

a. That in view of the provisions of paragraphs 1 and 2, Manual for Courts-Martial 1928, Article of War 46, paragraphs 131 and 133, TM 27-255, and Circular 114 WDUSA 1945, a sentence is not complete and final until confirmation.

b. That since 15 September 1947, United States Forces in Italy are no longer an occupying force within the meaning of Article XLII of the second Hague Convention and jurisdiction over Italian citizens is vested in Italian courts for crimes committed against American citizens or interests.

c. That jurisdiction assumed by military courts has been personal or universal and not territorial. However, according to Coules in his Universality of Jurisdiction over War Crimes (XXXIII Cal. Law Review, pp 178, 180 & 181) an independent State has legal power to vest jurisdiction in its courts to hear and determine alleged war crimes unless it is prohibited from doing so by international law and therefore, the question is one of the existence val nem of a limitation by international law on the legal power of jurisdiction of the State; that this limitation is established in this case by the fact that accused is an Italian citizen presently on Italian territory and any act of the assumption of jurisdiction by a United States court is an infringement on Italian sovereignty.

In other words special counsel for the accused asserts that since final action in this case was not taken prior to the coming into force of the Treaty of Peace the United States no longer has jurisdiction over the accused for the reason that Italy has now become a sovereign nation and hence has sole jurisdiction over her nationals. In my opinion this position cannot be maintained. The United States Supreme Court, discussing the question whether the authority to create a Military Commission and direct the trial by military order continued after the cessation of hostilities, in the case of Yamashita vs. Lt. General Styer (Sup. Ct. Nos. 61 Misc and 672, 4 Feb 46), stated:

> "An important incident to the conduct of war is the adoption of measures by the military commander, not only to repel and defeat the enemy, but to seize and subject to disciplinary measures those enemies

who, in their attempt to thwart or impede our military effort, have violated the law of war. Ex parte Quirin, supra, 28. The trial and punishment of enemy combatants who have committed violations of the law of war is thus not only a part of the conduct of war operating as a preventive measure against such violations, but is an exercise of the military sanctioned by Congress to administer the system of military justice recognized by the law of war. That sanction is without qualification as to the exercise of this authority so long as a state of war exists - from its declaration until peace is proclaimed. See United States v. Anderson, 9 Wall. 56, 70; The Protector, 12 Wall. 700, 702; McElrath v. United States, 102 U.S. 426, 438; Kahn v. Anderson, 255 U. S. 1, 9-10. * * *"

"We cannot say that there is no authority to convene a commission after hostilities have ended to try violations of the law of war committed before their cessation, at least until peace has been officially recognized by treaty or proclamation of the political branch of the Government. * * **

"No writer on international law appears to have regarded the power of military tribunals, otherwise competent to try violations of the law of war as terminating before the formal state of war has ended. (Footnote: The Commission on the responsibility of the authors of the war and on the enforcement of penalties of the Versailles Peace Conference which met after cessation of hostilities in the First World War, were of the view that violators of the law of war could be tried by military tribunals. See Report of the Commission, March 29, 1919, 14 Am. J. Int. Law 95, 128. See also Memorandum of American Commissioners concurring on this point, id., at p. 141. The treaties of peace concluded after World War I recognized the right of the Allies and of the United States to try such offenders before military tribunals. See Art. 228 of Treaty of Versailles, June 28, 1919; Art. 173 of Treaty of St. Germain, Sept. 10, 1919; Art. 157 of Treaty of Trianon, June 4, 1920 * * *) * * *."

"The extent to which the power to prosecute violations of the law of war shall be exercised before peace is declared rests, not with the courts, but with the political branch of the Government, and may itself be governed by the terms of an armistice or the treaty of peace. * * *"

The United States Supreme Court has reiterated the well recognized principle of International Law that a belligerent has the right to punish, during the war, such war criminals as fall into his hands and that it is a right of which he may effectively avail himself after he has occupied all or part of enemy territory, and is thus in a position to enforce war criminals who happen to be there for the accused are, in effect, in his power. The Supreme Court has further recognized the principle that the extent of the power to prosecute violations of the law of war after peace is declared may be governed by the terms of the treaty of peace. In this connection Oppenheim in his work on International Law by Lauterpacht (Vol II, Disputes, War and Neutrality, pp 437-438) states:

* * * * And although normally the Treaty of Peace brings to an end the right to prosecute war criminals, no rule of International Law prevents the victorious belligerent from imposing upon the defeated State the duty, as one of the provisions of the Armistice or of the Peace Treaty, to surrender for trial persons accused of war crimes. In this, as in other matters, the will of the victor is the law of the Treaty." See to the same effect, address by Major Gowns before the section of International Law of the American Bar Association (Am Bar Assn. J. June 1944); Mueller "The Legal Nature and Punishment of Criminal Acts of Violence Contrary to the Laws of War" (37 Am J. Int. L. (1943)); Wheaton, International Law,

p. 623; Glueck, War Criminals, Their Prosecution and Punishment, pp. 74-75 and notes; Kelsen, Peace Through Law, pp. 106-110 discussing surrender of war criminals to another belligerent under a treaty places the legal basis for jurisdiction on the treaty and likens it to legal extradition, but arrives at the same conclusion.

Paragraph 29 of the instrument of surrender of Italy provides:

"Benito Mussolini, his chief Fascist associates and all persons suspected of having committed war crimes or analogous offenses whose names appear on lists to be communicated by the United Nations and who now or in the future are on territory controlled by the Allied Military Command or by the Italian Government, will forthwith be apprehended and surrendered into the hands of the United Nations. Any instructions given by the United Nations for this purpose will be complied with."

Article 45 of the Treaty of Peace with Italy, which became effective 15 September 1947, provides in pertinent part:

"1. Italy shall take all necessary steps to ensure the apprehension and surrender for trial of:

"(a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity.

"(b) At the request of the United Nations Government concerned, Italy shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article. * * * *"

In this case it has been, as must be, admitted that prior to the coming into force of the Treaty of Peace with Italy, the terms of surrender made it obligatory upon the Italian Government to apprehend and surrender war criminals. It must be further admitted that as the accused had, in effect, been surrendered to the United States pursuant to the terms of the surrender instrument and as an occupying force, the United States military tribunals had sole jurisdiction of the accused. He was tried and convicted of a violation of the law of war and sentenced to death by a United States military commission. Under the rules governing the trial of the accused, the sentence was not to become final until acted upon by the Theater Commander. This action had not taken place on 15 September 1947, the date upon which the Treaty of Peace with Italy became effective. However, on that date the accused was still in the custody of the United States. On 15 September 1947, Italy agreed with, among others, the United States to surrender for trial any person accused of having committed a war crime. The accused in this case had not only been accused of committing a war crime but had been tried and found guilty of such offense by a tribunal of the United States which, when rendering its findings, had jurisdiction of the accused. Shall it then be necessary for the United States now to request of Italy the surrender for trial of the accused who is at this moment in the custody of the United Nations Government concerned, the United States, particularly since Italy had earlier agreed under the terms of surrender which continued in effect to the date of the coming into force of the Treaty of Peace, to surrender the accused? I am of the opinion that this formality is unnecessary and that Italy, by virtue of its basic agreement, continued under the terms of the Treaty of Peace, to surrender the accused, has, in effect, waived any jurisdiction it may have claimed over the accused and consented to his trial and/or punishment in accordance with the internal policy of the United States. Accordingly, the United States having acquired jurisdiction of the accused during the war does not lose that jurisdiction upon the formal conclusion of the war but continues its jurisdiction by virtue of the above-quoted provisions of the very document terminating the war, ie., the Treaty of Peace with Italy, and may, therefore, pursue this case to its ultimate conclusion. The authority to try and convict

war criminals in this area and to punish them has been vested in the Theater Commander by the United States.

6. In my opinion, the record of trial discloses no errors or irregularities which can be construed as prejudicial to the substantial rights of the accused in a case such as this. The evidence is compelling as to the guilt of the accused. The evidence submitted with the brief in fact presents no legal grounds for a disapproval of the sentence or for commutation thereof. The grounds of appeal attacking the jurisdiction of the United States is not, in my opinion, well founded and should be denied. The only matter left, therefore, for consideration is that of clemency.

Newspapers in Italy have carried on a campaign to request people and organizations throughout the country to write asserting the innocence of the accused. Many articles have been published attacking the Commission. The Vatican has transmitted a request from the wife of the accused that the sentence be commuted. His Excellency, Count Carlo Sforza, Minister of Foreign Affairs addressed a communication to the United States Ambassador to Italy on 12 August 1947 as follows:

"The Allied Military War Crimes Court has recently completed the trial of the ex-squad leader of the Republican National Guard, Vito (sic) Ronsaglia, accused of having killed, at Poline, near Terni, an American aviator who had descended by parachute and who was wearing civilian clothes at the time of his death.

"The Court-martial has sentenced Ronsaglia to death by hanging.

"For the same reasons I presented to you in my letter No. 931 of June 6, 1947, regarding the case of the fireman Ido Turchi, that is, that the August 10, 1944, Decree No. 224 of the Lieutenant General of the Realm provided for the abolition of the death penalty in Italy, commuting it to life imprisonment, and that this principle has already been applied in similar cases, the Italian Government trusts that the Allied Military Authorities will please concede also to Ronsaglia the commutation of the death penalty.

"I shall therefore be very grateful to you, dear Ambassador, if you will please interpose your high offices with the appropriate Allied Authorities to the end that they be pleased to perform this act of clemency, which will surely find an echo particularly in Italian public opinion, especially at this moment when, following ratification of the Peace Treaty, a broader spirit of understanding and generosity in judging facts and deeds connected with the tragic vicissitudes of the war is looked for on the part of the Allies.

"In earnestly requesting your courteous reply in the matter I send you, dear Ambassador, together with my thanks, my sincere regards."

On 19 September 1947, Count Sforza addressed a second communication to the Ambassador as follows:

"I refer to your letter of August 27, 1947, in which you kindly informed me that you had interposed your high offices with the appropriate authorities to the end that the death sentence pronounced by these authorities at Leghorn on the Italian, Vito (sic) Ronsaglia, be commuted.

"In view of the kind interest you have taken in this matter, I again appeal, while awaiting the decision of the Allied Military Authorities, to your high and trustworthy spirit of understanding and beg you please to point out again to the above mentioned Military Authorities that the Italian Government trusts--particularly now that the Peace Treaty has

come into force—in their sense of humanitarian generosity and awaits a gesture of clemency, the more so since the sentence is based on circumstantial evidence."

In connection with the first letter, it should be observed that Count Sforza is mistaken in several respects: (1) That the accused was not tried by an "Allied" Military Commission; (2) That the United States military authorities have at no time commuted a sentence in a war crimes case on the basis of the Italian decrees abolishing the death sentence. It should also be observed, as heretofore stated, that under the provisions of the surrender terms and Article 45 of the Treaty of Peace with Italy, the Italian Government has undertaken to take all necessary steps to insure the apprehension and surrender for trial of persons accused of war crimes. By this undertaking Italy has, in my opinion, waived its jurisdiction over such persons and has submitted them to the jurisdiction of the requesting power, which jurisdiction includes the rules of procedure and jurisprudence applicable to war crimes cases, without reference to the laws of Italy. Regardless of these facts the appeal of the Italian Government has been given careful consideration. I am of the opinion that legally the sentence in this case should be confirmed. However, considering the possible political effect in United States relations with Italy of the execution of a death sentence pronounced upon a subject of a country with which the United States has so recently entered into a Treaty of Peace, regardless of the provisions of Article 45 thereof, and a country which has within its own competency since the liberation of Italy abolished the sentence of death (a basic principle of jurisprudence changed only by the Fascist regime, ascribed to by the accused), and particularly since the Government of Italy has officially requested consideration of clemency, it is my opinion that the sentence in this case should be commuted to life imprisonment (ergastolo). This action would, I feel confident, serve the ends of justice by punishing an offense against the conscience of civilized humanity and by removing a menace to the social order in a manner in keeping with the basic principles of criminal punishment in many of the jurisdictions of our United States and in Italy.

7. I recommend that the appeal submitted on behalf of the defense be denied and that the finding and sentence be approved and confirmed but the sentence to death be commuted to imprisonment at hard labor for life (ergastolo). Ergastolo is recommended since, if this recommendation is approved, the accused will, in accordance with the agreement with the Italian Government, be confined in an Italian penal institution. A form of action appropriate to the foregoing recommendation is appended hereto.

TOM H. BARRATT
Lt Colonel, JAGD
Theater Judge Advocate

HEADQUARTERS
POSE OF LEGHORN
UNITED STATES ARMY
APO 512

16 September 1947

REVIEW OF THE POSE JUDGE ADVOCATE

ON

RECORD OF TRIAL BY MILITARY COMMISSION

U N I T E D S T A T E S

vs

TITO MENGAGLIA,
an Italian National

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1. The above named accused was tried by a Military Commission appointed by the Commanding Officer, Post of Leghorn, Leghorn, Italy, on the 3rd, 4th, 5th, 7th and 8th of August 1947, on the following charge and specification:

CHARGE: Violation of the Law of War.

Specification: In that Mengaglia, Tito, then a member of the Fascist Republicans of Parma, Italy, acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, did, near Poligno, Italy, on or about 26 January 1944, wrongfully, unlawfully and contrary to the law of war, summarily kill S/Sgt Dale E. King, a member of the Military Forces of the United States of America by shooting him with a gun.

He was found guilty as charged and sentenced to be hanged by the neck until dead.

2. CHALLENGES. The defense challenged the commission on the ground that it had no JURISDICTION. The commission apparently considered this a plea to the jurisdiction and overruled it (R. 3). While normally under courts-martial procedure challenges are dealt with in closed session, it is apparent that when the defense failed to assert any ground for challenge the case was treated as a plea to the jurisdiction and the commission denied the plea. This was proper under the provisions of paragraphs 6 and 8, Circular 114, HEADQUARTERS, 1945.

3. PLEAS. The defense entered a plea to the jurisdiction on the ground that no war CRIME had been committed. This plea was overruled (R. 3). In my opinion this was proper since the ground upon which the plea is based must be based upon facts which the commission could not determine until after hearing all the evidence.

4. ARRAIGNMENT. The accused did not plead to the charge and specification. The COMMISSION thereupon entered a plea of "not guilty" (R. 4).

5. EVIDENCE.

a. For the Prosecution: On 18 December 1943 an aircraft of the 319th Group, 440th Squadron of the 15th Air Force, piloted by Lieutenant Whildren Stewart, participated in a raid on the marshalling yards at Poligno, Italy. At

about 1555 hours Stewart's plane was hit by enemy anti-aircraft fire, burst into flames and later crashed. S/Sgt Dale E. King, radio gunner, apparently parachuted to safety (Pros. Ex. Nos. 1 and 2). At any rate, on 29 December 1943, two Fascist soldiers brought S/Sgt Dale E. King to the home of Orsini Gallerano in Poline, Italy (R. 5-8, 40-41; Pros. Ex. Nos. 3, 4, 5, 6, 7, 8). He stayed with Mrs. Orsini and her husband 21 days and until the 19th or 21st of January 1944 when, because she feared trouble, Mrs. Orsini took him to the home of Domenico Mattoucci (R. 6, 9, 39; Pros. Ex. No. 8). During this period Sgt King was dressed in civilian clothes (R. 6, 9, 25).

On 25 January 1944 two Fascists were killed by partisans at Poline. As a result the Terni unit of the 104th Legion of the Republican National Guard and Fascist Federazione of Terni were ordered to Poline to secure the bodies of the two Fascists who had been killed. The Legion was a military organization of the Italian Army and the Federazione was a military-political unit allied with the Italian Army, then an ally of Germany.

The accused, Vito Maneaglia, was a corporal of the Guard detached to the Federazione (R. 19, 28, 42, 116, 118; Pros. Ex. Nos. 9, 14). The unit mentioned which consisted of approximately 30 men, including the accused, departed from Terni for Poline on the morning of 26 January 1944, and arrived in Poline between 9:00 and 10:00 o'clock (R. 20, 33; Pros. Ex. Nos. 9, 10, 14). Upon arrival in Poline an order was issued that all male persons of Poline over 16 years of age immediately report to the village square, and if they failed to do so they would or could be subject to execution (R. 20, 29, 55, 56; Pros. Ex. No.9). One witness stated that if a man over 16 failed to report he would be shot dead but he later changed this statement because he did not know (R. 56). One witness testified that there was an order not to fire unless there was aggression (R. 35).

During the period between arrival and the assembling of the men of Poline, apparently some of the women of the town told some of the soldiers that there was an American aviator hiding in the home of Mattoucci (R. 55). About this time Mattoucci approached the square where he was accosted by a member of the unit who was dressed in civilian clothes. This man who was identified as the accused asked Mattoucci where the American was (R. 10, 17; Pros. Ex. No. 14). Mattoucci answered that he did not know. The question and answer were repeated again and a third time at which latter time the civilian, who was armed with a machine-gun or automatic rifle and pistol, pointed the pistol at Mattoucci's breast. Mattoucci then said that the American was in his house and lead them there (R. 10, 58, 158, 156).

Mattoucci escorted them to his home with the accused on his left and a soldier named Lancia on his right. There Mattoucci opened the door and the accused and Lancia pushed past him into the living room. S/Sgt King was at the moment seated in a chair before a fireplace which was built into the wall of the room to the right of the door. Immediately, upon seeing Sergeant King seated before the fireplace, one or both the two who had entered cried "Halt" and fired, cried "Halt" a second time and fired again, whereupon Sergeant King rose from the chair and fell to the floor. Each apparently had fired one shot, although this is not clear. The soldier, presumably Lancia, approached the American and said to the one in civilian clothes, accused, "He is wounded, we must take him as he is, we must not shoot". Accused in civilian clothes said, "We must kill him", whereupon he advanced a step and fired a third shot at Sergeant King from about 6 feet distance (R. 10, 11, 14-17, 66, 156-158; Pros. Ex. Nos. 13, 14).

Mattoucci then departed for the square in the company of soldiers who were outside the house (R. 10, 18, 157). A soldier, Dolci, who was a short distance from the house and a Captain Moscani hearing the three shots went immediately to the Mattoucci residence and entered. Dolci entered first. Lancia and Maneaglia were alone with Sergeant King who was then in a dying state. Upon inquiring how the American was killed, Dolci was told that Maneaglia had

killed Sergeant King. Moscani testified that he was told upon entering the house that Sergeant King had been hiding behind a cupboard and immediately lunged at the soldiers with a dagger, whereupon Ronsaglia fired; that he (Moscani) had found a dagger 30 or 40 centimeters from Sergeant King's body and that the body was about one and one half meters from the fireplace; that he immediately sent for means of taking King, who was still alive, to a doctor; that a ladder was brought and King laid upon it and transported from the house to the square and that he had reported this to his superior, Lt. Colonel Bonanni (R. 20, 22, 33-35, 38, 40, 47, 101, 102, 104, 105, 150, 151; Pros. Ex. Nos. 9, 10).

On the way from the house to the square Sergeant King died (R. 64, 46; Pros. Ex. No. 14). At the square the accused asserted he had killed the American (R. 10, 20, 23, 35, 145, 148, 149; Pros. Ex. Nos. 9, 14). Mattousci firmly denied that at the time of the shooting the victim was armed or had any weapon and that he had not made any lunge toward the two who entered the house with him. He asserted that the dagger which had been in the family a long time had fallen behind the bread box around the first of January where he had not seen it until it was brought to the square (R. 10, 12, 14, 156, 186, 187). Sergeant King's body was placed upon a trunk and taken to Terni where he was buried on 29 January 1944 (R. 45, 55-57; Pros. Ex. Nos. 11, 12, 14). After the incident Ronsaglia asserted on many occasions that he had killed the American, referring to Sergeant King (R. 107; Pros. Ex. Nos. 9, 10). It was stated in evidence by one not an eyewitness that Ronsaglia had stated that King was throwing himself, with the dagger raised, against the soldiers. It is not clear when Ronsaglia so stated (R. 22, 24, 55).

b. For the Defense: Special counsel for the defense took the stand and made an unsworn statement on behalf of the accused in which he stated that accused has always insisted upon his innocence; that the accused told him that between 6:00 and 7:00 on the morning of 24 January 1944 one Donati came to his house and told him to dress as they had to go to Poline; that he dressed in his military uniform with the help of his wife and then took his rifle but not his pistol as he had no right as a corporal to carry a pistol; that when he arrived at Poline he found himself in front of a house where shots were fired; that after he heard the shots he went into the house and saw on the floor a person dressed in civilian clothes and near the body he saw a dagger; that he felt badly and his head started to spin; that at that moment Captain Moscani entered and that he (Ronsaglia) departed; that he did not remember having accused himself as having killed the American as he was not present when the shots were fired (R. 128, 129).

Accused was sworn and took the stand as a witness. He testified that he was awakened by Donati on the morning of 24 January 1944 and told to dress because two Fascists had been killed at Poline the day before; that he dressed in his uniform and took his automatic rifle; that at Poline an order was given for all men over 18 to meet in the square; that he saw Pattaressi talking to a civilian; that Pattaressi told them to look out as someone was hiding in a house; that as they arrived at the house the door was opened by the owner or "the other"; that as the two went into the house he heard two shots; that upon hearing the shots he entered the house and saw a man in civilian clothes who was still moving; that Captain Moscani entered the house at the same time whereupon he (Ronsaglia) departed and was ordered to take the owner of the house to the square (R. 131). He further testified he always wore his uniform except when authorized to wear civilian clothes (R. 132). He denied that he had told anyone that he had killed the American, Sergeant King, nor did he hear anyone make a report that he (accused) had killed King. He stated that he saw Lemmia enter the house (R. 133-136).

Colonel Bonanni stated that he saw accused after the latter's return from Poline and he was dressed in uniform and carried a rifle. The witness further testified that he did not see a pistol (R. 120).

The wife of accused, Anita Santori, testified she helped accused dress in his uniform on the morning of the 24th and that when he left he took with him

his rifle but left his pistol at home. She also testified that upon his return from Peline he was in uniform. At this time he told her something of the killing but did not tell her that he had killed the man or that it was an American. She denied having heard the suggestion of Pitotti to place the blame for the killing on Pattarozzi (See Ex. 10) although she admitted having talked to Pitotti in Rome in June 1946 (R. 86-89, 91-94).

Witnesses were introduced showing accused to be a braggart but not a man who would commit a crime (R. 72); that he would not escape from confinement while in the MTOUSA Disciplinary Training Center although having an opportunity to do so (R. 80, 81); that he was brave as evidenced by an act in 1945 when he accompanied an officer who removed an explosive charge set on a bridge by Germans, and that he never bragged (R. 83-85); that in March 1946 he went into a convent and later told the padre of the killing of the American and proclaimed his innocence; that thereafter he voluntarily left with a war crimes investigator after having been advised by the padre of the extraterriteriality of the convent area (R. 75, 79).

A doctor testified that he had made a mental examination of the accused; that he showed signs of hyper-sensitiveness of the nervous system; that he has a low capacity to be attentive and is an individual who believes himself to be the motive center of everything and reacts exhuberantly to verbal stimulants; that he is imaginative and tends to exaggerate and tell things which are not true but seems to be persuaded of their truth; and that he is mentally competent (R. 111, 114).

6. DISCUSSION. At the close of the prosecution's case, the defense moved for an acquittal on the grounds that at no time had it been shown who killed Sergeant King; that there was no war crime because Sergeant King was not dressed in uniform; and that Sergeant King had a dagger. This motion was overruled by the commission. It is my view that this action was proper. At the time of the motion the prosecution had introduced the evidence of an eye witness to the killing who had testified that a man in civilian clothes, whom he had been told was accused, shot Sergeant King and thereafter ample evidence was produced showing that accused at the time and shortly after the shooting had stated that he had killed the American. One witness testified he had been told by accused and one other that Sergeant King had a dagger and had lunged at accused when he had entered the house. This was not corroborated and in view of the statements of the eyewitness that at the time accused entered the house Sergeant King was seated in a chair before the fireplace, was unarmed and that the dagger had dropped behind the bread box about 1 January and had not been seen since, would clearly permit the commission to discount the uncorroborated hearsay testimony. The fact that Sergeant King was not in uniform would not authorize his summary execution in view of the fact that the evidence indicated at the time the accused and others entered the house it was known to them that the person in the house was an American and was not to be affected by a supposed order, if there was one, that any male persons over 16 who failed to report to the village square would be "shot dead". These elements sufficiently established a case to warrant the action of the commission.

The accused in this case, as a member of the Fascist Federazione of Terni, acting with and in support of the combatant forces of the German Reich, a belligerent enemy nation, is charged with wrongfully and unlawfully and contrary to the laws of war summarily killing S/Sgt Dale E. King then a member of the United States Forces by shooting him with a gun on or about 24 January 1944 at Peline, Italy, in violation of the laws of war.

The evidence is clear that the accused was a member of the 104th Legion of the National Republican Guard and on 24 January 1944 was on detached service with the Fascist Federazione of Terni, the latter being a military-political organization of the Italian Government and army both of which at the time were allied with the German Reich. The evidence is also clear that the accused accompanied a unit of the Republican National Guard to Peline on the morning of 24 January on a military-political mission, i.e., to collect the bodies of two Fascists who had been killed by partisans the day before, to determine whether there were any men

in Poline over 16 years of age who could be utilized for military service, and to take hostages for the killings which had taken place the day before. The evidence indicates that upon arrival in Poline the accused and others learned that an American aviator, amply identified as S/Sgt Dale E. King, was in hiding in one of the homes in Poline and, upon learning the identity of the owner, forced the latter at pistol point to reveal the whereabouts of the home and S/Sgt King.

There is some question as to how the accused was dressed and armed at this point. The owner of the house testified a man in civilian clothes forced him to reveal the location of Sergeant King and that he was later told this civilian was Ruscoglia. He also testified that the civilian was armed with an automatic rifle and pistol. Another witness, Coppo, stated he could not recall how accused was dressed but that he was armed with a machine gun and pistol. Another witness, Captain Moscoui, stated that it appeared to him that accused was in uniform and later in describing soldiers inferred that they were all dressed in uniform. He further testified accused was armed with a rifle and pistol. Bolci asserted in a pretrial statement that accused was in civilian clothes and armed with a machine-gun and pistol and saw him pointing a pistol at the home owner and later accompanying him to the house. On the trial this witness could not remember how Ruscoglia was dressed although he believed him to be in civilian clothes but did not see a pistol. Colonel Bonanni stated that accused was dressed in uniform and armed with a rifle. This is also the statement of the accused's wife and the accused. Having the witnesses before it, the commission could properly weigh the apparently conflicting statements in connection with all the evidence and believe those witnesses who were most convincing.

The evidence is clear that two men accompanied the owner of the home in which Sergeant King was hidden to the house and upon entering fired two shots at King who was then dressed in civilian clothes, unarmed, and seated in front of the fireplace. The evidence is also clear that after the two shots Sergeant King rose from his chair and fell to the floor. After he had fallen to the floor one of the men fired another shot at him. This man, although he could not be identified at this time by Matteucci, matteucci was told was accused. Furthermore, the evidence is clear that immediately after the shooting at least two persons entered the room and found only the accused, one Lancia and the dying American, therein, and were told that accused had killed the American, which accused did not deny. A short time later the accused stated to several people that he had killed the American and on occasions at a much later date reiterated that he had killed the American.

Under the circumstances it matters little how the accused may have been dressed or whether the one eyewitness could presently point out the accused at the trial. Those who found accused and Lancia in the room alone with the dying Sergeant King and who heard him reiterate he had killed the American amply identified him.

At the time the accused and Lancia were found by witnesses in the house alone with the dying Sergeant King, and later it was asserted that Sergeant King had been hiding behind a cupboard in the room armed with a dagger and had lunged toward accused and Lancia and to defend themselves they were forced to shoot him. A dagger was apparently found on the floor of the room 30 or 40 centimeters from the body of Sergeant King. However, the eye witness Matteucci at the trial firmly and convincingly stated that the knife in question was his and that it had fallen behind the bread box about the first of January 1944 and was not seen again until it was brought to the square after the shooting. He also testified that when he and the two men who later shot King entered the house, Sergeant King was seated in a chair in front of the fireplace and that immediately the two who accompanied him called "Halt" and fired, called "Halt" again and fired a second shot. He further testified that on the second shot King rose from his chair and fell to the floor and was in that position when one of the men who later was identified to him as the accused, after stating the American must be killed, stepped forward and shot him again. He stated emphatically that at the time of the shooting Sergeant King was not armed, that he did not see a dagger in his hand, and he was not hiding behind a cupboard.

The brief is largely a re-argument of points raised during the trial and disposed of as the trial progressed. It is contended that because of the fact that Buscaglia was a member of the Italian armed forces at the time of the acts, although taken into custody after the fighting ceased, he is a prisoner of war and not a war criminal, and should have been tried by and under the rules of procedure and evidence governing courts-martial. This position is untenable. The evidence established the fact that that Buscaglia knew the man was an American although it was later shown he was of Italian stock. As an American he was entitled to be treated as a captured enemy prisoner and not summarily executed as was done. This was clearly a violation of the laws of war and the perpetrator was a war criminal. As a war criminal the international conventions for the protection of prisoners of war do not apply.

The brief attacks the findings and sentence of the court by re-arguing the evidence on such controversial points as identification of Buscaglia as the killer, admissions and statements by Buscaglia that he killed King, the type of clothing worn by and kind of arms borne by Buscaglia solely in favor of the accused. These matters were properly disposed of by the commission in its deliberations upon the findings and should not now be disturbed. There is ample evidence on each point to support the findings.

The policy and rules for the conduct of proceedings of trials of war criminals embodied in Circular 114, SHAEF, 1945, were promulgated with a view towards a full and fair trial for each accused. The strict rules of procedure and evidence governing the Anglo-Saxon courts and courts-martial proceedings were relaxed for reasons of necessity. The rules promulgated in Circular 114 assure an accused a full and fair trial and this point in the brief is not well taken.

The accused in his testimony asserted that he saw the owner of the house and a civilian enter the house and then he heard two shots. He stated he did not go into the house until after he had heard the two shots fired and then he entered where he saw the American mortally wounded on the floor. He then testified he saw Lamela enter and then he departed after Captain Pecnani arrived and escorted the owner of the house to the square. He further testified that at no time did he say he had killed the American.

After considering all the evidence, I am of the opinion that the commission could, without any reasonable doubt, arrive at the conclusion as it apparently did, that the accused without any legal justification summarily shot and killed Sergeant King as alleged. The act in itself was unlawful and wrongful under the laws of war. The accused was aware that the person in the house was an American and therefore a belligerent. The fact that he was in civilian clothes and thereby might have been considered a spy would not have warranted summary execution without legal justification. If the defense had established that the killing was done in self defense, which it did not, this would have shown legal justification. However, sufficient evidence to establish such justification was not shown. In my opinion, and apparently in the opinion of the commission such defense was not established under all the facts.

The evidence is clear that as the result of the shooting Sergeant King died within a few minutes after being shot while being transported from the Matteucci house to the public square and that his body was transported on 24 January 1944 to Terni where he was buried on 29 January 1944.

7. BRIEF OF SPECIAL COUNSEL FOR ACCUSED. Mr. Mario Lenire, Special Defense Counsel, submitted to the Reviewing Authority a brief on behalf of the accused. The substance thereof may be properly broken down as follows:

Attacks upon jurisdiction of the commission.
Attacks upon findings and sentence of the commission.
Attacks upon legal policy of rules governing procedure and evidence in trials of war criminals.
Miscellaneous.

There is an implication contained in the brief that the commission caused certain matter to be excluded or stricken from the record. There is no specific charge made that the action was improper but it is claimed that such action was unfair to the accused. It is sufficient to state that the record of trial has been authenticated by the regularly appointed defense counsel and accepted as correct.

It is also charged that a number of the prosecution's staff tried to persuade a witness to change his deposition. Apparently the deposition was not changed. Such conduct is not commendable, but it is not considered that it affected the deliberations of the commission or in any way adversely affected the rights of the accused.

The commission had jurisdiction of the accused and of the offense charged and the record of trial is legally sufficient to support the findings and sentence. There were no errors or irregularities which may be considered as injuriously affecting any substantial right of the accused.

8. APPEALS FOR COMMUTATION. The Secretariat of State of His Holiness the Pope at the instance of the wife of Runeglia has addressed to the Assistant to the Personal Representative of the President of the United States Mrs. Runeglia's request that the sentence be commuted. This message was communicated to the Chief of Staff, Headquarters, MTOUSA, through diplomatic channels.

His Excellency Count Carlo Sforza, Minister of Foreign Affairs, has addressed a communication to the United States Ambassador, Rome, Requesting that the death sentence be commuted to life imprisonment. He submits that the Decree of 10 August 1944 abolishing the death penalty in Italy has been recognized by the Allied authorities in former cases and requests that similar action be taken in this case.

The Foreign Minister also appeals on the ground that with the return to a state of peace such an act of clemency will exhibit a broad spirit of understanding and generosity on the part of the Allies in judging facts and deeds connected with the tragic vicissitudes of the war and will surely find an echo in Italian public opinion. The latter communication was also forwarded to the Chief of Staff, Headquarters, MTOUSA, through diplomatic channels.

These two communications are concerned only with commutation of the sentence which is outside the jurisdiction of the reviewing authority. The message from the Secretariat of His Holiness is considered as an ordinary appeal from a clergyman in behalf of an aggrieved parishioner.

The first ground stated in the appeal of the Minister of Foreign Affairs is not seriously considered as the action in the former case referred to does not constitute a binding precedent. The second ground stated in the appeal is based largely upon grounds of political expediency. The first ground stated, that the abolition of death sentences in Italy was considered in a previous case, is not accurate, for as a matter of fact this argument has never been used as the basis of commutation in any war crimes case, and in the present case it is recommended that it be not so recognized. The facts herein show a brutal murder of a helpless man without the existence of any extenuating circumstances.

The other grounds stated by the Minister of Foreign Affairs is that the Italian people will respond favorably to a charitable act of the Allied forces in recognizing the confusion and indecision which existed in the Northern parts of Italy subsequent to the landing of the Allied Forces on Italian soil and the continued occupation of the Northern parts of Italy by the Germans.

There was no doubt untold confusion and varying loyalties, the latter often determined by trifles. In some individuals loyalties run deeper than in others. As an act of Christian charity embodied in our religious teachings,

regardless of religious sects, to extend clemency would be proper and would no doubt strike a responsive chord among Italians who are deeply schooled and disciplined in Christian teachings. This headquarters has also received large numbers of letters and appeals from others asserting the innocence of Bonaglia.

These matters are all for consideration in connection with the question of commutation of the sentence, which sentence in my opinion is fully justified from the evidence in the case. The power to commute the sentence lies wholly within the power of the confirming authority and no recommendation is made in this regard.

9. RECOMMENDATIONS. Accordingly, it is recommended that the sentence be approved and the record of trial forwarded, pursuant to paragraph 12, Circular 114, Headquarters MTOUSA, dated 22 September 1945. A form of action designed to accomplish the foregoing recommendations is attached.

September 1947

VERNON C. MILLS
1st Sgt., [illegible]

In the foregoing case of Pvt Bonaglia, sentence is approved and the record of trial f[illegible] Acting Theater Judge Advocate
pursuant to paragraph 12, Circular 114, Headquarters MTOUSA, 22 September 1945.

[illegible]
Colonel, Infantry
Commanding

HEADQUARTERS
ZONE OF LIBERTY
UNITED STATES ARMY
APO [illegible]

September 1967

In the foregoing case of [illegible], the sentence is approved and the record of [illegible] under paragraph 18, Circular 114, Headquarters [illegible], 28 [illegible] 1945.

[illegible]
Colonel, Infantry
Commanding

HEADQUARTERS
PORT OF LEGHORN
APO 512

WAR CRIMES NO. 510 - RONCAGLIA

26 July 1947.

SUBJECT: Advice of Staff Judge Advocate

TO : Commanding Officer, Port of Leghorn

CHARGE : Violation of the Law of War

Specifications: In that Roncaglia, Tito, then a member of the Fascist Federazione of Terni, Italy, acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, did, near Foligno, Italy, on or about 24 January 1944, wrongfully, unlawfully and contrary to the law of war, summarily kill S/Sgt Dale E. King, a member of the Military Forces of the United States of America by shooting him with a gun.

I. EVIDENCE

The submitted evidence indicates that an American aircraft, a B-26 of the 15th Air Force, 319th Group, while on a combat mission to Foligno, Italy, was disabled on the 19th of December 1943. The plane crashed about 12 miles from Lake Bolsena. Five members of the crew bailed out. S/ Sgt Dale E. King landed at Lake Bolsena, obtained civilian clothing and during the next ten days traveled to Foligno, Italy. King was in an exhausted condition because of lack of food, but the inhabitants of Foligno furnished him food and shelter until the 24th day of January 1944. On the 23rd of January 1944, a group of partisans entered the village of Foligno, arrested two civilians and executed them on the public square. The following morning about 80 Fascists from Terni and neighboring cities surrounded Foligno, ordered all men above the age of 16 years to the public square and searched the houses in the town. At that time the deceased Dale E. King was in the home of Domenico Matteucci. Matteucci led a patrol consisting of Roncaglia, Edoardo Lancia and two or three other members of the Fascist party to his home. King was in the house when Roncaglia and Lancia entered. The two of them fired several shots without warning. King dropped to the floor and died within a few minutes. The evidence is conflicting as to whether King was sitting in front of the fire, hiding behind a dresser or attempting to escape when shot. There is evidence that King had his hands up in token of surrender at the time, and all agree that he was shot without warning.

The missing air crew report of the 440th Sq., 319th Gp., 15th Air Force shows that a B-26 was disabled by enemy anti-aircraft fire in the vicinity of Lake Bolsena while on a mission to Foglingo, Italy, on 19 December 1943. There were six crew members, four of whom returned. Lt Walton R. Stewart, the pilot, was found near his plane and S/Sgt Dale E. King, radio gunner was listed as killed in action.

On or about 2200 hours on the 28th of December 1943, an American airman reached the village of Poline. He went to the house of Giovannelli Cesira where he was given food and then taken to the Town Hall. Many inhabitants were present and it was decided to take him to the home of Orsini, Calleramo, where he remained for 18 days. Being afraid to keep him longer, Orsini made arrangements for the transfer of the American airman to the home of Domenico Matteucci where he remained until the 24th of January 1944.

On the 23rd of January a group of partisans executed a Fascist lawyer, Orsini, Carlo, and a corporal, Combi, Francesco.

The Fascists at Terni, learning of the executions, organised an expedition to recover the bodies of the Fascists and to exact reprisal on the people of Poline for the execution. A group of 80 Fascists surrounded the village on the morning of 24 January 1944. Federale Coppo, Alberto, ordered all male citizens of Poline to assemble at the public square and that all houses in the village be searched. There is some conflict in the evidence as to his exact orders, that is, whether any man found would be shot or would be arrested and brought to the public square. The evidence, however, favors the latter view.

Tito Ronsaglia and Edoardo Lancia, Gaetano Pattaressi and Domenico Matteucci went to the Matteucci home. Ronsaglia opened the door, cried: "Stop!" and fired. The American airman fell to the floor. It appears that several shots were fired and that the American airman was unarmed at the time although Ronsaglia and Lancia state he had a knife in his hand and attacked them. Matteucci identified the knife and states that it is his knife and that the knife was behind a chest of drawers at the time.

The American airman's body was then taken to the public square and later in the day transported to Terni where he was buried in Plot No. 10, Row 5, Grave 180. The body was disinterred and reburied at US Military Cemetery at Nettuno, Italy, on 7 March 1946, as "Unknown American X-988."

The loss of two crew members of a B-26 near Lake Bolsena, Italy, on the 19th of December 1943 is shown by a certified copy of the Missing Air Crew Report. This fact is further confirmed by a certified statement of S/Sgt John L. Wagner, a tail gunner in #3 plane of #2 flight. S/SgtDale E. King was in Lt Steward's plane which was in #2 position. The arrival of an American airman in Poline, Italy, about 10 days after the plane crashed is shown by the statements of many witnesses. The fact that the American airman remained in Poline is p proven by the statement of Calleramo Orsini, Domenico Matteucci and Annaria Pellini, two of whom, at least, can identify S/Sgt Dale E. King from photographs supplied by his mother, Mrs. Bessie Jacobsen.

The accused admits being armed and being at the scene of the crime, but denies shooting S/Sgt Dale E. King, although he bragged to Giovanni Pittotti, Coppo Alberto and Don Francesco Bigioni that he had killed the American flier.

Domenico Matteucci was an eye witness to the killing of S/Sgt Dale E. King and states that the accused is solely responsible and that the deceased was not armed with a knife.

Gaetano Pattaressi saw the accused and Lancia Edoardo burst into Matteucci's home and heard the call "Surrender!" and at the same time several shots were fired.

Many witnesses will testify that they heard the shots; that the body of the American airman, who had been killed in the Matteucci home, was carried to the public square and was then transported to Terni.

Otello Ricceetti also saw the airman's body carried to the square. He placed the body on his truck and delivered it to the caretaker at the civilian cemetery in Terni. Alvin H. Hall, 1st Lt, Ord Dept, O-1566150, certifies that the records of Air Force Clearance Detachment show the following facts:

a. That he, Otello Ricceetti, placed the body in a truck and took it to the civilian cemetery in Terni and personally turned the body over to COLLEMAGGIO, Massimo, grave digger.

b. That COLLEMAGGIO, Massimo, Vicolo San Giuseppe 25, Terni, did bury the body in Grave No. 150, Block 20, Section 8, in the civilian cemetery in Terni.

c. That the body recovered in Terni and reburied in the US Military Cemetery of Nettuno, Italy, Plot E V, Row 24, Grave No. 6761 is the body of the murdered American.

The reburial report shows that the body buried in March had all teeth in perfect condition, no fillings or cavities.

A cable from the Adjutant General, Washington, D. C., states that the dental chart in S/Sgt Dale E. King's enlistment record indicated all teeth present.

II. COMMENT

This case was referred to this Command by letter dated 26 July 1947 from Headquarters, Mediterranean Theater Of Operations.

The evidence in the file is sufficient to establish a prima facie case. However, to obtain conviction, the Government will have to depend on Italian witnesses. Past experience has shown that Italians are reluctant to testify against a fellow countryman and more than three years have elapsed since the crime was committed thereby giving them an excuse to forget essential details of the crime.

This question presents itself: Under the Law of War, was a war crime committed?

The evidence shows that S/Sgt Dale E. King had bailed out from a disabled plane and landed in territory held by the enemy. Thirty-six days after he landed while he was in the home of Domenico Matteucci he was killed by the accused. There is no evidence that he was armed or attacked the accused except the accused's own statement and the statement of Lancia Edoardo who has not been apprehended. It can be safely said that S/Sgt Dale E. King was unarmed, offered no defense, was not attempting to run away when shot, but neither was he a prisoner of war. Article 23-b of the Annex of the Hague Convention, No. IV, 18 October 1907, provides as follows: It is forbidden "to kill or wound treacherously individuals belonging to the hostile nation or Army."

Paragraph c. of the same article provides that it is unlawful "to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion".

Paragraph d. of the same article provides that it is unlawful "to declare that no quarter will be given".

Oppenheim's International Law by Lauterpacht, at page 270, states: "But combatants may only be killed or wounded if they are able and willing to fight or to resist capture. Therefore, combatants disabled by sickness or wounds may not be killed. Further, such combatants as lay down their arms and surrender, or do not resist being made prisoners, may neither be killed nor wounded, but must be given quarter. These rules are universally recognized, and are now expressly enacted by Article 23 (c) of the Hague Regulations, although the fury of battle frequently makes individual fighters forget and neglect them".

According to the facts in the file, an American soldier has been unlawfully killed in violation of the [illegible] rule[illegible] enacted at the trial may show a cold-blooded murder or in such cases as [illegible]

III. RECOMMENDATION: [illegible]

Accordingly, it is [illegible] that the accused will be brought to trial by a "Military Commission" for a violation of the law of war in the killing of S/Sgt Dale E. King.

VERNON G. [illegible]
Lt. Colo., [illegible]
Acting Staff Judge Advocate

CBM/rdy

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

In reply refer to

21 July 1943

SUBJECT: Authority to Appoint Military Commissions

TO : Commanding Officer
Port of Leghorn
APO 512, U. S. Army.

1. Authority is granted to the Commanding Officer, Port of Leghorn, to appoint military commissions for the trial of persons charged with violation of the laws of war in such cases as may be referred to him by this headquarters.

2. Military commissions appointed under this authority will be guided by theater regulations for the trial of war criminals.

BY COMMAND OF LIEUTENANT GENERAL LEES:

RALPH C. TILLEY
Colonel, AGD
Adjutant General

Data as to restraint of accused: .....
(Give date, place, and initial date of any restraint of accused)

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

In reply
refer to

26 July 1947

SUBJECT: Disposition of War Crimes Case

TO : Commanding Officer,
Port of Leghorn
APO 512, U. S. Army

1. By letter, dated 21 July 1947, the Commanding General, Mediterranean Theater of Operations, granted authority to the Commanding Officer, Port of Leghorn to appoint military commissions for the trial of persons charged with violation of the laws of war in such cases as may be referred to him by this headquarters.

2. War Crimes Case Number 510, relating to one Tito Roncaglia, Italian National, member of the Fascist Federazione of Terni, who is accused of the unlawful killing of an American soldier, Staff Sergeant Dale E. King, a member of the crew of a bomber of the 15th Air Force, 319th Group, United States Army, has been forwarded to your headquarters.

3. It is desired that the above mentioned case be disposed of before a military commission appointed by you. Said commission will be guided by theater regulations for the trial of war crimes.

BY COMMAND OF LIEUTENANT GENERAL LEE:

RALPH C. TILLEY
Colonel AGD
Adjutant General

Data as to restraint of accused: .....
(Give date, place, and initial date of any restraint of accused)

W. D., A. G. O. Form No. 115
8 July, 1943

o16—27769-2

RESTRICTED DCK/gam

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

CIRCULAR)
:
NUMBER 114) 23 September 1945

REGULATIONS FOR THE TRIAL OF WAR CRIMES

1. As used in these regulations the expression "war crime" means a violation of the laws or customs of war.

2. Military commissions appointed by the Theater Commander or by other commanders under authority delegated to them by the Theater Commander, shall have jurisdiction to try all cases referred to them of persons accused of committing war crimes.

3. A military commission shall consist of not less than three officers, the senior present at any trial being president. For each military commission there shall be appointed a judge advocate and a defense counsel with such assistants as may be required, whose duties shall be similar to those of like officers before general courts-martial.

4. The president of a military commission is empowered to appoint court reporters and interpreters who shall be entitled to such compensation as may be authorized by law and regulation.

5. A formal charge and investigation as provided for court-martial procedure is not required for military commissions. The charge may state the offense by its legal name or may describe it in terms of international law. The specification may in non-legal terms set forth the details of the act constituting the offense. It should also include expressions to enable the commission to determine its jurisdiction both in respect of the offense and the accused. The charges should be subscribed by any person subject to military law but need not be under oath.

6. Members of a military commission may be challenged for cause either by the accused or by the judge advocate, but they shall not be subject to removal upon a peremptory challenge.

7. The oaths prescribed by Article of War 19 for courts-martial shall be applied to military commissions, judge advocates, interpreters and witnesses with such modification as to make them appropriate to military commissions.

8. Military commissions may conduct their proceedings as may be deemed necessary for a full and fair trial, having regard for but not being bound by, the rules of procedure prescribed for general courts-martial.

9. The fact that an accused acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the commission determines that justice so requires.

RESTRICTED

Data as to restraint of accused: .....
(Give date, place, and initial date of any restraint of accused)

W. D., A. G. O. Form No. 115
8 July, 1943

e16—27769-2

10. The technical rules of evidence shall not be applied but any evidence shall be admitted which, in the opinion of the president of the commission, has any probative value to a reasonable man. Without limiting the scope of the above rule the following in particular will apply:

a. If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the president of the commission, unable to attend without undue delay, the commission may receive secondary evidence of statements made by or attributed to such witness.

b. Any document purporting to have been signed or issued officially by any member of any allied or enemy force or by any official or agency of any allied, neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof.

c. Any report by any person when it appears to the president of the commission that the person in making the report was acting within the scope of his duty may be admitted in evidence.

d. Any deposition or record of any military tribunal may be admitted in evidence.

e. Any diary, letter or other document may be received in evidence as to the facts therein stated.

f. If any original document cannot be produced or, in the opinion of the president of the commission, cannot be produced without undue delay, a copy or translated copy of such document or other secondary evidence of its contents may be received in evidence. A translation of any document will be presumed to be a correct translation until the contrary is shown.

g. Photographs, printed and mimeographed matter, and true copies of papers are admissible without proof.

h. Confessions are admissible without proof of circumstances or that they were voluntarily made. The circumstances surrounding the taking of a confession may be shown by the accused and such showing may be considered in respect of the weight to be accorded it, but not in respect of its admissibility.

11. A military commission shall record its proceedings as nearly as practicable as prescribed for a general court-martial.

12. Convictions and sentences shall be determined by the concurrence of at least two-thirds of the members present at the time the vote is taken.

13. Appropriate sentences imposed by a military commission are:

a. Death (by hanging or shooting)

b. Confinement for life or a lesser term

c. Fine

(Show name, grade, and initial date of any restraint of accused)

W. D., A. G. O. Form No. 115
8 July, 1943

616—27700-2

Hq MTOUSA Circular Number 114 (cont'd).

14. No sentence imposed by a military commission shall be carried into execution until it shall have been approved by the appointing authority.

15. No sentence of death shall be carried into execution until it shall have been confirmed by the Theater Commander, but where the military commission that imposed the death sentence was appointed by the Theater Commander and he has acted on the sentence as approving authority, no additional confirmation by him is necessary.

BY COMMAND OF GENERAL MCNARNEY:

OFFICIAL:

M. G. WHITE
Major General, GSC
Acting Chief of Staff

C. W. CHRISTENBERRY
Colonel, AGD
Adjutant General

DISTRIBUTION:
Z

(Give date, place, and initial date of any restraint of accused)

W. D., A. G. O. Form No. 115
8 July, 1943

e16—27769-2

(WRITE NOTHING ABOVE THIS LINE)

CHARGE SHEET

Leghorn, Italy (Place), 26 July (Date), 19 47

Name, etc., of accused: Ronconglia, Tito
(Give last name, first name, and middle initial in that order followed by serial number, grade, company, regiment, arm or service, or by other appropriate description of accused. Alias names, etc., to follow in same manner)
An Italian National

Age _____ Pay, $_____ per month. Allotments to dependents, $_____ per month.
(Base pay plus pay for length of service)

Government Insurance deduction, $_____ per month.

Data as to service: Presently a prisoner held by the American Military Forces in the MEDUSA Disciplinary Training Center, APO 512, US Army
(As to each terminated enlistment, give including dates of service and organization in which serving at termination. As to current enlistment, give the initial date and the term thereof. Give similar data as to service not under an enlistment)

Data as to witnesses, etc.: Witnesses for the Prosecution
(Give names, addresses, and note if for accused. List documentary evidence and note where each item thereof may be found)

Pattarozzi, Gaetano	Via Mint, Rome, Tel. 70[illegible] or Villa Salia, Sardinia
Pistotti, Giovanni	Via Ippocrate 96, Rome (Apartment 32)
~~Bonzanni, Ezio~~	Desio, Milan.
Coppe, Alberto	Via Roma 161, Terni, Italy.
~~Pattarozzi, Domenico~~	Poline (Terni)
Salvati, Stanislao	Viale Campofregoso 24, Terni.
~~Severini, Armentario~~	~~Via del Cacciere No. 1, Terni.~~
Orsini, Calleratum	Poline. (Terni)
~~Bigioni, Don Francesco~~	~~Parish of S. Michele Arcangelo, Poline.~~
Ricotti, Otello	Via San Giuseppe 17, Terni.
Collemaggio, Massimo	Viccle San Giuseppe 25, Terni.
Dolci, Vincenzo	Via della Reora 5, Cosi (Terni)
Angelotti, Emilio	Via Santa Maria in Via 37, Rome.
Pollini, Amneris	Poline, Terni.

DOCUMENTARY EVIDENCE:

Missing Air Crew Report, 19 December 1943
Report of Reburial, 7 March 1946
Statement of S/Sgt John L. Wagner, 21 December 1943.
Cable, the Adjutant General, Washington, D. C., 27 August 1946.

Data as to restraint of accused: _____
(Give date, place, and initial date of any restraint of accused)

CHARGE : Violation of the Law of War Article of War.

Specification : In that Ranaglia, Tito, then a member of the Fascist Formations of Terni, Italy, acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, did, near Polino, Italy, on or about 2d January 1944, wrongfully, unlawfully and contrary to the law of war, summarily kill S/Sgt Dale E. King, a member of the Military Forces of the United States of America by shooting him with a gun.

(Additional sheets, if necessary, for charges and specifications will be attached here. Ordinary 8 by 12½-inch paper will be used for additional sheets)

(WRITE NOTHING BELOW THIS LINE)

c16—27760-2

(WRITE NOTHING ABOVE THIS LINE)

(Signature of accuser) William V. Cornett
WILLIAM V. COURTNEY
1st Lt., JAGD
(Grade, organization, arm, or service)

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 26th day of July, 19 47, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he* has personal knowledge of the matters set forth in specifications

; and *has investigated the matters set
(Indicate by specification and charge numbers)

forth in specifications of the charge and the charge, and that the same
(Indicate by specification and charge numbers)

are true in fact, to the best of his knowledge and belief.

(Signature) Percy A. Matthews
PERCY A. MATTHEWS
Major, JAGD
(Grade and organization)
(Official character, as summary court, notary public, etc.)

NOTES.—At (*) strike out words not applicable.
If the accuser has personal knowledge of the facts stated in one or more specifications or parts thereof, and his knowledge as to other specifications or parts thereof is derived from investigation of the facts, the form of the oath will be varied accordingly. In no case will he be permitted to state alternatively, as to any particular charge or specification, that he either has personal knowledge or has investigated.
If the oath is administered by a civil officer having a seal, his official seal should be affixed.

1st IND.

Headquarters Port of Leghorn, Leghorn, Italy, 26 July, 19 47
(Place) (Date)

Referred for trial to Lieutenant Colonel Clyde W. Wellen, Infantry
(Grade, name, and organization of summary court, or trial judge advocate)

Judge Adv. of Military Comm.
(Summary) (Trial judge advocate of special or general) court-martial appointed by paragraph 2, Special Orders No. 24, Headquarters Port of Leghorn, 22 July, 19 47

By ORDER of COLONEL OSBINGER
(Command or order) (Grade and name of commanding officer)

e10—27709-2

H. P. Tope
H. P. TOPE
WOJG, USA
Asst. Adj. Gen.
, *Adjutant.*

I have served a copy hereof on (each of) the above-named accused, this 28 day of July, 19 47

(Signature) Franklin D. Ashcraft, *Trial Judge Advocate.*

Capt., JAD.
(Grade and organization)

(SPACE FOR USE WHERE TRIAL IS BY SUMMARY COURT)

CASE No. .....

SPECIFICATIONS AND CHARGES	PLEAS	FINDINGS	SENTENCE OR ACQUITTAL AND REMARKS

Place ....., Date ....., 19....

..... Summary Court.
(Signature, grade, and organization)

Headquarters .....
(Place and date), 19....

.....
(Action of reviewing authority)

....., *Commanding.*
(Signature, grade, and organization)

Entered on service record in cases of conviction .....
(Initials of personnel adjutant)

(WRITE NOTHING BELOW THIS LINE) o16—27708-2

C E R T I F I C A T E

Under the provisions of Paragraph 2 j, AR 35-4120, 30 July 1943, compensation for clerical duties performed for a court willnot be paid to a person who is in the pay of the Government. For this reason, the undersigned, who is a War Department employee, has not submitted a Reporter's Voucher for reporting the trial of Tito Roncaglia, an Italian National.

Margurite D. Blackwell
Reporter

RECORD OF TRIAL

by

MILITARY COMMISSION

of

BONAGLIA Vito, an Italian National

Leghorn, Italy

Proceedings in the trial of Bonaglia Vito, an Italian National, by the military commission appointed by the orders of which a copy is appended.

CONFIDENTIAL

RECORD OF TRIAL

BY

MILITARY COMMISSION

OF

TITO RONCAGLIA, an Italian National

I N D E X

	Page
Arraignment	3
Pleas	3
Findings	160
Sentence	160

T E S T I M O N Y

Name of Witness:	Direct	Cross	Redirect	Recross	Commission	Recalled
For the Prosecution:						
Orsini Gallerano	5	8			8	
Matteucci Domenico	8	12	19	16, 18	13, 18	62
Coppo Alberto	19	21	24,29,30	25, 30	23, 29	
Nesenni, Anastasio	31	36	39,41	39	37, 40	
Dolci, Vincenzo	41	46			47	
Pollini, Amerio	48	50		50	50	
Salvati, Stanislao	51	53				
Otello Riccetti	55					
Collemaggio Massimo	57					
For the Defense:						
Vito Mazzuca	71	73			72	
Valombo Pietro	73	73a		73a	73a	
Pedro Giovanni Rosati	75		79		79	
Pvt Shelton W. Duvall	80	82				
Lucchini Bruno	83	85	85		85	
Anita Santori	85	88	89,90	89	90	
Mario Lauro	94	99			99	
Nesennia Anastasio	100	102	104		104	
Ideale del Carpio	110	114	114		114	
Bonanni Nsio	115	121	125		121,124	
Tito Roncaglia	130	133	137			138
For the Prosecution in Rebuttal:						
M/Sgt A. W. Brown	139	140				
		cross by defense	cross by prosecution		redirect	
For the Commission						
Nesenni Anastasio	145	146				
Coppo Alberto	149					
Dolci Vincenzo	150		153			
Matteucci Domenico	154	157			158	

CONFIDENTIAL

Proceedings in the [illegible] (Page 6 of Index), Italy, pursuant to the following orders

Description	No.	Page Where Introduced
For Prosecution:		
Missing Air Crew Report	1	5
Report of Lt Stuart's Plane	2	5
Picture of deceased on a bicycle	3	6a
Picture of deceased on a bicycle	4	6a
Picture of deceased in a group	5	6a
Picture of deceased in a group	6	6a
Picture of deceased on a bicycle	7	6a
Affidavit of Roxie V. Jacobsen, 3 pictures and envelope	8	7
Statement of Coppe Alberto	9	25
Statement of Pitotti Giovanni	10	58
Report of Burial	11	61
Air Force Casualty Clearance Detachment (Ovhd) Report	12	62
Diagram of room	13	62
Statement of Deoi Vincenzo	14	153

HEADQUARTERS
PORT OF LEGHORN
D STATES ARMY
C 512

July 19[illegible]

[illegible] Orders Number 23, this Headquarters, dated [illegible], as amended by Special Orders Number 1, [illegible] appointed to meet at [illegible] hours, 28 July 1947, or as soon thereafter as practicable for the trial of such persons as may be properly brought before it.

For Defense:

DETAIL FOR THE COMMISSION

Copy of sign on Highway #1 — A — 96

COLONEL [illegible] P. [illegible]ERO, O-7[illegible], INF,
COLONEL WILLIAM C. [illegible]OORE, O-4[illegible], GSC,
COLONEL JEROME F. SEARS, O-1[illegible], ID,
LT COLONEL CHARLES P. [illegible]'DONNELL, O-1[illegible], INF,
LT COLONEL PAUL R. [illegible], O-203[illegible], AGD,
LT COLONEL GERVAISE S. [illegible]TICK, 0903[illegible], CML C,
MAJOR ANDREW L. TUCKER, O-1[illegible], CIT,
MAJOR JAMES D. LOTZ[illegible], O-1[illegible], INF,
MAJOR ELMER H. [illegible], O-3[illegible], INF,
CAPTAIN DONALD C. [illegible], O-1[illegible], QMC,

LT COLONEL [illegible] W. [illegible], O-1[illegible], INF,
Judge Advocate,
CAPTAIN FRANKLIN D. ASHCRAFT, O-476382, CIT,
Assistant Judge Advocate,
CAPTAIN [illegible] [illegible]SON, O-1[illegible], JAGD,
[illegible] Counsel,
[illegible] [illegible], O-1[illegible], FA,

[redacted] in the military commission which convened at Leghorn, Italy, pursuant to the following orders:

HEADQUARTERS
PORT OF LEGHORN
UNITED STATES ARMY
APO 512

SPECIAL ORDERS)
:
NUMBER 24)

22 July 1947

1. Paragraph 1, Special Orders Number 23, this headquarters, dated 21 July 1947 is revoked.

2. A military commission is hereby appointed to meet at Leghorn, Italy, at 0900 hours, 28 July 1947, or as soon thereafter as practicable for the trial of such persons as may properly be brought before it.

DETAIL FOR THE COMMISSION

COLONEL VIRGIL N. CORDERO, O-7472, INF,
COLONEL WILLIAM C. MOORE, O-4899, GSC,
COLONEL JEROME F. SEARS, O-100021, FD,
LT COLONEL CHARLES F. KNOBLOCH, O-158894, INF,
LT COLONEL PAUL REVERE, O-203266, AGD,
LT COLONEL GERVAISE S. CHITTICK, 0903369, CML C,
MAJOR ANDREW L. TUCKER, O-151059, CMP,
MAJOR JAMES D. LOEWUS, O-23205, INF,
MAJOR ELMER H. BAUER, O-362421, INF,
CAPTAIN DONALD C. YOUNG, O-1588391, QMC,

LT COLONEL CLYDE W. WELLEN, O-153627, INF,
Judge Advocate,
CAPTAIN FRANKLIN D. ASHCRAFT, O-476382, CMP,
Assistant Judge Advocate,
CAPTAIN FRANK W. ROBINSON, O-194342, JAGD,
Defense Counsel,
CAPTAIN JOSEPH M. O'LEARY, O-1168013, FA,

[redacted]

Proceedings in the military commission which convened at Leghorn, Italy, pursuant to the following orders:

HEADQUARTERS
PORT OF LEGHORN
UNITED STATES ARMY
APO 512

SPECIAL ORDERS)
: 22 July 1947
NUMBER 24)

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Judge Advocate,
CAPTAIN FRANKLIN D. ASHCRAFT, O-476382, CMP,
Assistant Judge Advocate,
CAPTAIN FRANK W. ROBINSON, O-194342, JAGD,
Defense Counsel,
CAPTAIN JOSEPH M. O'LEARY, O-1168013, FA,
Assistant Defense Counsel.

In the conduct of the proceedings, the commission shall follow the provisions of Circular 114, Headquarters Mediterranean Theater of Operations, 23 September 1945, entitled "Regulations For the Trial of War Crimes".

BY ORDER OF COLONEL ORSINGER:

RALPH C. TILLEY
Colonel, AGD
Adjutant General

OFFICIAL:

RALPH C. TILLEY
Colonel, AGD
Adjutant General

DISTRIBUTION:

1 TAG (Compilation)	2 Da Officer	25 JA of Commission
2 CG, MTOUSA	2 AG Records	14 File
100 TJA, MTOUSA	2 G-1	1 CO Da Orgn Concerned
1 CO, Port of Leghorn	25 AG Library	
2 AG Opns	2 AG AT&O	

The military commission met pursuant to the foregoing orders at Leghorn, Italy, at 1000 hours, 8 August 1945.

PRESENT

COLONEL VENDEL E. CHENEY, 0-7478, INF,
COLONEL WILLIAM G. ECCLES, 0-4000, CAC,
COLONEL JEROME F. KEARN, 0-[illegible], FA,
LT COLONEL CHARLES F. ENGELKE, 0-[illegible], INF,
LT COLONEL PAUL REVERE, 0-[illegible], AGD,
MAJOR ARTHUR L. WICKER, 0-[illegible], CAC,
MAJOR JAMES D. LOWELL, 0-[illegible], INF,
MAJOR ELMER E. BAKER, 0-[illegible], INF,
CAPTAIN DONALD G. YOUNG, 0-[illegible], CAC,

LT COLONEL GLEN E. WEAVER, 0-[illegible], INF,
Judge Advocate,
CAPTAIN FRANKLIN B. ARMBRUST, 0-[illegible], CAC,
Assistant Judge Advocate,
CAPTAIN FRANK W. ROBINSON, 0-[illegible], JAGD,
Defense Counsel,
CAPTAIN JOSEPH M. O'BRIEN, 0-[illegible], FA,
Assistant Defense Counsel.

ABSENT

LT COLONEL GERVAISE S. CHIPPLOK, [illegible], CAC,
Excused [illegible], on official business.

The military commission proceeded to the trial of Romolgio Tivo, an Italian national, who appeared before the military commission and was given the opportunity to introduce civil or military counsel of his own selection.

Prosecution: The accused is present in court, represented by the regularly appointed defense counsel and assistant defense counsel. Does [illegible] the accused desire to introduce as counsel? y.

Defense: The accused wishes to introduce as his counsel the regularly appointed defense counsel, Captain Frank H. Robinson, JAGD, and an Italian lawyer, resident in Livorno, by the name of Mario Lenzi, a regularly licensed advocate under the laws of Italy, and Captain O'Leary, the assistant defense counsel regularly appointed.

Prosecution: Does the accused desire to introduce another special defense counsel?

Defense (Capt. Robinson): The accused states that he does not.

Marguerite B. [illegible] was then sworn as reporter.

Valentino D. Rocchio was then sworn as interpreter.

The Judge Advocate then announced the names of the members of the commission present and absent and the names of the accuser and the person who referred the case for trial.

Prosecution: A copy of the charges in this case was served on the accused on the 30th day of July 1947.

The general nature of the charges in this case is an alleged violation of the Law of War. The charges were preferred by William V. Cornett, First Lieutenant, AGD, Headquarters MTOUSA. The charges were referred for trial to Lieutenant Colonel Clyde W. Hailes, Infantry, Judge Advocate of the Military Commission appointed by Special Order No. 84, Paragraph 5, Headquarters First of Leghorn, by order of Colonel Ottinger, under indorsement dated 28 July 1947, which apparently is in proper form.

The judge advocate does not expect to call any members of the commission now present as witnesses in this case, nor is any member an accuser; the records in this case disclose no grounds for challenge. If any member of the commission is aware of any facts which he believes to be a ground for challenge by either side against any member, it is requested that he state such facts.

President: Apparently none.

Prosecution: The prosecution has no challenge for cause. Does the accused desire to challenge any member of the commission for cause?

Defense (Capt. Robinson): The accused has no challenge for cause other than the overriding jurisdiction of the entire commission and this entire tribunal.

President: The objection is overruled.

Prosecution: The commission will be sworn.

The members of the commission and the personnel of the prosecution were then sworn.

Prosecution: Vito Ranauglio, I will now read the charge and specification under which you are about to be tried.

CHARGE: Violation of the law of war.

Specification: In that Ranauglio, Vito, then a member of the Fascist Federazione of Terni, Italy, acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, did, near Foligno, Italy, on or about 24 January 1944, wrongfully, unlawfully and contrary to the law of war, summarily kill S/Sgt Dale R. Haig, a member of the Military Forces of the United States of America by shooting him with a gun.

The interpreter then read the charge and specification to the accused in Italian.

Prosecution: Before pleading, does the defense have any special pleas or motions to offer?

Defense (Capt. Robinson): The defense enters a plea as to jurisdiction of this commission, contending that no war crime has been committed and objecting to the jurisdiction by this commission.

President: Subject to objection by any member of the commission, the objection of the defense is overruled.

Prosecution: Any further motion at this time?

Defense (Capt. Robinson): There are none at this time.

Prosecution: How does the accused Tito Ronzaglia plead to the specification and the charge?

Defense (Capt. Robinson): May it please the commission, the accused is relying on one of the rights as laid down in the Manual for Courts-Martial, which, as we understand it, augments the rules before this commission, and if this accused does not plead at all and thereby does not submit himself to the jurisdiction in any manner whatsoever, we rely on the fact that the commission will, according to the Manual for Courts-Martial, enter a plea of Not Guilty on behalf of the accused.

Prosecution: Does the accused refuse to plead?

Defense (Capt. Robinson): The defense counsel has read into the record the position, in which he is asking that the commission enter a plea of Not Guilty, similar to our court-martial proceeding.

President: The commission will enter a plea of Not Guilty for the accused.

Prosecution: May it please the commission, the prosecution expects to prove that an American aircraft, a B-24, of the 15th Air Force, 319th Bomber Group, while on a combat mission to Foligno, Italy, was disabled on the 19th of December 1943. The plane crashed about twelve miles from Lake Bolsena. Five members of the crew bailed out. Staff Sergeant Dale E. King landed at or near Lake Bolsena. The evidence will show that Staff Sergeant King obtained civilian clothes and during the next ten days, traveled over the mountains to Palino, and arrived in Palino about the 29th of December 1943. At that time he was weak from hunger, exhaustion, and cold. He was taken to the home of Salleranan Orsini, where he remained until the 15th or 16th of January, 1944. At that time Mrs. Salleranan, fearing that his presence might have been discovered in her home, took him to the home of Domenico Matteucci. He lived in the home of Matteucci until the 24th day of January. On the 23rd day of January, the partisans descended on the little town of Palino and killed two Fascists in the town. There was an expedition organized at Terni to go to Palino. That expedition left Terni early in the morning of the 24th. The accused in this case was a member of that expedition. The expedition reached the little city of Palino, about 80 armed men. The town was surrounded. All male citizens over the age of 16 years were ordered to the public square, and patrols were sent out to see that everybody reported. The accused, Ronzaglia, and one Lancia, went towards the home of Matteucci. They had been informed that an American was hidden in Matteucci's home, and on the road to Matteucci's home they met him and threatened him that unless he divulged where the American was hidden they would kill him. Matteucci led them to his home. He opened the door. The American, Dale King, was sitting in front of the fire. The two men hollered, "Halt!" and shot at the same time. King was wounded, fell off his chair near the fire. Lancia, seeing that the American was wounded, said, "Don't shoot any more," but the accused in this case fired a third time into the body of the wounded American who was lying on the floor of the Matteucci home. King died in a few minutes, as he was being transported to the public square of Palino. He was transported to the public square wrapped in a blanket and lying on a ladder. After being taken to the public square, he was later transferred to Terni, where he was buried, and later the body was taken up by American military authorities and he was buried in an American cemetery.

Gentlemen, we expect to submit evidence to substantiate every word of that statement. It was a cowardly thing on the part of the accused to do, and if we prove these statements we will expect a conviction in this case.

Defense (Capt. Robinson): Objection. The defense objects to the last statement and will let the Commission determine about the cowardly act. We object to the testimony of the judge advocate.

President: Objection sustained.

Defense (Capt. Robinson): We ask that the commission be admonished not to consider that part of—

President: The commission is admonished not to consider that last statement.

Prosecution: Subject to objection by the defense, the prosecution offers in evidence Missing Air Crew Report of Prosecution's Exhibit No. 1 for identification.

Defense: There is no objection.

Prosecution: May I read the pertinent parts to the commission?

President: It will be admitted and marked Prosecution's Exhibit 1.

(Prosecution's Exhibit 1 was then read to the commission by the judge advocate.)

Prosecution: Subject to objection by the defense, the prosecution offers in evidence Prosecution's Exhibit 2 for identification, being a report of Lieutenant Malden R. Stewart's plane, which was missing, signed by John L. Wagner.

Defense: There is no objection.

Prosecution: No objection?

President: It will be admitted in evidence marked Prosecution's Exhibit 2.

(Prosecution's Exhibit 2 was then read to the commission by the judge advocate.)

Prosecution: The prosecution calls as its first witness Orsini Calderaman.

Orsini Calderaman, Puline, a witness for the prosecution, was then brought into the courtroom, and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q. State your name.
A. Orsini Calderaman.
Q. [illegible]
Q. Where do you live?
A. Puline.
Q. What is your occupation?
A. Housewife.
Q. How long have you lived in Puline?
A. Since I was born.
Q. Did an American come to your house in late December 1945?
A. Yes, the Fanalgtz of Puline brought him.

Q. When?
A. On the 25th of December 1944. They had given him food and drink and then brought him to my house.

Q. Was that 1944 or 1945?
A. Nin, 1945, because a few days afterwards 1944 came along.

Q. How was the American dressed?
A. With very light civilian clothes, trousers with stripes only.

Q. What was his physical condition on arrival at your home?
A. He was--he came in an exhausted condition. He said that it had been ten days that he hadn't eaten anything.

Q. Did he tell you to what organization he belonged?
A. We could not understand him, because he was American.

Q. Did you talk to him at all?
A. We asked him, "What did you do in the airplane?" and he--

Interpreter: Bail, the could the mate.

Q. Do you know the airman's name?
A. He said his name was--

Interpreter: And then she said something, some sound or other.

President: Didn't she say Dale?

Interpreter: No, sir. Phonetically it is Gale Dam.

Questions by prosecution:

Q. How long did the airman remain at your home?
A. 21 days.

Q. Where did he sleep during that time?
A. The first night he slept near the fire on a mattress, and then afterwards he slept with my husband--that is, unfortunately and he said I was at his and for the hell, because the room was not large enough and I had no other possibilities.

Q. Where did the American airman go when he left your home?
A. I went to keep my house closed and the people started getting suspicious, and I was afraid I would be killed, so I asked the wife of Hatsuzoki if she would do me the favor of keeping him in her house and I would supply the linen.

Q. Did he go to the Hatsuzoki home?
A. I brought him myself, at ten o'clock at night.

Q. When?
A. On Saturday.

Q. What month?
A. In January.

Q. What year?
A. 1944, the 21st of January.

(A man was brought into the courtroom.)

Q. Do you recognize this gentleman?
A. This is the man to whom I brought the American.

Prosecution: May the record show that Exercise Nakanishi was brought into the courtroom and has now left the courtroom.

Questioned by prosecution:

Q. After you had taken the American airman to the Matsumoto home, did you see him any more?
A. Yes, on the evening of the 23rd I brought him supper.

Q. Did you see the airman after that?
A. The third morning when they brought him to the square dish.

Q. How did they bring him to the square?
A. They had wrapped him in a blanket, which I had given him, and a comforter, a quilt, belonging to Matsumoto, and then they placed him on a ladder, a ladder [illegible]

Q. Where did they take him?
A. To the square.

Q. What [illegible]
A. [illegible]

Q. Today [illegible]
A. Yes, 4, 5 and 3 [illegible]

Q. Did you see the body and are you able to state to this court that that body was the body of the American that had formerly been at your home?
A. Yes, I knew him well [illegible]

Q. I now hand you Prosecution's Exhibits Nos. 3, 4, 5, 6 and 7 for identification, and will ask you to state whether or not you recognize the pictures of the man shown there.
A. This one here, that one with the bicycle (indicating)--he came voluntarily and then he did have his old suit [illegible] with him. I recognize him, although in civilian clothes--although here he is in uniform, and when I saw him he was in civilian clothes.

Q. Do you recognize the picture of the airman as shown in Prosecution's Exhibit No. 7 for identification as being a picture of the airman that arrived at your home in November 1944 and remained there until some time in January 1945 [illegible]
A. Yes.

Prosecution: Subject to objection by the defense, the prosecution now offers in evidence Prosecution's Exhibit No. 7 for identification.

Defense: You are offering just exhibit--the pictures?

Prosecution: At this time, the one identified by the witness.

Defense: There is no objection.

President: It will be admitted in evidence and marked Prosecution's Exhibit No. 7.

Questions by prosecution:

Q. I hand you Prosecution's Exhibit No. 4 for Identification and ask you do you recognize that photograph?
A. I recognize him as though he is there talking to me, but it has been forty years and I am old, and-but he wore a shirt; and he looks different in a khaki shirt. My wife supplied him.

Q. I now hand you Prosecution's Exhibit No. 5 for Identification and ask you if you recognize the picture shown there?
A. They are all the same.

Q. I now hand you Prosecution's Exhibits 5 and 6 and will get you to state whether or not the airman who stayed at your home is shown on those exhibits? If so, point him out.
A. When they had killed him he had already gotten strong again, and he had a full face, just as he has here.

Q. Will you mark--place an X--on the picture of the airman who was at your home in December 1943 and January 1944 on Exhibits 5 and 6?
A. I recognize the face of this man, but he has another appearance, of course, with the hat and the clothes.

Q. All right, place an X on the picture that you recognize.
A. (The witness complied.)

Prosecution: The prosecution now offers in evidence Prosecution's Exhibits Nos. 3, 4, 5 and 6 for Identification.

Defense: There is no objection.

President: They will be accepted in evidence and marked Prosecution's Exhibits 3 to 6 inclusive.

Prosecution: You may have the witness.

Defense (Capt. Robinson): At this time the defense asks that all witnesses be retained for possible recall at any time during the trial. If that is done, at this time there are no questions of this witness.

President: All witnesses will be retained through the trial.

Prosecution: May it please the commission, subject to objection by the defense the prosecution now offers in evidence Prosecution's Exhibit No. 8, which consists of an affidavit by Mrs. Ruth V. Jacobsen, together with a series of photographs and an envelope. Objection?

Defense (Capt. Robinson): May it please the commission, there is an objection to the introduction of these exhibits on the grounds of the fact that the exhibits are not sufficiently identified to show that the exhibits contained in the envelope are the exhibits shown to.

President: Objection by the defense is overruled; the document and the photographs will be admitted into evidence and marked Prosecution's Exhibit No. 8.

Prosecution: May I read the affidavit?

(Prosecution's Exhibit No. 8 was then read by the judge advocate.)

Prosecution: I'd like to ask this witness one more question.

Questions by prosecution:

Q. I hand you herewith Prosecution's Exhibit No. 8 and ask you if the photographs attached thereto represent a picture of the airman whowas at your home in December 1943 and January 1944.
A. This one here is (indicating); I remember him just as I see you.

CROSS EXAMINATION

Questions by defense (Capt. Robinson):

Q. Did the airman who stayed in your house tell you whether or not he was of Italian stock?
A. Yes. His mother.

Q. The airman, then, told you that his mother was Italian?
A. Yes.

Defense (Capt. Robinson): There are no further questions.

Prosecution: Any questions by any member of the commission?

EXAMINATION BY THE COMMISSION

Questions by Major Tucker:

Q. Did I understand that the Fascists brought this airman to your home?
A. The Fascists of Poline.

Q. Did I understand that this man told you his mother was Italian, or his father Italian?
A. His mother.

Questions by Col. Stone:

Q. Were you paid anything by anyone for the services that you rendered?
A. I kept him hidden--who could pay me?

President: No more questions by the commission; the witness is excused.

(There being no further questions, the witness was excused and withdrew.)

Mateusz Ramunio, Poline, a witness for the prosecution, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q. State your name.
A. Mateusz Ramunio.

Q. Where do you live?
A. Poline.

Q. Is that in Italy?
A. Yes.

Q. What is your occupation?
A. Laborer.

Q. Where did you live in December 1943 and January 1944?
A. At Palina.

Q. Do you know Gallerstein Daniel?
A. Yes.

Q. How long have you known him?
A. Since we were kids.

Q. Did Gallerstein Daniel bring a man to your home in January 1944?
A. Yes.

Q. When was that?
A. He was an American.

Q. What was his name, if you know?
A. I was never able to know his name.

Q. How long did he remain at your home?
A. From the evening of the 19th to the morning of the 24th, when they killed him.

Q. You mean the evening of the 19th of January 1944?
A. Yes, the 19th of January and the 24th of January.

Q. 1944?
A. 1944.

Q. I hand you here Prosecution's Exhibit No. 8 and will get you to state whether or not you recognize that man?
A. I have already said that I did recognize this man.

Q. Is that a picture of the man that Gallerstein Daniel brought to your home?
A. This is the man, but I do not distinguish these things, because I saw other photographs.

Defense: Will you let the record indicate what "these things" are?

Q. What do you mean by "these things"?
A. Those stripes here, because he was dressed in civilian clothes, but as far as the face is concerned it represents him.

Q. The stripes referred to being the service ribbons.
A. It seems that the others that I saw, other photographs that I saw, you can see him better. I believe this is he too.

Q. Referring to Prosecution's Exhibit 8-A.
A. It is hard to distinguish him in a photograph like this when I saw him in civilian clothes.

Prosecution: The witness is referring to Prosecution's Exhibit 8 (A).

Q. Do you distinguish the airman in that photograph?
A. I believe this is he. I believe this person represents him.

Q. Pointing to photograph marked 2--did anything unusual happen on the morning of January 24th, 1944?
A. When I awoke on the morning of 24 January 1944, I went out of my house--

Q. Just speak slowly and loudly so the defense can hear you.
A. --and I went about 20 or 30 meters when I met a squad of these Fascists or Republicans, whatever they were. Among these was a man dressed in civilian clothes, and he stopped in front of me and said, "Are you Matteucci, called Cumbelli?" and I answered, "Yes." "Where is the American?" "I don't know." And again he repeated to me, "Where is the American?" "I don't know." The third time he pointed the pistol to my breast and obliged me to say that the American was at my house. And then they followed me to my house, where I led them. When I was in front of the door of my house I opened the door, when--as soon as I opened the door--I had one on either side, one dressed in civilian clothes on the left and one dressed as a soldier on the right--they went forward in front of me, and they immediately saw the American on the right in front of the fire. As soon as--they hardly saw the American when they said, "Halt"--boom--"Halt"--boom.

Q. Boom--do you mean they fired a shot?
A. They shot the pistol, shot toward the American. At the second shot, the American fell to the floor of my house. Then the soldier approached the American and said to the civilian, "He is wounded, we must take him as he is, we must not shoot," and he advanced another step and said, "We must kill him," and fired another shot.

Q. Who advanced another step?
A. The civilian, the man dressed in civilian clothes.

Q. Proceed.
A. As I withdrew, I left them in my house, and the soldiers, other soldiers, that were on the right, at the door and just outside, took me and brought me to the square and there I was guarded until the time they loaded us on trucks and took us away. After they had brought us away just a bit below the town called Palino they stopped, the trucks stopped, and then the civilian who had shot the American said, "Mr. Federale, we have killed the American; the man who was hiding him is here, here he is." What I continue?

Q. Do you know who the civilian was that entered your home and shot the American?
A. You mean the one I have just spoken of?

Q. That is correct.

Interpreter: He doesn't understand.

Defense: The defense asks that the original question be read back and re-interpreted.

(The question was read by the reporter.)

Witness: After four and a half months that I had been in jail, and when I returned I heard from the warrant officer of the carabinieri that his name was Buonaglia.

Questions by prosecution:

Q. Would you be able to recognise that man today?
A. No, because I only saw him once and I was frightened and I do not feel that today I can recognise the person.

Q. Will you look around the courtroom and see if you recognise that man?
A. They can bring him here, but as I say and repeat, I don't feel that I can recognise the man. I am unable to recognise the man.

Q. Will you stand up and look around the courtroom and see if you can recognise the man?
A. I can also look around the court, but during the investigations the questura took me to a place where there were prisoners and they had me look around and I was not able to recognise the man.

Q. Will you stand up and look around the courtroom and see if you recognise him?
A. I don't recognise anyone (complying).

Q. How far is your home from the public square in Palma?
A. About 100 meters or so.

Q. Will you describe the room in which the American airman was sitting?
A. We have already described it yesterday morning.

President: Tell him he do as he is told to do.

Interpreter: What, sir?

President: Tell him to answer your question.

Interpreter: He doesn't understand.

President: Repeat the question.

(The question was read by the reporter.)

Witness: We can write it down.

Questions by prosecution:

Q. Before writing it down, was there a window in front of this house?
A. My house?

Q. Yes.
A. No.

Q. Where was the fireplace in your house?
A. As soon as you go in the door of my house, it is on the right.

Q. Where was the American airman that was killed sitting with reference to the fireplace?
A. This is the road that goes to my house (indicating). This is the door of my house (indicating). This is the door of my house that opens. This is the fireplace (indicating). Here is the wall. Here is the wall of the room. This is the corridor that goes to the fireplace in the kitchen.

Q. Just a minute. Was the airman sitting in front of the fireplace?
A. Yes, in front of the fireplace.

Q. What other furniture was in the room?
A. There was the bread box, the table, and other things that are needed in the kitchen.

Q. Had the American airman armed?
A. No, sir.

Q. Did you, during the course of the day, and before you were taken to jail, see a knife or a dagger?
A. When this man that had shot the American came down to the square and he carried that small dagger, he said, "Do you see what the American had? This dagger. This is a French-type dagger."

Q. Had you ever seen that dagger before?
A. I have not seen this dagger since the first of January, as I have already said.

Q. Where was the dagger on the first of January?
A. As I have already once said, I used to keep this knife in the drawers, in the small drawers, of the bread box, and looking for some objects which are in the drawers I placed it on top of the bread box, and then my wife, looking for something, was opening the lid of the box, made the dagger go down behind.

Q. To whom did that dagger belong?
A. That dagger was in my house ever since my father was still living.

Q. Was the dagger bright and shiny, or tarnished?
A. I don't know, because this dagger had a tin sheath.

Q. How long was the dagger?
A. It could have been from 15 to 20 centimeters.

Q. How long was the blade?
A. That's all, the whole length of it.

Q. How large was the room in which the American airman was sitting at the time he was shot?
A. About six and a half by four meters.

Q. Did you later see the American airman after he was shot in your home?
A. I saw him when they brought his body to the square.

Q. How did they carry the body from your house to the square?
A. With a ladder, the quilt of my bed and a woolen blanket, and they brought him to the square. Then they loaded him on a truck and took him to Borni.

Prosecution: You may have the witness.

CROSS EXAMINATION

Questions by defense (Capt. Robinson):

Q. Did you talk with the American soldier at all?
A. Yes.

Q. What language did you speak to him?
A. I said a word or so, because I had been in America.

Q. How much time have you spent in America?
A. Three times.

Q. How long did you stay in America the first time?
A. I went in 1914 and came back in 1915 or 1916, when the war was going on in Italy.

Q. About how many months or years, total, did you stay in America?
A. 40 or 50 months, in all.

Q. Did the American that remained in your home tell you what was his World stock?
A. He told me he was of Italian descent. He said his father was an Italian, of Italian descent--his father was of Italian descent.

Q. Did he tell you where his father was born?
A. He told me that he was in California, but did not tell me anything about his father.

Q. Is it a matter of your knowledge whether his father came from Italy?
A. I do not know. He told me that his father was of Italian descent.

Q. Will you describe to the commission how the American that stayed in your home appeared, as to whether he was dark of skin?
A. Fairly rather dark-complexioned,

Q. Calling your attention now to the time a man in civilian clothes put a pistol at your chest, will you describe that man, first telling me how old you thought he was?
A. According to his features, from 27--28 or 30 years of age.

Defense (Capt. Robinson): No further questions at this time.

EXAMINATION BY THE COMMISSION

Questions by president:

Q. Do you remember if the American had a moustache?
A. He did not have a moustache.

Q. What about the civilian--do you remember the civilian, if you can recall--do you remember if the civilian had a moustache or not?
A. I did not stop to look to see if he had a moustache or not.

Questions by Capt. Young:

Q. This American who was shot in your home by this Italian civilian--did the American have his back toward the man who did the shooting at the time he was shot?
A. No.

Q. Where was the American shot from?
A. May I illustrate, may I show you in what position he was?

Q. Yes.
A. This is the door of my house, right in front of me (indicating). You go this way to go toward the fireplace (indicating).

Defense: Let the record show that the witness is indicating that as you enter the house you turn to the right.

Witness: And when you go down, the fireplace is this way (indicating) and the American was sitting this way, because the fireplace was in this direction (indicating).

Questions by Capt. Young:

Q. When the American was sitting in the position as you have indicated, was the door of your house to his rear or to his side or in front of him?
A. Like this--when I opened the door in front, there is the wall of the other room. You go to the right, and on the right is the fireplace. When you go into the room, on the right is found the fireplace.

Q. Did the American do anything, such as trying to escape, at the time he was shot?
A. No, he was shot and he fell to the floor. I was the ground I opened [illegible] and I was [illegible].

Questions by Col. Rhoda:

Q. What part of his body did the bullet hit?
A. In the right side.

Questions by Capt. Young:

Q. Let the record so indicate, indicating the right and back.
A. Because he was in this position, and therefore he was shot on this side.

Defense: May it please the commission, I believe the witness indicated side.

Capt. Young: All right, have him stand up here again and indicate where this boy was shot.

Q. Was the [illegible] of you gun or out of the gun?
A. Witness (indicating): Right there, on this side.

Capt. Young: Let the record indicate the right side, to the rear.

Defense (Capt. Robinson): Let him point exactly on my body. (To witness:) Put your finger on the spot.

Witness: I cannot say where exactly the shots hit, but I know it is on this side.

Defense (Lieutenant): Pardon me--the interpreter has forgotten something. He said, "I cannot say"--the witness said, "I cannot say where he was hit because I didn't look at him, at his wounds."

[illegible]

Defense (Capt. Robinson): May it please the commission, the special defense counsel is a university graduate and understands Italian thoroughly and fluently. The defense has been careful not to disturb this commission, but there are numerous small places where the interpretation is not satisfactory, and this is one of them; so we insist upon this particular interpretation being correct, and the commission has heard--the special defense counsel has stated that this witness says that he does not know the spots where the bullets actually struck.

Presentation: I think that was the interpretation of the official court interpreter.

Defense (Capt. Robinson): May it please the commission, I think it would clear this whole thing if the court will ask this witness is the witness assuming or did the witness see the wounds upon the victim.

President: Very well.

(The question was read by the reporter.)

Witness: No.

Defense (Capt. Robinson): Which is no, he did not see the wounds, or no, he did not assume?

Witness: I did not see them.

Questions by president:

Q. Did you see any blood?
A. No, because as soon as I--as soon as he fell to the ground I was--I backed up and I was brought to the square.

Q. Did you hear the American make any remark--did he say anything when he was shot?
A. No, Sir, because when the Fascists took me away from there they brought me to the square and they guarded me--I was not able to move--then I was loaded on the truck.

Q. How many shots were fired?
A. I heard three.

Q. Did you see who fired the shots?
A. As I have already said, as soon as these two went into the house, as soon as I opened the door when these two saw the American--"Hali"--boom--"Hali"--boom.

Q. Were the shots fired out of one gun or out of two guns?
A. I heard the first two shots together and the other alone.

Q. The one that you heard by itself, who fired?
A. The man dressed in civilian clothes.

Questions by Capt. Young:

Q. When the third shot was fired was the American lying on the floor of your house?
A. Yes.

Q. Do you remember whether he was lying face down or face up?
A. Like that (indicating).

President: Let the record show that when the last shot was fired the man was facing down.

Defense: Halfway--

President: On the side.

Questions by Major Lozano:

Q. Did those shooting call "Hali" in English or Italian?
A. Italian.

Q. When the civilian fired the third shot, did he approach the American before he shot?
A. As I have already said, before shooting he advanced one step, about, and fired the third shot.

Question by Col. Moore:

Q. How far was the pistol from the airman when he fired the third shot?
A. From here to there (indicating).

Defense: Let the record show about six feet.

REDIRECT EXAMINATION

Questions by defense (Capt. Robiseau):

Q. You previously testified that the soldier in uniform made a statement about the Americam being wounded, is that right?
A. Where is the wounded? He was wounded after they shot.

Q. You made a statement that the soldier in uniform said, "He is wounded, we must take him"?
A. Yes.

Q. And then you made a statement that the man in civilian clothes made a statement that he must kill him, is that right?
A. Yes.

Q. Then you have testified that the man in civilian clothing fired all three shots?

Prosecution: Objection. That is not the testimony.

President: Objection sustained.

Defense (Capt. Robiseau): You testified that the civilian--the man in civilian clothing--fired the first shots.

Prosecution: Objection again--he testified two shots were fired at the same time, or approximately the same time.

Questions by defense (Capt. Robiseau):

Q. I ask you this question--who fired the shots?
A. The two whom I have already said, the two who stopped me and came to my house and who were one on each side of me when I opened the house.

Q. Did you see the man in uniform shoot at all?
A. Yes.

Q. What did he shoot with?
A. With a pistol.

Q. Did the man in uniform shoot with a pistol?
A. Yes.--No, the civilian.

Q. The civilian. Then did the civilian fire all of the shots?
A. The first two shots, when they entered the house--they said, "Halt"--boom--"Halt"--boom, when they entered. They said, "Halt"--boom--"Halt"--boom.

Q. I ask you to carefully tell the court who fired the shots.
A. When I opened the house and these two advanced, one on my right and one on my left, the soldier on the right and the civilian on the left. I opened the house and they advanced. As soon as they turned there, turned their eyes toward the fireplace, I heard, "Halt"--boom--"Halt"--boom.

Q. I ask you now specifically did the civilian fire all of the shots?
A. I can say that the last shot was fired by the civilian.

Q. Who was the first shot fired by?
A. I cannot say whether it was the one on the left or the one on the right who shot first.

Q. I ask you now specifically did you see the man in uniform shoot at all?
A. I did not see him.

Q. All right. I ask you now, do you know how the man in uniform was armed?
A. The soldier?

Q. What weapon did the soldier carry?
A. I could not see what weapons the soldier carried.

Q. But did you see the weapon the civilian carried?
A. I saw that the civilian was carrying a pistol, because he pointed it to my breast.

Q. What is the same pistol the civilian pointed to your breast out in the street a few moments before?
A. I don't know if it was that one or another one.

Q. Did the civilian point a pistol at your breast in your house?
A. Yes.--No, not in my house, outside where they stopped me.

Q. Did you see a pistol in the hands of the civilian in your house?
A. He was holding it in his hands while we were going up to the door of the house.

President: The commission will take a ten-minute recess.

The commission then took a recess for ten minutes, at the end of which time all the personnel of the commission, the prosecution, the defense, the accused, the reporter and the interpreter resumed their seats. The witness who was on the stand at the time the recess was taken resumed his seat and through the interpreter was admonished that he was still under oath.

Questions by defense (Capt. Rubiosen):

Q. I ask you now that you have had a recess, time to refresh your memory, whether you recall definitely who fired all three shots in your house.
A. I have said that as soon as I have opened the door and they advanced--as soon as they have opened the door of the house, they said, "Halt"--boom--"Halt"--boom. But I did not see, I did not hear, which of the two it was. I only heard, "Halt"--boom--"Halt"--boom.

Q. I will ask you one more time, now--did you see the soldier shoot any shot?

Prosecution: If the commission please, we object. This has been repeated and repeated and repeated.

Defense (Capt. Rubiosen): May it please the commission--

President: Objection over ruled.

(The question was read by the reporter.)

Witness (answering): I did not see him, I only heard the words, "Halt"--boom--"Halt"--boom. Then the soldier went to the American and saw that he was wounded.

Defense (Capt. Robleson): There are no further questions.

Prosecution: Any further questions from members of the Commission?

EXAMINATION BY THE COMMISSION

Questions by Col. Sparr:

Q. Was there anyone else in the room?
A. You mean outside of these people?

President: Outside of yourself and the American.

Col. Sparr: Outside of yourself and the people that you came in with and the American.

Witness: There was nobody else when we entered.

REDIRECT EXAMINATION

Questions by defense (Capt. Robleson):

Q. Was there anyone outside of your house while the shooting was going on inside?
A. No one belonging to my house was in there, because my wife had left with my daughter. My wife and my daughter had left.

Q. Were there any soldiers or Fascisti outside your house during the time the shooting was going on?
A. Yes.

Q. How many?
A. Seven, eight, or ten--I did not count them.

Q. Were they armed?
A. Yes, they were armed.

Q. Were there any civilians standing in front of your house while the shooting was going on?
A. I do not know. I could not see this, because I just--I could not see this. When we went to the house there were already soldiers standing outside the house.

Q. And how many civilians total were in the group?
A. I only saw that one. I cannot state of others.

Defense (Capt. Robleson): There are no further questions.

EXAMINATION BY THE COMMISSION

Questions by Major Loewus:

Q. Were there any windows in your kitchen?
A. Yes, one, opposite the fireplace.

Q. Opposite the fireplace? Answer yes or no.
A. Yes, one.

REDIRECT EXAMINATION

Questions by prosecution:

Q. The one window in your house was at the back of the house, is that correct?
A. No, it was frontways. That corresponds to the side the town is on.

Q. With reference to the steps into the kitchen, what side of the kitchen was the window on?
A. These are the steps. This is the door. The fireplace is here and the window is opposite the fireplace (indicating).

Q. And also opposite the steps, is that correct?
A. No. The steps are here, the fireplace is here, and the window is there (indicating).

Prosecution: No further questions. May the witness be excused?

President: The witness will be excused.

(There being no further questions, the witness was excused and withdrew.)

Prosecution: The prosecution calls as its next witness Alberto Ceppo.

Ceppo Alberto, Foligno, a witness for the prosecution, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q. What is your name?
A. Ceppo Alberto.

Q. Where do you live?
A. At Foligno.

Q. What is your occupation?
A. Professor in letters.

Q. What was your occupation in January, 1944?
A. Federal commissary of the Federazione--of the Fascist Federazione--of Terni.

Q. What was your rank?
A. Sergeant in the Republican Guard.

Q. Do you know the accused in this case, Tito Romaglia?
A. Yes, sir.

Q. Will you point him out?
A. There (indicating).

Prosecution: Let the record show that the witness has pointed out the accused, Tito Romaglia.

Q. Was the accused a member of your organization in January 1944?
A. In January 1944 the accused was a soldier in the Republican Guard, and was detached with his officers for my command.

Q. Was Italy allied with Germany at that time?
A. In that period I belonged to the Republican Government of Salon, which said that Italy was allied to Germany.

Q. Your organization, then, was serving as an ally of Germany at that time, is that correct?
A. It is correct if we ourself we consider that we were an ally of Germany in a war, but we did not depend from Germany as it, because of the impression I had.

Q. Was there any unusual happening on or about January 24, 1944?
A. If you refer to the death of an American soldier and the reason for which we are here, yes; otherwise, I know of no other event.

Q. Where were you stationed at that time?
A. I was at Parma.
Q. Did you go to Poline on 24 January 1944?
A. Yes.
Q. How many men went with you?
A. I cannot know the exact number of the men. I cannot know, because they depended from companies of the Guard, Republican Guard, and I don't know how many soldiers there were, and the same for those of the police--I don't know how many there were. But I do not believe the number could be more than 80 or 90.

Q. What time did your force arrive at Poline?
A. I never looked at my watch that day. I believe, however, that it may have been about nine, half-past nine, or ten o'clock.

Q. In the morning?
A. In the morning.

Q. What did you do after you arrived at Poline?
A. The first thing I did when I went to Poline was to visit the family of the dead Fascists.

Q. Where did you then go?
A. Then I went to the square of the town, where we had the order to assemble all the men over 16.

Q. Who gave that order?
A. That order was concerted upon the night before between the military and administrative authorities. But I must add there was the German liaison officer present. He was an Italian in liaison with the German command who had brought from the German command an order for reprisal, but the Italian officers, Prefect Faustini, Lieutenant Colonel Romanni, and at that time myself, the Federale, we obtained that reprisals be not taken, but that only the military position of the men eligible for the Army be examined. Therefore, in the morning that order was repeated by the officers to the men, and it may be that to somebody who may have asked me I confirmed that order.

Q. Did you see the body of an American soldier brought to the square in the city of Poline?
A. I received the news that a man had been killed and that this man was an American. I went to see him, and I met a few men who were carrying him wrapped up in blankets and carried on a ladder that is used to go up on trees. The body was placed on the ground. I did not uncover the body, so that it would not get wet. I believe he was wounded on the left side; he probably had some blood in his mouth. I saluted the body, I recited for them a Catholic prayer, and I ordered that he be brought with the dead Fascists.

Q. Did you see the accused Vito Romaglia at the point where you saw the man carrying the American soldier on a ladder?
A. I did not see him at that point, but I saw him a step or so after, at the entrance to the town. I had the impression that he was dismounted [illegible]
Q. Did you at that time speak to Romaglia or did he make a report to you?
A. Romaglia was not in a condition to make a complete report, or else I did not think--I did not believe--to have him make it, because of the impression I had.
Q. Did the accused Romaglia say anything to you at that time?
A. As far as I know, at that time he repeated the words, "I killed him. I killed him."

Q. Do you know whether or not Romaglia was referring to the dead American when he said, "I killed him"?
A. Probably he was referring to the dead American, but I have not the absolute certainty that he was calm and that he was sure of what he was saying.
Q. At that time was Romaglia following the men who were carrying the body of the dead American by the square?
A. When I spoke to Romaglia, the American, the dead American, was no longer there. He had already been put down [illegible]
Q. There?
A. He was placed on a low wall to wait for the jeep to be found in order to place him with the rest. I don't know if Romaglia then followed the body.
Q. Was the American the only man killed by your forces in Paliano on the morning of January 30th?
A. Certainly.
Q. Did you later talk to Romaglia about this incident?
A. Later, yes.

Q. Did he at that time confirm the statement that he had made at Paliano to you regarding the killing of the American?
A. Yes.

Prosecution: You may take the witness.

CROSS EXAMINATION

Questions by defense (Mr. Lauro):

Q. Were you present in the house of Matteucci at the moment in which the American soldier had been shot?
A. No.

Q. When Romaglia was sitting--just after the killing of the American soldier, when you saw him for the first time--when he stated, "I killed him, I killed him," what were the emotional conditions of Romaglia at that time?
A. A man who underwent a nervous shock.

Q. Do you know well the character of Romaglia?
A. Certainly.

Q. What type of soldier was he?
A. A soldier who bragged very much but very much afraid.

President: The commission will come to order.

Defense (Mr. Lauro): I have compared the English translation with the Italian text signed by the witness. Notwithstanding the fact that it is not a very literal translation, I may accept it, because the meaning is corresponding.

President: It will be admitted in evidence and marked Prosecution's Exhibit No. 9.

(Prosecution's Exhibit No. 9 was then read by the Judge Advocate.)

Questions by prosecution:

Q. All you know about what happened at the house of Matteucci where the American was killed is what you have heard, is that correct?
A. Certainly.

Prosecution: No further questions.

RE CROSS EXAMINATION

Questions by defense (Mr. Lauro):

Q. You said that you remembered seeing two weapons on the body of Romaglia, the pistol and the Mitra, but you said that you don't remember if he was dressed in civilian or military clothes, just like somebody that says, "I remember the frame of the picture, but I don't remember the picture."

Q. Did anyone else in the presence of the accused make such a statement to you?
A. I have never had occasion.

Q. Did anyone report to you that prior to the death of the Americans they learned that there was an American hiding in one of the houses of the city?
A. It is certain that no one before the time that I knew that there was a dead man—no one had told me that there was an American at Paline.

Q. Did the party that returned from Mahmoud's home tell you that they had learned that there was an American there before they went to the home?
A. The crowd that was in Mahmoud's house did not come to me, but a soldier came in the town hall to tell me that a man had been killed.

Q. I hand you a paper dated 8 May 1945 and ask you whether or not that is your signature.
A. Yes.

Prosecution: I now offer in evidence, subject to objection by the defense, Prosecution's Exhibit No. 8 for identification, a statement made by the witness on the stand in Italian, together with the English translation thereto.

Defense (Mr. Lamar): I would like to verify the translation in English is properly made.

President: The examination will take a five-minute recess.

The Commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter, and the interpreter resumed their seats. The witness who was on the stand at the time the recess was taken resumed his seat and was admonished through the interpreter that the oath previously taken by him was still binding.

Q. Can you tell the commission something that you know that has happened before this episode in Folino that will show to the commission the type of soldier that Ronsaglia was?
A. I can remember an episode before and an episode afterwards. The first one--a few of his companions commanded with him to escort a truck convinced him that there were partisans around. They made him lay on the roof of the truck with his automatic rifle ready. One of the soldiers from behind shot a round from a pistol on the barrel of the automatic rifle and Ronsaglia discharged all of the rounds from the rifle and later declared that he had seen partisans in front of him escape and hide under a small bridge.

Q. Excuse me, was that correct, that the partisans were there and escaped under the small bridge?
A. There were no partisans in the area. Another episode personally occurring between myself and Ronsaglia: After the occupation of Rome, I was then on a military mission. Ronsaglia, speaking of myself, had said that I was afraid. So I said to an officer that at the first occasion when I would be coming back I would show the contrary. So to the officer I said that I would provoke a duel between myself and Ronsaglia, that I would not have shot and that I would have myself shot upon from 20 meters away by Ronsaglia. Ronsaglia was approached by me in the yard of a tavern at Tormini on the Lake of Garda, and he was challenged to a duel without anybody else hearing it. I told him to go get his pistol and to come, without having anyone see him, on the field. He understood, said to a friend of his and mine that he did not know whether I would shoot or not, that he had been challenged by me. This friend then wanted the duel to cease, just as Ronsaglia wished. But the officer was notified by me and scared Ronsaglia to accept the duel, and Ronsaglia did not want to come. So with a hand he touched him very lightly--I did not see well, whether it was a hand or the tip of a foot. One thing is certain, Ronsaglia threw himself to the ground, accusing violent pains, and a friend of ours, a doctor, was called to visit him and found no trace whatsoever of blows on his breast, but Ronsaglia was sick for three days.

Q. In your opinion Ronsaglia is a man that is able to shoot somebody?
A. I do not think that Ronsaglia is able to shoot a man if this man is in front of him.

Q. Did you ever hear that the American soldier that was killed in Folino had in his hands a stiletto?
A. Yes. Everybody, from the very first day, said that he had a dagger; Ronsaglia as well as all the others that were witnesses said that this dagger existed. I, in the Town Hall of the town, saw a dagger being brought on the table, a wallet, an identification tag, a dagger. This dagger was certainly not one in use in the Italian Army forces.

Q. When I asked you before had he a dagger, you mean the American soldier--you understand that I meant the American soldier?
A. I was of the opinion that you were referring to the American soldier.

Q. When you answered me, then, he had a dagger?
A. That is what was told me and that is what I must believe.

Q. And do you mean the American soldier in the house?
A. That is what I was told.

Q. Do you mean that the American soldier who was killed in the house of Folino on January 24, 1944, had a dagger?
A. That is what I was told by the officers who were present. This was stated to me by Ronsaglia, who declared that this American was throwing himself, with the dagger raised, against the soldiers.

Q. As far as you know, there is nobody who gave the particular order to arrest an American soldier in the house?
A. No one gave that specific order.

Q. Or is it possible that when themilitiamen appeared in the house they didn't know that an American was there?
A. It is possible, because all of us that day, before the death took place, did not know that there was an American at Poline.

EXAMINATION BY THE COMMISSION

Questions by Major Looms:

Q. Did you see the American's wounds--just answer yes or no.
A. No, not well.

Q. Did you see them at all?
A. I just barely saw them, because it was raining, the soldier was covered, and I did not want to uncover him completely.

Q. How was the accused dressed that day?
A. I do not remember that day how the accused was dressed, because the accused had the privilege of dressing for his duties--of dressing either in civilian clothes or in uniform.

Q. You saw the accused--did you see the accused in the village square?
A. Yes, sir.

Q. Now think hard. See if you can remember how he was dressed.
A. I do not know the exact impression of how the soldier was dressed in that moment, because I had a general--my general spiritual state was I was preoccupied.

Q. Were you in charge of the expedition?
A. I did not have the military command of the expedition.

Q. Did you have the political command?
A. Yes, sir.

Q. What was your mission?
A. To retrieve the bodies of the two dead Fascists.

Q. Was anything said about the capture of an American soldier?
A. Never did I know before the death of this man that there was an American soldier in the area.

Major Looms: That's all the questions I have.

Questions by president:

Q. The day you saw the accused, when he told you, "I killed him, I killed him," was anybody else killed on that day there besides the American?
A. No.

Q. What did he mean when he said, "I killed him, I killed him"?
A. I said that I believe that in that moment Romagnia referred to the dead man.

Q. Who was the dead man?
A. The dead man was he who was said to be an American soldier.

Questions by Major Imbrey:

Q. What name was registered on the identification tag which you accepted in the public office?
A. I saw the identification card, or tags I could not read them—I did not read the written matter, or could not read it. But certainly I would not remember [illegible]

Q. Where is that tag now?
A. Present was the chief of the province, the German liaison officer—a German officer—and an Italian officer, liaison officer with the Germans.

Q. Never mind.
A. I do not know. Into the custody of each of these three persons it was given.

Questions by president:

Q. Did you state to this commission here that the duties of the accused were of such nature that he could be dressed either in civilian or military clothing?
A. Yes.

Q. You don't remember whether he was dressed in civilian or military clothes the day the American aviator was killed?
A. I absolutely do not remember.

Q. It could have been either of the two?
A. It could have been one or the other.

Questions by Major Imbrey:

Q. Did you say that your mission that day was to retrieve the bodies of two dead Fascists?
A. Yes.

Q. Did you say that your mission was to register the men of military age in that area?
A. That was not my special mission, because that is a military mission. [illegible]

Q. That was a part of the mission of the military commandant [illegible]
A. Of the military commander of all the police [illegible]

Q. Was that the only reason that the men were assembled in the public square?
A. Most surely. [illegible]

Q. You had no advance information that there was an American in Tolmin?
A. Absolutely not. [illegible]

REDIRECT EXAMINATION

Questions by prosecution: [illegible]

Q. How was the accused armed when he said, "I have killed him, I have killed him"?
A. The accused had an automatic rifle and a pistol [illegible]

Q. Did the accused inform you that while they were searching the village they were informed that an American was hiding in one of the houses?
A. The accused never made a specific report to me, because the relations between myself and the accused were those [illegible] directly to me, or in my presence directed to others, he always declared only this part of the version, that a soldier armed with a dagger launched himself toward him.

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A. One thing is certain, however, that I knew, and I always knew, that--correctly that--Capt[illegible] Ronnaglia carried, therefore when I said I saw, for me it is just like saying I know.

Q. Then you refer to the past tense, that you were saying about Ronnaglia in the actual moment in which you observed Ronnaglia after the killing of the American soldier?
A. That day I was too preoccupied with other things to fix my eyes on the individual forthimself, so much so that when I saw Ronnaglia again--that is, a battle was initiated with the German officer to defend the population, which had immediately to be executed.

Q. Therefore you could not swear by God that at that moment Ronnaglia was with two weapons on his body?
A. I cannot seriously swear that in that moment he had two weapons on him, but I always believe that he had two, because I know that he had personally distributed to him an automatic rifle and a pistol.

Q. Then it is a supposition of yours?
A. Certainly. I would like to point this out--it isn't a precise photograph made with my eyes.

Q. Can you tell the commission what happened in Poline the day before the killing of the American soldier on January 23rd, 1944?

Prosecution: Objection to that question. What happened in Poline on the day before has no bearing, is irrelevant and immaterial on the killing of this--

President: Objection overruled.

Questions by defense (Mr. Lamre):

Q. Describe the facts as you heard them from the son of Lawyer Orsini on the 24th of January 1944.
A. I have already described them in a newspaper article which bears my signature under a pseudonym. The name of the paper is Prima Linea, which means Front Line. It was narrated to me that partisans surprised Lawyer Orsini while he was at home immediately after having had his dinner, and with his son, who was very young, a few years old.--Would the court excuse me, because Lawyer Orsini was my friend.--and with the child--they were enjoying the birth of a rabbit, small rabbit, that the child was raising in the kitchen, for fear of the rat. Lawyer Orsini was made to go on the second floor of the house, his house was looted of all it contained, and then with his hands tied he was brought to the square of the town. The eldest daughter followed the father, and when the father was killed, or, rather, when the father fell after the first burst, the little girl threw herself down on the father. A partisan brushed her away and finished off the man with a burst in the head. This is all.

Q. Were these things the things that often were made by the partisans in the region of Terni?
A. In the area of Terni, following this incident, since Orsini was the first man to be killed, three other persons were killed whom I knew and remember in worse conditions, under worse circumstances, because they were completely undressed and killed, rather than by firearm shots, with feet and with stones. But we knew by reports which were obtained that in the area near to us a little while before many incidents of this nature had come about, and if I remember correctly, a whole garrison, surprised while at supper in a mountainous zone,

was killed, pulled apart, and taken the genital parts and placed in the mouths of the dead. However, in the area of Berni, truly, only those four cases of fury, and one or two others killed by execution. Some of those partisans that were killed were not Fascists.

President: The commission will adjourn until 9:45 tomorrow morning.

The commission then, at 5:40 P.M., 4 August 1947, adjourned to meet at 9:45 A.M., 5 August 1947.

Clyde W. Wellon
CLYDE W. WELLON
LT COL, IN
Judge Advocate

Leghorn, Italy
8 August 1947

The commission met, pursuant to adjournment, at 0:45 o'clock A.M., all the personnel of the commission, prosecution and defense who were present at the close of the previous session in this case being present. The accused, the reporter and the interpreter were also present. The witness who was on the stand at the close of the previous session resumed his seat.

President: The commission will come to order.

Prosecution: All members of the commission sworn to try this case, the judge advocate and assistant judge advocate, reporter and interpreter are all present. May I remind me that we are still under oath. The accused is present, together with his regularly appointed defense counsel, assistant defense counsel, and special defense counsel. The witness who was on the stand at the close of the last session is still on the stand; may I remind you that you are still under oath.

(The admonition to the witness was repeated in Italian by the interpreter.)

Defense (Mr. Laura): Gentlemen of the commission, at this point, before starting to question the witness, I would like to inform the commission that are present in the courtroom two Italian officers, Lieutenant Ferrella and Captain Fiorotti, who have been sent here by the Italian Government to assist--to be present, more correct--at this trial, and report it to the Italian Government if there is anything that may interest the Italian Crime of War Commission. If there isn't any objection by the commission, they would like to remain.

President: No objection by the commission; the commission will be glad to have them present.

CROSS EXAMINATION

Q. Questions by defense (Mr. Laura):

Q. Mr. Coppe, you have said that at the time of the incident Italy was an ally of Germany in war, but that Italy did not depend from Germany. When you have said that Italy did not depend from Germany, did you mean politically or militarily?
A. I intended to say politically.

Q. There was at that time an efficient Italian Army--or, rather, the very few remnants of an army that was not able to stand on the field alone?
A. In that moment there were the remnants of an army that could not stand in the field alone.

Q. Were the Germans or Italians in general command of military operations?
A. The Germans.

Q. After the news of the killing of Lawyer Orsini and Militiaman Conti, on the same day there was a meeting held in your office, in the afternoon or evening of January 22rd 1944?
A. Yes, Sir.

Q. Who were present?
A. The liaison officer with the German command, the Prefect Funstini, the commander of the Republican Guard, and myself.
Q. Tell the commission what instructions were taken in relation to the Police situation.
A. To go and get the bodies and verify the military position of all men eligible for the Army.

Q. Did the German officer order that a search be made in the houses to see if there was any hidden partisan or any man of military age who was in default of the law of conscription or any other military law?
A. Certainly he ordered it.

Q. Did the German officer direct that all male persons over 16 years of age had to assemble in the public square of Police and that those who had been found
A. In the houses after such an order the given had to be killed on the spot?
A. I do not know if to the military commands something similar was ever said. I think that I have never ordered or confirmed any similar thing regarding the military personnel. However, to the people I said this, that anyone who remained in the house would be, could be, subject to execution.

Defense (Mr. Lamers): At this present time the defense counsel has no other questions for the witness, but he reserves to question him again.
Q. Did you have any interest
A. I would not have known. REDIRECT EXAMINATION Yes?

Q. Questions by prosecution? [illegible] the 16th of January 1945?
A. [illegible] 15th January 1945.
Q. What was your order in regard to men found in the houses of Police?
A. My order to the men, when I did transmit orders, was that they be led there.
A. Absolutely.
Q. What do you mean, there?
A. That they be brought to the authorities. I said this every time a soldier asked me anything.

Q. By that you mean that any man over the age of 16 be brought to the public square in Police; is that what you mean to say?
A. Yes, certainly.
Q. What was your answer [illegible] a public [illegible] military man?
Q. Did you order the execution of any man found?
A. Of no one.
Q. In each political [illegible] given by the Prosecution? No further questions.

EXAMINATION BY THE COMMISSION

Questions by Major Lesser [illegible]

Q. What were your standing orders to your organization concerning the taking of prisoners?
A. If they were prisoners of war and soldiers, they were to be taken to a concentration camp.
A. [illegible] soldiers from that [illegible] Police [illegible]
Q. Were orders ever issued to shoot on the spot any airmen who had been shot down?
A. Absolutely never.

Q. Where were you first kept at this particular [illegible]?
A. Near Caserine.
Q. You have said that not all orders of a military character were known to you.
Q. [illegible] but [illegible] orders to you?
A. I have never given it thought, and therefore, maybe 100--I don't know--of those have never given it thought upon reflection in my duties.

Q. [illegible] that's all I have.
A. I had the duty of counsel to the military authorities and I would request them [illegible] by Capt. Bongar or some room I thought at departure, but if I had [illegible] anything that was in contrast with superior military orders, I would advise, give advice, [illegible] the military commander, but the military command acted as it thought best. I could report to my superiors in such a way that the military commander could [illegible]
Q. Any orders were issued by hostages to collect certain hostages to be shot in reprisal for the lawyer of your party who had been shot?
A. No such order was given, although the German commander desired it, because the Secretary Chief of the province, the Administrative Chief of the province, and myself, decidedly opposed it.
[illegible] other questions.

REDIRECT EXAMINATION

President: The witness [illegible] questions.

Questions by prosecution:
Defense (Mr. Laurel): Pardon me, sir. I would like to ask one more ques-

Q. Did you take any hostages?
A. I could not take hostages--where could I put them?
Questions by defense (Mr. Laurel):

Q. Were any hostages taken from Poline to Zorui on the 24th of January 1944?
A. Yes, there were hostages taken from Poline to Zorui on 24th January 1944.
A. [illegible]

Q. How many?
A. About 50. [illegible] may the witness be excused?

Prosecution: No further questions.

(There being no further REDIRECT EXAMINATION, witness was excused and withdrew.)

Questions by defense (Mr. Laurel): As my next witness Anastasio Acapuri.

Q. Whereas your other job in Ormoc, a political or a military job? [illegible] prosecution.
A. My job was only political. [illegible] was sworn and [illegible]
Q. In that political job were you able to know all the orders given by the military command?
A. Not all.
Questions by prosecution:

Q. Do you realize that some of the questions that have been put to you can be harmful to you and that therefore your answer would be considered in self [illegible]?
A. Why should I defend myself?
Q. [illegible] do you know
Q. Do you know if this order was given to the soldiers to act in self-defense if they were molested by anybody?
A. This is necessary. All soldiers know that they must defend themselves, and we know that in that manner [illegible] we had to defend ourselves. I have been [illegible]

A. (cont.) We went there with weapons to defend ourselves.

Q. You have said that not all orders of a military character were known to you. Do you infer that the military did report some orders to you?
A. I don't know if other military orders were given that day, but I know of these orders that were commented upon together in my office.

Q. Were you in a position that you could issue orders through the military?
A. I had the duty of counsel to the military authorities and I could request them to act in this or that other sense when I thought it opportune, but if I had ever ordered anything that was in contrast with superior military orders, it was certain that I would not have been obeyed. I could advise, give advice, to the military commander, but the military command acted as it thought best. I could report to my superiors in such a way that the military commander could be reproached, but the commander could in any hour of the day or the night arrest me.

Defense (Mr. Laure): For the moment, the defense counsel has no questions.

Prosecution: No further questions.

President: The witness will be excused.

Defense (Mr. Laure): Oh, pardon me, sir, I would like to ask one more question.

Questions by defense (Mr. Laure):

Q. What was your military rank?
A. Sergeant.

Prosecution: May the witness be excused?

President: The witness will be excused.

(There being no further questions, the witness was excused and withdrew.)

Prosecution: The prosecution calls as its next witness Antonio Mezzani.

Mezzani Anastasio, Via del Cassero No. 1, Terni, a witness for the prosecution, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q. What is your name?
A. Mezzani Anastasio.

Q. Where do you live?
A. At Terni, Via del Cassero No. 1.

Q. What is your occupation?
A. I was a school teacher, temporary school teacher, and today I have been purged. I have no occupation.

Q. What was your occupation in January 1944?
A. I was a captain in the militia.
Q. What organization?
A. I was in a public order unit, like the carabinieri.
Q. Where were you stationed?
A. At Rimini.

Q. Were there any unusual events on January 23rd and 24th, 1944?
A. Yes.
Q. Did you accompany an expedition to the city of Foline, Italy, on the 24th of January 1944?
A. Yes.

Q. Were all the men in that expedition armed?
A. Yes.
Q. Do you know the accused in this case, Vito Ronaglia?
A. Yes.
Q. If he is in this courtroom, will you point him out?
A. (The witness indicated.)
Prosecution: Let the record show that the witness has indicated the accused Vito Ronaglia.
Q. Was the accused a member of the expedition to Foline on the 24th of January 1944?
A. Yes.
Q. Was he armed?
A. Yes.
Q. What did you do on your arrival in Foline?
A. As soon as I arrived at Foline Federale Geppe had a squad of soldiers lined up toward the mountains to prevent a surprise attack from the partisans.

Q. Who do you mean, Federale Geppe?
A. I mean the political chief of the province of the Fascist organization.
Q. What was his name?
A. Alberto Geppe.

Q. Then what happened?
A. We went, we patrolled the town, and at a certain moment I heard some shots and I ran.
Q. How many shots did you hear?
A. Two or three.
Q. Where were those shots fired, if you know?
A. I heard them coming from the inside of a house.

Q. Do you know the owner of that house?
A. Yes.

Q. Who is the owner and who was the owner on the 24th of January 1944?
A. I do not know the name, but I recognize him, the proprietor, as an old man with a white moustache.

Prosecution: May we have a five-minute recess, if the commission please?

President: The commission will take a five-minute recess.

The commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution, and the defense, the accused, the reporter and the interpreter resumed their seats. The witness who was on the stand at the time the recess was taken resumed his seat after having been admonished through the interpreter that the oath previously taken by him was still binding.

President: The commission will come to order.

Prosecution: Let the record show that Domenico Mattaresi was brought into the courtroom.

Questions by prosecution:

Q. Captain, will you observe the gentleman standing just to your rear and tell the commission whether or not you have ever seen that man before?
A. Yes, he is proprietor of that house.

Defense (Capt. Robinson): At this time, may it please the commission, the defense objects to the prosecution announcing the name of any witness or anyone to be identified in the room prior to the time the witness has an opportunity to identify him, because there are many Italians who speak English, and we insist that the identity of the individual be withheld until we ascertain whether the witness--

President: Objection sustained.

Prosecution: Let the record show that Domenico Mattaresi has left the courtroom.

Questions by prosecution:

Q. Was that man that you have just pointed out the owner of the house to which you went after hearing the shots?
A. When I went to the house this man was not there.

Q. Did you go in the house?
A. Yes.

Q. Who was in the house when you entered?
A. When I entered I found Private Lenzia, Private Romaglia, and Private Dolci.

Q. Was anyone else in the room at the time?
A. And naturally there was that American soldier, who was on the floor wounded, and (interpreter:) something about a death rattle.

Q. What was the position of the American soldier?
A. The room is rectangular. Here there is a closet, a cupboard. Here there is a fireplace, and the soldier was here, and there was--he was in death rattle, and near the American there was a dagger.

Q. Was the American near the fireplace?
A. No.
Q. How far from the fireplace was he?
A. About one meter 50, one meter 60, or so.

Q. Did you observe the wounds on the body of the American?
A. No.

Q. Was the American bleeding?
A. Yes.

Q. From the light coming from
A. I saw it come from here (indicating). I thought it was a grenade. He put

Defense: If it please the commission, let the record show that the witness indicated the breast.

Q. After he also saw that he had fired at the Americans?

Witness (continuing): I found a wallet with six or seven hundred Italian lire and a jug on which there was written a name in English, and I handed this identification card, this dagger, and the wallet, to the prefect Pietro Funcini.

Q. Where did you find the dagger?
A. Right there near the American, about 30 or 40 centimeters away.

Q. What kind of a dagger was it?
A. A small dagger--it may have been about 25 centimeters long, maybe 27, including the hilt.

Q. Was the dagger tarnished or bright?
A. It was not shiny, it was oxidized, rusty.

Defense (Mr. Lewis): But plainly rusty, may it please the commission.

Interpreter: He said oxidized, Sir.

President: Ask that question again.

(The question was read by the reporter.)

Witness (answering): It was oxidized, not shiny.

President: (To witness) Was it tarnished?

Witness: It was neither tarnished nor shiny.

Questions by prosecution:

Q. Did you in your official capacity as a captain make any inquiry as to what had happened?
A. I asked how they had killed this American.

Q. What were you told?
A. It resulted that the American was said to have hidden behind the engineers and that he launched himself, he sprung, toward the soldiers, and that the soldiers naturally to defend themselves shot, fired, because the distance that separated the soldiers from the American was very short.
Q. Who reported these facts to you?
A. The soldiers who were present.
Q. Who were these soldiers?
A. Private Lonzio, Ronsaglia, and Bolei.
Q. Did Private Ronsaglia tell you that he had fired at the American?
A. Anyhow, the soldiers told me that it should have been--it was Ronsaglia who was to have fired and Ronsaglia, perhaps hoping to gain a promotion, did not deny this.

Q. Did Ronsaglia tell you that he had fired at the American?
A. Later he also stated that.
Q. When? Was it when you returned or went down to that house where the American was?
A. When we were in the town.
Q. In the town of Foline?
A. Yes, in the town of Foline.
Q. How much later?
A. About 5 or 6 minutes afterwards, something like that.
Q. Where? In what part of the town, in the square?
A. In the town, along the street--I don't remember exactly where.
Q. Who was present at that time?
A. I don't remember. There were many people. I later wrote a report to my commander including the depositions which I had gathered, so that he could later ascertain the truth as to how the incident had come about, because the statements that the soldiers made were different.
Q. Who was your commander?
A. My commander was Lieutenant Colonel Romanni, but in that moment he was not in the town and that moment I was under the orders of the Prefect, Fenstini.
Q. Was the fact that an American soldier was hidden in the town known to you or to your men prior to the shooting?
A. No, before we went up there we did not know that there was an American there. A few women told it to the soldiers. A few women of the town told it to the soldiers, and the soldiers went out to look for him.

President (to witness): You mean a few women of the town told what to the soldiers?

Witness: That in a certain house there was an American.
Questions by prosecution:
Q. Do you know what orders were issued to those soldiers?
A. No specific order. I did not give any specific order, but there was a very general order that said that all the men were to be assembled in the square of the town. As a matter of fact, there was the order not to fire unless there was an aggression.

Q. Where were the women when they reported an American soldier hidden in the town?
A. They were there in the town, and they just told them like that without even stopping.
Questions by president:

Q. Was that in the square, in the city square, after you arrived in Foligno?
A. I believe that it was really in that square, or very near there, in the Vittorio[illegible]

A. I did not note this exact observation, but in the moment I tried to see if
Q. Soldiers were stationed in which home the American was hidden, [illegible] was
A. I believe they visited the cellar of that house.

Q. Prosecution: You may have the witness. I assume from that the deceased was shot in front or in the rear or on the side?
A. Prosecution: Before witness. Shot on the front—I must conclude that he was wounded on the front.

CROSS EXAMINATION

Q. Where was the dagger in relation to the body of the deceased?
A. Question by defense (Capt. Robleson): [illegible]ction of the arm.

Q. Will you direct to your knowledge this uniform you found Romaglia, the accused, in at the time you entered or went down to that house where the shooting had occurred?
A. It appears to me that he was in uniform; it's military uniform, on that day?
A. Yes.
Q. Do you know what uniform, or what organization that uniform which Romaglia was wearing represented?
A. It represented the uniform, but Romaglia— the other soldiers.

Q. Interpreter: That's a mistake, that is not responsive to the question, and I want the question read back and I want you to answer my question specifically.

Q. Prosecution: I request the witness be permitted to finish his statement and a record be made of it.
A. No.
President (to interpreter): Finish his answer.
Questions by Capt. [illegible]
Witness (continuing): But Romaglia was on detached service at the Fascist Federation[illegible] the weapons was Romaglia carrying that day?
A. I don't know. It was just a normal pistol that was distributed—it may have
Questions by defense (Capt. Robleson):

Q. Then I ask you a question. I want you to respond to the question and then stop and wait for another question. [illegible] or 9. There were other soldiers.
A. Very well.
Q. What caliber was the automatic rifle?
Q. Did Romaglia [illegible] at the time you saw him at that house? don't know what
A. [illegible]

Q. When was did Romaglia carry at the time? [illegible] American lying on his face or
A. Pistol and an automatic rifle.
Q. Was this [illegible]?
Q. Are you certain of that fact?
A. Yes, I am certain. I believe it is that way.
A. He was on the side, with his hand [illegible] arm, and he was in another
Q. Did you see both of these weapons at that time?
A. Yes.
Questions: The witness indicates the American was lying on his right side.
Defense (Capt. Robleson): There are no further questions at this time.

EXAMINATION BY THE COMMISSION

Questions by president:

Q. Where was the accused wounded, what part of the body was he shot in--I mean the deceased?
A. I did not make this exact observation, but in the moment I tried to see if there was anything to do that aided him and because all the clothing was bloody it was not easy to ascertain exactly where the wounds were.

Q. Therefore you cannot testify before this commission that the deceased was shot in front or in the rear or on the side?
A. Since the [illegible] saw the blood on the front--I must conclude that he was wounded on the front.

Q. Where was the dagger in relation to the body of the deceased?
A. About 40 or 50 centimeters in the direction of the arm.

Q. How far from the three Italian soldiers was this weapon?
A. It may have been a meter and a half.

Q. Are you sure about the uniform which the accused was wearing on that day?
A. Yes.

Q. You [illegible] was wearing?
A. The same uniform, the same common uniform as the other soldiers.

Q. Who was wearing civilian clothes on that day?
A. There were civilians too in the town; but there were no civilians with me.

Q. All right. Of the three soldiers that you mentioned that were in the house when you went in, were any of them wearing civilian clothes?
A. No.

Questions by Capt. Young:

Q. What caliber weapons was Romaglia carrying that day?
A. I don't know, it was just a common pistol that was distributed--it may have been 7, 9--

Q. What caliber is the common pistol that was distributed to your organization?
A. It could have been caliber 6, 7.65, or 9. There were no other calibers.

Q. What caliber was the automatic rifle?
A. It is just the common mitra, the common automatic rifle--I don't know what caliber it is.

Q. Now, when you went into this house was this American lying on his face or on his side or on his back?
A. Like this (indicating).

Q. Indicate that.
A. He was on the side, with his head resting on one arm, and he was in convulsions still, and in death rattle.

Prosecution: The witness indicated the American was lying on his right side.

Questions by Major Leonard.

Q. Who was in complete charge of the expedition that day?
A. The prefect Funtini militarily, the political--Zoppo was Federale.

Q. Who was the person that was responsible?
A. The prefect Funtini and the federal Zoppo.

Q. How many hostages were ordered to be taken? and, and how
A. I do not know the exact number--7, 8, or 10. They were made to be loaded on the truck and a few of them succeeded in running away, getting away.

Q. By whom was that order given?
A. I believe by the Federale, by Zoppo, and then there were some German officers there, [illegible]

Q. Did Zoppo give that order to you?
A. Which order?

Questions by Col. [illegible]

Q. To take a --the order to take the hostages.
A. No. They gave us a usual order to have all the men older than 16 years assemble in the square.

Q. How many you did take hostages. What did you do with these hostages?
A. I took the hostages, because as soon as I arrived in the town I heard the shots and I requestered the wallet, the dagger and the card, and handed them over to prefect Funtini. [illegible] Apparently, him.

Q. Which weapon did Rossoglia state that he used to kill the American with?
A. He did not state what weapon he used. He just stated he killed him.

Questions by prosecution:

Major Leonard: That's all I have.

Questions by Capt. Keough

Q. You made an investigation of this incident to report it to higher authority, did you not?
A. Yes, sir.

Q. Did you make an examination of the weapons of Rossoglia to see whether or not they had been fired?
A. No, sir.

Questions by Defense Capt. Falkowski:

Q. Was there a Italian police agent in Biscari and in Niscemi also?
Q. Who was in charge of the expedition when it left Vittoria en route to Feline?
A. At the command of Federale Zoppo; then the Prefect arrived.

Q. Who was in charge of the expedition en route from Vittoria to Feline?
A. Federale Zoppo.

Q. Did you say that the American soldier was hidden behind the cabinet?
A. I said that because that is what I was told, that this American soldier was hidden on the side of sideboard, cabinet.

Q. How far was the body from the cabinet when you arrived?
A. Maybe a meter 50, a meter 80.

Q. How far was the body from the door? Can give the defense an opportunity to
A. About the entire one meter 80; one meter 80 that I guess.

Q. Was there a chair in the room?
A. I could not--I did not observe that, because I concerned myself with seeing if I could do something for the wounded man.

Q. Was the cabinet directly across the room from the door? [illegible]
A. No. Here is the door, and there is the cupboard, and here is the fireplace (indicating). [illegible] I don't know if there were any [illegible] present, dealing with the present, because the prefect came later.
Q. Was the dagger between the American soldier and the door?
A. Between the American soldier and the wall [illegible] January 1944, was it necessary for you to know whether there were Italian police directed in civilian dress within
Q. Was it between the American soldier and the wall against which the cabinet
A. stood? was not my duty.
A. No, the opposite wall.
[illegible] as a matter of fact you cannot say under oath truthfully that there were
Questions by Col. Hoover: Italian police in the city of Rolino on the 24th of January 1944?
Q. Was the dagger in its sheath? [illegible] fact I can believe that there may have
A. Now were with the present.

Q. Where was its sheath? [illegible] whether such civilian police did
A. I did not see it.
A. [illegible] they were there. They would have been present.
President: Any more questions by members of the commission? Apparently not.
[illegible] that?
A. [illegible]

REDIRECT EXAMINATION

Q. Questions by prosecution: [illegible] of the American army?
A. Yes.
Q. How large was the room in which the American soldier was killed?
A. From approximately about 8 meters long to 8 or 8½ meters wide. [illegible] you found.
A. [illegible] was not visible, but was not pretty [illegible] of an American soldier.
Q. Were the soldiers given any instruction regarding the shooting of the American or were they acting on their own? [illegible] was lying [illegible] on the floor.
A. They acted on their own initiative, because there was the order not to fire unless they were attacked.

A. And [illegible] your order [illegible] REDIRECT EXAMINATION [illegible] to be carried from [illegible] law, to see if there was some possibility of aiding him.
Questions by defense (Capt. Robiesen):
A. [illegible] the American was carried from the room, did you observe him?
Q. Were there in Rolino any Italian police agents dressed in civilian clothes?
A. I don't remember. I believe not, but I don't remember exactly.

Q. Could there have been Italian police agents dressed in civilian clothes [illegible] within the town of Rolino on 24 January 1944 and that fact not have come to your attention?
[illegible] how far away from what house were you when you heard the shots?
Prosecution: Objection; that calls for a conclusion on the part of the witness.
Defense (Capt. Robiesen): [illegible] further questions.
Defense (Capt. Robiesen): May it please the commission--
[illegible] the question [illegible]
President: Objection sustained.
[illegible] by the court

Defense (Capt. Robieson): Will you not give the defense an opportunity to argue that question and show why it is a standard question? Private Romagilia on the right, and Luigi and just then entered and was in front of me.

President: Objection sustained.

Were any of those dressed in civilian clothes thought to be mistaken for civilian

Questions by defense (Capt. Robieson):

A. Or, defense uniforms in uniform.

Q. Did you have knowledge of where all civilian-dressed police were on 24 January 1944? Present night?

A. I don't know where they were--I don't know if there were any following the prefect, coming with the prefect, because the prefect came later. Accompanied by Major Imperati

Q. In line of duty as a military man, on 24 January 1944, was it necessary for you to know whether there were Italian police dressed in civilian clothes within the city of Palma, Italy? Or you did not see the owner of the house at that

A. No, it was not my duty. time, the old man was no longer there.

Q. Then as a matter of fact you cannot say under oath truthfully that there were no such civilian-dressed Italian police in the city of Palma on the 24th of January 1944? 6 meters.

A. I cannot say this, but as a matter of fact I can believe that there may have been some with the prefect. here.

Q. Is it a matter of your knowledge as to whether such civilian police did carry pistols?

A. If they were there, they would have been armed.

Q. With what? You saw the owner of the house?

A. With pistols. A boy went for him.

Q. Do you understand the meaning of the word rusty?

A. Yes. There were some soldiers there or Corporal--I don't know who.

Q. I am not clear on your explanation of the condition of the dagger you found.

A. The dagger was not shining and was not rusty; it was just of an opaque color. soldiers who were on this patrolling for.

Q. When you entered the room where the American was lying prostrate on the floor, was that American yet alive? Yes.

A. Yes. President: The witness will be excused.

Q. And was it your order that caused the American to be carried from the room?

A. Yes, to see if there was some possibility of aiding him. and witness.

Q. As the American was carried from the room, did you observe him? Because.

A. No, because I had gone to bring the dagger, the wallet, and the card to the prefect. Thereupon, Capt. A witness for the prosecution, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

Q. Can you say, then, as to whether the American was alive when he left the room?

A. He was just about alive--he was ready to die.

Q. How far away from that house were you when you heard the shots?

A. About 5 or 6 meters. Have you seen

Defense (Capt. Robieson): No further questions.

EXAMINATION BY THE COMMISSION

Questions by Col. Moore:

Q. Who was in the room when you entered?
A. There was the agonising American, Lancia on the left, and Private Ronsaglia on the right, and Dalei had just then entered and was in front of me.

Q. Were any of these dressed in clothing that might be mistaken for civilian clothing?
A. No, because uniform is uniform.

Q. Were they all dressed alike?
A. Yes.

Questions by Major Lecuna:

Q. You say that you were 5 or 6 meters away from the house when the shots were fired. You also stated that you did not see the owner of the house at that time.
A. When I ran, the old man was no longer there.
Q. How far away were you from that house?
A. I said about 5 or 6 meters.

Major Lecuna: That's all I have.

REDIRECT EXAMINATION

Questions by prosecution:

Q. When did you see the owner of the house?
A. I saw him when they went for him.
Q. Who went for him?
A. I believe some soldiers there or Ceppe--I don't know who.

Q. Did you see the accused, Lancia, and the owner of the house enter the house?
A. No, I was turned in the other direction, because I was checking some soldiers who were on this patrolling job.

Prosecution: No further questions.

President: The witness will be excused.

(There being no further questions, the witness was excused and withdrew.)

Prosecution: The prosecution calls as its next witness Dalei Vincenzo.

Dalei Vincenzo, Cesl, a witness for the prosecution, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q. State your name.
A. Dalei Vincenzo.
Q. Where do you live?
A. Cesl.

Q. What is your occupation?
A. Laborer.

Q. What was your occupation in January 1944?
A. Soldier.

Q. What was your organization?
A. I was of the police.

Q. Where were you stationed?
A. At the orphan asylum.

Q. Where?
A. At the orphan asylum at Porta Garibaldi.

Q. Did anything unusual happen on January 23rd or 24th 1944?
A. We were in the barracks at night. Lieutenant Antonucci came, and he said that we were to depart, but we did not know where we were to go to at the time.

Q. What did you do?
A. But instead of leaving that night we left the day after. He returned at about five o'clock or half-past five.

Q. In the morning or afternoon?
A. In the morning.

Q. What day?
A. I don't remember whether it was Saturday morning or Sunday morning. It was Saturday or Sunday, but I believe it was Sunday.

Q. January 24th, 1944?

Defense (Mr. Laure): The witness--what did he say, Sunday or Saturday? I understood in Italian Sunday or Monday.

Witness: I don't remember exactly whether it is Saturday or Sunday.

Questions by prosecution:

Q. Was that January 24th 1944 when you left?
A. Yes, in the morning.

Q. Where did you go?
A. We went toward Poline.

Q. When did you arrive at Poline?
A. It may have been eight o'clock or half past eight--I do not know exactly.

Q. In the morning?
A. In the morning.

Q. Who was in command?
A. I was commanded by Captain Moscani, but then there were others that were commanded by the Federation. They were considered--they were in the Federation, and we were in the barracks.

Q. Were you in uniform?
A. What do you mean, in uniform?

Q. What kind of clothing were you wearing?
A. I wore gray-green clothes.

Q. Were you armed?
A. Yes.

Q. What did you do after you arrived at Polino?
A. As soon as we got to Polino the Federale, Coppo, said, "Down off the cars," off the vehicle--ordered us off the vehicle.

Q. Where did you then go?
A. He sent one group toward the mountains and another toward the town on the left side.

Q. Where did you go?
A. I remained in the square, because I still had my wounds bandaged and could not walk.

Q. What, if anything, happened while you were in the square?
A. The others went away and I remained in the square. What did you say?

(The question was read by the reporter.)

Witness: When I was in the square, no. Then I went into the town, about ten meters away, only at the entrance of the town.

Q. Who were you with?
A. Captain Moscard and myself.

Q. Where did you go?
A. We went into the town.

Q. Did you hear any shots fired?
A. When we were about 30 or 40 meters approximately from a house.

Q. What did you then do?
A. I heard the first shot fired and the second shot fired and then after the second shot I ran.

Q. Where did you go?
A. I went into this house where I had heard the shots.

Q. Who was in the house when you entered?
A. The old man wasn't there--there was a certain Lancia, a certain Ronsaglia, and there was also another one called Pattarozzi, but he was dressed in civilian clothes--I don't know if he was there; he usually dressed in civilian clothes, I don't know if he was there. But I found only Ronsaglia and Lancia there, and that's all.

Major Loomis: Will you have that last answer read back, please?

(The question and answer were read by the reporter.)

Major Loomis: Sir, will you straighten that out?

Questions by prosecution:

Q. How many and who were in the room when you entered?
A. I saw only two.

Q. Who were they?
A. As far as I am concerned, I saw Lansia and I saw him I believed to be Ronsaglia, but I only saw him 3 or 4 times in all, and I probably would not recognize him if I saw him.

Q. Will you look around the courtroom and see if you recognize the accused Ronsaglia now?
A. I cannot recognize him, because it is four years that I haven't seen him, because I saw him only 3 or 4 times in all. If he was dressed in uniform, maybe, like he was, maybe I would have recognized him, but then he had a permit to dress in civilian clothes and in uniform.

Q. How did you know Ronsaglia was in the room when you entered if you did not see him personally?
A. I saw him 3 or 4 times in all. He wasn't with me; he stayed--I was at the Orphan Asylum, and those of the police who were detached from us had Palazzo Matsangalli.

Q. My question was, how do you know that Ronsaglia was in the room when you entered if you do not know him?
A. Because I heard Lansia say that it was Ronsaglia. When I went into the room I saw one there and one other.

Q. You saw Ronsaglia and Lansia dressed at that time--were they in uniform or civilian clothes?
A. I saw Lansia dressed in uniform and I saw Lansia in uniform, and I believe that Ronsaglia was also in uniform, but I cannot say exactly because it is four years, and I cannot remember well.

Q. Were both of them armed?
A. Yes.

Q. What weapons did they have?
A. Ronsaglia had an automatic rifle and Lansia carried a pistol and also an automatic rifle.

Q. Where was the wounded man at that time?
A. When I went in? I also made a drawing. Here is the breast chest (indicating); The civilian was in the middle of the house--

Q. What civilian?
A. This man that had the white shirt. I heard the civilian say that it was an American--I cannot say that it was an American--and when I went in I found him lying down on this side, this side, on the ground.

Q. Witness indicates left side.
A. This arm was under him and this arm was above him. He fell like that (indicating).

Q. Did you observe any wound on the body?
A. I saw the wounds on this side (indicating).

Q. Indicating left side, towards the front of the body.
A. --and as soon as I saw this man lying on the ground and behind me was Captain Moscani, so I told Captain Moscani we must aid this man who is wounded. Captain Moscani then said, "Go and get four civilians to take him away." I went out of the house and went to the square, got the four civilians, and I returned with a ladder and I went up to get this man, who is called an American but that I don't know is an American, because I never knew him.

Q. Did you get him?
A. I took this American--I took him by the head and some civilians took him by the legs and others by the waist. We took a quilt and blanket and spread them on the ladder. When he was on the ladder, the civilians took the feet and I took the head and--because he went down this way (indicating), descending.

Q. Where did you take the wounded man?
A. When I was leaving the house and taking him down to the vehicle on which he was to be taken away, about 10 or 15 meters before getting to the square he gave a heavy sigh. I told the civilians he died, and I continued to carry him down to the square, and when he breathed that heavy sigh I felt badly, because he was on my side--I was on the side of the head.

Q. Did he die?
A. Yes, he was dead. He died right in front of my eyes.

Q. Was he dead before you reached the square?
A. Yes.

Q. What did you do with the body?
A. I took him and I brought it to the square.

Q. Where was the body then taken?
A. A vehicle was taken there and he was put on the vehicle.

Q. Who was the driver of that vehicle?
A. A certain Rigoletti. So we put the civilian on the vehicle and then we went to get Lawyer Orsini, and after having gotten Lawyer Orsini, we departed. And besides I made a statement about this.

Q. Did you hear any conversation between Lanoia and the man he called Roncaglia?
A. You mean he called the dead man? I want to know the man, because--I want to know the man, because if it was the proprietor of the house, I don't know --he wasn't there. Inside the house there was no civilian.

President: Tell him to answer the question. Put that question again, and have him answer the question he is asked.

Defense (Mr. Lauro): May I object to the translation, that the proper translation in Italian would be, "Avete sentito nessuna conversazione tra Lancia ed il uomo che voy"--you, the witness, called Roncaglia.

Interpreter: No, that isn't the question. I know it isn't.

Defense (Mr. Lauro): Because he had said that he called him Roncaglia.

Prosecution: No, the witness said that Lancia called the other man Roncaglia.

Interpreter: May I repeat the name Lancia again, if that would make it clearer?

Prosecution: Repeat the name Lancia--the man that Lancia called Romaglia.

(The question as amended was read by the reporter.)

Witness (answering): When I went up with the ladder, I met Romaglia and Lancia.

Questions by prosecution:

Q. Precede.
A. And Lancia told him, "Why did you shoot at him, why did you kill him? He could have taken him very well wounded." And that's all I heard, no other words.

Q. Was there any reply to that question?
A. By me?

Q. By Romaglia.
A. From Romaglia I heard nothing else, and I continued to walk.

Q. Were you personally acquainted with Lancia?
A. Yes, by sight, because he was with us and he was serving with us.

Prosecution: You may have the witness.

Defense (Capt. Robiseon): May it please the commission, the associate counsel--special counsel--desires to know what statement has been read into evidence here, and it appears the defense has no record of the statement referred to by the judge advocate with reference to--

President: The only statement read here was this one (indicating), that was admitted into evidence yesterday.

Defense (Mr. Laure): This is Coppo.

President: That is the only statement that has been read.

Defense (Mr. Laure): I was meaning that among the papers that have been offered to the defense for examination before the trial I don't remember any deposition of this man.

President: If it is used, you will get a copy.

Defense (Mr. Laure): Thank you.

Prosecution: May it please the commission, the statements of all witnesses that were to be introduced before this commission were given to defense counsel on July 15th, if I recall the date.

CROSS EXAMINATION

Questions by defense (Mr. Laure):

Q. You have seen well in his face, in his pictures, the man that died in your presence in Peline on January 24th 1944? Answer yes or no.
A. Yes, I observed him well.

Q. Does he have a complexion that could be mistaken for Italian or Jugoslavian complexion?
A. I could not see him well. I could not know it well, because he was dark.

Q. Dark complexion and hair?
A. Dark complexion and hair.

EXAMINATION BY THE COMMISSION

Q. Will you examine the [illegible]
A. Questioned by President:

Q. When you heard the shots fired and you went inside the house and you got there first, besides the body of the wounded man who else was there?
A. Inside the house there was Lonzia and Renzaglia.

Q. Only two?
A. There was also one Pattarozzi, I don't know--he was dressed in civilian clothes, but I did not find him in the house.

Q. Then I want to know who was in the house?
A. I found Renzaglia and Lonzia.

Q. All right. How was Lonzia dressed?
A. Lonzia was dressed as a soldier.

Q. How was Renzaglia dressed?
A. I don't remember exactly now.

Q. How do you remember how one was dressed and you don't remember about the other--how is that?
A. He was dressed in civilian clothes--it is four years, and I don't remember well. I make a statement.

Q. Who do you mean by him when you say he was dressed in civilian clothes--which of the two?
A. You mean Renzaglia?

Q. You said he was dressed in civilian clothes.
A. Because I only saw him 4 or 5 times, that's all, because I did not know him well and I was never on duty with him.

Q. All right. What weapons did Renzaglia have?
A. The automatic rifle.

Q. Did he have a pistol?
A. I did not see a pistol.

Q. You did not see, but you are not sure whether he had a pistol or not?
A. I am not sure, because I never saw the pistol.

Q. What did the other fellow have?
A. Lonzia?

Q. Yes.
A. Lonzia had a pistol and an automatic rifle.

Q. Why on the person of Renzaglia do you only remember seeing the automatic rifle?
A. I only saw the rifle; I cannot say exactly yes or no, but it is four years. Four years have passed, and I do not remember.

Q. Then you don't remember whether Renzaglia had a pistol?
A. I did not see the pistol; I only saw an automatic rifle.

Questions by Major Tucker: [illegible] January 1944]

A. [illegible]

Q. Did you examine the body of the deceased American soldier?
A. When I picked him up I noticed that he was wounded here (indicating), and that's all, because he wore a little white shirt and a pair of blue trousers. [illegible] blood flow of the house at Bellarmino.

Q. You did not undress the body and see where the bullets entered the body?
A. I saw blood on the white shirt while he was on the ground here (indicating).

Defense: May it please the commission, will you indicate the spot where the witness indicated? Mrs. Bellarmino, he was an American soldier.

Q. President, indicating the house soldier.
A. Yes.

Questions by Capt. Young:

Q. [illegible]
Q. You say you helped carry that body from the house and you had the head?
A. Yes.

Q. [illegible] arrived at the house of Mrs. Bellarmino?
Q. Did you see any wounds in the head? [illegible] don't remember the date.
A. I did not observe; I only saw here (indicating). I did not observe exactly
Q. if on the face there [illegible] you remember whether there were wounds on
A. the face in the manner who took him away.

Q. Did you see any blood coming from his mouth? January 1944]
A. He appears to me lying down this way (indicating). I saw a small pool of blood there.

Q. Do you know where the American soldier is? the home of Mrs. Orsini?
A. [illegible] No further questions she had sent him away, but I don't know where. I think he must be and definitely your foreman.
Defense: No further questions.

Q. Did you again see that American soldier?
A. President, Prosecution any further questions? [illegible] another 2 or 3 or 4 days. Mrs. Bellarmino told me "I know the [illegible] is still [illegible] the prosecution has no further questions," and she asked me if I would like to go and see him again because she usually went to bring [illegible] the witness will be excused.

Q. (Upon being no further questions, the witness was excused and withdrew.)
A. [illegible] January e, the Sunday when the lawyer [illegible] the Sant'Angelo d'Ocmini, Terni, a witness for the prosecution, was then brought into the courtroom and through the interpreter was sworn and testified as follows: American soldier after the 22nd of January 1944?
A. No.

DIRECT EXAMINATION

Q. Are you acquainted with the facts occurring on the 26th of January 1944?
A. Questions by prosecution? house of a townsman there were my aunt was living, as a refugee, and through rumors I had of what the fascists had killed
Q. What is your name?
A. Felicia Amoris.

Q. [illegible] Exhibit No. 4 in evidence and ask you to state
Q. Where do you live? [illegible]
A. 44 Terni, Via Sant'Angelo d'Ocmini No. 88.

Q. What is your occupation?
A. Housewife. Interpreter said, "Sole Leo". She was there [illegible] with in the house of Mrs. Bellarmino, and that [illegible] to the house of [illegible].

Q. Where were you in December 1943 and January 1944?
A. Palina.

Q. Where did you live in Palina?
A. I could not say the street--it was in the main square. You can also say on the second floor of the house of Calleraman.

Q. Do you remember seeing a stranger at Calleraman's house?
A. Yes.

Q. Who was that man, if you know?
A. As I heard through Mrs. Calleraman, he was an American soldier.

Q. Did you ever talk to the American soldier?
A. Yes.

Q. How many times?
A. I cannot remember, but I did speak to him sometimes.

Q. Do you remember when he arrived at the home of Mrs. Calleraman?
A. Exactly the day he arrived I do not remember--I don't remember the date.

Q. Was it the latter part of December, 1943, do you know?
A. I don't know exactly.

Q. Do you remember seeing the American soldier in January 1944?
A. Yes. In that house.

Q. Do you know when the American soldier left the home of Mrs. Cristi?
A. Mrs. Calleraman Ursini told me that she had sent him away, but I don't know when. I thought that he had definitely gone forever.

Q. Did you again see that American soldier?
A. I saw the American soldier again--I don't know now whether 2 or 3 or 4 days. Mrs. Calleraman told me, "You know the boy is still, the American is still in town, and he is in another house a little more hidden," and she asked me if I would like to go and see him again, because she usually went to bring him food.

Q. Did you go to see him again?
A. Yes, it was on a Sunday, the 23rd of January, on the Sunday when the lawyer Cristi was killed.

Q. Did you again see the American soldier after the 23rd of January 1944?
A. No.

Q. Are you acquainted with the facts occurring on the 24th of January 1944?
A. On 24 January I was at the house of a townsman there where my aunt was living in a refugee, and through rumors I heard that the Fascists had killed this American soldier.

Q. I now hand you Prosecution's Exhibit No. 4 in evidence and ask you to state whether or not you recognize that picture?
A. Yes, I know him.

Q. Who is that soldier?
A. As he pronounced it, he said, "Dalo Mur", the man that I became acquainted with in the house of Mrs. Calleraman, and that I later saw in the house of Mr. Gambelli.

Q. Also known as Mr. Matteucci?
A. Yes. Matteucci.

Q. And that is the same man that was killed by the Fascists on January 24th 1944?
A. I have known him until the 24th of January 1944 but later I was not present to know what had happened.

Q. That is the soldier that was reported killed on the 24th of January, is that correct?
A. Yes.

Prosecution: You may have the witness.

CROSS EXAMINATION

Questions by defense (Mr. Laure):

Q. Did you ever see the American soldier you spoke about in military uniform?
A. No.

Q. Do you speak English?
A. No.
Q. Did the soldier speak Italian?
A. We understood each other through gestures, let's say.

Q. Then the things that you have said between you and him cannot be referred correctly, because they could have been misunderstood at the time the gestures were made?
A. Naturally, and to give you an example as to how we understood each other, to tell me that he was an aviator he had to draw an airplane on a piece of paper.

EXAMINATION BY THE COMMISSION

Questions by Col. Keese:

Q. Did he tell you his name?
A. He said Dale Keen.

Prosecution: Any further questions?

RECROSS EXAMINATION

Questions by defense (Capt. Robieson):

Q. One question, what complexion the American had and what color his hair is?
A. Rather dark, but I remember him very faintly.

Q. If he were among Italians, could he have been exchanged with an Italian?
A. Yes, effectively, almost you could, a bit dark, yes.

Q. Did he tell you if he was from Italian parentage?
A. No, he did not tell me this. He told me the name of his mother by writing it down, but I could not read it because I don't know the language.

Q. Did he ever speak to you about the name of his father?
A. No? [illegible]

Q. No, the soldier. Soldier's name?
A. No.

Q. Who's [illegible]?
A. Tommy King.

REDIRECT EXAMINATION

Questions by prosecution:

Q. [illegible] soldier.

Q. Was the color of Dale King's hair brown or dark?
A. Not very dark, no, not an exceptional black.
Q. [illegible]
A. Prosecution? No further questions.

Q. President: The witness is excused. [illegible]
A. No.

(There being no further questions, the witness was excused and withdrew.)

Q. [illegible]
A. President: The prosecution calls as its next witness Salvati Stanislao.

Q. Salvati Stanislao, North, a witness for the prosecution, was then brought into the courtroom, and through the interpreter was sworn and testified as follows:
Q. [illegible] unusual than happened on the 23rd of January 1944 in the town of Foliano?

DIRECT EXAMINATION

A. Yes.

Questions by prosecution:

Q. What happened on the 23rd?
Q. What is your name?
A. Salvati Stanislao.
Q. [illegible] happened on the 24th, following the killing of the two Fascists?
Q. Where do you live?
A. At Ferentino.

Q. What is your occupation?
A. University student and clerk in Rome.

Q. Do you know the deceased in this case, Vito Resseglia?
A. No.

Q. Where were you living in January 1944?
A. At Foliano.

Q. Were you living in Foliano in December 1945?
A. Yes. [illegible] you go to the square?
A. Yes.

Q. Do you speak English?
A. Yes, you go to the square?
A. Yes.

Q. During the latter part of December 1945 did you see an American soldier at Foliano?
A. Yes, I have seen him. [illegible] with persons superior to 16 years of age.

Q. Where did you see him?
A. In a locality just below the town.

[illegible]

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Q. When?
A. At about six o'clock in the evening.

Q. Do you know that soldier's name?
A. Yes.

Q. What was it?
A. Sammy King.

Q. When did you next see that soldier?
A. After half an hour, about half-past six.

Q. On what date?
A. The same day.

Q. Did you see that soldier in January, 1944?
A. No.

Q. Did you ever see the soldier again?
A. No, only the night in December.

Q. Was there anything unusual that happened on the 24th of January 1944?
A. No.

Q. Was there anything unusual that happened on the 23rd of January 1944 in the town of Poline?
A. Yes.

Q. What happened on the 23rd?
A. Lodger Ovsini and Ezekiel Francesco were killed.

Q. What happened on the 24th, following the killing of the two Fascists?
A. The Fascists from Isernia came with the SS to the town at seven o'clock in the morning.

Q. Where were you at this time?
A. At home.

Q. Where did you go?
A. In the last part of the town with my family.

Q. How long did you stay with your family?
A. In that part of the town?

Q. Yes.
A. About ten minutes, because later they called us and they gave us the order to go to the square.

Q. Did you go to the square?
A. Yes.

Q. What happened when you arrived at the square?
A. They gave us the order to arrest all the persons superior to 16 years of age.

Q. What happened to you personally?
A. They also took four other prisoners including my father, who is also blind. I was with him, near him. They had taken four because they wanted to know where the house was of a certain Gambelli, that is, Matteucci.

Q. Did [illegible] back as way of Italian servant?
Q. Why did they want to know that?
A. I do not know.
Q. Do you remember [illegible] given by him mentioning that were in
Q. [illegible] that your name is Milan, understanding
A. since that [illegible] that is where this house is," and I acted to my
[illegible] by lying that it was impossible that he could
know, because actually he was completely blind, therefore he could not know
Q. Did you at that time know where the Nitchbit hand the [illegible]?
A. [illegible] to object to that question.
Q. Did the Fascist soldiers ask about an American soldier?
A. Only about the house. That they asked.
(The question was read by the reporter.)
Q. What they asked that?
A. [illegible] me if I knew where the house was, because I was standing right
by my father, and I had protested so that they would not do anything to him.
[illegible]
Q. When you first saw the American soldier, did you have a conversation with
him?
A. Yes, I was ordered to.
[illegible] Well, I will withdraw the objection.
Q. By whom?
A. [illegible] By it pleases the American, before he answers
I want to [illegible]
Q. Did you see [illegible] of the American soldier? not convey
A. I saw one identification slip, but it was he who told me his name.
(The [illegible])
Q. Was the [illegible] sort of paper?
A. [illegible] Do you believe that people that have been [illegible]
Q. Would you recognize a picture of that American soldier? showed.
A. [illegible] I already have seen it.
Q. I hand you Prosecution's Exhibit No. 4 in evidence and I ask you if that
is the soldier you have been testifying about.
A. Yes. Here he is a bit fatter. stated just before this question of mine.
Q. That picture represents the same American soldier that you saw in Fabiano
A. In December and January, 1943 and 1944? [illegible] nor was I a partisan.
A. Yes.
Prosecution: You may have the witness. [illegible] commission?
President: Apparently not. CROSS EXAMINATION [illegible]. The commission will recess until 1:45.

Questions by defense (Mr. Lewis):
[illegible] at which time all the
Q. Was the American soldier in a military uniform of the U. S. Army? and
A. No, he was in civilian clothes.
Q. Was the American soldier of a dark or a light complexion?
A. Rather dark. [illegible] spoke as the said [illegible]
Q. Was it possible to mistake him for an Italian if he were among Italians?
A. Yes, very easily, because he was dressed in civilian clothes.

Q. Did the American soldier tell you that he was of Italian descent?
A. No.

Q. Do you remember if an order was given by the authorities that were in Palma on January 24th 1944 that all those who would not have been gone to the public square and would have been found in the houses would have been shot dead on the spot?
A. Yes, if they were over 18 years of age.

Q. Do you think that people that have been connected with the Fascist party at that time in Palma possibly will hide this fact to protect themselves?

Prosecution: We object to that question.

President: Read the question.

(The question was read by the reporter.)

President: You made an objection?

Prosecution: Yes, sir.

President: On what grounds?

Prosecution: Well, I will withdraw the objection.

Defense (Capt. Robieson): May it please the commission, before he answers I want to correct the English--the English is incorrect and will not convey the proper meaning. Will you read that question again?

(The question was read by the reporter.)

Defense (Capt. Robieson): Do you believe that people that have been connected--people who were connected with the Fascist party, as amended.

Witness (answering): Which fact?

Questions by defense (Mr. Lamb):

Q. This fact, the fact that he has stated just before this question of mine, the fact that an order was given that those that were found hidden in the houses would be shot on the spot.
A. I cannot know, because I was not a Fascist, nor was I a partisan.

Prosecution: Any questions by any member of the commission?

President: Apparently not; the witness is excused. The commission will recess until 1:45.

The commission then took a recess until 2:00 P.M., at which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter, resumed their seats.

President: The commission will come to order.

Prosecution: The prosecution calls as its next witness Otello Riccetti.

. Otello Biscotti, Via San Giuseppe 17, Terni, a witness for the prosecution, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

A. Biscotti.

DIRECT EXAMINATION

. Questions by prosecution:

Q. What is your name?
A. Biscotti Otello.
Q. Where do you live?
A. Via San Giuseppe 17, Terni.
Q. What is your occupation?
A. I am unemployed, but I am a driver, mechanic.
Q. What was your occupation in January 1944?
A. I was a refugee at Poline.
Q. How large a town is Poline?
A. About a hundred houses or so.
Q. Did anything unusual occur in Poline on the 24th day of January 1944?
A. Fascists came.
Q. What did they do?
A. They ordered that all the men in the town be assembled on the square.
Q. Where did you go?
A. I was in the square.
Q. What if anything happened while you were on the square?
A. I saw that they had assembled these men to take hostages.
Q. To your knowledge was anyone killed at that time?
A. An American was killed.
Q. Where was his body?
A. His body was brought to the square on a ladder wrapped up in a blanket and a quilt.

Q. Were you on the square at that time?
A. Yes, sir.
Q. Who brought the body to the square, if you know?
A. Some civilians.

Q. Do you know the soldier Reisi?
A. I became acquainted with him now; I did not know him before.
Q. What was done with the body?
A. The prefect ordered it to be taken to Terni.
Q. Who took it to Terni?
A. I myself with a truck belonging to Danieli Biggiero.

Q. To what did you deliver the body of the American soldier?
A. I handed it over to the custodian of the cemetery at Ponza.

Q. What was the name of the custodian, if you know?
A. Colimaggio.

Q. Do you know the accused in this case, Vito Reneaglia?
A. If I saw him maybe I could recognize him.

Q. Will you look around the courtroom and see if you see Reneaglia here?
A. That gentleman there (indicating).

Q. Will you point him out?
A. (The witness complied.)

Prosecution: Let the record show that the witness has indicated the accused Reneaglia.

Q. Did you see the accused Reneaglia in Palma on the 26th day of January 1944?
A. Yes, sir.

Q. Where?
A. In the square.

Q. Did you talk to him?
A. No.

Q. Did you hear the accused make any statements at that time?
A. No.

Q. Was the accused armed?
A. I couldn't say exactly.

Q. Where were you when the Fascists first arrived in Palma?
A. I was at home.

Q. Did you hear any orders issued to assemble the population?
A. I heard that all the men were to be assembled in the square to take hostages.

Prosecution: You may have the witness.

Defense: No questions.

Prosecution: Any questions by any member of the commission?

President: No questions.

Prosecution: May the witness be excused?

President: The witness will be excused.

(There being no further questions, the witness was excused and withdrew.)

Prosecution: The prosecution calls as the next witness Massimo Colimaggio.

(Witness was sworn.)

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Colonel Higgins, Corps, a witness for the prosecution, was then brought into the courtroom and through the interpreter was sworn and testified as follows: together with the English translation. [illegible] a witness that the prosecution does not very much to have, but we are informed by the questions we have that they are usually DIRECT EXAMINATION [illegible]

Questioned by prosecution: By [illegible] agreement, despite the fact that this is a five-page record--may the officers [illegible] just a few minutes to [illegible]

Q. What is your name?
A. Colonel Higgins.

Q. Where do you live?
A. Rome.
The commission then took a recess for ten minutes, at the end of which time
Q. What is your occupation?
A. Military occupation.

Q. How long have you acted in this capacity?
A. Eleven years.
Prosecution: The prosecution now offers in evidence Prosecution's Exhibit
Q. Do you know Otello Nicosia?
A. Yes, sir.
Defense: Defense's objection by the defense. The defense objects
Q. Did Otello Nicosia deliver the body of an American soldier to you for burial on the 20th of January 1944?
A. Yes, sir.
Prosecution: Objection overruled. [illegible]
Q. Did you bury that body?
A. Yes, sir.
Prosecution: May I hand it to the witness?
Q. When?
A. On the 20th. [illegible]

Q. Where?
A. At the cemetery of Nettuno. The number of the grave is here, and the plot (indicating).
Defense: Defense objects. May it please the commission, the accused was
Q. Will you give the commission the number of the grave and the plot? pointed
A. Grave number 130, plot H. [illegible]
Prosecution: You may have the witness. [illegible]

Defense: No questions.
Prosecution: All right. Defense [illegible]
Prosecution: Any questions by any members of the commission?
The [illegible] EXAMINATION BY THE COMMISSION [illegible]

Questions by Major Tucker:
Prosecution: The translator will [illegible]
Q. Did you examine the body?
A. No, because he was wrapped in a blanket and we could not examine all bodies we got. [illegible]
Prosecution: May the witness be excused? [illegible]
Prosecution: The witness will be excused [illegible]

(There being no further question, the witness was excused and withdrew.)

Prosecution: The prosecution now offers in evidence Prosecution's Exhibit No. 10 for identification, being the original statement of Giovanni Pivetti in Italian, together with the English translation. This is a witness that the prosecution desired very much to have, but we are informed by the gendarmerie here that they are unable to locate this witness and produce him for this trial.

[illegible] Defense (Capt. Robinson): May it please the commission, despite the fact that this is a five-page record--may the defense have just a few minutes to carefully scrutinize this in order to ascertain what to place before the commission in the way of an objection. Just five minutes.

[illegible] Mr. Lowry: I suggest that the interpreter be given the Italian

President: All right, the commission will take a twenty-minute recess. Lowry, you say, "Notwithstanding a stringent interrogatories to parte del investigatore [illegible]

[illegible] The commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter resumed their seats. I understand I am to consider the full truth as to the killing of the woman as Feline.

President: The commission will come to order. Again, subject to the objections, would be, "subjected to repeat questioning by Investigator Daniele and I [illegible] The prosecution now offers in evidence Prosecution's Exhibit No. 10 for identification, subject to objection by the defense.

Interpreter: The Italian is really a bit stronger than this translation in [illegible]

Defense (Capt. Robinson): May it please the commission, the defense objects to the admission of Prosecution's Exhibit No. 10 on the basis that there will not be an opportunity for cross-examination of the witness killing of the American in the town of Feline by the Gendarmerie. Therefore, in the stringent interrogation

President: Objection overruled. It will be admitted to the commission and considered as Prosecution's Exhibit no. 10 and marked as such.

Defense (Mr. Lowry): I would like to submit that the word "stringent" has

Prosecution: May I refer to the commission [illegible] we do with the kind of [illegible]. It is why I used the adjective, "stringent"; but the word is not [illegible] (Prosecution's Exhibit 10 was then read to the commission by the judge advocate.)

[illegible] don't think I have any other thing to say.

President: Would the defense like to have the original read in court in Italian for the benefit of the accused?

Defense (Capt. Robinson): May it please the commission, the accused was [illegible] with the Italian as stated. However, the special counsel has pointed out several errors, and prior to the time the defense counsel so-called cross-examines Prosecution's Exhibit No. 10, we will ask about two minutes for the Italian co-counsel to point out the alleged errors. We will save the time of the commission of reading the Italian translation, here two questions.

President: All right. Request granted. I note that the special counsel, in saying that is the only objection, would the only language objection. May it [illegible] the commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, also the accused, the reporter and the interpreter resumed their seats. [illegible] A statement of [illegible] was taken down the town of Feline [illegible]

President: The commission will come to order, again. With the translation [illegible] Defense (Capt. Robinson): May it please the commission, [illegible] should continue the portion of the trial, but due to cross-language difficulties, the defense is asking that the Italian counsels be permitted to discuss with the commission the portion of our objection as pertains to language difficulties and permit the American defense counsel to present the objections and the cross-examination following the clarification of the language difficulties. [illegible]

Prosecution: May it please the commission, I suggest that the original Italian communication be submitted to the court's interpreter for the purpose of making any interpretation required.

Defense (Capt. Sybicon): That is agreeable to me, but I am suggesting, if it please the commission, that that stipulation be permitted by the Italian interpreter and not destroy the defense counsel's opportunity of cross-examination.

President: The request is granted.

Defense (Mr. Lamb): I suggest that the interpreter be given the Italian copy of the depositions of Mr. Fitotti. Reading here, page 6, fifth from last line, page. "Successivamente a richiesta dell'interprete da parte dell'investigatore Daniel Amili fu fornita a dover necessario la verità dei fatti relativi all' uccisione dell'americano nel paese di Folina da parte di Tito Menaglia." The official translation which the evidence reads, "Under a cross-examination I did by counsel was full truth as to the killing of the American at Folina, carried out by Tito Menaglia." The proper translation, according to the defense, would be, "subsequent to diligent questioning by Investigator Daniel Amili, I was compelled to disclose, et cetera.

Interpreter: The Italian is really a very simple sentence in English English. As I translate this, literally, it reads this way: "Subsequent to diligent interrogation by the investigator, Daniel Amili, I was brought to have to confess the truth in the facts relative to the killing of the American in the town of Folina by Tito Menaglia." Therefore, "In the stipulated interrogation by the investigator, Amili, I was brought to have to confess."

Defense (Mr. Lamb): I would like to submit that the word "successivamente" has more to do with sequential material, "sequent" just something to do with the idea of a person. That is why I used the adjective, "sequent"; but the word-in the dictionary I have found that both words are synonyms. You may show the dictionary the dictionary. I don't think I have any other thing to say.

President: Is that the only—

Defense (Mr. Lamb): The only objection to the translation, that I have given you.

Defense (Capt. Sybicon): That is, only language.

Defense (Mr. Lamb): The defense counsel will have some questions.

Defense (Capt. Sybicon): May the record show that the special counsel, in saying that is the only objection, meant the only language objection. May it please the commission, in the absence of being able to cross-examine a silent witness, defense counsel asks the court to consider very carefully Prosecution's Exhibit No. 30, now in evidence, the sworn being under duty of 4 September 1946, in connection with another statement which will submit shows the truth of Fitotti Giovanni, certified before Daniel Amili, special agent, with the translation certified to by Vera Konya on 18 June 1946 at Rome, Italy. Were the witness present in court and sworn as a witness, the defense counsel then could address this communication to him and ask him, "Did you, Giovanni Fitotti, on the date mentioned, 18 June, 1946, make this statement which I now hold in my hand?" And the only presumption we could have is that the witness did make that statement. Then we would have a right to read this statement to him—"Is it true that in that statement you said, 'In that following day, as I remember, that a brigadier called Tito Menaglia was often asked by the federations workers who

had killed the American. Romeoglio answered that he did it himself, but while he said so I noticed that the colleagues twinkled at each other so as to have the contrary understood thus giving the impression that Tito Romeoglio attributed this deed to himself to show off before his companions. I heard from others that the first to shoot had been Pateresni, Gaetano, who was then on the directing staff of the Federazione of Terni."—

President: Are you offering that?

Defense (Capt. Robinson): I am reading it into the record, sir, as a cross-examination before the silent witness, Prosecution's Exhibit No. 10 in evidence. The statement further would be read, "Later, part of the Federazione of Terni transferred to the north. So on 5 June 1944 we moved to Candiana (Padua). In August 1944 we moved again to Sale'. At Sale', in February 1945, I received a visit of Gaetano Pateresni and his wife, on their way from Parma to Novigo. They stayed for dinner at my place, and in the course of the conversation, we came to the well known topic regarding the killing of the American at Feltre, a killing carried out by Tito Romeoglio. But at this point, in presence of Pateresni's wife, Lina, of my wife and my two daughters Luciana and Mirella, Pateresni declared: 'You know I was the first one to shoot, Romeoglio fired after I did, when there was no need for it any more.'" And gentlemen, note the quiet declaration of Pattaresni, "You know I was the first one to shoot, Romeoglio fired after I did, when there was no need for it any more." Now, gentlemen, if the alive and living witness were on this witness stand the defense counsel could point a finger at him and draw from his lips the statement which he has in this document, that the American was dead at the shots of Pateresni.

May it please the commission, the defense feels that this entire statement should be introduced before this commission in evidence so the commission may have all of these facts in front of the commission and be able to arrive--and I am going to use the Anglo-Saxon word and say arrive at who is lying about who. And, in that connection, I will dismiss with almost one sweep of the arm the entire Prosecution's Exhibit No. 10 placed before this court by a man under oath, submitting to you—

President: This is no time to argue the case. If you want to argue the case, wait for your argument. You are arguing the case now.

Defense (Capt. Robinson): May it please the commission, I am stating the questions which would be asked of this witness, and if the court would rather have it, I will ask them as questions of this witness, but it is in cross-examination of Prosecution's Exhibit No. 10.

President: Still I say that you are arguing the case. You wait for that; if you want to offer this statement as evidence, go ahead and offer it, but do not argue the case.

Defense (Capt. Robinson): May I have one minute?—May it please the commission, since the prosecution is still carrying on its case the defense feels that it should not now break into the prosecution part of the case by making an exhibit entry, so the defense will hold this exhibit until the proper time to enter it, but the defense does have one or two other questions to ask of the silent witness, Prosecution's Exhibit No. 10.

Prosecution: To which the prosecution objects under Circular No. 166, Paragraph 18a and c: "If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the president of the commission, unable to attend without undue delay, the commission may receive secondary evidence of statements made by or attributed to such witness. Any diary, letter or other document may be received in evidence as to the facts therein stated." Prosecution's Exhibit 10 is admissible in evidence and has been admitted by this commission. It is not subject to cross-examination.

Defense (Capt. Robiseau): May the defense ask if the witness himself were here would he be subject to cross-examination?

President: Yes.

Defense (Capt. Robiseau): May the defense suggest that Prosecution's Exhibit No. 10 is the paper document, the silent document, of the witness himself?

President: Go ahead and ask your questions.

Defense (Capt. Robiseau): The question is taken from Page 2 of Prosecution's Exhibit No. 10. The question would be asked of that witness, "Is it your intention to produce the idea that the party"--meaning the Fascist party--"tried to show that Romagnia was not given the credit for the taking of the Amerian by whatever methods used?" and with that we rest this portion of the cross-examination, but ask the commission especially to take notice of the question asked of the witness.

President: It is a question you would have asked if the witness were present?

Defense (Capt. Robiseau): Yes, sir. May it please the commission, there would be about 20 questions if the witness were present. We ask the commission to scrutinize extremely carefully both of these documents, Prosecution's Exhibit No. 10 and the first statement made by the same witness, which the defense will introduce as a defense exhibit. Thank you, sir.

President: For the benefit of the accused, the commission will carefully consider the contents of Prosecution's Exhibit No. 10.

Prosecution: Subject to objection by the defense, the prosecution now offers in evidence Prosecution's Exhibit No. 11 for identification, being a report of reburial.

Defense: No objection.

President: It will be admitted and marked as Exhibit No. 11.

Prosecution: Request that I be permitted to read the pertinent parts.

(Prosecution's Exhibit 11 was then read to the commission by the judge advocate.)

President: There is a discrepancy there; in the statement made by--he gave the grave number 120 and the plot number 11, instead of 10. Which is right?

Prosecution: I don't know, sir; I'll check it.

Defense (Capt. Ephlesen): May it please the commission, that may be one of the reasons why we have no objections we may offer the opportunity for the prosecution to show which one is right.

Prosecution: Subject to objection by the defense, the prosecution offers in evidence Prosecution's Exhibit No. 12 for identification, Air Force Casualty Officers Investigation (Overseas) report.

President: It will be admitted in evidence and marked Prosecution's Exhibit No. 12.

(Prosecution's Exhibit 12 was then read to the commission by the judge advocate.)

DIRECT EXAMINATION

Defense (Capt. Ephlesen): May it please the commission, the defense counsel would like to call attention to a condition that is stated in the last exhibit. The person investigating the affair at that time could not report the conclusion as to whether the person killed was entitled to lose his life in battle [illegible] Exhibit No. 12 for identification.

A. [illegible]

Prosecution: May it please the commission, that is an official report that has been submitted.

Defense (Capt. Ephlesen): May it please the commission, the defense, by its failure to object to this last exhibit, does not admit the terminology of [illegible] I think it important. As I have already said, here is the door of [illegible]

President: Exhibit No. 12 has been admitted in evidence by the commission.

Prosecution: At this time this prosecution requests permission of the Japanese guard of Domei Photocast for the purpose of identifying a diagram of the room in which the American was killed.

Colonel Brandon, Miller, a witness for the prosecution, was duly sworn by the prosecution, and having been identified through the interpreter and the [illegible] previously taken by him was still binding, resumed the witness stand and testified further as follows:

Interpreter: Hai, hai.

DIRECT EXAMINATION

[illegible] questions by prosecution which we will place on the diagram.

Q. I have here Prosecution's Exhibit No. 13 for identification and ask you whether or not you assisted in the drawing of this diagram.
A. Yes, I did, when you drew it.

Q. Is that diagram a diagram of the room in which the American soldier was killed in your home on the 26th day of June, 1944?
A. Yes, it is. [illegible] I don't see, because

Q. Are the dimensions of that room as shown approximately correct?
A. Shown as you have drawn them, the fireplace, is you drew it, here, the window as you drew it, the cupboard, the table, and all that is here as you drew it is all right.

[illegible] a line showing the [illegible]
Q. Is that correct?
A. Correct as it is.

CONFIDENTIAL

Q. Does that drawing represent the furniture in the room as placed on the 26th of January 1944?
A. You mean the cupboard and the table?

Q. The cupboard and table and stool or chair which was in front of the fire.
A. The cupboard on the left and the table on the right.

Prosecution: Subject to objection by the defense, the prosecution now offers in evidence the diagram marked Prosecution's Exhibit 18 for Identification.

Defense (Capt. Robinson): The defense desires to examine the witness on the diagram to ascertain whether or not there may be an objection.

CROSS EXAMINATION

Questions by defense (Capt. Robinson):

A.

Q. Without your glasses or spectacles, can you see this diagram?--and let the record show that the defense counsel handed to the witness Prosecution's Exhibit No. 18 for identification.
A. These are the steps, and here near the table--I did not indicate it before--because I forgot it--there was a small set of shelves, there is a small set of shelves.

Q. There?
A. Near the table, right there (indicating). I forgot to mention it, because I didn't think it important. As I have already said, here is the door of the house (indicating). It is a double door. On the right, opposite, is the door of the room where we sleep. This, on the right, is the fireplace. This is the place on the right where the cupboard leans against the wall of the bedroom. Here is where the table was--here is the window of the house (indicating).

Defense (Capt. Robinson): If the commission please, the record will not possibly show all of these "heres". I ask that the interpreter have--when you said, "Here is" a certain item, interpret where that item is, pointe--where did he point when he said, "Here is"?

Interpreter: Well, he said a lot of "heres."

Prosecution: The items as pointed out are marked on the diagram, with the exception of the shelving, which we will place on the diagram.

Col. Sears: Can he see without the glasses?

Questions by defense (Capt. Robinson):

Q. Can you read this diagram without the glasses?
A. Yes. I couldn't read, because I can't read, and then I can't see, because I read very little.

Q. I ask you now to point out on Prosecution's Exhibit No. 18 for Identification, the paper which you hold in your hand, where the street runs by the door.
A. It is right in front of it.

Q. I ask you to draw a line showing the street.
A. This is the street that comes from the town and goes into my house (complying).

Q. I ask you to letter that line A-B, placing the A near the door and B at the other end of the line.
A. Which side of the line?

Q. On the line.
A. (The witness complied.)

Defense (Capt. Robieson): The witness has indicated A and B in the position asked for.

Q. If that street continued on toward the letter A, would it go right into the door of your house?
A. Near the steps of my house there is a pathway that takes to the edge of the town.

Q. Is there any other street running by your house?
A. No, sir.

Q. What is the name of the street that you have indicated on that chart?
A. Via del Capecroce.

Q. What direction does that street run?
A. It originates in the square of the town and it winds in through the town and goes to Capecroce, near the church.

Q. Please tell me the direction that street runs as it passes your house.
A. It finishes right at the door of my house.

Q. Please tell me whether it runs from north to south or east or west, or which direction.

Prosecution: Objection.

President: Objection sustained.

Defense (Capt. Robieson): If it please the commission, will you not give the defense an opportunity to show why this--

President: Make it brief.

Defense (Capt. Robieson): I will be glad to, sir.

President: Go ahead.

Defense (Capt. Robieson): The defense contends that this diagram is improperly drawn, it is damaging to our client, the accused, and by the showing here of the direction of the street--and when the proper diagram is shown, the defense will have a proper diagram and not an improper diagram.

President: Your objection is overruled. You can do that later on, introduce your own diagram.

Defense (Capt. Robieson): May it please the commission, I will submit that we will have to go through this whole testimony again if we do.

President: Well, we will go through the whole testimony again; objection sustained.

Defense: (Capt. Robieson) I still object to the diagram on the grounds that the diagram is incorrect.

President: Objection is overruled.

Defense (Capt. Robieson): May I ask him this question with this diagram, then? (To witness:) I show you another paper and ask you--we will number that later--

Prosecution: Number or identify the paper.

Defense (Capt. Robieson): I will identify it if it goes into evidence.

Prosecution: Sir, a lot of talk--

President: Wait a minute, wait a minute. We are dealing now with things--we are talking now--we are offering one in evidence; now you are introducing another one.

Defense (Capt. Robieson): I am trying to show that is incorrect, sir.

President: Don't introduce another diagram for that now. We are trying to introduce this diagram here, No. 18.

Defense (Capt. Robieson): If it is shown to you to be incorrect, will you still accept it?

President: It will be admitted into evidence. Then you can introduce yours later on, and we can weigh both of them.

Defense (Capt. Robieson): I submit the objection to the commission.

President: All right. Objection overruled. Now, you can submit yours later on.

REDIRECT EXAMINATION

Questions by prosecution:

Q. You have mentioned in your testimony some shelving. Where was the shelving located?
A. At this point, right here (indicating).

Interpreter: He is pointing at the table.

Q. At the corner of the table nearest the fireplace? How many shelves were there?
A. They formed two sections.

Q. Was the shelving above the top of the table, or did the shelving rest on the floor?
A. The shelving was fixed in the wall. The plank of the shelving was made of wood.

President (to interpreter): Will you tell the witness to show you where the shelf was and you put it down there in that diagram.

(The interpreter explained to the witness.)

Witness: The shelving extends from the table--boards along the wall, with two shelves.

Prosecution: Mark the word "shelving" along the wall at the point the witness indicates shelves were placed.

Witness: Here, near the table. From here to here (indicating).

(The diagram was marked by the interpreter.)

Witness: There were bottles there and glasses.

Prosecution: You may have the witness.

Defense (Capt. Robieson): May it please the commission, the defense has required that a diagram be made by members of the soldiery or military who saw the home of the gentleman who is now on the witness chair. We ask the indulgence of the commission for a few moments and our chart will be brought in to be submitted and will save time on cross-examination of this particular chart, which the defense contends is incorrect. May it please the commission, may the defense have five minutes before cross-examining this witness?

President: Who is making this diagram? How long was he in the house?

Defense (Capt. Robieson): We will put him back on the stand.

Prosecution: May it please the commission, that is a matter for defense and the defense will have ample opportunity after the prosecution presents its case.

Defense (Capt. Robieson): May it please the commission--

President: It is a matter for the defense, and the defense will take it up when it comes to it.

Defense (Capt. Robieson): May it please the commission, how can we properly cross-examine at this time--

President: You can cross-examine from that diagram; then you can produce your own.

Defense (Capt. Robieson): It is possible that this diagram is not correct.

President: Well, it is his own house; he made his own diagram, where he lives, and your man was there five minutes, and you want to use your own.--Your diagram will be introduced when the proper time comes.

Defense (Capt. Robieson): May we withhold our cross-examination?

President: You may cross-examine on that all you want to.

Defense (Capt. Robieson): I am sorry, but may it please the commission, if we could have just a few moments before beginning this cross-examination.

President: All right, you can have a few minutes. We will take a five-minute recess.

The commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter resumed their seats. The witness who was on the stand at the time the recess was taken resumed his seat having been admonished through the interpreter that the oath previously taken by him was still binding.

President: The commission will come to order.

Defense (Capt. Robieson): May it please the commission, there is no further cross-examination at this time.--I intended to say, no further cross-examination of this witness at this time.

Prosecution: Any questions by any members of the commission?

President: No questions; the witness is excused.

(There being no further questions, the witness was excused and withdrew.)

Prosecution: The prosecution rests.

Defense (Capt. Robieson): May it please the commission, at this time the defense moves the commission that a verdict of acquittal be pronounced at this time for the reason that the prosecution has not made a prima facie case. At no time during the course of this trial has it been pointed out definitely who killed the American soldier. There is some confusion concerning the dress of the accused Ronzoglia; there is, without question, the fact that the prosecution's principal witness could not even identify the accused. The commission has heard the progress of this trial. The commission knows that the war was yet on. The commission knows that an American soldier had fallen from an airplane behind enemy lines. The prosecution has established that that American soldier abandoned his uniform and placed upon himself civilian clothing, that that American soldier wandered about behind enemy lines for a long period of time, that that American soldier took up residence in at least two different houses; and the prosecution has produced the witnesses to prove that portion of the case. The prosecution has failed to prove the bloody title in the proof of the corpus delicti; the prosecution has not shown beyond a reasonable doubt the exact cause--or, the exact and particular corpus delicti. You have, gentlemen, heard before this court a witness of the prosecution, perhaps their primary witness, testify that a man in civilian clothes fired the fatal shots. You have heard much said about different people firing the shots, and the bragging, perhaps for heroic purposes, of who did fire the shots. Gentlemen, this case is in a state of almost hopeless confusion. According to American law and jurisprudence, a capital case, or any criminal case, must be proved beyond a reasonable doubt. Gentlemen of this commission, the defense submits to you that certainly at this stage of this game there is much reasonable doubt.

Now, true, there had been trouble between partisans and Fascisti. There had been killings in that little community. There was the fervor among the citizenry; there was fear. There was testified by the woman who first housed the American that she got rid of him. She went to her friend and said, "I'm afraid. I'm afraid that I will be killed if I keep him. You keep him, I'll feed him, but you keep him." Yes, she turned him over to her friend, and her good friend took him. He went into that house. And then you heard the testimony of this old gentleman, this kindly old gentleman, who went down and turned him in. But in the search of that community--and mind you, gentlemen,

the Fascisti at that time were the organized government. The soldiers in uniform represented that government, they were armed by that government, and we, as Americans, are not concerned with our likes or dislikes of partisans or our likes and dislikes of Fascisti, if there be any on either side; we are concerned here with a matter which is a matter of American jurisprudence. being a commission of war crimes, we are nevertheless concerned with American jurisprudence.

We are holding ourselves to the proof beyond a reasonable doubt before a life penality, or any penalty, for crime be levied upon anybody. Gentlemen, as you know, in an American court of procedure there has not been proved beyond a reasonable doubt of the guilt of this man, who by the principal witness was not even identified. Instead, gentlemen, you have in front of you exhibits, particularly Exhibit 10 and that portion of another statement read into this record by the defense counsel, showing the interlocking stories between even the Fascisti themselves as to whom they would place the blame upon. First, if there was to be honor from Headquarters Fascisti, some wanted to say, "I want the honor." There was argument among the Fascisti. It was shown to you in that one document, Prosecution's Exhibit No. 10 in evidence, that a letter was written that the accused was not to be taken seriously, that he was vainglorious, or words to that effect, that he was boasting, not to take him seriously, and the individual himself telling who fired the shots. Gentlemen, you heard that said.

After the war was over and the statement was taken, oh, no, no, "I didn't have anything to do with it; let that man have his brag now, he is the one." Gentlemen, I want this commission to weigh that in all fairness and in all honor, and I know you will.

The next thing, this old gentleman, this honest old fellow that sat on this witness stand, apparently so confused that he couldn't remember facts of his own home--he told a pretty straightforward story. He told about the civilian firing. He told about the soldier who rushed out and said, "We mustn't injure this man, he is wounded now," and the man in civilian clothing said, "No," and shot him dead. The evidence has not been produced here to show that this accused Ramaglia was in civilian clothes. One of the Fascisti who wandered within the whole picture revamped part of his statements and says something about civilian clothes, but, gentlemen, weigh it carefully.

The proof in American law is not there. We submit to this commission that the whole prosecution fabric in this case has fallen for a lack of a complete connection of corpus delicti, proper corpus delicti and proper positions at the time the crime was committed and who fired the fatal shots. Conspiracy is not charged. Upon the individual who killed the American soldier may rest a fault, but if a fault then the question arises after that, was that fault a war crime? Under all the conditions of fever in that little community, under all the conditions of what was happening and the pogroms coming and a soldier out of uniform, a belligerent out of uniform--was there war crime?

And now let us speak about Position Number 3. There has been plenty of testimony by the prosecution's own witnesses that a stiletto, or dagger, or a knife, was in evidence, and by the same type and kind of testimony as is before this commission, it was shown that the American did have possession of that knife, dagger, or stiletto, or weapon, whatever it may have been, that it was shown by two witnesses, one of them saying some 30 or 40 centimeters from the body of the fallen American, and the other stating not more than a meter and one half, meter--say 60 inches or less--from the body, and that particular witness stated that that weapon was in such a juxtaposition as would indicate that the American was making the attack.

Gentlemen, there has been some talk of this cupboard. You gentlemen, perhaps, have been in Italy long enough, and those that have not have formed the proper opinion, that this particular piece of furniture known as a cupboard was a large

heavy cabinet, and that large heavy cabinet could form a place for somebody to step at the end for partial hiding of himself. It was testified to here by one witness specifically that the American had the knife. It was shown by two witnesses that the knife was in certain places. It was shown by other witnesses that the knife was brought from the house to the square. It was testified to in Prosecution's Exhibit No. 10 that the American was armed and made an attack upon the Fascist soldiers who entered the room.

Weigh, now, gentlemen, your different pictures in that room. First, a civilian and a soldier, another time all soldiers, and another time you didn't know what; a state of confusion.

Gentlemen, we submit upon this motion that the prosecution definitely has not established, first, a crime, let alone a war crime, and we submit that this accused should be afforded a verdict of not guilty, and we thank you.

Prosecution: May it please the commission, the prosecution has shown beyond a doubt that an American airplane was shot down on December 19th, 1943. I do not believe there is any question in the minds of this commission but that Dale E. King bailed out from that airplane and made his way to Poline, that at that point he was taken by Fascists to the home of Orsini Gallerarman and later transferred to the home of Matteucci. The evidence is also clear that when the Fascists arrived in the city of Poline, if they did not already know it they soon learned that there was an American hidden in that home. The statements of Coppe Alberto prove that fact. The statements of Captain Massani, who was on this witness stand, show that fact. The statements of Salvati, who was questioned and threatened on the public square to know where Matteucci's home was, all bear out the old man's statement that these Fascists accosted him, threatened him with death unless he told them where the American was hidden.

Gentlemen, those men knew who was in that home. They knew there was an American soldier hidden in that home, and they went there for the sole and express purpose of killing him, and they killed him. I don't believe any one could doubt the statements of Matteucci. The American was sitting before the fire when these men entered his home. We have a statement of the captain, Massani, and Dolci. Massani told this commission that he was five or six meters from this home when he heard the shots, from this room where the American was killed. He went there immediately. And who did he find when he entered that room? He found Lancia and this man here, Ranaglia, and a man on the floor, and Dolci, who had just preceded him into that house.

These were the men that were there; these were the men that had killed Dale King, and there is no dispute about that. Whether they were in uniform or civilian clothes makes no difference; the evidence is clear that they were armed, they had a machine gun--an automatic rifle--and pistol. The evidence is clear on that point, and they were there, and they went there, for the sole and only purpose of killing that American. There can't be any question about that.

This accused has been identified from the witness stand. We are sorry that Lancia is not here, but he escaped from the British in September of last year. But the two of them killed that American, and he was killed--the evidence shows that his body was taken from that home, taken to the public square, and was there transported to Terni, where the body was buried.

The defense talks a great deal about a dagger. The evidence in this case shows that there was no window in the room in which this man was killed on the side next to the street. The American was sitting before the fire, the old gentleman has told you that. He was sitting before the fire; he had no means of knowing that anyone was coming to that house until they burst in through the door. And do you think, gentlemen--he had surrendered once and was taken to this home--would he, then, with an old rusty dagger have attacked two armed men, two men who were armed with automatic rifles and pistols? Do you think

it is possible? Do you think he would be so foolish as to jump up and lunge at these two men? And from whom do we get that statement? It all comes from the statement of Romaglia, who was one of the soldiers in that room when his captain went into the room. Now, whether or not he told the captain or Lentia that Romaglia killed the American soldier, I don't know--the captain didn't say so. He said they reported to me," and that was immediately after the shots were fired--that is the time that they would tell the truth, if they ever told the truth. And they would have you believe that this man is a coward, this man who later became a lieutenant in the Black Brigade? Did he fool the entire Italian army and get a promotion? It is just not possible things like that could happen--a coward such as the defense has attempted to picture in this case would be promoted and made a lieutenant in the Black Brigade.

Gentlemen, I submit to you that the prosecution has made a definite case. All the prerequisites have been established before this commission.

President: Subject to objection by members of the--

Defense (Capt. Robieson): May it please the commission, usually there is rebuttal.

President: All right, go ahead.

Defense (Capt. Robieson): May it please the commission, due to the fact that there is special counsel, Italian counsel for this Italian accused, I ask that the Italian counsel be able to say a few words in rebuttal.

President: Go ahead. Now, confine your argument, please, to the legal points.

Defense (Mr. Laura): First of all, I wish to say how myself and I think all good Italian people are sorry that a happening of this kind took place in Foligno on January 24th 1944, but examining closely the situation of this soldier of the Italian army, I think it is my duty to submit to the commission the legal points that put this soldier within certain rights, and also to establish that if the Italian soldiers killed somebody under the circumstances that have been explained at the trial by some witnesses, they acted completely in compliance with military law. It is a fact that the day before the killing of the American something happened in Foligno that could be considered an act of war. Partisans and Fascists were actually two opposite armies. The partisans invaded the town, killed somebody, dragging him from his house, bringing him in the public square, killing him in front of his daughter. Certainly that would have brought a reaction of any opposing army, either, I think, the Italian army or the opposing army.

The Italian authorities in charge took some steps--the Germans wanted to set fire to all the village and destroy it--the Italian authorities intervened and said, "That is too much," and so they decided to appease the Germans and at the same time to fool them. They went to Foligno for the intent of showing to the Germans their good intention, but not to harm the population. So it only was decided to make a raid of the houses to see if somebody was in there that should be suspected of connivance with the partisans. This bunch, with the military law to give orders, was the authority in power, was entitled to do that, to give that particular order, and it is a fact that the particular order was given, because a witness, that Italian student of engineering, that the American soldier spoke in English with him, stated in the most definite way that the Italian authorities communicated to the people that if a man over 16 years of age were not assembled in the public square but found in their houses, he would have been shot.

Now, in one of the houses there was a man in civilian clothes with no insignia, with nothing showing that he was belonging to an army, a man that had the physical appearance of an Italian. It is also to be supposed that that man had been killed in the application of this order. There is no evidence at all that Ranzaglia is the man that killed him; there is no evidence at all that Ranzaglia was dressed in a civilian suit, and everybody that has been a witness present to the facts has stated, principally the owner of the house, Matteucci, that the man who killed was a man dressed in a civilian suit. Therefore, I don't see how it is possible under international law to treat this case as a crime of war case and sentence upon that. I don't see how it is possible to sentence an Italian for a thing which has not been proved that he has committed. I thank you, gentlemen.

The counsel indicates to me something which I pointed out to him. I wrote, "From Livorno to Pisa," which is going to the training camp to visit this man--you certainly have seen what I am going to tell you--"next to the American depot, now, not in time of war"--the war has ceased since many months ago --"there are signs along the depot where there are only foodstuffs, implements of war, where there are no pistols to be taken, which reads in Italian, in German, and in English--who comes near this fence will be shot dead." Now, if that order is legal now, I think that under international law would that be legal, the order to kill everybody that did not obey an order given during the combat. I rest, gentlemen.

President: Subject to objection by any member of the commission, the motion of the defense for a finding of not guilty is denied. The court will adjourn--

Defense (Capt. Robieson): Please. Before you close the commission, I have one request to make. It will be known that there was something said to the commission about a continuance, first, for a period of two weeks. That was not at all favorable to the American authorities. Out of deference to that request, the defense proceeded to trial without any motion for any continuance. Since this trial has started, part of the defense' witnesses have arrived. In order for the defense to even partially prepare itself--we are not asking for weeks, not asking for days, but we do ask that we have until two o'clock or 1400 hours tomorrow afternoon, giving the defense the morning to see their witnesses and to formulate their case for defense. We ask that this trial be continued until 1400 hours tomorrow afternoon.

President: Your request for continuance is granted until Thursday morning at 8:45. You have all day tomorrow.

Defense (Capt. Robieson): Thursday morning. Thank you, sir.--May it please the commission, before anybody leaves--there is a medical doctor who contends that he has some 60 patients at Terni. He has only a brief statement to make. And there is a young man present who operates a business at Terni and is needed there. He can assure the commission that 30 minutes, and maybe 15 minutes--just as quickly as we can hear them. Will you hear a rapid testimony?

President: Very well.

TESTIMONY FOR THE DEFENSE

Vito Mazzuca, Terni, a witness for the defense, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by judge advocate:

Q. What is your name?
A. Vito Nanavan.

Q. Where do you live?
A. Torni.

Q. What is your occupation?
A. Doctor.

Questions by defense (Mr. Laure):

Q. Do you know this gentleman sitting here?
A. Yes.

Q. What is his name?
A. Romaglia.

Q. Can you say to this court something about the help that you have received sometimes from this gentleman?
A. I became acquainted with Romaglia in November, 1943, as a friend of the British and as the doctor of a partisan brigade. I was arrested by the Fascists. On that occasion Romaglia came to visit me in my cell often, and while all the other Fascists said to deliver me to the Germans, Romaglia instead occupied himself with my case and insisted that the Fascist commanders free me. Every time that he came to see me he was kind, he was never sectarian, and during the short tragic moments during bombardments, while all the Fascists went into the air raid shelter they used to lock me in my cell with a double turn of the key and Romaglia quarreled with the Fascist commanders that I be treated like a prisoner of war and brought into the air raid shelter. Then at Christmas I was transferred to another jail and since then I saw him no longer. In these contacts I was aware that I was before an individual who talked very much but was not a bad man. I have nothing else to add.

Q. Do you mean to say that in your opinion Romaglia is not a man able to kill another man?
A. To me it seemed that he was not a man that could kill another person like that. He was very talkative, but not capable of committing a crime.

Q. Do you have any objection if I pose on you some question about belonging to some particular political party?
A. I have no objection.

Q. Do you belong or did you belong to the Fascist party?
A. No, I belonged to the Communist party.

Q. Is this man here at the table the man to whom you have been testifying?
A. Yes, I recognize him.

EXAMINATION BY THE COMMISSION

Questions by president:

Q. To what party did you belong in 1944?
A. I was a doctor in the Garibaldi Brigade, in a Communist brigade.

Q. Communist brigade!
A. Communist brigade.

CROSS EXAMINATION

Questions by prosecution:

Q. Just one question. Is Romoglia a coward?
A. In my conversations with him I have had the impression of standing before a man who holds an awful lot, but not a man of great actions.

Prosecution: Questions by any member of the commission?

Defense (Capt. Robinson): May it please the commission, may this witness be excused permanently in order to return to his profession at Zanzi?

President: Yes.

Interpreter: He wants to thank the commission very much, because he has an epidemic of typhus to deal with.

(There being no further questions, the witness was excused and withdrew.)

Valentino Pietro, Zanzi, a witness for the defense, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by [illegible] advocate:

Q. What is your name?
A. Valentino Pietro.

Q. Where do you live?
A. Zanzi.

Q. What is your occupation?
A. I have a restaurant business.

Questions by defense (Mr. Laure):

Q. Do you know the man sitting at this table?
A. Yes.

Q. What is his name?
A. Romaglia Tito.

Q. Point him out.
A. (The witness indicated.)

Defense (Capt. Robinson): Let the record show that the witness has indicated the accused, Romaglia Tito.

Questions by defense (Mr. Laure):

Q. Where did you meet Tito Romaglia?
A. During the period of the German occupation.

Q. Where?
A. In my restaurant.

Q. Did you ever notice what kind of clothes Romeoglia usually had on him?
A. At first when he used to come there he was dressed in civilian clothes, but I remember him being very little in civilian clothes. The other times I saw him he was in military uniform with a black cap. He had stripes indicating rank, but I don't know what rank it was.

Defense (Capt. Robinson): Let the record show the witness has indicated something like the left sleeve, perhaps purporting to be chevrons.

Questions by defense (Mr. Amore):

Q. Did Romeoglia come often to eat in your restaurant?
A. Often, but not every day.

Q. Do you remember if Romeoglia, in the period about January 25-26-27, 1944, was dressed in uniform or not?
A. I cannot be certain of this, but it is certain that those soldiers of the division of that period were almost always dressed in uniform. The men who were dressed in civilian clothes at that time were in a policing office which was different from the Intervigilanza.

CROSS EXAMINATION

Questions by prosecution:

Q. When did you first become acquainted with the accused Romeoglia?
A. I cannot remember well, but I can specify that it was about--roughly, about two months before January, two or three months, but I cannot specify the exact day.

Q. In what business were you engaged at that time?
A. I was working at the restaurant.

Q. Where?
A. At my restaurant in Terni.

EXAMINATION BY THE COMMISSION

Questions by Col. Amore:

Q. Being what in the restaurant?
A. I did everything there was to be done, because in that period, with all the bombing going on, civilians were reluctant to work in the city, and we were obliged to hold the restaurant open, doing our best. Then later my brother and myself were taken by the Germans and obliged to work at the station.

REDIRECT EXAMINATION

Questions by prosecution:

Q. Where did Romeoglia live at that time?
A. I cannot say, because I don't remember. I never asked him.

Q. Did you see him in civilian clothes and also in the military uniform--is that correct?
A. Yes.

C O N F I D E N T I A L

[illegible], Iwo
7 August 1947

Prosecution: No further questions.

The commission met, pursuant to adjournment, at [illegible] A.M., all the members present.

Witness: He used to come in civilian clothes, but I remember him more in uniform than in civilian clothes and remember him very little in civilian clothes. [illegible] and the interpreter were also present.

Prosecution: Any questions by any members of the commission?

President: Apparently [illegible], a witness for the defense, was then brought into the courtroom and, through the interpreter, was sworn and testified as follows:

Prosecution: May the witness be excused?

President: Witness excused. [illegible]

(There being no further questions, the witness was excused and withdrew.)

Defense (Capt. Robinson): May it please the commission, may this witness be excused permanently to go back to his business in another town?

Prosecution: No objection by the prosecution.

A. At Koror.

President: The witness will be excused permanently. As previously stated, the commission will adjourn until Thursday morning at 0:45.

Provisional roster of the [illegible], I was [illegible] Japanese Army.

The commission then at 0:35 P.M., 6 August 1947, adjourned to meet at 0:45 A.M., 7 August 1947.

Questions by the court (Mr. Lewis):

Q. Do you know [illegible] Angaliar?
A. Yes, I do.

Q. Do you see this Kanesiglio in this court?
A. Yes, he is present.

Clerk: Please let the record show that he has pointed to the accused.

Q. When did you see him for the first time, this Kanesiglio?
A. I saw him the first time in March, [illegible] 1945.

Q. Where?
A. At Koror.

Q. [illegible]
A. He came to me to ask for a employment.

Q. And you employ him?
A. Yes, I sent him on a boat [illegible] Yamaji.

Q. For what?
A. I forgot.

Q. How long did he stay at the command of Yamaji?
A. About 15 or 2 months. I could not say the exact number.

CONFIDENTIAL

CONFIDENTIAL

Leghorn, Italy
7 August 1947

The commission met, pursuant to adjournment, at 0930 o'clock A.M., all the personnel of the commission, the prosecution, and the defense who were present at the close of the previous session in this case being present. The accused, the reporter and the interpreter were also present.

President: The commission will come to order.

Pedro Giovanni Rosati, Rome, a witness for the defense, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by judge advocate:

Q. What is your name?
A. Giovanni Rosati. In religion Padre Basilio.

Q. Where do you live?
A. At Rome.

Q. What is your occupation?
A. Provincial Father of the Institute. I am an inspector, a coordinating inspector.

Questions by defense (Mr. Laura):

Q. Do you know Tito Romoaglia?
A. Yes, I do.
Q. Do you see Tito Romoaglia in this room?
A. Yes, he is present.
Defense: Please let the record show that he has pointed to the accused.
Q. When did you meet for the first time Tito Romoaglia?
A. I met him the first time in Rome, I think, 1946.
Q. Where?
A. At Rome.
President: [illegible]
Q. Under what circumstances did you meet Tito Romoaglia?
A. He came to me to ask for an employment.

Q. Did you employ him?
A. Yes, I sent him to a convent in the province of Vetralla.
Q. For what?
A. As handyman.

Q. How long did he stay at the convent at Vetralla?
A. About 15 or 20 months—I could not say the exact number.

Q. Then what happened?
A. One day he came back to Rome because the rector there said that he was not very useful, so he came back to me at Rome and there I also employed him as a handyman.

Q. Where did Tito Romaglia live at the time that he was employed with you--did he live in your convents or other places?
A. Within the convent.

Q. Did he ever exit from the convent?
A. He continually went in and out at all times of the day, because I used to send him to the post office and stores.

Q. Was he hiding himself?
A. No, he was not hiding. He had come to me for a job because he couldn't live, he didn't have any job to do.

Q. During the time that he was in your convent, did he ever tell you that anybody had contacted him in relation with the killing of an American soldier in Padua?
A. Yes, he told me this.

Q. What did he say to you at that time?

Prosecution: May it please the commission, statements made by Romaglia to the father at that time are inadmissible in evidence.

Defense (Capt. Robinson): We can't hear the judge advocate. Please, will you speak up?

Prosecution: Statements--the self-serving declarations made by the accused at that time to the father are inadmissible in evidence.

Defense (Capt. Robinson): May it please the commission, the defense will show that this conversation which is to be produced will bear upon the conclusions at the time the United States Government was standing as agent to locate Romaglia. It appears that the rules of evidence have been relaxed considerably in regard to the admission of hearsay. This is more than hearsay; this is a direct statement between a sworn witness on this stand and the accused, and the defense feels that the foundation that is now being laid is very proper to be brought before this commission.

President: Objection overruled.

(The question was read by the reporter.)

Defense (Mr. Moore): Pardon me; I think that something has been missing to my question. I was taken so to jump away--my question was, "What did he say to you about being innocent or not?"

Prosecution: That was not a part of your question.

President: Word the question the way you want to.

Questions by defense (Mr. Laure):

Q. What did he say to you at that time about being innocent or not?
A. Zito Rossaglia always told me that he was not the killer of this American soldier.

Q. Did he show to you ever his interest in bringing his innocence, in one way or the other,--

Prosecution: If the court please, we object to this line of testimony. The accused is here; he can testify.

President: Objection overruled.

(The question was read by the reporter.)

Witness (answering): He said his interest in this case, knowing that he was being looked for again by the American police, he wanted to report to clarify his position. I convinced him to wait a little while until we could make contact with someone of the American Army, so that in the meantime he would not be taken to some concentration camp. When he was captured, I was in those days trying to make contacts with one of our fathers of the United States who was here--he was the military chaplain--to see if he could accompany him and maybe present him, but I was not in time, because other things happened.

Questions by defense (Mr. Laure):

Q. You have said when he was captured, but are you sure that he was captured or that an American, or an agent of the War Crimes Commission, came to your convent looking for him?
A. Yes, an American military man came to look for him at the convent.

Q. And that American military man, did he speak with you?
A. Yes. First of all he called me, he was very kind--and he said that he knew that he should not even come into this--he realized that he could not enter into the convent, because it enjoyed the pontifical exemption, that is, extra-territoriality.

Q. And what did he say that the American man in military uniform, to you, about Rossaglia--did he have to go with him, or did he leave him in your place?
A. No, he just had him called. He wanted to make contact with him. I called Rossaglia immediately and he came to make a contact with this officer, and then he left there for 3 or 4 days and said, "I will come to get him."

Q. So he did not arrest him or capture him?
A. No, he left him as he was. He only asked Rossaglia's word of honor as an officer to remain.

Q. During the time which elapsed between the moment that this officer came to your convent the first time to the moment that he appeared the second time and requested Rossaglia if he was willing to go with them, did Rossaglia stay always inside your convent or had he chance to go out?
A. Yes, he continued to carry on the life he had always carried on. He went out many times. We, of course, limited this a bit, because it was supposed that maybe the police would have sentries or somebody to stand guard.

Q. If Romeaglia had the intention to avoid to go with that American soldier, when he would have come back, could he, Romeaglia, have had the opportunity of escaping during these days that he was in your convent?

Prosecution: Objection--calls for a conclusion of the witness.

President: Objection overruled.

(The question was read by the reporter.)

Witness (answering): Yes, as a matter of fact, I told the officer who came to see if he was there that--I told him that I did not have sentries on my door.

Questions by defense (Mr. Lamb):

Q. Did the American soldier ask you to keep Romeaglia in the convent and be sure that he doesn't leave?
A. He asked me to give my word, and I gave my word as a clergyman, and Romeaglia gave his word as an officer, but of course I don't know what is in Romeaglia's mind.

Q. But is it true that you told the American agent that you could not consider him as a prisoner and you were not responsible if he was going to escape?
A. Yes, I declared that.

Q. Did Renaglia say to you why he was so sure of himself, remaining?
A. Why did Renaglia--?

Q. Did Renaglia say to you why he was so sure of himself?
A. He declared this to me quite a few times. He said he was very peaceful, because he was peaceful at mind, because he knew that he had not committed the crime.

Q. And when the American agent came back to the convent, did Renaglia go voluntarily with him?
A. Yes, they stopped to talk for about a half an hour or three-quarters of an hour; then they went on in an automobile.

Q. Then Renaglia surrendered himself voluntarily to that agent from your convent?
A. They came to the convent to get him with an automobile, but he said he was going to go very soon--he would like the day to come very soon, when he could be placed into contact with the proper authorities and explain.

Prosecution: May it please the commission, the prosecution at this time moves to strike from the record all testimony given by this witness as having no bearing on this case and not being admissible under Circular 114.

President: The motion of the prosecution to strike the testimony of this witness from the record is denied.

Prosecution: No cross-examination. Any questions by any members of the commission?

EXAMINATION BY THE COMMISSION

Questions by Major Zucker:

Q. Just where was this convent where Rosaglia was interviewed?
A. At the Holy Stairs in Piazza San Giovanni in Laterano, Rome.

Questions by Major Lacour:

Q. You spoke that Rosaglia came to you and mentioned an incident of killing an American. When did he first mention this incident?
A. After a few days that he was with me.

Q. Was that before the American agent arrived?
A. Yes, before.

Q. Did he appear to be in a worried state of mind?
A. More than being worried about his condition of being, because he was more worried about how he was to live. I used to reprimand him. I had occasion to reprimand him because I had occasion to observe that a part of the food that was given to him sometimes during the day was set aside for his family.

Major Lacour: These are all the questions I have.

Questions by Colonel Scarr:

Q. Had the accused ever worked for the Church at any time before he was given this position?
A. I cannot answer this question directly, because I did not know him before he came to me, and I do not know what his previous activity was, and so far as what he told me, I do not think so.

REDIRECT EXAMINATION

Questions by defense (Mr. Lamm):

Q. You have mentioned extra-territoriality of the convent. Does that mean that if Rosaglia stepped in the convent no foreign power could send an agent there to arrest him?
A. No, just as they can't go in the Vatican. It has the privilege of the same rights.

Q. May your convent has the same rights of extra-territoriality that the Vatican City has--is that privilege given to that convent too by an international treaty or not?
A. Yes, by the Lateran Pacts.

Q. What are, then, the Lateran Pacts?
A. The treaty between the Holy See and the Italian government to eliminate forever the Roman question.

Defense (Capt. Rubicam): One moment. May it please the commission, I know it is not well for two men to examine one witness, but I ask the indulgence of this commission for the clarifying of one question. Associate counsel asked the question, which I am quite sure the father, here, did not understand, and he gave the answer, "No," when I am quite certain the father meant yes, the question being, "Was the convent extra-territorial?" but it was asked in such a way--and I ask that the record be read back at that point and that question clarified.

President: Read the record back.

(Question and answer in question were read by the reporter.)

Defense (Capt. Robideau): Well, that explains itself; I'm sorry, sir.

Prosecution: The prosecution has no questions. Any further questions by members of the commission?

President: Apparently none.

Prosecution: May the witness be excused?

President: The witness will be excused.

(There being no further questions, the witness was excused and withdrew.)

Private Shelton W. Duvall, Disciplinary Training Center, Pisa, a witness for the defense, was then brought into the courtroom, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by defense counsel:

Q. What is your name?
A. Shelton W. Duvall.

Q. What is your rank and organization?
A. Private, sir. I am attached to the DTC now.

Q. Near Pisa, Italy?
A. Yes, sir.

Q. Do you know the accused in this case?
A. Yes, sir.

Q. Will you point him out?
A. (The witness indicated.)

Prosecution: May the record show that the witness has indicated the accused.

Questions by defense (Capt. Robideau):

Q. Duvall, have you seen the accused Romaglia incarcerated or imprisoned in the DTC? Do you understand my meaning--have you seen--do you know this accused out in the DTC?
A. Yes, sir.

Q. Have you seen him out there behind the wire?
A. No, sir.

Q. Was he in what you call in jail when you saw him?
A. Yes, sir.

Q. Have you ever seen him try to escape?
A. No, sir.

Q. Have you ever seen an incident wherein this accused Romaglia may have had an opportunity to escape?
A. Yes, sir.

Q. I want you to tell this court in your own words exactly what you saw, speak so loudly and carefully.
A. Well, sir, then I dodged myself I asked this scouser if he wanted to escape with me and he said he would like to wait, because he maybe would be free, and he didn't want to escape because if he escaped and he was brought before a court-martial, that would prove him guilty of the charges they have got him for, and I asked him 5 or 6 times before I escaped, sir, and he said no, he did not want to escape.

Q. Were there any physical arrangements whereby Romaglia had an opportunity to help himself to escape that you saw?
A. Well, sir, there was some wire cutters in there and he could escape himself any time, if he wanted to.

Q. Did he accept the wire cutters?
A. No, sir.

Q. Do you know whether Romaglia had anything to do with reporting a pair of wire cutters in to the authorities?
A. Yes, sir, he reported one pair of wire cutters over in Cage 2.

Q. And did the authorities act upon that report?
A. Yes, sir, they went over there and got the wire cutters--they were in Cage 2, over in the cell block, sir.

Q. Then Romaglia could have had these for his own use?
A. They were

Q. Instead, he reported them and the authorities came to Cage 2 and obtained the wire cutters?
A. Yes, sir.

Q. When did this occur, approximately?
A. Sir, it was the 14th of July I escaped, sir.

Q. And did this occur prior to your escape?
A. Just before I escaped, sir--that's when they got the wire cutters from Cage 2.

Q. And prior to 14 July 1945, did you offer the opportunity to Romaglia to go with you?
A. Yes, sir.

Q. 1945?

President: Has this man been tried yet?

Witness: Yes, sir, I am serving time.

Capt. Young: For the escape the 14th of July?

Defense (Capt. Robinson): You have been punished for your escape out of the DTC?

Witness: Yes, sir.

Defense (Capt. Robinson): I understood as before putting him on. May it please the commission, the defense explained to this witness, and I also do now, that, Ismail, do you recall the defense counsel telling you that you did not have to incriminate yourself on this witness stand with regards to this incident--you were not forced to come here and testify?

Witness: No, sir.

Defense (Capt. Robinson): Your testimony here is voluntary?

Witness: Yes, sir.

President: Are you serving sentence now?

Witness: Yes, sir.

President: You have already been tried.

Witness: Yes, sir.

Defense (Capt. Robinson): There are no further questions. The date is on the record, I believe--prior to 14 July 1947.

CROSS EXAMINATION

Questions by prosecution:

Q. When did you escape?
A. The 11th of July, sir.

Q. When were you tried?
A. May the 6th, sir.

Defense (Capt. Robinson): Claims to have been punished for the escape.

Questions by prosecution:

Q. Were you tried for escaping from the DTC?
A. I was punished, sir.

Q. How long were you gone?
A. Well, sir, I escaped on Monday morning and they brought me back on Wednesday at noon, sir.

Q. How were you punished?
A. I was put in a cell, sir. Before I escaped, sir, I was in a cage where I could run around and get plenty of exercise, and after I escaped they brought me back and put me in a cell, and the only time I get out is when I am brought for chow, sir. I am locked up at all times.

Major Lawton: Are you in now what is known as solitary?

Witness: Well, sir, I reckon you would call it solitary, because when you bring my chow to me and everything I don't get out at all, sir.

Questions by prosecution:

Q. Do you know whether or not charges have been preferred against you for escaping?
A. They said they wouldn't prefer charges, sir. They punish me in this cell.

Prosecution: No further questions. Any questions by members of the commission?

President: Apparently none.
Prosecution: May the witness be excused?

President: Witness is excused.

(There being no further questions, the witness was excused and withdrew.)

President: The commission will take a five-minute recess.

The commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter resumed their seats.

President: The commission will come to order.

Luschini Bruno, Sale', a witness for the defense, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by judge advocate:

Q. What is your name?
A. Luschini Bruno.

Q. Where do you live?
A. At Sale'.
Q. What is your occupation?
A. Assistant contractor.

Questions by defense (Mr. Lumro):

Q. In April 1945 where were you?
A. On the evening of the 26th of April I got off the train with my men--I was the commander of the 137th Garibaldi Brigade.
Q. The Garibaldi Brigade was a Fascist unit or a partisan unit?
A. Partisan.

Q. Did you ever meet the accused Romaglia Tito while you were in Sale' at that time?
A. Yes, sir. On the 26th of April at about ten o'clock in the morning.
Q. So you were able to recognize him?
A. Yes, sir.

Q. Do you see him in this room?
A. Yes, sir, I have already seen him.

Q. Do you want to point to him here, if you know?
A. (The witness indicated.)

Defense: Let the record show that the witness indicated the accused Tito Romaglia.

Q. Romaglia Tito as far as you knew was a militiaman of the Fascist militia?
A. I knew on the 26th of April that he was a member of the militia, but when I arrested him he was in civilian clothes.

Q. Did you say that you arrested him?
A. Yes.

Q. Did Romaglia help you in any way in fighting the Germans?
A. Yes, sir.

Q. How long did he stay with you fighting the Germans?
A. Two days.

Q. What was his behavior in combat?
A. He showed himself to be really a valiant soldier, brave soldier.

Q. And there is a big bridge near Salo' that if blown up may have damaged the advance of the Allies?
A. Yes, there was a big bridge at Salo'.

Q. Is that the bridge of the Cartecana?
A. Yes, sir.

Q. How long about is that bridge?
A. About one hundred meters.

Q. And is it very high from the bottom level of the river or the street that is under it?
A. About 60 or 70 meters.

Q. In height?
A. In height, yes. No water passes underneath it; it is a valley.

Q. But you have been instrumental in avoiding the blowing up of that bridge?
A. Yes, sir.

Q. Can you tell the commission what you did in that connection, to avoid the blowing up of the bridge?
A. It would be a little long to tell, but I can say it from the beginning to the end.

Q. But can you summarize?
A. Yes. On the 27th of April it was--

Q. I would like to know the year.
A. 1945. There was a German emplacement--

President: Now, the commission is not interested in this unless he can prove that the accused had something to do with it.

Questions by defense (Mr. Lauro):

Q. Did Ronsaglia help you in conducting the operations to avoid the blowing of the bridge?
A. The Germans had given the alarm after they had placed the charge to have the bridge explode. I ran there and Ronsaglia offered voluntarily to go with me. There was about this much of fuse to burn yet, and--

President: How much--about a foot, ten inches, eight inches?

Witness: The whole fuse was about one meter long, but only about 20 centimeters had yet to burn. And I pulled the fuse out of the charge, and Ronsaglia was right there with me.

CROSS EXAMINATION

Questions by prosecution:

Q. In your opinion and judgment, Ronsaglia was a brave man, is that correct?
A. When I arrested him he said-he asked me for a weapon. He said, "I will go against the Germans. I will go ahead, and if I don't go ahead, you can stay behind me and shoot."
Q. Did Ronsaglia do any bragging to you?
A. No, never.

Prosecution: No further questions.

EXAMINATION BY THE COMMISSION

Questions by president:

Q. How far away were you from the line when the fuse was 20 centimeters long?
A. When it was 20 centimeters long, I was there.
Q. Right there?
A. Right on it, yes.

Prosecution: May the witness be excused?

Defense (Mr. Lauro): I would like to question.

REDIRECT EXAMINATION

Questions by defense (Mr. Lauro):

Q. For this act of bravery in combat, did you receive any appraisal from the Italian government?
A. No, the committee made the proposal and I have not heard anything else.

President: The witness will be excused.

(There being no further questions, the witness was excused and withdrew.)

Anita Santori, Rome, a witness for the defense, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by judge advocate:

Q. What is your name?
A. Anita Santori.

Q. Where do you live?
A. At Rome.

Q. What is your occupation?
A. Clerk.

Defense (Capt. Robinson): May it please the commission: the witness has misunderstood as to her name. In Italy, as you know, they give the family names, and it should be added in the record Ronsaglia.

President: Is she the wife of the accused?

Defense (Capt. Robinson): The wife of the accused, yes, sir.

Prosecution: Your witness.

Questions by defense (Mr. Laura):

Q. Are you the wife of the accused, Tito Ronsaglia?
A. Yes.

Q. Do you see your husband in this room?
A. Yes.

Q. Do you mind to point to him with your finger?
A. (The witness indicated.)

Defense: Please let the record show that the witness pointed with her finger to Tito Ronsaglia.

Q. Do you remember what happened in the morning of January 24th, 1944?
A. Yes.

Q. Did anybody come to your house where you were there with your husband, to call for him?
A. Yes.

Q. Who was the party that came to call your husband?
A. Donati.

Q. Who is this Donati?
A. He was the vice-Federale.

Q. Vice Federale of what city?
A. Terni.

Q. At that time where did you live?
A. At Citta Giardino, Via Montegrappa.

Q. In the city of Terni or in Rome?
A. Terni.

Q. What did he say, Donati, to your husband?
A. To drop up and go with him.

Q. Did your husband dress?
A. Yes, I helped him.

Q. What kind of dress did he put on?
A. He put on his uniform.

Q. What uniform?
A. The military uniform, the uniform of the National Republican Guard.

Q. There were any chevrons on that uniform?
A. Yes.

Q. Why were there chevrons?
A. Because he was a--well, he was a corporal.

Q. Corporal of what?
A. Of the Republican Guard.

Q. Did he arm himself before leaving the house?
A. Yes.

Q. What kind of weapon did he take?
A. I gave him his automatic rifle.

Q. Did he have any pistol in the house?
A. Yes.

Q. What did he do with the pistol?
A. He left it at home.

Q. Do you know if your husband, any time that he was called for military operations, went out in civilian clothes or in uniform?
A. According to the cases.

Q. If they were military operations, did he go in uniform or civilian clothes?
A. Always in uniform.

Q. At what time did he leave the house that morning?
A. I don't remember the hour now; I couldn't say whether it was half-past eight or half-past seven. I couldn't say.

Q. Do you remember when he came back?
A. Yes.

Q. At what time did he come back, about?
A. About one o'clock, or half-past one.

Q. Was he dressed in civilian clothes or uniform?
A. Certainly.

Q. Certainly what?
A. In uniform, as he had left that morning.

Q. Was he armed?
A. Yes.

Q. What kind of weapon he had with him?
A. The automatic rifle.

Q. Do you know on what date this happened?
A. Yes.

Q. What date was it?
A. 24th.

Q. And what month was it, what year?
A. 24 January 1945.

Q. Are you sure that was 1945 or another date?
A. It was 1945.

Q. And at the beginning of this questioning you said 1944--why are you changing now? Please be calm and think over in your mind before speaking to the commission. Try to recollect other circumstances that may help you to establish the exact year. Are you ready to say the year?
A. 1944.

Q. Now, in 1945 where were you?
A. At Sale'.

Q. When you left Terni to go to Sale'?
A. In May, 1944.

Q. And these things of which you have spoken have happened in January of 1944?
A. Yes.

CROSS EXAMINATION

Questions by prosecution:

Q. What organization did your husband belong to?
A. To the Republican Guard.

Q. In January 1944 did he belong to another organization also?
A. Yes.

Q. What organization was that?
A. To the Federazione.

Q. When your husband was on duty with the Federation, what uniform did he wear?
A. The uniform, and sometimes his civilian clothes.

Q. In other words, your husband sometimes wore civilian clothes and sometimes a uniform, is that correct?
A. When he was not on duty.

Q. When he was on duty with the Federation, did he wear civilian clothes or a uniform?
A. Sometimes civilians and sometimes uniform.

Q. Do you know Gaetano Pattarozzi?
A. Yes.

Q. Do you know Giovanni Pitotti?
A. Yes.

Q. Do you know how your husband was dressed on the 15th of January 1944?
A. I couldn't remember on the 15th.

Prosecution: No further questions.

REDIRECT EXAMINATION

Questions by defense (Mr. Laura):

Q. Why do you remember the 24th of January 1944?
A. Because that day things happened that can very well be remembered.

Q. You have said that already, but for the benefit of the prosecution, I would like to ask you again--when your husband was going out on military operations, what kind of uniform did he wear?
A. The gray-green uniform.

Q. And do you know that on January 24th 1944 he went out of his house because he was called for military operations?
A. Yes.

Q. What kind of military operations--do you know anything about?
A. No.

Q. Did the man that came and called your husband, did he say anything to him about military operations?
A. Yes, they said they had to go out.

Q. Go out. What for?
A. Because they were to make an inspection.

Q. Where, this inspection?
A. At Polino.

RECROSS EXAMINATION

Questions by prosecution:

Q. Isn't it true that in January 1944, and particularly on January 24th, 1944, your husband was on detached duty with the Federation of Terni?
A. Yes.

Q. Did the members of the Federation of Terni wear a uniform?
A. Yes.

Q. What kind?
A. The same, gray-green.

Q. What time did you get up on the 24th of January 1944?
A. About half-past six or seven o'clock--I don't remember now.

Q. When did your husband leave home on the 24th of January?
A. I don't remember the hour.

Q. Before or after you got up?
A. We got up together.

Prosecution: No further questions.

REDIRECT EXAMINATION

Questions by defense (Mr. Lauro):

Q. The fact that your husband belonged to the Federazione did exempt him from military operations, in case of military operations?
A. I don't understand.

Q. Can I put the question another way? The fact that your husband was working at the Federazione did exonerate him from going with the soldiers when the soldiers were going out for military operations?
A. No, he had to go.

Prosecution: Questions by any members of the commission?

EXAMINATION BY THE COMMISSION

Questions by president:

Q. How was your husband dressed on the 23rd of January 1944?
A. In uniform as well.

Q. How do you remember that and you don't remember how he was dressed on the 15th?
A. I helped him dress, too, because they had to go out.

Q. Now remember I mean the 23rd, not the 24th, of January.
A. He was also in uniform that day.

Q. And you remember because you helped him dress, eh?
A. Yes, I remember in particular.

Q. Did you used to help him dress every day?
A. No.

Q. Only on a special occasion.
A. No, I used to help him other times.

Q. But you don't remember how he was dressed on the 15th?
A. I don't remember, but I remember how he was dressed the day before.

Questions by Capt. Youngs:

Q. Mrs. Roncaglia, you said that your husband, on the 23rd and 24th, was on detached service with the Federazione of Terni, is that correct?
A. Yes.

Q. Now, where is the Federazione of Terni located?
A. At the center of Terni.

Q. Do they have barracks there where the members sometimes sleep?
A. Yes.

Q. And these members who sometimes sleep there keep clothes there, do they not?
A. I don't know.

Q. Now, who was it called your husband the morning of the 24th?
A. Donati.

Q. Now, Donati is connected with what organization?
A. At the Federazione.

Q. Where was your husband told to report when he was called that morning?
A. To go to the Federazione, because they had to go to Poline.

Q. Did your husband tell you he was going to the Federazione?
A. I heard this, that they were supposed to go to the Federazione, but I did not hear my husband say he was going to go to the Federazione.

Q. Now, you say you remember the 24th of January 1944 because things happened. What happened?
A. On the 23rd lawyer Orsini and another guard were killed.

Q. Did you finish?
A. Yes.

Q. Now, when your husband returned to you that day, or the next day, after going to Poline, did he tell you what had happened in Poline?
A. Yes.

Q. What did he tell you had happened?
A. He said that there had been a man found who was hiding in a house.

Q. What did he say happened to that man?
A. He said he was killed.

Q. Who did he say killed that man?
A. I don't know.

Q. Did he tell you whether the Fascists or the partisans had killed him?
A. The Fascists.

Q. Members of your husband's organization?
A. No, he did not tell me this.

Q. Well, you knew, did you not, Mrs. Renzaglia, that at that time there were no Fascist troops stationed in Poline?
A. I do not know this.

Q. Isn't it true, Mrs. Renzaglia, that your husband told you that he had shot and killed this American soldier?
A. No.

Q. Do you know a Giovanni Pitotti?
A. Yes.

Q. Where did you know him?
A. At Terni.

Q. How long have you known him?
A. I became acquainted with him in 1944.

Q. Before the time that your husband told you this American had been killed?

Defense (Capt. Robieson): May it please the commission, I think there has been a misstatement made to the witness, and the defense would like to hear the exact question of Captain Young. He would like to have that question read back.

(The question was read by the reporter.)

Defense (Capt. Robieson): May it please the commission, the witness has testified on two or three--during the course here, that that statement has not been made, and we feel that in these cross-statements--

President: All right; the objection is sustained.

Defense (Capt. Robieson): And in these cross-statements--

President: All right; objection is sustained.

Defense (Capt. Robieson): --the witness has the right to have that interpreted.

President: The objection is sustained.

Prosecution: Well, I believe the witness did testify her husband reported an American had been killed.

Capt. Young: It was my recollection of the testimony. I am going to ask the question again.

Questions by Capt. Young:

Q. When your husband returned home after going to Polino on this morning, the 24th of January 1944, did he tell you than an American soldier had been found hiding in a house and had been killed?
A. He said that someone had been killed, but he did not tell me whether he was American, Italian, or what.

Q. Now, do you know Giovanni Pitotti?
A. Yes.

Q. And you know him for some time previous to the 24th of January 1944?
A. Very little time before.

Q. To what organization did he belong?
A. He also belonged to the Federation.

Q. All right. Now, do you know also a Gaetano Patteressi?
A. Yes.

Q. How long have you known him?
A. I know him later, afterwards.

Q. To what organization did he belong?
A. He did not belong to the Federazione; he was in a little town near Terni, Amelia.

Q. Now, in June of 1946 did you meet Giovanni Pitotti?
A. Yes, I did meet him.

Q. And that was during the time that this case was being investigated, is that true?
A. Yes.

Q. And at that time you believed Gaetano Futterossi either to be dead or to be in Switzerland, did you not?
A. I do not believe him neither in Switzerland or dead.

Q. Where did you believe him to be?
A. In his house; I don't know.

Q. Well, at that time didn't Giovanni Pitotti tell you that Gaetano Futterossi had been shot by the partisans or had escaped to Switzerland?
A. No.

Q. And at that time didn't you and Giovanni Pitotti agree upon a plan to name Gaetano Futterossi as the man who shot the American rather than your husband, Tito Rosnaglia?
A. No.

Q. And at that time didn't Giovanni Pitotti suggest to you to find a way of contacting your husband in order to inform him of this plan and to give your husband a chance of acting accordingly?
A. No.

Q. Well, if Giovanni Pitotti took the witness stand and swore under oath that that was true, would you say he was not telling the truth?
A. I am telling the truth.

Q. You have testified you saw this man, Giovanni Pitotti, in June of 1946. Where did you see him?
A. At Rome.

Q. Where in Rome?
A. I met him.

Q. Did you talk with him?
A. Yes, Pitotti was a friend.

Q. What did you talk about?
A. We talked, but not of this thing. I don't know what it is all about.

Q. This man, Giovanni Pitotti, was a friend of your husband's?
A. Yes, he was a friend, an acquaintance.

Q. How long did you talk with this Giovanni Pitotti at that time?
A. Very little.

Q. At that time was your husband in confinement?
A. Yes.

Q. Was your husband discussed at any time during that conversation?
A. Yes.

Q. What was said during that conversation between you and Pitotti?
A. He said--we said that he was there in prison, at Regina Coeli, and that he wasn't very well off, and that--that's all.

Q. Who told you that?
A. Pitotti.

Q. What else did he say about your husband?
A. I used to always meet Pitotti; I don't know right now what he said.

Q. Did you also visit your husband in this jail?
A. Yes.

Q. Did you ever tell your husband in jail that you had seen Giovanni Pitotti?
A. I always used to see Pitotti. I can't say now whether I told my husband that I had seen him, that I had spoken to him--I don't know.

Capt. Young: No further questions.

Prosecution: No further questions.

President: Witness is excused.

(There being no further questions, the witness was excused and withdrew.)

Defense (Capt. Rubieson): May it please the commission, at this time the defense asks the court to explain in open court the rights of the accused with reference to making his testimony. Defense counsel has explained these rights, but we desire that it be done in open court.

President: Will the interpreter read the accused in Italian the rights of the accused, as shown in Appendix 1 of Training Manual 27-255, page 188.

(The interpreter complied.)

Defense (Capt. Rubieson): May it please the commission, there are two matters that co-counsel, the Italian counsel, is called upon to present before this commission. Defense is asking for one of these things, that the Italian counsel will be sworn as to the extra-territoriality of the Vatican and its counterparts in Rome, and the other will be brought up later. I ask that Mario Lauro be sworn as a witness.

Mario Lauro, Livorno, a witness for the defense, was then sworn and testified as follows:

DIRECT EXAMINATION

Questions by judge advocate:

Q. What is your name?
A. Mario Lauro.

Q. Where do you live?
A. In Livorno, Italy.

Q. Are you in position to explain to this commission the legal status as regards extra-territoriality of the Vatican and its immediate counterparts?
A. Yes, sir.

Q. Will you so state?
A. Yes. In 1870, when the Italians occupied Rome, that was the state of the Pope. They seized all territories in the city, all buildings in the city, as well as all the territory surrounding the city that was the territory of the state of the Pope. States of the Church, more correct. At that time the Pope confined himself in the Vatican and never came out any more, as a sign of protestation for the act done by the King of Italy in depriving him of his territory. Count Cavour at that time was the Premier of Italy, and had a law enacted giving to the Pope and to the Church certain privileges. Nobody forbade the Pope to come out; nobody forbade the Church to do as she pleased as far as religious matters were concerned, but the Pope never accepted this law enacted by the Kingdom of Italy, that was known as the Law of Warranties to the Church. Finally, at the time of the Fascist Government, Mussolini was very instrumental in obtaining an appreachment between the government of Italy and the Church. This appreachment was instrumental in bringing about the signing of treaties between the Church and the Government of Italy, which treaties have been signed in February 1929.

In these treaties have been established the rights of the Church, the rights of the state. The Italian government has recognized in this treaty the territorial sovereignty of the Church on the Free Territory of Italy--certain parts, rather, correctly, on certain parts of the Free Territory of Italy. The Pope, before these treaties, was considered the use of the

Q. What is your occupation?
A. Lawyer.

Q. Are you the special counsel for the accused?
A. Yes, sir.

Questions by defense (Capt. Robinson):

Q. Avvocato Lauro, are you licensed as an avvocato in Italy?
A. Yes, sir.

Q. How long have you practiced law?
A. Since 1921.

Q. Have you practiced law in any other country other than Italy?
A. Yes, United States of America.

Q. In what cities?
A. In Chicago and New York, and sometimes in Washington, D. C.

Q. And when you say Chicago, do you mean Chicago, State of Illinois?
A. Yes, sir.

Q. And when you say New York, do you mean the City of New York, State of New York?
A. Yes, sir.

Q. Both aforesaid cities being in the United States of America?
A. Yes, sir.

Apostolic palaces, but that was Italian territory. After the treaties have been signed, the place where the pope used to live, the Church of Saint Peter, became the property of the new state that was built, the state of the City of Vatican. And since the State of Vatican, in relation to his religious obligations, had the necessity to use other certain places inside the city of Rome, it was deemed proper to recognize to these places the same status of the City of the Vatican. So we have, for instance, the church of Santa Maria Majore, which is just near the convent where Ronsaglia was working and which is recognized territory belonging to the City of the Vatican.

Now, as far as the international law is concerned, these territories, ground where these territories are, are actually considered like a foreign state, like they would be a piece of the United States of America in Italy. Neither the Italian police can enter these places without proper authorization by the Vatican. The Vatican, as you know, has its own police. So I assume that Ronsaglia, the accused in this trial, as far as he was on that ground, was an untouchable person by the Americans, by the British, by the Italians. If he had choosed to remain there, nobody could have touched him, unless they went through the regular extradition proceedings, and I am afraid that no extradition would have been granted by the Vatican, being the matter of political reasons attending to the supposed crime of which he had been accused.

Q. I hand to you Defense Exhibit A for identification only and ask you what that document is.
A. This is all correct.

Q. Just tell me who made it and what it represents, but don't read what is on it.
A. I made this copy, copying with a pencil on another sheet of paper, then recopying this on the typewriter. I copied the words which are on this sheet of paper from a sign which is posted along Highway No. 1 in the portion of that highway that goes from the city of Leghorn to the city of Pisa.

Q. Near Quartermaster Depot 61?
A. Yes, exactly that, in a place where there is a fenced portion of the ground just along the highway.

Q. And you represent this Exhibit A for Identification to be an exact copy of the English, the Italian and the German writing upon the sign that you saw?
A. Yes, sir.

Defense (Capt. Robiscom): Any objection on this?

Prosecution: No objection.

Defense (Capt. Robiscom): At this time the defense offers in evidence Defense Exhibit A for Identification, subject to objection by the prosecution.

Prosecution: No objection.

President: It will be admitted in evidence and marked Defense Exhibit A in evidence.

Defense (Capt. Robiscom) (to witness): .. I ask you to read this.

Witness: In the English language there are written these words: "Anyone trespassing will be shot dead." Then--

Questions by defense (Capt. Robinson):

Q. I ask you now, is the same meaning conveyed in the Italian language?
A. Yes, in the line under it.

Q. Then below that line is there another writing?
A. Yes.

Q. And what meaning is conveyed there?
A. The meaning of the English text.

Q. The same text?
A. Of the line which is above.

Q. In what language?
A. The language above is in English.

Q. What language is the bottom line?
A. German, I believe, because I don't know the German language, but I have an impression that it is German.

Defense (Capt. Robinson): May it please the commission, Defense Exhibit A, then, purports to be an exact copy of a sign on the 61st Quartermaster grounds saying, "Anyone trespassing will be shot dead," and that that sign is written in three different languages, English, Italian, and German.

Questions by defense (Capt. Robinson):

Q. I ask you now, did you see more than one of these signs?
A. Oh, plenty of them.

Q. At approximately what distance along the quartermaster grounds highway would you say these signs were erected?
A. Some 50, 60 yards from one to the other.

Q. And numerous of these signs?
A. Yes.

Prosecution: May it please the commission, we object to this line of testimony. I don't see where it is relevant or material in any way.

President: Objection overruled.

Defense (Capt. Robinson): May it please the commission, I'd like to state in there that it is relevant.

President: Well, the objection is overruled. You don't have to, the objection is overruled.

Defense (Capt. Robinson): Would the defense be precluded from making an argument in order that the record will show our purpose?

President: You don't have to show your purposes, because the objection has been overruled.

Defense (Capt. Robinson): That is true, please the commission, but if the defense desires to have the record show why this last--

President: Well, then, go ahead, go ahead.

Defense (Capt. Robinson): The reason for this statement being placed in evidence at this reference to show that here in Italy, where the United States government is in occupation and presumably the war over, and further, we are in the territory of a co-belligerent, we have, presumably on authority of our government, erected such signs thereby individuals are warned that they will be shot summarily for even trespassing, then we are quoting that as an analogy to the case in hand, which the court will know, of where it is alleged that an American soldier in civilian uniform without any markings whatsoever on that uniform was shot by belligerent soldiers in uniform, and so--

Prosecution: Now--

President: It will be more proper to bring that up in your final argument.

Defense (Capt. Robinson): Yes, sir, but it is also proper to be shown in the motion, or in the argument on the motion of the objection, because, if it please the commission, the final argument is not recorded in the record, whereas motions are recorded.

President: The motion was not sustained; I don't see why you have an argument.

Defense (Capt. Robinson): We have the record show the facts.

Questions by defense (Capt. Robinson):

Q. Witness Longo, do you have anything further to testify to concerning Defense Exhibit A in evidence?
A. Yes, that I have seen at daytime and at night time sentries with rifles posted along the place where these signs were posted.

Q. Are posted.
A. Then I have read in the papers and I report to the commission there are chronicles in the newspapers that at least I have read in the papers at least four times or five times, I read in the papers that persons have been actually shot and some of them died along the line where these signs are posted in the city of Livorno.

Defense (Capt. Robinson): There are no further questions.

President: Wait a minute--are you trying to contend that the deceased was trespassing on somebody's property and that is the reason he was shot?

Defense (Capt. Robinson): The defense is merely saying that in the war conditions of the case at hand there was certainly more justification for an immediate shooting than there would be justification for a shooting in the condition shown with regards to Defense Exhibit A. It is an analogy for the consideration of either the commission or the record, or both.

Capt. Young: Is it your contention that the deceased, Staff Sergeant Dale King, at the time he was shot was engaged in pilfering this Italian's home where--

Defense (Capt. Robinson): Now, may it please the commission, just a moment. Don't answer that--may it please the commission, there is an objection to that question.

President: On what grounds?

Defense (Capt. Robinson): On the grounds that this was merely the admission showing these signs. The advocate has not opened himself to a sworn testimony with regard to the issues of the case, but the defense counsel merely stated his contention concerning why the defense counsel introduced Exhibit A, and it is the contention of the defense that by the mere introduction of this exhibit and for that purpose only--this advocate is not on the stand under oath to testify to the general issue of this case, and we object.

Prosecution: The special counsel took the stand.

President: Objection sustained. Go ahead.

Prosecution: The special counsel took the stand openly; there were no restrictions on his testimony at the time.

President: Objection sustained.

Defense (Capt. Robinson): There are no further questions.

President: No further questions.

Prosecution: I have one question.

CROSS EXAMINATION

Question by prosecution:

Q. Would the Church protect on its property a criminal from due prosecution of justice?

Defense (Capt. Robinson): Objection is made to that question on the grounds that it would call for a conclusion from the witness--

President: Objection--

Defense (Capt. Robinson): Just a minute; may I finish? The witness has stated only the law and he has not stated his opinion as to what the Pope may or may not do under a given set of circumstances.

President: Objection overruled; the question will be answered.

Witness (answering): I won't say that the Pope would protect the criminal, but I would say that the Pope would abide to international law as it is set forth in extraditing all persons accused of having committed crimes.

EXAMINATION BY THE COMMISSION

Question by Major Tschirn:

Q. Was the place where the accused, Ramoglia, was arrested, one of those places considered under the Lateran pacts?
A. Yes, sir, they are actually listed in the Lateran pact by their name and location.

Defense (Capt. Rabiesen): May it please the commission, at this time defense counsel wishes to read into the record that the accused was not arrested, but that the accused surrendered himself, and testimony shows that after the agent talked with the accused, then some three days later the accused came out--

Prosecution: We object to the defense counsel testifying for the record.

President: Objection sustained.

Defense (Capt. Rabiesen): Will my objection be noted, that the conclusion of arrested--

President: Everything is noted, everything is in the record.

(There being no further questions, the witness was excused and resumed his seat.)

Defense (Capt. Rabiesen): May it please the commission, our next witness is to be a professor from the University of Pisa whom we could not obtain this morning, but hope to obtain in the afternoon for that session. It is now approximately a quarter to twelve, and we do not wish to start a long witness and run over into the noon hour.

President: The commission will recess until 1:45.

The commission then took a recess until 2:40 P.M., at which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter resumed their seats.

President: The commission will come to order.

Defense (Mr. Lauro): This witness has been already a witness for the prosecution.

Nazzani Anastasio, Via dei Cassero No. 1, Terni, a witness for the prosecution, was then recalled by the defense, and having been admonished that the oath previously taken by him was still binding, through the interpreter, took the stand and through the interpreter testified further as follows:

DIRECT EXAMINATION

Questions by defense (Mr. Lauro):

Q. At the time that in Foline was killed an American soldier, a person in civilian clothes that was discovered to be an American, were you connected with the National Republican Guard?
A. I was a member of the National Republican Guard, only I was in an office.

Q. With what rank?
A. With the rank of captain.

Q. If I will remember, when you have been on the stand before you have said that while being in a street near a certain house you heard shots and you went in the house; is that true?
A. Yes, sir.

Q. When you went in at that house who did you see in that house?
A. When I entered that house I saw a man who was wounded and three soldiers.

Q. Who were these three soldiers?
A. Lamia, Romaglia, and Dolci.

Q. Did you see any weapon in the room beside the weapons that the soldiers had on themselves?
A. I saw a dagger near the wounded man and I sequestered it and brought it to the prefect.

Q. How were they dressed, the three soldiers that you saw in that house?
A. They were dressed in the uniform of the National Republican Guard.

Q. And Romaglia, too, was he dressed in that uniform?
A. Yes.

Q. Can you believe, according to the military orders that you had knowledge of, that Romaglia could have been dressed in civilian suit?
A. I did not see him in civilian clothes.

Q. Do you know if there were orders that all the soldiers when participating to a military action had to be in uniform?
A. A general order was that anybody going on military operations should be in uniform.

Q. Was Romaglia a soldier at that time?
A. Yes, a soldier who depended from the GNR, but detached at the Federazione.

Q. What was it said to you when you entered in the room about the man lying on the floor?
A. I was told that Romaglia shot the man in the sense that when the man lunged toward Romaglia Romaglia shot him.

Q. Did Romaglia himself say that to you or the other soldiers?
A. In that moment the other soldiers told me, that Lamia and Dolci.

Q. Did Lamia tell you if he shot or not?
A. No, Lamia did not tell me.

Q. Have you been informed at that time that an attack by the American soldier had been made against the Italian soldiers and that you reported that fact to your superiors?
A. I was informed that this soldier who was hidden at a corner of the broad bar, broad chest, leaped, lunged toward Romaglia, and even though the soldiers were not under my orders, I, as an officer, collected the information and just made a report, written, which I gave to Lieutenant Colonel Romanni.

Q. Did you make a complete inquiry about these facts?
A. Just a momentary inquiry, because then I had this wounded man taken away to see if we could give him some aid by a doctor.

Q. So you did not question very powerfully, completely, all the soldiers about this fact?
A. For me the statements that the soldiers gave me already were sufficient, that is, that this man lunged toward the soldiers and he was shot.

Q. Was the soldier Deloi in uniform?
A. Yes, he was in uniform.

Q. Were the members of the Federazione of Zorzi required to be in uniform?
A. The soldiers detached at the Federazione had to dress the uniform in military operations, but they dressed in civilian clothes for special missions.

Q. Will you describe Lanzia, as to whether he was dark or light?
A. Lanzia had a rosy complexion and light brown hair.

Q. Which was the taller of the two soldiers, Lanzia or Romaglia?
A. Romaglia was the taller, but the difference was very little.

Q. When was the first time after you entered the room that you talked to Romaglia concerning this incident?
A. I didn't speak to him of this incident when I met him, I only heard that he was bragging of this incident. But I knew he wanted to be promoted, well, to get a commission as an officer, and he may have done this, I believe that he may have done this, just to attribute to himself a merit.

Q. You did not see any part of the action in the room yourself, is that correct?
A. No. When I entered the American soldier was already on the floor and the shots had already been fired.

Q. Did you hear the accused Romaglia say, "I killed the American"?
A. Yes.

CROSS EXAMINATION

Questions by prosecution:

Q. Did the soldier Dalai precede you into the house?
A. I found him in the house.

Q. Was he alone just previous to entering the house?
A. I don't know; I found him in the house. I don't know if he was around there. I don't know if he was near us, or where.

Q. Were you personally acquainted with Lamaia and Romeaglia?
A. Yes.

Q. What organization did Lamaia belong to?
A. Lamaia and Dalai belonged to the unit of Captain Branca and Lieutenant Antonucci.

Q. Was that unit a part of the National Republican Guard?
A. Yes.

Q. Were the members on active duty with the National Republican Guard required to be in uniform at all times?
A. The National Republican Guard had always to be in uniform, but I don't know if anybody dressed in civilian clothes of their own initiative. This has nothing to do with the orders.

Q. Did you observe whether or not the soldier Lamaia was in uniform?
A. Yes, he was in uniform.

Q. Where?
A. Right there in the town a little while after the incident.

Q. Do you recall making a statement to a War Crimes investigator?
A. No, I made a statement to a vice-brigadier of carabinieri.

Q. Is that your signature (indicating)?
A. Yes.

Q. This statement was made on the 18th of October, 1946, is that correct?
A. I don't remember the exact date, but they called me in the barracks.

Q. Is your mind clear now or was it clearer then in regard to the facts of this case?
A. For me my mind is just as clear now as it was then, because I had to report just what I was informed of.

Q. Did you not at that time make the statement, "I do not recall whether he wore military or civilian clothes"?

Defense (Mr. Laure): Pardon me--may I object? I would like that the prosecutor would clarify if that reference to the dying man or to some of the soldiers. I have the impression that from the statement it appears that he refers to the dying American soldier, that he does not remember if he was wearing civilian or military clothes. It does not refer to the--

President: Objection overruled; if I recall well, the witness who was here before the commission made a statement yesterday that he wasn't sure whether the accused was in civilian clothes or not. He made that statement to the commission yesterday here. You can read back the cross-examination from the commission. He wasn't sure whether the accused was in civilian clothes or in military uniform.

Defense (Capt. Robieson): May it please the commission, since at least two of the three on the defense feel that there must be a mixup on the part of the witness on the stand, we will ask, then, for a reference to the notes of yesterday concerning the statement of the witness now on the stand, and the defense asks that the testimony of this witness yesterday be read back.

President: The request of the defense is denied.

Defense (Capt. Robieson): May it please the commission, if the answer is different it will make a difference upon this testimony. At the time--

President: Your request is denied. You ask him a direct question; later on we can go back in the record.

(The question was read by the reporter.)

Witness (answering): I was asked a question concerning the American wounded man and I was asked if I recognized him perfectly. So they put down I don't remember whether he was in civilian clothes or in military uniform, but that regards the American.

President (to reporter): All right. Now you look back into the cross-examination of the court in which the witness was asked in what uniform the accused was dressed and he answered that he wasn't sure.

Prosecution: I object; we should have the entire testimony of that witness read back, because I am sure yesterday he made the statement he was not positive.

President: All right; read the entire testimony from beginning to end.

(Testimony of Mapeani Anastasio on 5 August 1947 was read as requested.)

President: I understand that the statement about the civilian clothes, the accused was in civilian clothes, was made by the witness Vincenzo Bolsi and not by the present witness, Anastasio Mapeani.

Questions by prosecution:

Q. In your statement, did you say that the soldier who killed the American had no superior orders to carry out but acted according to their own initiative?
A. Yes.

Q. And did you further state, "For that reason, I think the whole responsibility is on the executors of that crime"?
A. Certainly.

Defense (Mr. Lamers): I ask the court--I would like to see a copy of that document, that was handed to that witness.

President: You will get a copy. Will you show him a copy, Colonel Wollen?

Defense (Capt. Robinson): We want to see it now; there may be some cross-examination on the document.

Prosecution: May it please the commission, the defense was furnished copies of all statements of the witnesses on July the 15th.

Defense (Mr. Lamers): No, the only reason is this, that in the copies that are being furnished to us that document does not appear--I have noticed that, looking at the document, so I would like to know what it is all about. That is the only point.

Defense (Capt. Robinson): To the knowledge of the defense counsel, the packet that was handed to him on the 15th July of 1947 has not been untastened.

(The statement was handed to the defense.)

EXAMINATION BY THE COMMISSION

Questions by Major Lamers:

Q. You arrived at the scene of this incident shortly after the incident occurred, is that correct?
A. It had already happened, but as soon as I heard the shots I went right away, so it was right after.

Q. Did you investigate this incident?
A. Yes, I asked why they had killed him.

Q. What report did you turn in to your superiors as to the responsibility connected with the incident?
A. As soon as I went--I reported that as soon as I heard the shots I went into the house and I found these three soldiers, Lanzia, Renneglia and Dolci, but that this American hid himself behind the bread box and threw himself toward the soldiers and this soldier just fired.

Q. Which soldier fired?
A. Renneglia. That is, it resulted from the statements made to me that Renneglia fired.

Q. Did Renneglia execute a coup de grace, that is, the killing shot, the final shot that you put in the head of a person?

Defense (Capt. Robiseon): May it please the commission, an objection to that question, calling for a conclusion of this witness. The witness has testified that he was not there, that the shooting was all done, and that there was only a statement made by the soldiers.

Major Leeuws: I will withdraw that question.

Questions by Major Leeuws:

Q. Did you assert in your investigation that a coup de grace was fired?
A. What do you mean by coup de grace?

Q. A final killing shot.

Defense (Capt. Robiseon): May it please the commission, objection here, may it please the commission. That question of the member of the commission still calls for a conclusion on the grounds of the fact that this witness has repeatedly testified that the witness was not present.

Prosecution: May it please the--

Defense (Capt. Robiseon): Now, wait--we are not finished. May it please the commission, may I finish now?

President: Go ahead.

Defense (Capt. Robiseon): There is no testimony here of anything being said about such a final shot being fired, that there was only a report that two other soldiers said a shot was fired and later down on the square some 5 or 6 minutes the accused bragged that a shot was fired. Now, may it please the commission, the question just propounded is unfair.

President: He is asking for what was said in the report of investigation, so if he reported that in that report it is a fair question to be asked. Therefore, your objection is overruled.

(The question was read by the reporter.)

Witness (answering): They told me that this American leaped toward the soldiers and that he thought Renneglia shot, and this man fell on the floor.

Questions by Major Tucker:

Q. Did you take written statements from these soldiers or just report what you had heard by word of mouth?
A. Only oral statements. I made only a summary report, so that the Lieutenant Colonel Benzoni could make a more ample investigation.

Questions by Col. Moore:

Q. Did you see the soldier Dolci enter the room?
A. I found him in the room when I entered.

Q. You testified in the reading yesterday that this man was alone and he preceded you into the house.
A. He said that he was with me, but I was on a small road looking in another direction and checking up on some soldiers and when I ran and went into the house Dolci was already there. It may very well be that he had gone in there one moment before I did.

Questions by Col. Sears:

Q. Did the wounded man speak or attempt to speak in any way?
A. No, he could not.

Q. Was there a fire burning in the fireplace?
A. If the fire was burning? I did not see this burning fire. There was, but the fire was dead, and I don't know if there was any flame or not. I didn't see any flame.

Questions by Col. Moore:

Q. Where is Lanoia, if you know?
A. I don't know.

Q. How many shots did they report to you that Ronsaglia fired?
A. They told me one shot.

Q. How many shots did you hear?
A. Two or three.

Q. Who fired the others?
A. I do not know.

Questions by Major Tucker:

Q. Is the uniform of the Republican Guard the same as the uniform of the Federazione?
A. No.

Q. Was Ronsaglia wearing the uniform of the Republican Guard or of the Federation?
A. Many times I saw Ronsaglia in the uniform of the National Republican Guard, but other times I saw him also in civilian clothes.

Q. Was he wearing the uniform of the civilian guard on the morning of the 24th of January 1944?
A. I saw him there in military uniform.

Q. Is the uniform he wore of such a color and cut that it could be mistaken for a civilian suit by an elderly civilian?
A. No, it could not be confused. The uniform is grey-green.

Questions by Major Loewus:

Q. When you entered the room, did you see any weapons in Ronsaglia's hands?
A. Yes.

Q. What weapon did he have in his hands?
A. Well, anyhow, he had an automatic rifle and a pistol.

Q. Did he have both of them in his hands or was one slung over his shoulder?
A. It seems to me that he had his automatic rifle in his hands and that his pistol was in its holster.

Questions by Capt. Young:

Q. Did the accused ever tell you that American soldier was hidden behind the cupboard when the accused went into that house?
A. Later, but not then.

Q. How much later?
A. 3 or 4 or 5 days.

Q. And you talked with the accused between the time of this incident and the time he told you that the deceased was hidden behind the cupboard?
A. I had no reason for seeing the accused; I was in an office and he was detached at the Federation.

Q. Did you see him at the square shortly after this incident when the American's body was brought to the square?
A. I don't remember if it was on the square; I saw him on the street.

Q. Shortly after, then, a matter of a few hours, after this incident?
A. 4 or 5 minutes after.

Q. 4 or 5 minutes--and that was the time he told you that he had shot the American, is that true?
A. Yes.

Q. And it wasn't until 4 or 5 days after that that he first told you that the American at the time was hidden behind the cupboard, isn't that true?
A. I don't know how much time passed, but anyhow it is a thing that I learned from the soldiers that were there, Salsi and Lamedia.

Q. I am speaking about your conversation with the accused that you testified that you had 4 or 5 days after this incident. That was the first time that you learned from the accused that the deceased was behind the cupboard at the time of the incident, isn't that true?
A. I do not remember exactly, but I know this thing anyhow, because the others had told me this.

Q. I am asking you when did the accused first tell you that the deceased was behind the cupboard at the time?
A. He told me that when I met him, that the soldier was behind the bread box and when he jumped out toward him he wounded him.

Q. When is that?
A. I don't remember the time, but it was a day or so afterwards.

Q. Yes. Now, you testified a moment ago that you heard either 2 or 3 shots fired. Do you remember your testimony in that regard?
A. Yes.

Q. Now, were those shots fired in rapid succession or was there an appreciable length of time, a matter of seconds, between the shots?
A. There may have been an interval of a half or a whole second.

Q. All right. Now, will you demonstrate to this commission by the clapping of your hands the rapidity with which these shots were fired?
A. (The witness complied.)

Q. Only two?
A. I don't remember if there were 2 or 3, because there was much shooting going on also on the outside.

Q. All right. Now, if there were three, was there about the same period of time between the first and second as between the second and third?
A. I heard the first shots together, and then I don't--and the other shots afterwards at a distance.

Q. And you say there was a lot of shooting going on outside--who was doing the shooting outside?
A. When we arrived at the time Goppo put a squad of soldiers facing the mountains to prevent eventual partisan Jugoslav attack. At a certain moment we heard lots of shooting.

Questions by president:

Q. I now hand you Prosecution's Exhibit No. 15, purported to be a floor plan of the house where the American was killed. I want you to draw here a line about half an inch long showing the place where the body of the American soldier was when you entered the house, and another line showing the place where the knife was lying on the floor.
A. (The witness complied.)

President: For the purpose of the record mark where the body was as X-1 and the little line that illustrates where the dagger was lying as X-2.

(The diagram was so marked by the judge advocate.)

Questions by president:

Q. Make two small circles indicating where the soldiers were standing.
A. Here Lancia (indicating), here Romagnia, here Dalai (indicating).

Q. All right, mark these circles 1, 2, and 3.
A. (The witness complied.)

Q. Number 1 is who?
A. Lancia.

Q. Number 2?
A. Romagnia.

Q. And number 3?
A. Dalai.

Q. Does that house have one or two floors?
A. There were 2 or 3 steps going into the house, three steps going into the house, then a small corridor, and then you come into the kitchen.

Q. Only one floor, then?
A. I don't know if on the other side there was a cellar or something, but on the side we entered there were only 3 steps, so the distance from the level of the ground to the level of the floor could have been about 50 or 60 centimeters.

President: Any other questions by any members of the court?

REDIRECT EXAMINATION

Questions by defense (Mr. Laure):

Q. If I am not mistaken, you have said that you have seen the pistol in the holster on the body of Roncaglia?
A. Yes, when I entered.

Q. Now, is it always possible to see a pistol in a holster or not?
A. Yes.

Q. How many types of holsters are there for pistols?
A. There are many types, because the soldiers even made their own, and anyhow there are some that are completely covering the weapon and others that are made in stripes, so that you can see the whole of it.

Q. Have you ever been an officer of the Regular Army?
A. I am a captain in the Italian Army.

Q. Have you been under the colors in time of peace?
A. Yes.

Q. Do you know that there is a rule about the uniform of the officers that when they go out free from any duties while taking their time visiting in town, under their uniform they must wear the pistol at any time?
A. Yes.

Q. Do you know that many officers, to avoid disturbance with their superiors, used to go out in the street of the city with an empty holster?

Prosecution: Objection, if the commission please. This calls for a conclusion on the part of the witness and the accused was not an officer at the time the crime was committed.

Defense (Mr. Laure): I asked the witness if he has been an officer of the Regular Army in time of peace, and I referred to time of peace there too.

President: Objection overruled.

Questions by defense (Mr. Laure):

Q. Do you know that the purpose was only to avoid the weight of the pistol when going walking in the street for pleasure?
A. Sometimes they stuffed paper into their holsters.

Q. And was it possible for officers on duty in the streets to find out that they had not a pistol there, only outside?

Prosecution: I don't understand the question.

Questions by defense (Mr. Laure):

Q. It was possible that the officers patrolling the street to see if other officers were in proper uniform were able to obtain the fact that they had not the pistol only looking at the holster?
A. Yes, it could be seen right away.

Q. Also with the type of holsters which were all covered?
A. Yes, you could see just the same.

Q. You mean that it could be seen by the eyes or that it could be felt by touching it?
A. You could see it even 4 or 5 paces away, but it has only happened in cities, in garrisons.

Defense (Mr. Laure): I would like to take the witness stand to state that I could not tell it.

Questions by defense (Mr. Laure):

Q. So you say that you may be mathematically sure that when a holster is empty you may detect that it is such. Remember that you are under oath, and also if you are mistaken you are letting a great responsibility--

Prosecution: The prosecution objects to comments by counsel, and objects to counsel cross-examining his own witness. He has called this witness, now, as a witness for the defense.

President: Objection sustained.

Defense (Mr. Laure): I rest for the moment.

Defense (Capt. Robiesen): No further questions. The counsel means--we are not ready to rest; no further questions.

President: The witness is excused and the commission will take ten minutes' recess.

The commission then took a recess for ten minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter, and the interpreter, resumed their seats.

President: The commission will come to order.

Ideale del Carpio, Pisa, a witness for the defense, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by judge advocate:

Q. What is your name?
A. Ideale del Carpio.

Q. Where do you live?
A. Pisa.

Q. What is your occupation?
A. Professor of legal medicine at the University.

Prosecution: Your witness.

Questions by defense (Mr. Laure):

Q. Professor, have you ever met a man by the name of Tito Romaglia?
A. I have seen him, because I was asked to by the lawyer a few days ago.

President: Is he a doctor?

Defense (Capt. Rubicson): May it please the commission, yes, in our courts we are obliged to qualify him.

Questions by defense (Mr. Laure):

Q. You are a professor of legal medicine in the University of Pisa?
A. Yes.

Q. Do you have any academic degree beside the title of Professor?
A. Doctor of Medicine and a free teacher in my subject.

Q. When did you graduate as a doctor of medicine?
A. In 1926.

Q. Then in what university did you graduate?
A. Florence.

Q. Is the university of Florence a duly recognized university in Italy by the Italian government and cultured institutions?
A. It is a government university. There is no other kind of university in Italy.

Q. With the degree of Doctor of Medicine can you practice medicine in Italy?
A. Yes, because I already took the government examination for free professor.

Q. When did you start to teach in universities?
A. Practically, from 1926, with an effective title from 1936.

Q. In what university did you teach first?
A. Catania, Cagliari and Pisa.

Q. Beside being a teacher in universities, have you any particular occupation with the Italian courts?
A. I am in general called by penal--in civil tribunals of Livorno, Pisa, Lucca, as a medical legal expert.

President: We will consider him qualified.

Questions by defense (Mr. Laure):

Q. Did you ever meet a man by the name of Tito Romaglia?
A. I saw him two days ago for the first time.

Q. Can you recognize that man now in this room?
A. Yes.

Q. Do you mind to point him out?
A. There he is (indicating).

Defense (Mr. Laure): Let the record show that he has indicated the man Tito Romaglia.

Questions by defense (Mr. Laure):

Q. Have you had the opportunity of physically examining and mentally examining Vito Renaglia?
A. I have been able to make an examination which was extremely summary, due to the short period of time I had.

Q. What can you say to the commission about your findings?
A. From a physical point of view, bronchial catarrh, very diffuse, a lowering of the left pulmonary apex. From a neurological point of view, an accentuation of tendonal reflexes and a not very marked Romberg.

Q. Can you explain to the court in plain terms what are the conclusions of all these medical terms?
A. Those tendonal reflexes are symptoms of a hyper-sensitiveness of the nervous system. Romberg indicates an alteration of the vestibule apparatus in the middle ear.

Q. What consequences would that bear on the character of Renaglia?
A. I have carried out some psychological inquiry into the character of Renaglia. Although the time was very short, a Lurie test was made for tension, and it consists in erasing a certain number of similar marks on a piece of paper, a printed piece of paper, and I carried out this inquiry with the characterological test of Rorschach. The test of Rorschach consists in a series of photographs made with ink spots pressed between 2 or 3 sheets of paper. As a general interpretation, it serves to know the capacity of imagination that the individual has, and of fantasy. On the basis of the answers to the questions and on the interpretation of the answers that the individual gives it can be established if the individual is capable of logical reasoning. If he follows with accurateness the test which is presented to him, if he looks at superficial things or general things rather than particular ones, and other small particulars which it would be long to speak of without having also the test at your disposal to show.

Q. You have found that Renaglia has a capacity of attention, to be attentive?
A. From the observation of the test, it should be said that Renaglia has a capacity to be attentive which is very low.

Q. You have noticed through your test that Renaglia has that defect which is called in Italian pletorico dell'io? Explain to the court what that means.
A. When we say that an individual is pletheric from a physical point of view, we mean an individual that has an exuberance of the masses. From a psychic point of view, an individual is pletheric of the ego.

Q. That is a correct translation, but in what regard is a pletheric of himself?
A. An individual who believes himself to be the motive center of everything, believes himself to be in the central and important position and no one else can do anything but him.

Q. What you have found about his impermotion, and explain what means that term.
A. He is an individual who reacts very exuberantly to anything, to verbal stimulants.

Q. To any stimulation?
A. Verbal stimulation.

Q. Did you find that he is easy to imagine things and imagine fantasies?
A. From the Rorschach test he demonstrates a certain amplitude of imagination.

Q. Now, not talking of Renzaglia but in general, do you think that it is possible for a human being receiving a nervous shock to formulate in his mind the idea to have done something, particularly in relation to the physical facts that have produced the nervous shock?
A. This is even a common observation of any police office, when a fact of a certain important case comes about, it is not rare that there be individuals with a nervous system that is weak, that can present themselves declaring they have committed certain facts, certain things, and that way deviating the investigational activity.

Q. Now, then, do you know, always speaking in general, that it is possible that a person telling a lie, and that he says that lie again and again and finally believes that it is the truth and defends what he is saying as it were the truth?
A. We know that in the infant age there is a period which is called the period of mittomania, myth mania, the mania of myths, and in this period children tell lies just for the enjoyment of telling lies, and they are so convinced of what they say that they defend it notwithstanding corporal punishment. Now, facts of this nature can be found in adults sometimes when adult individuals remain infants in their minds and remain in the period of myth mania.

President: Before you go ahead, will you please explain to the commission what you are trying to prove with this line of questioning?

Defense (Mr. Laure): To find out if Renzaglia, from the examination made by this competent professor, can be a person subjected to mittomania.

President: Would the summary examination made two days ago prove that?

Defense (Mr. Laure): I understand yes, or at least can give the chance for a further, more complete, examination.

Prosecution: You are suggesting that the accused is incompetent mentally to defend himself?

Defense (Mr. Laure): No, I am not saying that he is incompetent to defend himself, but he is not completely in accord with the Latin term, compos sui, which is completely unto himself, but this fact is only one side of the question. The true side, that I am trying to bring out now, is that Renzaglia is a man afflicted with mittomania, that is, with the habit, which is not coming out from his soul but only from his natural bent to say lies and to insist on lies and particularly to bring out that he is a man that he is always thinking of himself as the motive center of everything and especially when the lie is said in relation to his personality, making his personality greater, at least in his eyes, he insists on that lie.

President: Go ahead.

Questions by defense (Mr. Laure):

Q. Now, after you have said these things in general, what comments in particular about Renzaglia?
A. The time I have had to examine him from a psychological point of view is very short. However, the results of the conversation with Renzaglia--I have

found that he is an individual who has a certain tendency to exaggerate. For instance, regarding what his capacities are, he told me he was an important employee of a very large firm, and instead what the lawyer and the wife told me, he was a very modest employee, nothing exceptional. This shows a tendency to tell things which are not true and to be persuaded of what he is saying.

Defense (Mr. Laure): Your witness.

CROSS EXAMINATION

Questions by prosecution:

Q. You say the accused has a certain tendency to exaggerate. What test disclosed that tendency?
A. The tendency to exaggerate is found in a man that talks an awful lot and says much more than what is really in reality.

Q. What test did you make to determine that?
A. I have only been able to carry out the Rohrschach test, which does not give a response to this particular query, but my experience in criminal psychology induces me to believe that there is in Romanglia this tendency to exaggerate. The medical diagnosis and sometimes the psychological diagnosis does not all derive from exact data or objective data, but from the general impression that the examiner observes from the case.

Q. How much time did you spend in your examination?
A. Six hours.

Q. Is the accused mentally competent?
A. The accused is mentally sound, he has a capacity of will and understanding according to our, the requisites of our, in relation to our penal code.

Q. Does he have the mental capacity to assist his defense counsel in his own defense?
A. I believe so, yes.

Prosecution: No further questions.

REDIRECT EXAMINATION

Questions by defense (Mr. Lauro):

Q. But do you think that he is able sometimes also to mislead the defense counsel?

Prosecution: The prosecution objects to that question.

President: Objection sustained.

Defense (Mr. Lauro): Nothing else.

EXAMINATION BY THE COMMISSION

Questions by Major Lacsuna:

Q. Let's take a hypothetical case. If a man killed somebody and three years afterwards he requested a job of a priest, then two days or three days after obtaining this job he informed this priest of that former act, what would you say of that man?
A. From what point of view?

Q. Would you say that that man had that on his mind--that is, from a psychological point of view?
A. If he doesn't suffer from amnesia, he may have--it could be possible that he could have that fact on his mind.

Defense (Mr. Laure): (To witness:) If he had the amnesia he may remember that?

Interpreter: Well, he said have in his mind.

Questions by Col. Sears:

Q. Any indication of the use of narcotics?
A. I have seen him only these last few days, and I have found no sign of him being addicted to drugs.

President: No further questions by the commission. Witness excused.

(There being no further questions, the witness was excused and withdrew.)

Defense (Mr. Laure): Sir, I move at this moment if it is possible to excuse that professor. He has to return to his profession.

President: Very well.

Defense (Mr. Laure): If you don't mind, I will absent myself for a moment. I will be back soon.

President: The commission will take a five-minute recess.

The commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter resumed their seats.

President: The commission will come to order.

Defense (Capt. Robieson): May it please the commission, the defense is calling one of the witnesses the prosecution have listed. He is the witness Bonanni Ezio; I am making him a defense witness.

Bonanni Ezio, Desio, Province of Milan, a witness for the defense, was then brought into the courtroom and through the interpreter was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Judge Advocate:

Q. What is your name?
A. Bonanni Ezio.

Q. Where do you live?
A. At Desio, Province of Milan.

Q. What is your occupation?
A. Druggist.

Q. Do you know the accused in this case?
A. Yes.

Q. Will you point him out?
A. (The witness indicated.)

Prosecution: Let the record show that the witness has indicated the accused. Your witness.

Questions by defense (Mr. Laure):

Q. Do you know that the accused's name is Tito Ronsaglia?
A. Yes.

Q. In January 1944 where were you?
A. At Terni.

Q. Doing what?
A. I commanded the 104th Legion of the National Republican Guard.

Q. Is the legion the equivalent of a regiment?
A. Yes.

Q. What was your military rank?
A. Lieutenant Colonel of the Guard.

Q. Did you ever belong to the Italian Regular Army?
A. Yes.

Q. In what guard?
A. Bersaglieri, and then I was transferred to the medical corps.

Q. In the Regular Army were you an officer or a private?
A. Officer.

Q. When you have been commissioned as an officer for the first time?
A. In 1918.

Q. Did you take part to the war previous to the present war with the Italian Army?
A. Yes, with the Italian Army.

Q. As an officer?
A. Yes.

Q. Do you have any military awards?
A. The Cross of War and wounded in war.

Q. At the time you were the commanding officer of the 104th Legion in Terni, did Tito Ronsaglia belong to your legion?
A. Yes.

Q. You were then his superior that controlled his military actions?
A. Of all of them.

Q. Was Tito Ronsaglia in January 1944 detached to some particular duty of a political character?
A. It was of political and military character.

Q. Did Tito Rossaglia wear the uniform of a soldier of the National Republican Guard?
A. Yes.

Q. Do you know that Tito Rossaglia was authorized to dress in civilian clothes sometimes?
A. Yes.

Q. Was he authorized to dress in civilian clothes when taking part in military operations?
A. No.

Q. Do you remember if something happened on January 24th, 1944, in Terni or nearby there?
A. Yes.

Q. What happened?
A. At Poline a Fascist and an NCO of the Guard were killed.

Q. Pardon me--I asked you if on January 24th had happened something--I didn't ask you another date.
A. An American soldier was killed.

Q. What happened on January 23rd, 1944, the previous day?
A. An NCO of the Guard, Centi, and a lawyer called Orsini were killed.

Q. This lawyer called Orsini, was he a Fascist?
A. Yes.

Q. Was he an officer of the Republican Guard?
A. He was an officer of the militia before, when the militia existed. That is not in the period of the republic.

Q. After the killing of Lawyer Orsini and Militiaman Centi, had you ever that a meeting was held in Terni just the night, the evening, that the killings happened?
A. Yes.

Q. Where was this meeting held?
A. At the Federation.

Q. In the office of whom?
A. I don't know.

Q. Who were present at this meeting?
A. I was at Amelia when the meeting took place--I was called by phone.

Q. Did you go to Terni?
A. Yes.

Q. Did you reach the Federazione offices when the meeting was still going on?
A. No.

Q. Did you arrive there soon after or long after?
A. I cannot say.

Q. What did they say to you when you arrived in the offices of the Federazione in Terni?
A. They informed me of the death of the two and they requested a military unit to render honors to the bodies and to retrieve the bodies.

Q. Did you give orders to the units of your legion-to some units, rather, of your legion, to go to Polino?
A. To an officer.

Q. What orders did you give to that officer?
A. To get a unit ready and stand by.

Q. Did that unit leave Terni the same day or the morning after?
A. The morning after.

Q. Do you know how many men, about, there were in that unit?
A. I do not know exactly, but it was a small unit of men, because we had few men at our disposal.

Q. Can you say 10, 20, 30, 40, or 50?
A. Exactly, no.

Q. About.
A. 20, 25 men.

Q. It is your knowledge that to Polino, beside the militiamen in uniform went some men belonging to the militia in civilian suits, civilian clothes?
A. There were men of the police.

Q. But did they belong to your military unit?
A. No.

Q. Where did they belong?
A. To the police.

Q. To the civilian police, you mean? There is a military police, there is a civil police.
A. I mean civilian police, because we did not have military police.

Q. Did you go to Polino yourself?
A. No.

Q. Did Captain Mascani go to Polino?
A. Yes.

Q. Did Captain Mascani, after coming back from Polino, report to you something about the killing of an American soldier?
A. Yes, at first vocal, and then written.

Q. Do you remember what Captain Mascani said and wrote to you?
A. Yes. There is a statement of mine concerning this.

Q. What did you say?
A. I expressed displeasure at the incident and I placed Remoaglia under inquiry informing my direct superiors.

Q. Why did you put Roncaglia under an inquiry?
A. To be able to establish what the responsibilities were and how the facts had come about.

Q. But why you picked out Roncaglia just to inquire?
A. Because in the report forwarded to me by Captain Mascani it was said that Roncaglia had killed him.

President: Had killed who?

Witness: The American.

Questions by defense (Mr. Laure):

Q. Did ever Captain Mascani, at that time or any time after, tell you that he had seen actually with his own eyes Roncaglia killing the soldier?
A. No.

Q. Then what happened about your inquiry--did you find anything about Roncaglia?
A. As soon as I had started my inquiry I was informed that the head of the province, the head of all of the province, went to Poline himself to initiate an inquiry, and not to get tangled up with his work--

Defense (Mr. Laure): Now, wait a minute--different translation. "To avoid to disturb with my mission the mission of the prefect that was my superior."

Prosecution: May it please the commission, we have an official interpreter here--

Interpreter: That is not avoiding anything. Not to--

Defense (Mr. Laure): Disturb.

Interpreter: It is not disturb; it is to--

President: Interfere.

Interpreter: Not to interfere with the work of my superior.

Questions by defense (Mr. Laure):

Q. Was it usual that when a case of that type happened an inferior set himself aside to leave the superior do what he pleased to do?
A. Always.

Q. Was that a duty?
A. Always, unless you had a direct mission.

Defense (Mr. Laure): "A specific--"

Interpreter: A direct mission.

Defense (Mr. Laure): Did he say a specific order?

Interpreter: I'm sorry, but the witness said "direct" and I am translating "direct".

Questions by defense (Mr. Laure):

Q. Do you know when the men that went to Folino returned to Terni?
A. About 1360 hours.

Q. Do you remember that you have seen Romoaglia Tito at that time in some place in Terni?
A. Yes.

Q. Do you remember if he was dressed in civilian clothes or with a uniform of the National Federal Republican Guard?
A. In the uniform of the National Republican Guard.

Q. Did he wear any arm?
A. An automatic rifle.

Q. Did you see if Romoaglia had a pistol at that time?
A. I did not see it.

Q. Now, I show you two holsters for pistols used generally in the Italian Army. Are these—

Prosecution: The prosecution objects to the exhibit offered unless they are shown to have been the type used in 1944 by the Army.

Defense (Mr. Laure): We may ask the—

President: Objection overruled; go ahead.

Questions by defense (Mr. Laure):

Q. Can you tell us if these types of holsters, are they the same as were used also in January 1944?
A. There were these and other forms.

Q. And also 1918?
A. No.

Q. What type there was in 1918?
A. (The witness indicated.)

Q. The covered type. Now, if a man wears, like I am wearing this moment, and if I have here a revolver, can you say when it is closed if you may see if the revolver is in there or not?
A. If the holster is made for that particular pistol, yes, but if the pistol is of a similar caliber it goes in.

Q. Was it the use of the Italian officers to go outside when free from the duty with an empty holster?
A. Yes.

Q. Was it possible to obtain the fact that the holster was empty?
A. No.

Q. The material is hard or soft? Please let the record show that he put something which is not a revolver inside the holster.

President: What are you trying to prove with that?

Defense (Mr. Laura): That a revolver can be in but also that a revolver cannot be in.

EXAMINATION BY THE COMMISSION

Question by president:

Q. Would an officer going on a military mission carry an empty holster?
A. No.

Question by Major Lawson:

Q. Does the butt of the Berretta 7.65 or the Berretta 9 millimeter protrude slightly from the holster?
A. Caliber 9, yes.

Q. Does not the caliber 7.65 also protrude slightly?
A. No, the butt does not in the holster belonging to caliber 9.

Q. Is there not a holster of a similar type for the Berretta caliber 7.65?
A. Yes.

Major Lawson: That's all.

President: The commission should not have interrupted you before you finished your direct.

Defense (Capt. Robinson): May it please the commission, with the possible thought of shortening the rest of this case, the defense counsel asks for a five-minute recess. I think there are a lot of questions we can avoid and save a lot of time.

President: All right; request granted.

The commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter resumed their seats.

President: The commission will come to order.

Prosecution: Let the record show that the witness who was on the stand at the time the recess was taken is still on the stand, and may I remind you that you are still under oath.

(The admonition was translated by the interpreter.)

Defense (Mr. Laura): No further questions.

CROSS EXAMINATION

Questions by prosecution:

Q. Who ordered the expedition to Paline?
A. At Paline--that was not an expedition.

Q. Who ordered the movement of troops and personnel from Terni to Foligno on the 24th day of January 1944?
A. The German command.

Q. Who commanded the men composing that party?
A. Which group?

Q. The group going to Foligno from Terni on the 24th day of January 1944.
A. A German officer.

Q. I believe you said the meeting prior to the trip to Foligno was held in the office of the Federazione, is that correct?
A. Yes.

Q. There has been evidence before this commission that Coppo Alberto commanded the men going from Terni to Foligno. Is that correct?
A. No. The Federale Coppo only communicated to me at my arrival the request for military personnel to render honors to the bodies of the dead.

Q. Who called you to Terni?
A. By telephone.

Q. Who?
A. My duty officer.

Q. Which one--or, what unit of your command made the trip to Foligno on the 24th day of January?
A. A mixed unit. We did not have a constituted unit; we had services.

Q. At that time the accused was on detached service with the Federazione, is that correct?
A. He was also on detached duty at the Federazione; the Federation had a guard.

Q. You had approximately 20 or 25 men on the trip, is that correct?
A. Yes, about.

Q. The other members of the party were composed of policemen and members of the Federazione, is that correct?
A. That were going with the Federale.

Q. In what capacity did Captain Manzoni go to Foligno on the 24th of January 1944?
A. As my trustworthy officer, because I had given him the mission of organizing the unit.

Q. Who was in command of the unit?
A. Captain Branca.

Q. Do you know what time the unit departed from Terni for Foligno?
A. I do not know the exact hour, but certainly before eight o'clock.

Q. What time did you arrive in Terni?
A. At eight o'clock. That is why I can establish it was before eight o'clock.

Q. The expedition had already cleared the town, at that time, is that right?

Defense (Mr. Lauro): Pardon me, sir, there is a mistake in the translation. Previous, when something was questioned, the prosecution has asked to the witness if that was an expedition. The witness has answered no. Now the prosecuter has asked if the expedition had cleared from the town by eight o'clock. The interpreter has translated the word "expedition" with the word "gruppo", which is not expedition.

Interpreter: Well, I'm sorry. I had "group" in mind.

Witness (answering): At what time?

Questions by prosecution:

Q. At eight o'clock?
A. Yes.

Q. Do you know what time they left?
A. Exactly, no.

Q. Approximately.
A. I was not present.

Q. Did Captain Branca make any report to you?
A. No, because only Captain Mascani was to make a report.

Q. Was not Captain Branca in command of your unit that went to Folina?
A. Yes.

Q. Was the accused Ranzaglia with your unit or with the Federazione?
A. I don't know.

Q. Where did Captain Mascani report to you?
A. At Terni.

Q. When?
A. At the command.

Q. When?
A. In the afternoon of Monday, after having arrived at Terni, at first vocal and later in writing.

Q. Did Captain Mascani report to you immediately upon his return to Terni?
A. Yes.

Q. Do you remember what time he reported to you?
A. From 1400 hours to 1500 hours.

Q. What time did you first see the accused Ranzaglia?
A. About 1500.

Q. Did the accused report to you before Captain Mascani reported?
A. No.

Q. Where did you see the accused?
A. In the street.

Q. Was he with your unit at that time?
A. No, because there were--there was more than one barracks.

Q. Being on detached service with the Federazione, did the accused live in a barracks?
A. He could also be authorized to sleep at home.

Q. Did the men keep clothing in the barracks, those that lived at home?
A. I don't understand.

(The question was read by the reporter.)

Witness (answering): Which clothes?

Questions by prosecution:

Q. The ordinary clothing that a soldier or a civilian might have.
A. You mean civilian clothes?

Q. I mean their extra clothing that they were not wearing at that time.
A. No, they were issued only one uniform.

Q. Did the men living at home keep civilian clothing in the barracks?
A. No.

Q. How many men did you see returning from Poline on the afternoon of January 24th?
A. I was not present at the return of the mission.

Q. Then you didn't see any of them returning from Poline?
A. At the return, no. I only met a few groups that were returning to the barracks.

Q. Then, as a matter of fact, you don't know anything that happened on the 24th day of January except that Captain Manzani reported to you, is that correct?
A. Nothing else.

Prosecution: No further questions.

EXAMINATION BY THE COMMISSION

Question by Col. Moore:

Q. Did Romaglia say anything to you when you saw him in the street about 1500 hours on the 24th?
A. Nothing. He only saluted, as an inferior salutes a superior.

President: Any further questions? Apparently not.

Defense: No further questions.

Defense (Mr. Laura): Only one question, sir.

REDIRECT EXAMINATION

Questions by defense (Mr. Laure):

Q. Did you ever have any British prisoners of war in your barracks?
A. Yes.

Q. Do you remember their names?
A. Mack, Scottish, and George, English, and I knew that Mack was a grocer in Scotland.

President: When you say English you mean British and not American?

Witness: British.

Questions by defense (Mr. Laure):

Q. Under what circumstances did these prisoners happen to be in your barracks?

Prosecution: May it please the commission, I don't see the relevancy of this.

President: Go ahead.

Witness (answering): They were found by some of my men on patrol.

Questions by defense (Mr. Laure):

Q. Did Romaglia have anything to do with these British soldiers in your barracks?
A. No.

Q. But do you know that he was in contact with them sometimes?
A. Oh, yes, he was also waited upon at mess by them together with other NCO's, non-commissioned officers.

Q. Do you know that Romaglia offered a civilian suit to one of these prisoners for a particular reason that you may explain to the court?
A. Yes.

Q. In what circumstances?
A. I took Mack to my house and only Mack, because George was ill with malaria.

Q. And why you had that prisoner dressed in civilian clothes?
A. To hide him from the Germans; otherwise, the Germans would have taken him from me.

Q. Did Romaglia know that?
A. Yes.

Q. Did he act voluntarily in giving you his civilian clothes?
A. As soon as they were requested by me he gave them to me immediately.

Prosecution: No further questions.

President: Witness excused.

(There being no further questions, the witness was excused and withdrew.)

Defense (Capt. Robinson): May it please the commission, the defense feels that it can finish this case very briefly in the morning, but due to the fact that on our four days of preparation we are truly tired out, we would like to have the evening to recapitulate, to size up our case, be ready for arguments in the morning, and possibly only one or two brief statements from a few witnesses in the morning. We feel that the case can be completed very early tomorrow, including argument.

Defense (Mr. Lamar): If it is convenient, I will be here in the morning, but if it would be possible and not distract the commission, I would prefer to have time in the morning. You have said—perhaps I misunderstood you—told the commission what you want? Now I am asking this. If the Commission wants that for tomorrow morning, I have no objection, but if there is the possibility to open the commission in the afternoon instead of the morning and finish in the afternoon.

President: We have other cases to take after this tomorrow.

Defense (Mr. Lamar): Then it will be as the commission is pleased.

President: We will start at 8:30 tomorrow morning. We will adjourn until 8:30 in the morning.

The commission then at 4:55 P.M., 7 August 1947, adjourned to meet at 8:30 A.M., 8 August 1947.

Clyde W. Weller
CLYDE W. WELLER
LT COL, INF
Judge Advocate

Leghorn, Italy
8 August 1947

The commission met, pursuant to adjournment, at 9:50 A.M., all the personnel of the commission, the prosecution and the defense, who were present at the close of the previous session in this case, being present. The accused, the reporter and the interpreter were also present.

President: The commission will come to order.

Defense (Mr. Lauro): I want to address the commission in Italian.

Defense (Capt. Robinson): May it please the commission, the special counsel is about to tell the commission in Italian, in order that it may be passed through the interpreter, the accused will hear the Italian spoken words. The interpreter will then proceed to be placed before the commission the same as any other witness, and at this time the defense is taking the opportunity to inform the commission of the fact that on all of these arguments, when we discussed motions and so forth, they were not translated from the interpreter back to the accused, who speaks Italian, and we feel that that has been almost an error in this commission. This Italian accused has a right to know every word that goes into this record.

President: He has an Italian defense counsel, and--

Defense (Capt. Robinson): But the Italian lawyer is defending him, but when some of his own conversation is going on, on arguments and motions, the accused did not have the benefit of knowing those questions.

President: That is the reason we have an Italian counsel here, to take care of that.

Defense (Capt. Robinson): At this time we request the Italian counsel be allowed to make his talk at this time in Italian through the interpreter in English to the commission, in order that the interpretation may go on to the record in English and in order that the accused may have benefit of every word spoken.

President: Go ahead.

Defense (Mr. Lauro): From the talks I have had in this last week with the accused, and from what privately Professore del Carpio referred to me, and Professore del Carpio himself confirmed under oath in front of the commission, I have formed the honest conviction that Tito Renzaglia, although not being mentally disabled, although being able to understand in part the procedure which is being carried on against him; however, he is in an infusion psychological state, which it is opportune at this moment that instead of having him answer questions which in this moment may not be understood by him, it is better that I instead should tell the commission what is my conviction which I have arrived at after my conversations with Renzaglia.

Tito Renzaglia, in any circumstances, from the very first moment I have known him, has insisted with me in the strongest manner that he is completely innocent of the crime of which he is accused. I have formed the conviction, as certainly the commission also formed it, that the documents and the deposition presented to the commission are so confused and sometimes tend to deviate from the truth--

Prosecution: May it please the commission, the prosecution objects to this argument. If there is a motion--

President: Is this a statement or an argument?

Defense (Mr. Laura): A statement.

President: Well, a statement has to be very short. You are going too long for a statement.

Defense (Mr. Laura): The accused told me as his attorney that he is innocent, that the day of January 24th, 1944, he was at six o'clock or about that time, between 6 or 6:30 or 7, which he doesn't recollect just, in his house at Terni with his wife in the bed, when somebody knocked at the door--

President: You are making a statement and not an argument. Now, this sounds like an argument to me, the final argument in the case.

Defense (Mr. Laura): I am sorry, because I did not understand what were my allowances this morning.--May I ask permission to stand or to sit?

President: Do you want to take the witness stand?

Defense (Capt. Robinson): May it please the commission, the defense counsel thought he had this thing clarified and the defense counsel stated on numerous occasions and here in open court, as written on this pad to his co-counsel, "Your unsworn testimony must be what the accused told you as his attorney," and then verbally the defense counsel explained to the Italian co-counsel, "Your private opinions and deductions are not to be a part of this unsworn testimony." As a matter of fact, it has been explained to the counsel that he is virtually the accused on the stand not sworn.

Prosecution: Then counsel is making an unsworn statement for the accused?

President: Make it a matter of record that everything that has gone on so far was part of that unsworn statement by the counsel on behalf of the accused.

Defense (Mr. Laura): He has stated to me that he is innocent, that the happenings from the morning of January 23rd--pardon me, may I continue in Italian? (Continuing through the interpreter:) Tito Romaglia told me he was innocent on all occasions on which I have spoken with him of this trial. He gave me this version of the facts. The morning of 24 January 1944, Tito Romaglia was at his home in Terni, sleeping in his bed with his wife. A person who is called Donati and who was the vice-secretary of the Federazione of Terni came and rang the bell of his house. He awoke the wife and Romaglia, and said to Tito Romaglia, "Hurry up, put on your military uniform and come with me, because we must go to Foligno following the incidents which happened yesterday." Then Tito Romaglia dressed himself up, very much in a hurry, with his military uniform of the National Republican Guard, which he kept in his home, because he did not sleep in the barracks or at the Federazione, since he was authorized, since he was married, to live with his own family, out of military quarters. He told me that his wife helped him to dress, his military uniform. He told me that after he had dressed in military uniform he took his automatic rifle and not the pistol, which he left at home, because it is true that he had a pistol but this pistol he used when he dressed in civilian clothes.

Dressing in military uniform, since he was just a simple corporal, he had no right to carry a pistol, the pistol was not part of his military uniform. He took the automatic rifle and went away from the house. He kept his weapons in his house because not having his quarters in military quarters he had to have at his prompt disposition his weapons for all the times that they would call him urgently. As he left the house he went toward the Fascist Federation, where he found other soldiers already armed and found civilians armed. With the others he got on a truck and went to Polino. When he arrived at Polino he was sent on a patrol in the town. At a certain moment he found himself in front of the house where shots were fired, that he heard from the outside, while he was in the street, and then he believed that it was his duty as a soldier to go into that house and see what had happened.

In fact, after all the shots had been fired, he entered the house. He saw that there were two other soldiers. He saw also that on the ground lay the body of a person dressed in civilian clothes. He approached to see better, and was taken by a great horror. He felt badly in seeing that that civilian who was lying on the floor was dying. He also saw that near the body of this man, between his body and the wall, where there was a table, not the wall where there was a bread box, there was a dagger on the floor.

His head started to spin. At that moment Captain Nascani entered, so, seeing that a person who was superior in rank to him had entered the room, and since he felt bad and needed to breathe some fresh air, very much disturbed, he left the house, always thinking of the tragic scene he had seen.

He does not remember to have accused himself in that moment to have killed the American, and he could not have been able to do this, because he was not present when the shots were fired.

Afterwards he does not remember many things. He remembers only having returned to Terni with the other soldiers, always preoccupied and disturbed of the scene that he had seen, and that he arrived at Terni at about 1300 hours. He remembers that on the way he met on the other sidewalk his Colonel Bonanni, and that he saluted him.

Defense (Capt. Robieson): If the commission please, I would like to add just one more thing. From the conversations which I have had with Tito Roncaglia, I was also informed by him that he did not have, in the military establishments of Terni, or at the Fascist Federation, or in any other place that was not his home, any clothes of any kind, either military or civilian.

President: The commission will take five minutes' recess.

The commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter, resumed their seats.

President: The commission will come to order.

Prosecution: At this time, for the purpose of the record, since a question of interpretation is brought up, I would like to state that the accused is represented by the regularly appointed defense counsel, an old, experienced, well-qualified lawyer. He also has a military assistant. The accused is also represented by a special counsel, an Italian lawyer of long experience. The prosecution has furnished the defense everything that they have asked for that was within our power. They have not asked us for an interpreter, and I am sure, had they felt that an interpreter was needed, that is, a special interpreter for the accused, that they would have asked us.

Defense (Capt. Robieson): May it please the commission, at this time is the commission open?

President: The commission will come to order.

Defense (Capt. Robieson): That is what I am asking--is the commission open?

President: Yes.

Defense (Capt. Robieson): At this time the accused Tito Romaglia will express to the commission his desire as to whether he will remain silent or take the witness chair not under oath or take the witness chair under oath. I ask the accused to do that for himself, and the interpreter tell the accused to make his decision of what he desires.

Interpreter (complying): I asked him if he has made his decision as to what he desires to do.

Defense (Capt. Robieson): What is that decision?

President: Wait a minute. The question by the commission to the accused--Have you decided what you are going to do--do you want to remain silent, make a sworn statement under oath, or a statement not under oath?

Accused: A statement under oath.

Tito Romaglia, the accused, was then through the interpreter sworn as a witness in his own behalf and took the stand and through the interpreter testified as follows:

DIRECT EXAMINATION

Questions by judge advocate:

Q. What is your name?
A. Tito Romaglia.

Q. Where do you live?
A. In this moment my wife lives in Rome. I have no residence.

Q. What is your occupation?
A. Clerk.

Q. Are you the accused in this case?
A. Yes, in this case.

President: Make it a matter of record that the accused was explained his rights yesterday.

Questions by defense (Capt. Robieson):

Q. Romaglia, do you wish to make a statement before this court in your own words or do you ask your defense counsel to ask questions of you?
A. As you wish.

Q. I ask you where you were on 25 January 1944.
A. At Terni.

Q. You have heard the testimony that some Fascist members were killed in an adjoining town of Poline, is that correct?
A. I heard it only the morning of the 24th of January.

Q. On the morning of 24 January 1944 where were you sleeping?
A. In my own home in Terni, Via Montegrappa 64.

Q. About what time did you arise that morning?
A. I do not know the hour, because I did not look at my watch. It could have been 7, half-past seven.

Q. Do you recall why you arose that morning?
A. Yes.

Q. State to the commission what happened.
A. I was sleeping when I heard the door rapidly being knocked at. I got up to see who it was, and I saw that it was Luigi Donati, Vice-Federale at the Terni Federazione, who very excitedly told me to dress immediately because at Poline two Fascists had been killed, Orsini and a corporal of the National Republican Guard. I told him to wait for me with the car, because he had a vehicle downstairs, but he could not do so because he had to go and invite others. I dressed up very hurriedly, dressing in uniform of the National Republican Guard that I always wore and especially when I had to go out of my residence. I took the automatic rifle, that I always kept at my home, because I was authorized to sleep at home because I was married, and I left.

In about ten minutes I reached the Federazione, Fascist Federazione. There I saw there was a movement of men that were getting ready to leave for Poline. We were waiting with all the men assembled together, that is, the men that were to leave, because some men had been requested to go from nearby towns, and also the police from Amelia came, and we left for Poline.

We arrived at Poline--I don't know what time, because I didn't have a watch to look at; it may have been at half-past eight. We stayed a bit outside the town, and in the meantime the order had been given that all men from 16 years of age and above were to assemble in the square. When the established time had expired, but I don't know at what time the expiration had been set, not being an authority, and I had not been there with those who had decided. I know that at a certain moment they gave us the order to patrol.

As I arrived on the square, I saw a group that was going toward a street, the name of which I do not know, because it was the first time I went to that town. At a certain moment I saw a civilian with the Commissariat of Public Security, Patteroni Gaetano, who was speaking with this man, but I don't know what they said. He turned around and said watch out, that there is someone hiding in a house. As we arrived at this door, the door was opened, either by the owner of the house or by the other, I don't know well, because I was under the tension of danger in that moment, because it could be thought that in that home there could have been ten persons and that it was an ambush.

As the two went into the house, that is, the two which I have mentioned, I heard two shots, and I remember it perfectly. At hearing the shots, as it was my duty, I went immediately into the house followed by another soldier or by other soldiers--I don't know how many they were--and I saw a man in civilian clothes who was still moving. At the same time, Captain Nascemi, entered, and in that moment I was taken by a certain impression in seeing that poor man in those conditions, so I went out of the house, and they gave me the order to accompany the proprietor of the house to the square.

All that happened in there later I do not know. I know that later in the square I heard that the body of the killed man was that of an American. This is all I can say for the sake of truth and of the facts as they were.

Q. Did you at any time in the town of Palino see the body of Lawyer Orsini?
A. Yes.

Q. What was the condition of that body?
A. Horribly mangled. The brain matter was scattered around.

Q. Describe a little further what you say.
A. We entered into a small enclosed place near the fountain on the square where these two bodies of these two Fascists had been sort of composed.

Q. Now, when you say two bodies, will you name the second?
A. Orsini and Genti.

Q. What was the condition of the body of Gentil?
A. I did not examine it well, because when I saw that of Orsini I did not have the strength to look at the other.

Q. You testified you left your personal home the morning of 24 January 1944 dressed in the uniform of the National Republican Guard. Did you wear that same uniform throughout the day the 24th of January 1944?
A. Yes, always, until the night, when I went to bed.

Q. What hour did you return from Palino to your town of Terni?
A. One or half-past one. I know that the noon hour had passed.

Q. Did you keep any wearing apparel, either military or civilian, at the barracks in Terni?
A. I was never in the barracks. I kept all my stuff in my home. I had nothing.

Q. Will you state whether or not you were on detached service on 24 January 1944?
A. I was always detached. At the Federation we used to mount guard to avoid any attacks.

Q. Did you keep or maintain any weapons of any kind at the barracks?
A. No, the weapons I had I kept at home.

Q. You testified that you departed your home the morning of 24 January 1944 armed with a mitra?
A. Yes.

Q. At any time during that same day did you augment or add to your armament any other military weapon, property of the Italian government or otherwise?
A. No. Where could I get them? I left with my mitra and I returned with my mitra.

Defense (Capt. Robieson): Will the reporter read back the last answer, please?

(The answer was read by the reporter.)

Defense (Capt. Robieson): Your witness.

CROSS EXAMINATION

Questions by prosecution:

Q. Were you issued a pistol?
A. I only had a pistol issued to me in the month of April, but I had a personal pistol.

Q. On the 24th day of January 1944 did you wear your belt and holster?
A. No.

Q. Is that part of the normal equipment?
A. What?

Q. Belt and pistol holster, together with a pistol.
A. For the soldiers it was arbitrary.

Interpreter: That "arbitrary" means optional. They could or they couldn't, whatever they wanted.

Q. By soldiers do you mean members of the National Republican Guard?
A. Yes, of course.

Q. What were the members of the Federations classed as, soldiers or civilians?
A. Soldiers. The command of the 106th Guard used to post.

Q. As a member of the Federations, were you entitled to wear civilian clothes if you so desired?
A. I had to be authorized.

Q. Were you not so authorized?
A. Sometimes, according to the services I had to carry out, they also authorized me to dress in civilian clothes.

Q. Then at times you did not dress in civilian clothes, is that correct?
A. Of course, sometimes, yes.

Q. You heard Captain Masseni testify on this witness-stand?
A. Yes.

Q. Did you hear him say that a few minutes after the American was shot in the Matteucci home that you made the statement, "I killed him"?
A. I never said this.

Q. Isn't it a fact that the report was made while you were in the room at the Matteucci home that you killed the American?
A. I was never interrogated by anyone.

Q. Will you read the question?

(The question was read by the reporter.)

Witness (answering): I never heard anything.

Defense (Capt. Robieson): May it please the commission, counsel wants to point out a question--

Defense (Mr. Laurel): The prosecutor, if I am not mistaken, has said, "Is that true that—" Now he has omitted the word "that", so that the—

President: Read the question.

(The question was read by the reporter.)

Interpreter: Now, to translate this—I don't understand if the report was made while he was there or what. Would you clear that point, please, sir? I don't know how to translate it.

Questions by prosecution:

Q. Isn't it true that while you were in the room, in the Matteucci home, where the American soldier was shot, that either you or a member of the party with you made the report to Captain Mancani that, "Ranaglia killed the American"?
A. I don't know who made the report. I was never interrogated, and I already said that I immediately came out, because I was impressed by the way I saw that poor man in those conditions.

Q. Did you hear such a report made?
A. No.

Q. Isn't it a fact that after you returned to the square in Falina on the 24th day of January 1944 that you stated openly and publicly, "I killed the American"?
A. I don't remember having said this.

Q. Were you under the influence of liquor on the 24th day of January 1944?
A. No, because I had not drunk. I was never drunk.

Q. Were you under the influence of drugs on the 24th day of January 1944?
A. I never took drugs.

Q. Isn't it a fact that you made a report to Coppo Alberto that you killed the American?
A. I do not remember to have ever said this to Coppo.

Q. Isn't it a fact that you told your friend Giovanni Pitotti that you had killed the American?
A. No, because Pitotti wasn't even there that day.

Q. I am referring to a later time.
A. What?

Q. Did you ever make such a statement to Giovanni Pitotti?
A. No.

Q. Did you ever make such a statement to anyone?
A. No.

Q. Who accompanied you into the house of Matteucci where the American airman had been killed?
A. No one accompanied me. When I heard the shooting I went in.

Q. Isn't it a fact that you and Lanzia entered that house together with Matteucci?
A. Lanzia did just go in with me. I don't know if he went in with Matteucci. I saw him enter, because he was a driver and he was always around the Federation.

Q. After this incident you were promoted to the rank of a lieutenant in the Black Brigade, is that correct?
A. No. I was promoted to lieutenant in the Black Brigade, but only on February 25, 1945. A rank in the north was not given to assistants, but the Black Brigades did not have a recognized rank, but for simulation, that is, ranks were given according to the duties that one carried out.

Q. Isn't it a fact that after the wounded American was lying on the floor Lanzia said to you, "Don't shoot him again"?
A. I did not say anything, because I wasn't in there.

Defense (Mr. Laure): Please--we feel the witness did not understand and would like to have that again, read back.

(The question and answer were read by the reporter.)

President: Read back the question.

(The question was read by the reporter and translated by the interpreter.)

Witness (answering): How could he have told me that if I went into the room after the shots were fired?

Questions by prosecution:

Q. Did he make such a statement to you?
A. To whom should I have said it if no one questioned me?

Q. Answer the question.

President: Read the question.

(The question was read by the reporter and translated by the interpreter.)

Witness (answering): Who, he?

Questions by prosecution:

Q. Lanzia.
A. No, because after that day I never saw anybody because first I went to the Abruzzi region to get my family and then I had to go on duty to the north to escort refugee families.

Q. I am referring to the time when you and Lanzia were in the room and the American airman was lying on the floor wounded. Did he not say to you, "Don't shoot the man"?
A. He could not have said this to me, because when I went in Lanzia was already there, and he did not say anything to me.

Q. Isn't it a fact that you shot the wounded American a third time after he was lying on the floor already wounded?
A. I never shot. I went in and I saw that poor man in those conditions and then I went out and--why should I shoot a dead man?

Q. You are positive that you did not state to anyone on the square at Poline on the 24th day of January 1944 that you had killed the American?
A. I do not remember having said this to anyone.

Q. And is that statement as true as the statements you make about shooting the American in the Matteucci home?
A. Which statement do you mean?

Q. Did you shoot the American?
A. No.

Q. And that statement is as true as the statement you make that you did not tell anyone on the square that you killed the American, is that correct?

Defense (Capt. Robinson): Please, just a moment. Co-counsel did not understand the entire question. Will it be read again?

(The question was read by the reporter.)

Defense (Capt. Robinson): May it please the commission, we don't understand that question ourselves over here; it is a misleading question, comparing the situations, almost a double question. We object to that type of question.

President: Objection sustained.

Questions by prosecution:

Q. Were you on the square in the city of Poline on the 24th day of January 1944?
A. Yes, because we had to leave through the square.

Q. What statements did you make while you were on the square?
A. No statement to note. I don't remember having made any statement.

Q. Do you remember having made a statement to Captain Nagoani?
A. I only saw Nagoani when he entered in the house immediately after me. Then I went out, and I never spoke to him and he never interrogated me.

Q. Do you remember telling witness Dolci that, "I killed the American"?
A. I do not know Dolci at all.

Q. As a matter of fact, you are telling this commission that you told no one that you killed the American soldier in the Matteucci home on the 24th of January 1944, is that right?
A. I don't remember having said this to anyone.

Prosecution: No further questions.

President: Any questions by members of the commission?

Defense (Capt. Robinson): One moment, we may have a question.--There are no questions at this time.

President: Apparently no questions by the commission; the witness will be excused.

REDIRECT EXAMINATION

Questions by defense (Capt. Robieson):

Q. Calling your attention to a question by the judge advocate with reference to soldiers wearing a pistol. There was some misunderstanding on the interpretation of Italian and I want you to state again whether the soldiers were required to wear the pistol or whether the soldier could use his own option and either wear the pistol or not wear the pistol.
A. They could not wear it, but if they wore it in an inside pocket, nobody could certainly go and see if they were it.

Defense (Capt. Robieson): May it please the commission, it will save a lot of time--I would like to have the record read back at the point of where it was interpreted--a certain word was used which gave one answer and then the explanation gave another answer, and I'd like to have it read back.

President: All right, read it back.

(The question referred to, the answer, and the explanation by the interpreter were read by the reporter.)

Interpreter: That is my mistake.

Defense (Capt. Robieson): Now, I want that question read and you interpret it to this witness and then I will ask him a question, if that is correct.

President: Aren't you satisfied with the answer?

Defense (Capt. Robieson): He has given two different answers now.

President: He just gave--the last answer is they couldn't wear it. It is up to the officer not to wear it or to wear it, but the enlisted man could not carry it.

Questions by defense (Capt. Robieson):

Q. Is it your statement that an enlisted man was not allowed to wear a pistol?
A. No, he could not carry a pistol.

Q. Is it your statement that an officer can carry a pistol if he desires?
A. The officer, yes.

Q. Were you in proper uniform on 24 January 1946?
A. Yes, according to the law, according to regulations.

Defense (Capt. Robieson): No further questions.

Prosecution: No further questions.

Defense (Capt. Robieson): May the witness resume his seat?

President: Any questions by members of the commission? Apparently not; the witness will resume his seat.

(There being no further questions, the witness was excused and resumed his seat.)

Defense (Capt. Robieson): May it please the commission, the accused asks that he be allowed to make one further statement to the commission on his own initiative.

Prosecution: Is this statement under oath or not under oath?

Defense (Capt. Robieson): Well, under oath; he is still under oath.

Prosecution (to accused): May I remind you that you are still under oath?

Accused: Yes, sir.

The accused, Tito Rosaglia, then resumed the witness stand as a witness in his own behalf and through the interpreter testified further as follows:

REDIRECT EXAMINATION

Questions by defense (Capt. Robieson):

Q. Is there anything else you wish to say to the commission before resting your case, or cause?
A. Yes, sir.

Q. Make that statement to the commission.
A. Officers of the court, I am certain, convinced, and sure that I am the victim of a Machiavellian plot to have an innocent be condemned, perhaps to cover up the responsibility of others who have not had not even the courage to report to this honorable court, because they would have been very dangerous changes of scenes. It is not up to me, therefore, to judge the facts.
I declare that I am not an assassin. I never killed anybody. My heart and soul have taken me through the ways of good, because if I were guilty I would have remembered a saying that a nation, when it is really strong, as America is strong, is clement toward the vanquished. But I am not asking for clemency, because I am innocent. And I will also cite the American proverb that says it is better to have a guilty man outside than an innocent man inside.
Therefore, I have the conviction that the officers of this court, representatives of an army that has fought and won a war for the liberty and justice of peoples, will remember this and will do justice upon me. And in the meantime I have the honor of saluting the American flag and its officers.
--You will excuse this act of weakness; my tears are for emotion.

Defense (Capt. Robieson): May it please the commission, the defense rests.

(The witness resumed his seat.)

President: Has the prosecution anything further?

Prosecution: The prosecution desires to call one witness.

TESTIMONY FOR THE PROSECUTION IN REBUTTAL

Master Sergeant A. W. Brown, 716Srd Disciplinary Training Company (Overhead), a witness for the prosecution, was then brought into the courtroom, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q. State your name.
A. A. W. Brown, sir, Master Sergeant.

Q. What is your organization?
A. 716Srd DT Company, Overhead, sir.

Q. Where is your company located?
A. Approximately four miles north of Pisa, sir.

Q. What are your duties, Sergeant?
A. Guard command, sir.

Q. Do you know the witness Duvall?

Defense (Capt. Robieson): May it please the commission, may we ask what the purport of this is?

President: This is a witness for the prosecution. He is appearing for the prosecution in rebuttal.

Questions by prosecution:

Q. Who testified in this case?
A. I do.

Q. As part of your duties did you bring him to this court to testify?
A. I did, sir.

Q. Did you have a conversation with Duvall as you brought him into court on Thursday of this week?
A. I had one when he was getting off the truck here, sir.

Q. What if anything did Duvall say to you in regard to the accused in this case?

Defense (Capt. Robieson): Now, may it please the commission--well, I have to withdraw, because hearsay goes.

Witness (answering): Well, on the last question, when he got on the truck I wondered what he had to do with the case. When he got down here I had a chance to ask him, and I asked him, and he told me he came down here , as far as he knew, to testify for the prosecution, and that Ronsaglia had asked to go with him in an escape that he made in the DTC, sir.

Prosecution: No further questions.

CROSS EXAMINATION

Questions by defense (Capt. Robieson):

Q. Sergeant, is it your custom to question the witnesses or prisoners that are brought here before this court?
A. What do you mean, sir?

Q. I mean just exactly that.
A. I didn't get what you meant, sir.

(The question was read by the reporter.)

Witness (answering): I like to know what they are coming for, sir.

Questions by defense (Capt. Robieson):

Q. Is that part of your duty?
A. Yes, sir.

Q. Is it an ordered duty?
A. What do you mean, an ordered duty, sir? I don't know--

Q. Yes, an ordered duty. Are you ordered to do that?
A. That's right, sir.

Q. Written orders?
A. That's right, sir.

Q. Can you produce those written orders that you are to question and find out what the prisoners you bring here before this court are to do?
A. That is in your general orders, sir.

Q. Oh, not in a special order, then. Will you state that general order?
A. Well, to take charge of all the government property in view is one of them, sir, and if I have got the man I like to know what he is going for and where he is going, sir.

Q. Will you state those general orders, Sergeant?

Prosecution: I object--

President: I object to that question.

Defense (Capt. Robieson): May it please the commission, the witness has testified here that he is under written orders to do certain things, and the defense--

President: The question doesn't have anything to do with the case.

Defense (Capt. Robieson): We are asking the question--

President: It is not a proper question.

Questions by defense (Capt. Robieson):

Q. Where were you when Duvall made that statement to you, Sergeant?
A. Right outside the building here, sir.

Q. Who were present besides you and Duvall?
A. The accused, sir.

Q. The accused was there and heard that statement?
A. That's right, sir. He was standing in one of the vans, sir, the prisoner [illegible]

Q. Did the accused hear the statement?
A. He was standing there; I imagine he did, sir.

Q. And will you state again, loudly, so we can hear it, just what you asked the accused?
A. I asked him what he had to do with the case and what was he doing down here.

Q. Give the words that you said.
A. Well, I don't remember exactly what words were--I asked him what he was doing down here.

Q. Kindly give the question you asked the accused.

Prosecution: If the commission please, the sergeant has answered--

Defense (Capt. Rebiesen): He has answered in narrative and we have a right --this is like an order, and the court-martial book will show--

President: All right, he answered the question.

Questions by defense (Capt. Rebiesen):

Q. I ask what the words were that Duvall said.
A. He replied, sir, that inasmuch as he knew he came down for the prosecution in regard to Ronoaglia asking him to go with him on the escape, sir.

Q. And you can't give the exact words, then, that the accused uttered?
A. I gave them to the best of my knowledge, sir.

Q. A. narrative?
A. Yes, sir.

Q. Sergeant, isn't it true that you are familiar with the conditions of a pair of pliers turned in from Cage No. 2?
A. What occasion? There have been several occasions when pliers have been turned in, from Cage No. 2.

Q. Which way did you understand that to mean, that Ronoaglia actually was asking for an opportunity to escape?
A. What, in this--Duvall, out there--

Defense (Capt. Rebiesen): Would you read the question back?

(The question was read by the reporter.)

Witness (answering): That is what Duvall told me, sir, that that is what he was called down here for, as far as he knew.

Questions by defense (Capt. Robinson):

Q. Sergeant, you used to be a captain in the Army, didn't you?
A. I did, sir.

Q. You should understand these questions. What day and date did this incident occur?
A. Which incident, sir, the escape?

Q. Of which you are now testifying.
A. The escape, sir?

Q. The incident that you have testified to, when Duvall told you these things.
A. Yesterday, sir, yesterday morning, when I brought him to trial.

Q. What did you do following that conversation with Duvall--did you report the incident immediately?
A. No, sir, I didn't.

Q. When did you report that incident?
A. What do you mean, report it, sir? To who?

Major Loewus: I object to this line of testimony, sir.

Defense (Capt. Robinson): May it please the commission, I am trying to find why they wait until this late hour to bring such a thing before the commission if it occurred yesterday, and I think it is possible to know whom the report was made.

Prosecution: May it please the commission, this is rebuttal testimony. It is the first opportunity we have had to bring the witness in.

Defense (Capt. Robinson): I am not arguing about the rebuttal testimony. Sergeant, I am asking you when you first divulged the information concerning your conversation with Duvall to any American military authority.

Witness: Yesterday, sir.

Questions by defense (Capt. Robinson):

Q. What time?
A. I don't remember the time, sir.

Q. About what time?
A. It could have been in the morning or the afternoon; I don't remember, sir.

Q. And what time was the conversation, in the morning?
A. Yes, sir, it was.

Q. Soon after you arrived at this place, the court?
A. When they were getting off the truck, sir; I'd say 30 minutes.

Q. And you don't even know when you reported it to a military officer?
A. No, sir, I don't. Yesterday.

Q. To whom did you finally report?
A. To the captain, I believe it was, sir.

Q. Which captain?
A. Over here, sir (indicating).

Q. Point him out if he is in the room.
A. That one (indicating).

Q. Do you know his name?
A. No, sir, I don't.

Defense (Capt. Robieson): Let the record show the witness is indicating Captain Ashcraft, the assistant trial judge advocate in this case.

Questions by defense (Capt. Robieson):

Q. What report did you make to Captain Ashcraft?
A. I didn't give a report, sir.

Q. What did you say to Captain Ashcraft?
A. I asked him what--why Duvall was down here, and he didn't know. Duvall hadn't testified at the time--I think that is the way it is. And then I finally found out Duvall was down here and had testified in here.

Q. Yes?
A. That's right, sir.

Q. And then what did you do?
A. Not anything, sir.

Q. What did you say to Captain Ashcraft when you did report it?
A. I just asked him what Duvall was doing here.

Q. Did you then tell Captain Ashcraft anything about this conversation out here?
A. I think I did, sir; I am not sure.

Q. What did you report to Captain Ashcraft?
A. The conversation that I had with Duvall, sir.

Q. And you did that some time yesterday, is that correct?
A. Sometime yesterday, yes, sir.

Q. Sergeant, did you approach Captain Ashcraft with this report or did Captain Ashcraft approach you?
A. I did, sir.

Q. Where were you at the time?
A. I don't remember exactly where it was, sir. It was in the building here.

Q. Was it in the building?
A. It was, sir.

Q. Was it on the side to your left or the side to your right?
A. I don't remember, sir.

Q. And you don't remember the hour?
A. No, sir, I don't.

Q. You don't even remember whether it was morning or afternoon?
A. No, sir, I don't.

Defense (Capt. Robieson): May it please the commission, this is a most unusual thing, and the defense is calling for the witness Duvall in order to rebut this rebuttal testimony.

President: Your request is denied. Go ahead.

Defense (Capt. Robieson): Well, this is most unusual.

President: All right. Your request is denied.

Defense (Capt. Robieson): No further questions.

Prosecution: Any questions by any member of the commission?

President: Apparently none.

Prosecution: May the witness be excused?

President: The witness is excused.

(There being no further questions, the witness was excused and withdrew.)

Defense (Capt. Robieson): At this time the defense wishes to read into the record that it feels that its defense has been prejudiced—the interests of this accused have been prejudiced when rebuttal testimony of this kind, and as weak as it appears to be, without details, is offered, and the defense is denied the privilege of recalling the witness who under oath can swear to the conditions—

Defense (Mr. Lauro): Please, sir, may I have some—

President: Make it a matter of record that the commission doesn't think it is necessary to recall the witness.

Defense (Mr. Lauro): Please, sir, I am sorry, sir, on behalf of the Italian people, to which this man belong, I would like that every opportunity be given to him.

President: Every opportunity has been given to the accused.

Defense (Capt. Robieson): May we have just a moment here—a recess, rather?

President: All right, the commission is admonished not to consider the testimony given by Sergeant Brown. It will be stricken from the record.

Defense (Capt. Robieson): May it please the commission, the defense would like to let it stay in the record that the court decided not to—

President: The commission has decided; you cannot tell the commission what to do. All right. The president of the commission admonished the commission not to consider the testimony of the sergeant.

Defense (Mr. Lauro): I thank you very much.

President: Any more witnesses for the prosecution?

Prosecution: May the prosecution have five minutes, please, to--

President: All right, the commission will take a five-minute recess.

The commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter resumed their seats.

President: The commission will come to order.

Prosecution: The prosecution rests.

President: The commission would like to call Amastasio Macsani.

TESTIMONY FOR THE COMMISSION

Macsani Amastasio, Sergt, a witness for the prosecution, was then recalled by the court, and having been admonished through the interpreter that the oath previously taken by him was still binding, resumed the stand and testified through the interpreter further as follows:

DIRECT EXAMINATION

Questions by the president:

Q. Captain Macsani, you testified before this commission that on the day the American was killed you saw the accused with a machine gun and a pistol on his person, is that right?
A. Yes.

Q. You also testified that you were outside of the house when the shots were fired.
A. Yes, at 5 or 6 meters' distance.

Q. You also testified that as the shots were fired you went into the house?
A. Yes.

Q. And that you found there the accused and two other soldiers.
A. Yes.

Q. Did you see the accused enter the house?
A. No.

Q. You also testified that you heard the accused make the remark, "I killed the American," is that right?
A. Yes.

President: All right, that's all. Any questions by members of the commission?

Questions by Major Tucker:

Q. You saw the body of an American lying on the floor?
A. Yes.

Q. Was his head pointing toward the door or away from the door?
A. It was toward the door, toward the fireplace.

Q. This diagram here shows a door--referring to Prosecution's Exhibit No. 15--this is the fireplace; is this the approximate position of the body?
A. It was a bit slanted this way, more slanted that way (indicating).

Q. In this direction?
A. Yes.

Major Tucker: The witness is testifying that the head was pointed diagonally toward the front but not toward the corner in which the door appears.

Question by Col. Moore:

Q. Is the body in approximately the place on the floor in this diagram as you remember it?
A. Yes, approximately.

President: No more questions by the commission.

Prosecution: No questions by the prosecution.

CROSS EXAMINATION BY DEFENSE

Questions by defense (Capt. Rebiscon):

Q. Captain Nasconi, were you in command of the accused Roncaglia's unit that day?
A. No, I had no unit under me.

Q. Were you in any way, directly or indirectly, responsible for what may have occurred in Poling on that day?
A. No, I was responsible only just in the same measure the others were in the sense that I was there.

Q. You said you were about 5 meters away from the house when you heard the shots fired, is that correct?
A. Yes, 5 or 6 meters.

Q. And I believe you told this court, this commission, that these shots were fired at intervals of about a half a second, is that correct?
A. Yes.

Q. And do you recall now how many shots you heard fired?
A. I don't remember exactly, but I believe two or three, not more.

Q. Then you are not swearing that there were three?
A. I have also said that there were shots fired in other directions; therefore I couldn't hear distinctly whether they were two or three.

Q. How could you discriminate between the shots on the inside and the shots on the outside of the house?

Prosecution: May it please the commission, this has gone--this has been gone into and it is not proper cross-examination.

Defense (Capt. Robieson): It is cross-examination, if the commission please, and—

President: Objection overruled.

Witness (answering): Those of the house were nearer and those other shots were far away.

Questions by defense (Capt. Robieson):

Q. When you entered the house and you testified that you saw the accused Ronegalia, what condition of mind did the accused appear to be in when you arrived at the house?
A. I did not notice any exceptional emotion. Certainly he was not completely tranquil.

Q. Captain, is there any doubt whatsoever in your mind concerning whether Ronegalia did or did not have a pistol on him at that time?
A. To me it seemed, it appeared, that he had a pistol on his belt.

Q. But it was—as you testified, it seemed or appeared to you. As you know, you are under oath; are you swearing certainly that you saw the pistol?

Prosecution: We object to the counsel arguing with the witness.

Defense(Capt. Robieson): That isn't argument. I asked a cross-examination question, is he certain. He said it seemed, it appeared.

Prosecution: This is the commission's witness. This is not the proper cross-examination, in the first place.

Defense (Capt. Robieson): A man's life is at stake here, and I think anything that comes before the commission is proper.

President: It is a proper question.

Witness (answering): Yes.

Questions by defense (Capt. Robieson):

Q. When you entered the house did you see the old man, the owner of the house?
A. No.

Q. Masami, if you will refresh your memory, on your original testimony, when the judge advocate asked you a question, "But did Ronegalia say this to you?" with reference to the statement of who shot the American, your answer, I believe, was this: "Ronegalia did not say this, but he did not talk." Now, I think the record is going to bear us out on that, and I am asking you why you are making these statements here now.

Prosecution: We object to that.

President: Objection sustained; that is already in the record.

Defense (Capt. Robieson): May it please the commission, the defense wants the whole truth in this case, and we have labored all week trying to get it, and my co-counsel states to me here in writing, and I think from his notes, that the original question by the judge advocate was, "But Renzaglia, did he say this to you?" Answer--"Renzaglia did not say this, but he did not say anything."

President: The whole testimony of the witness was read yesterday; do you want it read over again?

Defense (Capt. Robieson): No, sir, what I'd like to ask him is why he is changing his testimony today.

Prosecution: He has not changed his testimony.

Questions by defense (Capt. Robieson):

Q. Captain, you spoke of Renzaglia making a statement in the square; did Renzaglia, when he said something about shooting an American, use the personal pronoun "I" or did he use the personal pronoun "we"? Do you recall specifically that statement?
A. "I".

Q. Can you further testify, as you did yesterday, that Tito Renzaglia appeared to be suffering from shock? Do you recall that?
A. When did I say this?

Q. In your former testimony. I ask you now, are you certain and positive that Renzaglia was composed at the time you saw him in the house?

Prosecution: The prosecution objects strongly. Any such statement made by this witness yesterday that Renzaglia was suffering from shock--

President: Let him answer the question. Go ahead and answer the question.

(The question was read by the reporter.)

Witness (answering): He was not completely composed, but of course that depended from the incident that had just taken place.

Questions by defense (Capt. Robieson):

Q. Then if he was not completely composed, what was his state?
A. To me it seemed as though it was a normal state, and there was only the emotion of the thing that had taken place. Not even I was completely composed because of the thing that had happened.

Q. Captain Nasemi, I ask you--are you apprehensive about this incident on your own account?

Prosecution: Objection.

President: Objection sustained.

Defense (Capt. Robieson): No further questions.

President: The witness is excused.

(There being no further questions, the witness was excused and withdrew.)

President: The commission will recess until 1:45.

The commission then at 11:30 A.M. took a recess until 2:20 P.M., at which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter, and the interpreter, resumed their seats.

President: The commission will come to order. The commission would like to recall witness for the prosecution Alberto Coppo.

Coppo Alberto, Foligno, a witness for the prosecution, was then recalled by the commission, and having been admonished through the interpreter that the oath previously taken by him was still binding, took the stand and testified further through the interpreter as follows:

DIRECT EXAMINATION

Questions by president:

Q. Coppo, you testified before this commission the last time you were here that you heard the accused make the remark, "I killed him," referring to the American that was killed on January 24th, 1944. Is that so?
A. It is true that I made this statement.

Q. Speak louder, so they can hear you.
A. I would like to express to the court that this is my conviction, but the court already knows that I can sometimes not understand well words, because in January, 1941, I was affected by bilateral otitis, and I am still affected with this and there is a military medical certificate that has exonerated me from military service because of this incipient deafness, and even today I am afflicted with that illness, and I have still matter coming out from both ears.

Question by Col. Moore:

Q. Where was Romeaglia when you heard that remark made?
A. He was on the square.

Question by Major Looms:

Q. How long after the incident did you hear him make this remark?
A. Not very long after.

Question by Col. Moore:

Q. In what manner was Romeaglia carrying his pistol when you saw the pistol?
A. I do not remember, and I don't remember even to have seen--I always learned that he had it.

Question by president:

Q. What was that?
A. According to me, he had both the pistol and the automatic rifle, because they were his weapons, but I have already stated to the court that I could not swear to have seen them. I said he had them, because I know.

Question by Colonel Moore:

Q. You don't actually remember seeing the pistol in the possession of the accused at that particular time, is that it?
A. I have already stated that I have just a vague impression of the accused in that moment, and I cannot swear to have seen one or the other weapon, just as I do not remember whether he was in civilian clothes or in military uniform.

Prosecution: No questions.

Defense: There are no questions.

President: Witness excused.

(There being no further questions, the witness was excused and withdrew.)

President: We would like to recall Vincenzo Dolci, a witness for the prosecution.--The commission is closed.

The commission was closed; the commission was reopened, at which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter resumed their seats.

President: The commission will come to order.

Dolci Vincenzo, Cost, a witness for the prosecution, was then recalled by the commission and having been warned through the interpreter that the oath previously taken by him was still binding, resumed the witness stand and through the interpreter testified further as follows:-

DIRECT EXAMINATION

Questions by president:

Q. Dolci, you testified before this commission that you heard someone whose name you cannot remember ask the accused, "Why did you kill the American?" Is that true?
A. I heard these words, but I cannot remember -- I don't remember if Lancia asked it or Renoaglia asked it. There were signed statements, and I can't remember.

Q. Now you testified before this commission that you heard someone ask Renoaglia, "Why did you kill the American"? Now, remember what you said here before.
A. Yes.

Q. Is that true?
A. Yes.

Questions by Captain Young:

Q. You heard these shots, didn't you?
A. Yes.

Q. How far were you from this house when you heard the shots?
A. About 30 meters.

Q. Then you testified that you ran to the house, is that true?
A. Yes.

Q. Did you enter the house?
A. Yes.

Q. Did you see your captain in there when you entered the house?
A. No, the captain was coming right after me.

Q. However you dressed?
A. As a soldier.

Q. Did you see the captain at the time you heard the shots?
A. The captain came after me, was coming after me.

Q. You were between the house and the captain at the time you heard the shots?
A. Yes.

Q. How far was the captain from the house when the shots were fired?
A. He was 3 or 4 meters away from me.

Q. Who made that remark, "Why did you shoot him"?
A. There was Lansia there--

Q. Answer the question.

Defense (Capt. Robieson): May it please the commission, at this time the defense objects to that question and is prepared to ask for the record to be read back because we contend that this witness doesn't understand, that the testimony here a few moments ago, the witness testified, "I heard somebody say, 'Why did you kill him?'" and the witness clearly stated, "I do not know which one said it."

President: Objection overruled. Go ahead.

(The question was read by the reporter and interpreted by the interpreter.)

Witness (answering): Lansia said this.

Questions by president:

Q. How was the accused dressed on this day, do you remember?
A. I believe very well that he was dressed as a soldier. I don't remember well --when we left Termi, at least my unit were all dressed in military uniform.

Q. Were dressed in what uniform?
A. In military uniform.

Q. Didn't you testify yesterday that you saw the accused in that house in civilian clothes?
A. I do not remember. It is four years, and I can't remember, and besides, there are the statements.

Q. Then you don't remember one way or the other?
A. I don't remember. I don't know how I could remember in four years.

Q. You cannot say whether he was in civilian clothes or in military uniform?
A. I can't say this, because I don't remember.

Question by Capt. Young:

Q. Do you know the old man that was the proprietor of that house?
A. No, I have never seen him.

Capt. Young (to prosecution): Do you have him here?

Prosecution: Yes.

Capt. Young: Bring him in.

Witness: Because when I entered the old man was not in the house.

Question by Major Leeman:

Q. How did you know that the proprietor of that house was an old man?
A. Because he told me this on the way coming up here just now.

Capt. Young: Let the record show that Domenico Matteucci has been brought in.

Defense (Capt. Robieson): May it please the commission, see if he recognizes him first.

Question by Capt. Young:

Q. Will you look around and see if you recognize this man who just came into the courtroom?
A. I only saw this man before our trip from Terni to here.

Q. For this trial?--Have you got an objection?

Defense (Mr. Leary): No. About the translation--he has asked, "Have you ever seen this man before?" and the witness has said, "No, I have never even seen him before I have seen him in the trip from Terni to here." I am under the impression that he has missed the liaison between the first part of the sentence and the second one so it is not made clear.

President: That he never saw him before until he came here.

Prosecution: Let the record show that Domenico Matteucci was brought into the courtroom and has now left.

Defense (Capt. Robieson): Further let the record show that the trip was made from Terni to Leghorn on what day?

Capt. Young: Within the last 10 days.

Defense (Capt. Robieson): Within the last 8 days.

CROSS EXAMINATION BY PROSECUTION

Questions by prosecution:

Q. I ask you if you saw a short stout civilian with a big moustache before the shooting occurred in the house?
A. No, I did not see him.

Q. I hand you a paper and ask you whether or not that is your signature.
A. Yes, that is my signature.

Q. Did you read that statement before you signed it?
A. I cannot read very well. I did not know how to read it, because I cannot read it very well.

Q. Was the statement read to you?
A. The man who interrogated me did read it, but now I cannot remember what was written.

Defense (Capt. Robieson): Objection, please.

President: On what grounds?

Defense (Capt. Robieson): This is a witness for the commission and the prosecution is resuming now with new papers.

President: Your objection is overruled. Go ahead.

Prosecution: The prosecution now offers in evidence, subject to objection by the defense, Prosecution's Exhibit No. 14, being the statement of Dalei Vincenzo, the original, the Italian, and the English.

Defense (Capt. Robieson): May it please the commission, the defense objects to this statement being admitted at this time because the prosecution has rested and closed its case.

President: Objection overruled. Don't you know that the prosecution is supposed to examine all witnesses for the commission?

Defense (Capt. Robieson): May it please the commission, at this time the defense objects to the admission of Prosecution's Exhibit 14 which is marked 14(1) on the first sheet, and Prosecution's Exhibit 14 (2) on the second sheet for the reason that the statement is merely marked as a signed statement but does not show to whom the statement was made or any of the circumstances concerning the making thereof, and the statement further is not dated.

President: Objection overruled. It will be admitted in evidence and marked Prosecution's Exhibit No. 14.

(Prosecution's Exhibit No. 14 was then read to the commission by the judge advocate.)

President: Would the defense like to have the original statement read in Italian for the benefit of the accused?

Defense (Capt. Robieson): We will accept the reading.

President: You don't want it read in Italian?

Defense (Capt. Robieson): Not at this time. May I see it?--May I examine the witness?

Prosecution: I'd like to inquire whether or not the statement has been read to the accused by counsel or whether or not the accused is familiar with that statement.

Defense (Capt. Robieson): The counsel feels that the accused is familiar, but the accused stated, as he has heard stated on the witness chair, that he could not read well, and that the thing happened many years ago, and that the conditions of taking the statement, and the accused has repeatedly stated that he does not know--the witness stated that he did not know whether Renenglia was wearing civilian clothes or--

Prosecution: May it please the commission, I think the statement in Italian should be read to the accused if it has not been read to him by counsel.

President: You didn't answer his question. He asked you if the statement has been read to the accused or if he is familiar with it.

Defense (Capt. Robieson): May it please the commission, the accused has read the statement, Prosecution's Exhibit 14, in Italian.

Prosecution: No further examination.

Defense: No questions.

President: Witness excused.

(There being no further questions, the witness was excused and withdrew.)

President: The commission would like to recall Mattaucci.

Mattaucci Domenico, Polino, a witness for the prosecution, was then recalled by the commission, and having been warned through the interpreter that the oath previously taken by him was still binding, resumed the witness stand and through the interpreter testified further as follows:

DIRECT EXAMINATION

Questions by Capt. Young:

Q. Mr. Mattaucci, you testified that this American flier came to live at your home on the 19th of January 1944. Do you recall that?
A. Yes, sir.

Q. And he was shot and killed in your home on the 24th day of January of 1944?
A. Yes.

Q. And you further testified that you had a bread knife in your home which had fallen behind the cupboard?

Defense (Capt. Robieson): May it please the commission, the defense--

Capt. Young: Just a minute.

Witness (answering): It was not a bread knife, it was a little dagger.

Questions by Capt. Young:

Q. You testified that your wife had dropped that behind the cupboard, or someone in your household had dropped that behind the cupboard. Do you recall that, behind the bread box?
A. Yes, sir.

Q. Was that before or after the American flier came to live at your home?
A. This was on the 1st of January.

Q. The 1st of January of 1944?
A. Yes.

Q. Was that little dagger still behind the bread box at the time the American soldier was killed?
A. From the time it fell behind there we did not see it, we did not take it.

Q. You never saw it again?
A. I never saw it again, because it was a thing which I did not need.

Q. Did you at any time ever see this American flier in your home armed with any kind of a weapon?
A. I never saw a weapon in the hand of the American, nor did I see them on his body. I never saw weapons.

Q. Did you have any other daggers in your house besides the one that fell behind the bread box?
A. Only that one.

Q. Since the American flier was shot to death in your house have you ever seen that little dagger that had fallen behind the bread box?
A. If it was the dagger, I saw it after that when the man dressed in civilian clothes that had shot the American came down to the square and said, "This is what the American had." It is a French type dagger.

Q. Now, will you describe that dagger?
A. I can't describe it; you can draw it and I will tell you if it is right.

Q. Did the blade have two edges on it or three edges?
A. No, two.

Q. And was the two-edged blade sharp on both sides?
A. Yes.

Q. Where did you get that dagger originally?
A. When my father died I found it in the house among his belongings.

Q. Now, Mr. Matteucci, what time did you leave your home the day the American flier was shot?--Strike that question. How long before the American was shot was it that you left your home?
A. When I went that 50 or 60 meters away from my house.

Q. And where were you going?
A. I was going to the square.

Q. For what purpose?
A. In the morning, especially when I have nothing special to do, I always go out and I go to the square.

Q. You got 50 or 60 meters away from your house--what happened?
A. I found this group of Fascists, Republicans.

Q. And what happened?
A. They stopped me and they asked me, "Are you Matteucci, called Sambelli?" and I said, "Yes," and then they again asked me, "Where is the American?" "I don't know." And they repeated again, "Where is the American?" "I don't know." And the third time, they pointed the rifle at my breast and said, "Where is the American?" and I said, "He is at home."

Q. When you say they, you mean the Fascists?
A. The Fascists, the man that was dressed in civilian clothes.

Q. Did they have a rifle or a pistol?
A. He had a pistol with the other rifle--I don't know what you call it.

Question by president:

Q. Was that a mitra?
A. Mitra, yes.

Question by Capt. Young:

Q. You then returned to your home, did you not?
A. Yes.

Q. And did you go alone?
A. No, I was in front and they were right behind me.

Q. How many Fascists were right behind you?
A. The whole group was behind me, and only there were two that were on my sides, one on the right and one on the left.

Q. Did you enter your home?
A. When I arrived at the house I opened the door.

Q. And did you go in?
A. I opened the door and they were on either side of me, and when I opened the house they went in before me.

Q. Did you go in?
A. I went in, but they were right in front of me.

Q. How many of them?
A. Two.

Q. All right. Now, as you went in the door of your home did you see the American flier?
A. Yes.

Q. Where was he?
A. Sitting down on the chair.

Q. And was the chair in front of the fireplace?
A. The American was sitting before the fireplace.

Q. On the chair?
A. Yes.

Q. And then what happened?
A. "Halt"--boom--they shot at him--and "Halt"--boom.

Q. Was the American seated at the fireplace at the time he was shot?
A. Yes, on the chair.

Q. Did you see any weapon of any kind in the hands of the American?
A. No, sir.

Q. Did you see the American rise from his chair and lunge at his assailants?
A. No, sir, the American got up from the chair when he fell on the floor.

Q. How long did you remain in this house after the shooting?
A. After the third shot I came out of the house immediately.

Q. Where did you go?
A. They took me to the square.

Q. Who took you to the square?
A. The soldiers that were just outside the door of the house.

Q. They were not the soldiers who had done the shooting?
A. No.

Question by Major Lacoma:

Q. Did you see anybody come running towards your house as you left the house?
A. No.

Question by Col. Moore:

Q. How were the two men dressed that went in the house and did the shooting?
A. One dressed as a soldier and another as a civilian.

Prosecution: No questions by the prosecution.

CROSS EXAMINATION BY DEFENSE

Questions by defense (Capt. Robieson):

Q. You testified that two or three shots were fired?
A. Three.

Q. Did you see the third shot fired?
A. Yes.

Q. You testified that the civilian fired the shots?
A. I said when they shot, when they said "Halt"--boom--I only heard them say "Halt"--boom--"Halt"--boom. Then the soldier on my right side advanced toward the American that was in the middle of the house and said, "Don't shoot, he is wounded. We must take him away as he is." The one in civilian clothes advanced and said, "No, we must kill him," and shot the third shot.

Q. You testified here before that that civilian, or the man in civilian clothes, was about 1½ meters in height, is that correct?
A. I said one meter 60, or one meter 65.

Q. You further testified that that civilian was of light complexion, or light skin, in the face, is that correct?

Prosecution: Objection; I don't believe the witness testified—

Defense (Capt. Robieson): The record will show—well, I will turn it around.

Questions by defense (Capt. Robieson):

Q. Can you testify as to what color skin the civilian had, the man dressed in civilian clothes?
A. I don't remember.

Q. But you did testify that you judged him to be 26 or 27 years of age?
A. 27, 28, or 24, thereabouts.

Defense (Capt. Robieson): There are no further questions.

REDIRECT EXAMINATION

Question by Col. Moore:

Q. Was the third shot fired by the civilian from a pistol?
A. Yes, sir.

Question by Major Lacsus:

Q. Did the civilian have any other weapon besides a pistol?
A. He had the rifle—I never remember how it is called—the mitra.

President: No further questions by the commission.

Prosecution: No further questions by the prosecution.

President: The witness will be excused.

(There being no further questions, the witness was excused and withdrew.)

Prosecution: Does the commission desire any further witnesses called or recalled?

President: No. We will take a five-minute recess.

The commission then took a recess for five minutes, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter, resumed their seats.

President: The commission will come to order.

Prosecution: The prosecution has nothing further to offer.

Defense: The defense has nothing further to offer.

(Captain Ashcraft then made an opening argument for the prosecution.)

(Mr. Lowry then made an argument for the defense.)

(Captain Robinson then made an argument for the defense.)

Prosecution: Does the commission desire a recess before we go on?

President: All right, we will recess.

The commission then took a ten-minute recess, at the end of which time all the personnel of the commission, the prosecution and the defense, the accused, the reporter and the interpreter, resumed their seats.

President: The commission will come to order.

(Lt. Col. Wallen then made a closing argument for the prosecution.)

President: The commission will be closed.

The commission closed at 4:50 P.M. and was reassembled at 5:45 P.M.

The president then announced the findings and sentence, through the interpreter, as follows:

FINDINGS:

The military commission in closed session, and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds the accused:

Of the Specification of the Charge: Guilty;
Of the Charge: Guilty.

SENTENCE:

And again in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences the accused:

To be hanged by the neck until dead.

The military commission then, at 5:50 P.M., 8 August 1947, adjourned to meet at the call of the president.

AUTHENTICATION:

V. K. CORDERO
COLONEL, INF
President

CLYDE W. WELLER
LT COLONEL, INF
Judge Advocate

Examined by Defense Counsel before authentication:

FRANK W. ROBINSON
CAPTAIN JAGD
Defense Counsel

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

October 1947

In the foregoing case of Vito Ruscoglio, the appeal submitted on behalf of the accused is denied. The sentence of the Commission is approved and confirmed but commuted to imprisonment at hard labor for life (ergastolo). As thus commuted, the sentence will be duly executed. In accordance with the agreement of 19 April 1947 entered into between the United States and the Italian governments, Casa Penale di Procida, on the Island of Procida, an institution of the Italian Government, is designated as the place of confinement.

L. C. JAYNES
Major General, U. S. Army
Commanding

...STROKE REPORT
...Self Explanat)

RESTR

ORGANIZATION: ...ation ...ecima Airdrome Air Force- 15th Air Force
Group- ...th Group Squadron- 440th Sqdn.Detachment-

2. ...OFF: ...t of Departure- Decima Airdrome Course- 29deg mag
Intended Destination: M/Yds at Foligno, Italy Type Mission- Bombardment

3. WEATHER CONDITIONS AND VISIBILITY AT THE TIME OF CRASH OR WHEN LAST REPORTED- CAVU

4. GIVE: (a) Date- 12/19/43 Time- 13.28 and Location- 12 miles from Lake Bolsena
Last known whereabouts of missing aircraft.

(b) SPECIFY WHETHER (X) Last Sighted ( ) Last Contacted by radio ( ) Forced down ( ) Seen to Crash ( ) Information not available

5. AIRCRAFT WAS LOST: BELIEVED TO HAVE BEEN LOST AS RESULT OF:
(Check only one) ( ) Enemy Aircraft (X) Enemy Anti-Aircraft ( )
Other Circumstances as Follows:

6. AIRCRAFT: Type, Model and Series- B-25-C-16 AAF Serial No. 41-...81

7. ENGINES: Type, Model and Series- R-2600-43 AAF Serial No. (a) 42-51359
(b) 42-30...4 (c) (d)

8. INSTALLED WEAPONS: (Furnish below, Make Type and Serial No.)

(a)	36...22	(b)	3593...0	(c)	360239
(d)	360...45	(e)	363...57	(f)	3...0748
(g)	3...352	(h)	3...0523	(i)	

9. THE PERSONS LISTED BELOW WERE REPORTED AS: (a) Battle Casualty- ...
or (b) Non-Battle Casualty-

10. NUMBER OF PERSONS ABOARD AIRCRAFT: Crew- 6 Passengers- ...
Total- 6

	Name	Crew Position	Rank	ASN	
1.	...., ...l C.	...ilot	1st Lt.	-/...770	"A"
2.	..., ...l ...	Co-...ilot	F/.	-3...	"C"
3.	..., ...ed J.	...vigator	1st ...	-...	"C"
4.	...son ...	...	/...	...	"A"
5.	..., ...	...	/...	...	"C"
6.					
7.					
8.	... ...				
9.					
10.	... ...				

11. IF PERSONNEL ARE BELIEVED TO HAVE SURVIVED, ANSWER YES TO ONE OF THE FOLLOWING STATEMENTS: (a) Parachutes were used- (b) Persons were seen walking away from the scene of crash- Or (c) Any other reason (Specify)

PROSECUTION'S EXHIBIT NO. 1
CONFIDENTIAL

[redacted] BOMBARDMENT SQUADRON
[redacted] BOMBARDMENT GROUP

RESTRICTED

21 December 1943

REPORT OF LT. WALDEN R. STEWART'S PLANE, WHICH IS MISSING FROM RAID ON 20 DECEMBER 1943

[redacted] tail gunner in #3 plane of #2 flight. Lt. Stewart's plane was in [redacted] position of same flight, about 1325 hours, shortly after flying over [redacted] Holstein, many bursts of heavy flak started coming up at our formation. At this time I was looking over in the direction of Lt. Stewart's plane and saw a burst of flame shoot up out of his left engine. I then informed the rest of the crew of the incident. With the burning engine, Lt. Stewart stayed in formation for about 30 seconds. He pulled out of the formation, climbing in a right bank, and was about a thousand feet above the formation before he leveled off. While in the climb I saw one man parachute out of the waist window. Another man parachuted out of the waist window as the plane leveled off at about 10,000 feet. The plane then made about a 180 deg turn heading back in a Northwest direction. The plane was then a good distance from me and I then noticed a 3rd man bail out with the chute open while the plane appeared to be in a glide at about 8000'. The plane then disappeared in the haze below.

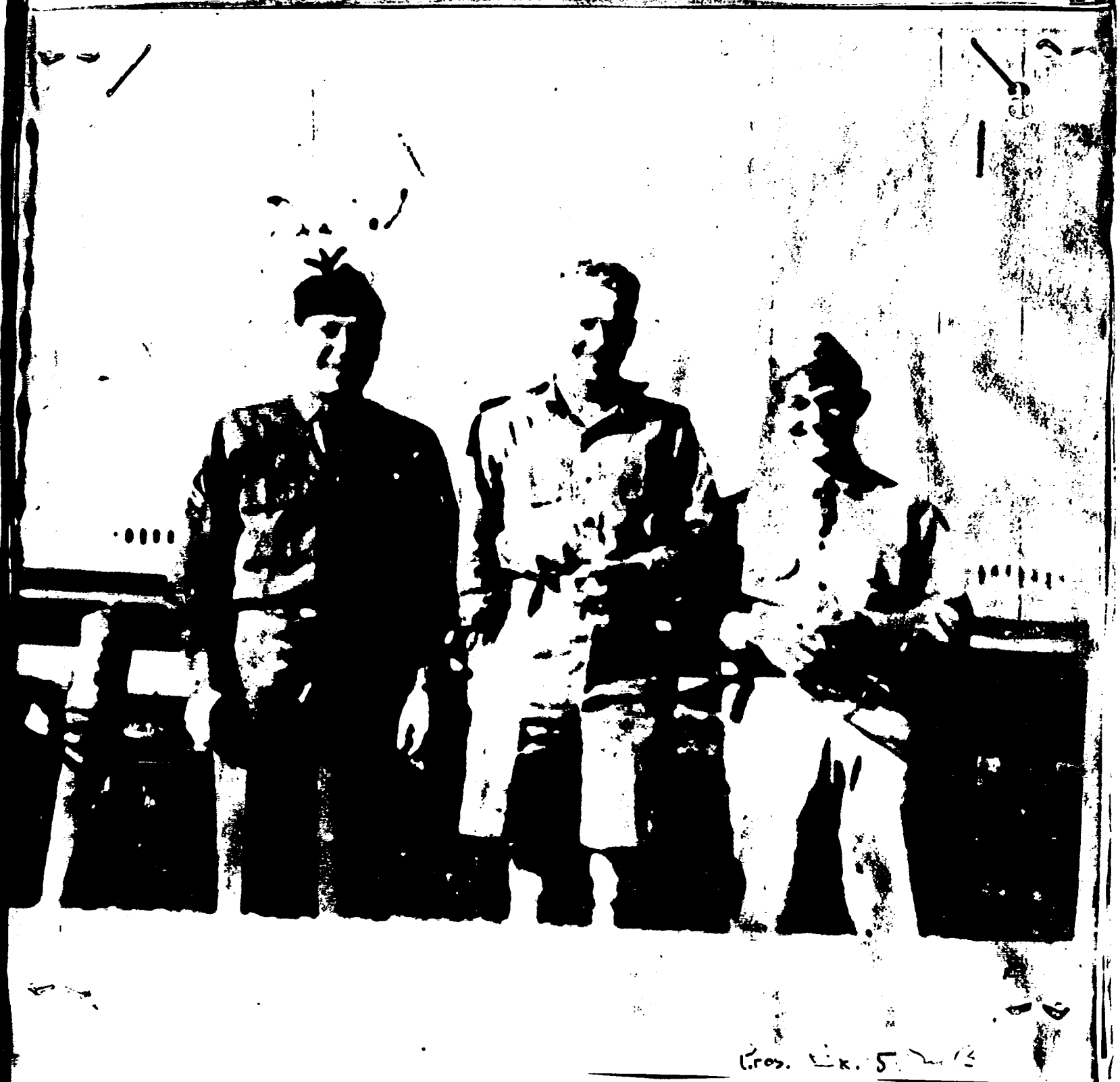
/s/ JOHN L. AGNER, 38130595
S/Sgt., Air Corps,
Eng-Tail Gunner.

CERTIFIED TRUE COPY:

[redacted] A.C.

Pres. Ex. 4 Rec'd

CONFIDENTIAL



Pros. Ex. 5

PROSECUTION'S EXHIBIT NO. 5

CONFIDENTIAL

Ex. 1

State of [illegible]
County of [illegible]

Before the undersigned Notary Publ[illegible] auth[illegible] oaths, this day personally appeared Mrs. [illegible] Jacob[illegible] Lauren, South Dakota who after being duly [illegible] did [illegible] the photograph attached hereto, is a picture [illegible] King, ASN 396032[illegible].

Further deponent says not.

[illegible]
Signature

Taken, sworn to and subscribed before me this the [illegible] day [illegible] 1947.

[illegible]
Notary Public

Pros. Ex. 8(1)

PROSECUTION EXHIBIT 8 (1)
CONFIDENTIAL

State of [illegible]
County of [illegible]

Before the undersigned Notary Publ[illegible] authe[illegible] oaths, this day personally appeared Mrs. [illegible] Jacc[illegible] Veurch, South Dakota w[illegible] o after being duly [illegible] lid [illegible] the photograph attached hereto, is a pictur[illegible] King, USN 3960324.

Further deponent says not.

[illegible]
(Signature)

Take[illegible] sworn to and subscribed before me this is the [illegible] day May [illegible] 1947.

[illegible]
Notary Public

Pros. Ex. 8(1)-C

PROSECUTION EXHIBIT 8 (1)
CONFIDENTIAL

PROSECUTION'S EXHIBIT No. 5 (2)
CONFIDENTIAL

Pros. Ex. 8(a)

PROSECUTION EXHIBIT NO. 8 (a)

COMMISSION

Rose V Jacobsen
Belle Fourche S.D.

War Dept.
Judge Advocate Sec.,
U.S. Army.

Hdq. Mtousai,
A.P.O. 512

S T A T E M E N T

I, the undersigned COPPO Alberto, son of Cesare and of late Firestauri Maria, born at Terni on 1 January 1909, residing at Terni, 161, Via Roma, state as follows:

On the evening of 23 January 1944 I was in company of the Prefect Pietro Faustini, the Commander of the Republican Guard, Consul Bonanni, the liaison officer of the German Command stationed at San Gemini, Capt. Schweigher, and I think also the Questura Chief of Terni.

Received a telephone message about the killing of two fascists, a lawyer Carlo Orsini and a Vice Caposquadra Conti occurred in the locality Polino, we decided to proceed to the recovery of the bodies and the transfer of their families in order to avoid further danger. At about 8 hrs of the following morning a truck, carrying a Company of the Republican Guard commanded by Capt. Branca and by Lt. Antonucci (of about 25 men) and a bus, carrying other member of the Republican Guard, as well as Federazione and police agents in civilian cloth were ordered to Polino. Among these people I remember very well a certain Luigi Donati and Tito Roncaglia.

I left in a car of the German Command together with Capt. Schweigher and a German officer, who represented the Commander. I was armed with a mashingun and a pistol, while the men carried Field Infantry weapons. On our way to Polino we stopped for a short time at Arrone, and proceeded all together to Polino. One group formed a barrier at the village entrance in order to prevent access from the mountains. The others entered the village to carry out a searching operation, while I went to pay a visit to the families of the two victims. Capt. Schweigher and the German Officer in company, I think, of Lt. Antonucci, went to the town-hall in order to enquire about the facts.

After having seen the families I also went to the town hall where I found the above mentioned officers in conversation with mayor, Fiorelli Fiorello. While still at the town hall, I was notified that an American has been killed in the village. Immediately I went out to ascertain what had happened and on my way to the place of the accident I saw a group of militi and civilians gathered around a ladder on which I noticed the body of a man, shot apparently in his chest.

I ordered that the body be taken where the other two bodies were lying, and went to the main square where, among other militi, I saw Roncaglia, who said: "I have killed him. I have killed [illegible]. He had a mashingun or a pistol in his hands, I do not recall which, but I

Pro

PROSECUTION'S EXHIBIT NO. 9

C O N F I D E N T I A L

sure it was a weapon. I joined th[illegible] asked what [illegible] told that while they were searching [illegible] village [illegible] that an American was hiding in one of [illegible] houses. [illegible] that, arrived to the place and opened the door, i[illegible] of th[illegible] he saw a man throwing himself against him [illegible] that seeing this he, Roncaglia, had fired [illegible] the [illegible] the m[illegible] did not say anything to Roncaglia, but la[illegible] I blame[illegible] beca[illegible] opinion he had fired out of an impulse of fear.

While I was still in the square, the man [illegible] hou[illegible] American had been found, was brought to me, and I [illegible] to take away. In the meantime the Prefect, Pietro [illegible]stini, arrived with [illegible] and I took him to Avv. Orsini's family.

The German officer wanted that a certain number [illegible] appli[illegible] shot for reprisal, and I, together with the Prefect succeeded [illegible] pr[illegible] both the execution and the handing over of the hostages to the German authorities. The hostages were taken to Terni and handed over to the Republican Guard.

Then I returned to Terni by bus - the same bus on which Avv. Orsini's family - and reported at the Federazione. I made a verbal report on the facts to Consul Bonanni, after which I had no further connection with the matter.

I had occasion to see Roncaglia several times subs[illegible]ly and each time he declared and confirmed that he had killed the A[illegible]. He also always mentioned the particular of the knife. The last [illegible] Roncaglia was in March 1945 at Salo', lake Garda, where he l[illegible] his wife. At that time he held the rank of Lieutenant of the [illegible] ade.

I believe that while I was at Polino, at the town h[illegible] shown a knife, a military identification tag and a billfold [illegible] I think, 100 lire. I presume that these items have been han[illegible]r the German Officerwho was present. The agreement was to bur[illegible] thre[illegible] bodies at the same place, but I was not informed where the b[illegible] the American was actually buried.

/signed/ Coppo Alberto

/s/
Seen : Daniel Anzil
, Special Agent

I certify that the above is a true translation of the original to the best of my knowledge and ability.

[illegible]

Terni

D i c h i a r a z i o n e

Io sottoscritto Coppo Alberto di Cesare e di fu Fia[illegible]
a Terni il 1-1-1909 residente a Terni via Roma 16[illegible]

D i c h i a r a

La sera del 23 gennaio 1944 assieme al Capo della [illegible]
Faustini,al Comandante della Guardia Repubblicana [illegible]
Capitano Schweigher Ufficiale di collegamento con [illegible]
di stanza a San Gemini,e credo anche fosse stato [illegible]
di Terni.Siccome era stato telefonato che al paese [illegible]
ti uccisi due fascisti uno Orsini Carlo Avvocato, [illegible]
Conti.Fu deciso di recuperare i cadaveri e di trasportar[illegible]
famiglie per evitare dei pericoli futuri.L'indomani matt[illegible]
8 con una Compagnia della Guardia Repubblicana su [illegible]
do del Capitano Franca,e del Tenente Antonucci che [illegible]
ni,poi un autobus ove vi erano alcuni della polizi[illegible]
della Guardia Repubblicana addetti alla Federazion[illegible]
ricordo bene Luigi Donati e Roncaglia Tito.Io sono part[illegible]
del Comando Tedesco,e con assieme il Capitano Schweigher
Tedesco che rappresentava il Comandante.Io ero armato di
pistola,gli uomini erano armati con armamento della [illegible]
Prima di arrivare al paese di Polino ci siamo fermati [illegible]
siamo partiti subito.Siamo arrivati al paese di Pol[illegible]
Un gruppo si è schierato per bloccare le strad[illegible]
parte dei monti.Poi gli altri sono andati in p[illegible]
io mi sono recato a visitare le famiglie dei d[illegible]
tano Schweigher ed l'Ufficiale Tedesco [illegible]do i
rono al Comune per assumere informazio[illegible]u com
Dopo avere salutato le famiglie [illegible]no s[illegible]
ho trovato e predetti Ufficiali [illegible]sie[illegible]
rello che conversavano.Mentre mi [illegible]
versone presenti,mi venne [illegible]ch[illegible]a s[illegible]o ucc[illegible]
A tale notizia io [illegible]ndai fu[illegible]ve[illegible]sul[illegible]
conto dell'accaduto,mentr[illegible]la strada inte[illegible]
un gruppo di militi e civi[illegible]d[illegible]scale ove[illegible]
cadavere di un uomo e mi s[illegible]osi stato ol[illegible]
Appena vidi questo,detti l[illegible]ne[illegible]v[illegible]sse p[illegible]
gli altri due corpi.Poi mi[illegible]lla piaz[illegible]
e civili vidi il Roncaglia[illegible]stava dic[illegible]
Lo ho amazzato.Lui aveva [illegible]r[illegible]una pistola [illegible]
bene,ma un'arma aveva di sicu[illegible]i sono avvici[illegible]
cosa era successo.Mi è stato detto che perlustran[illegible]
ti avvisati che in una casa si nascondeva un Ameri[illegible]
ebbe poi ha dichiararmi,che recatosi sul posto ave[illegible]
all'angolo in fondo di una stanza,era visto slanci[illegible]con
mano alzata brandendo un pugnale,e lui aveva fatto [illegible]per il
dissi niente al Roncaglia,successivamente mi rammaricai con lui,per
giudicavo che egli avesse sparato spinto da un impulso di paura.Ipoi
trovavo in piazza e mi venne portato l'uomo che aveva in casa l'amer
cano,io detti di portarlo via.In quel mentre [illegible]con [illegible]
na anche il Prefetto di Terni Pietro Faus[illegible]
casa del Avvocato Orsini,poi l'[illegible]
delle persone per [illegible]

Alberto Coppo

evitare sia le fucilazioni, che la consegna degli ostaggi ai tedeschi. Gli ostaggi furono portati a Terni e consegnati alla Guardia Repubblicana. Poi io ritornai a Terni sul autobus ove era anche la famiglia del Avvocato Orsini. Poi arrivato a Terni rientrai in Federazione. Feci il verbale al Console Romanni, su cio che era accaduto. E poi non mi sono piu occupato della cosa. Io rividi ancora il Roncaglia il quale raccontava e confermava sempre di avere ucciso l'amaricano e il particolare del pugnale. L'ultima volta che io rividi il Roncaglia fu a Salo nel Marzo 1945 lui era Tenente delle Brigate Nere credo che abitasse con la moglie. Ritengo che in Questura in Municipio mi siano stati mostrati, un pugnale, un piastrino militare, un portafoglio che credo avesse cento lire. Ritengo che dette cose siano state prese in consegna dall'Ufficiale tedesco. Ero rimasto d'accordo che la salma del Americano venisse sepolta assieme altre, ma non seppi ove l'anno sepolta.

Visto e confermato
Special Agent
Daniele ANZIL

In fede
Coppo Alberto.

STATEMENT

Rome, 4 September 1946.

Before the Special Investigator WCC, Daniele Ansil and in presence of Prof. Domenico Uras, lawyer, and Gaetano Pattarozzi, journalist, I, the undersigned, PITOTTI Giovanni, son of Michele and of Zenoni Quintilia, born at Terni, 30 May 1901, residing in Rome, 96 Via Ippocrate, apartment # 32, declare as follows:

On 8 November 1943 I joined the Federazione Fascista of Terni, in charge of the transfer to the North of fascist families, which duties I performed until 5 June 1944. During that period, more exactly on 24 January 1944, I was at my home in the locality Marmore (Prov. of Terni), when at about 10 hrs a.m. I was called to the phone by the Federazione of Terni and received the order to report immediately to that office.

On my arrival there I found only a few drivers, who, on my enquiry of what had happened informed me that all members of the Federazione were gone to POLINO, about 15 kms from Terni, to recover the bodies of Fascists, killed by partisans. One of the drivers present accompanied me then to Polino.

During the ride, at about 3 km from Polino, I met the first vehicles returning from that locality. On a small truck I noticed they carried some bodies. I asked what had happened and was told that during a mopping-up operation in the village, in searching all houses by Republican troops, an American partisan had been killed and that also two fascists, Avv. Orsini and Milite Conti had been murdered by the partisans.

After having obtained this information I joined the group who returned to Terni, where, at the Federazione office I learned that the murderer of the American partisan was VVSN Brigadiere Tito RONCAGLIA.

I saw the bodies of the two fascists taken to the "Sacrario dei Caduti", (the shrine containing the bodies of casualties belonging to this Federazione), and the body of the American to the cemetery of Terni.

After these events I resumed my work at the Federazione. During the following days the accident of Polino, regarding the killing of the American was amply discussed among the members of the Federazione. From Brigadiere Roncaglia himself I heard that during the searching operations at Polino, on entering a house of this village he found a man in civilian clothing, who, as soon as he caught sight of the brigadiere assulted him with a knife, on which the brigadiere fired and killed him.

These facts I heard repeated later by the same Roncaglia Tito as well as by other colleguas with whom we discussed the matter. Subsequently, on 5 June, together with the Federale Alberto Coppo, Commander of the Federazione of Terni and other members of this office

[redacted]

Rome, 4 September 1946.

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I was transferred to CERVIA (Ravenna) and assigned to a separation center of refugees coming from Terni. On 7 June the brigadiere Tito Roncaglia with his wife together with other members of the Federazione with their families were transferred to Cervia as well. Roncaglia, who had the same assignment as I had, stayed with me until the beginning of July 1944.

After completion of our duties both Roncaglia and I went to join our families at Candiana (Padova) where we stayed until 10 August 1944. During this sojourn at Candiana I was in contact with the Federale, Coppo Alberto, the once fascist commissary of Amelia, Gaetano Pattarozzi and other members of the Federazione who also spent these summer months at Candiana.

As with some of these people we were on not very satisfactory terms, Roncaglia, myself and Dr. Forbiconi moved, on our own initiative to Salo' taking our families with us, There we ere employed at the Party Direction headquarters.

I remember very well that on many occasions in company of our new friends of that place Roncaglia, among other facts, told us about the killing of the American at Polino, emphasising with exaggerated description of details his being the author of the murder.

Among other things, I remember that one day in September Roncaglia told me about a letter, which had arrived at the Party Direction office, written, as he suspected, by Mariottini Sestilio, Garzuglia Alvaro and other fascists with whom he was not on good terms. According to Roncaglia, the letter referred to his part in the killing, that is to say, the Direction was advised not to give any importance or pay attention to Roncaglia's statements on the matter. He said: "You see how they try to put me in a bad light before the Party headquarters, making them doubt my action as regards the killing of the American at Polino. But you know very well, and have known it for a long time that I was the one who did it."

During my stay at Salo' I met several members of the Federazione of Terni who came to the Party headquarters on official business. Among these I recall the Federale Alberto Coppo, Lt. Rolando Palmieri, Gaetano Pattarozzi and others.

In April 1945, in consequence of a partisan insurrection I was arrested together with other members of the Dalmate Brigade, among whom I remember Tito Roncaglia, who in the meantime had been promoted to the rank of lieutenant. I was, at first, taken to a concentration camp at Piacenza, then to another one at Coltano, under Allied control. At this camp I was held until 10 June 1945, the day I was released owing to regulations in power at that time. Roncaglia and others, I learned, were still held as prisoners in the camp.

A few days later I proceeded to Rome, where I joined my family. On 7 September 1945 I was newly arrested and incarcerated at the Regina Coeli jail, where I was kept until 13 January 1946.

In this jail, with the other political prisoners detained at that time, I used to talk during the ricreation out-doors, and so I learned that Capt. Gaetano Pattarozzi has been sentenced to death and probably already executed (shot) by the partisans. On 13 January 1946 I was transferred to the prison at Padova where I stayed until 26 Jan., 1946. During this period, among other news I heard the confirmation of the execution of Gaetano Pattarozzi.

On the 26th of that month I was released from the prison on account that no charges against me had arisen. I joined my family at Rome. Some time after my liberation, talking with friends in a family circle somebody said that Patarozzi had been sentenced to death and is presumed of having been shot by the partisans, but that there was a possibility however, of his having succeeded to escape to Switzerland.

In early April 1946 I was at home and still unemployed when I received the visit of the ex-lieutenant Tito Roncaglia and his wife. As I was in very friendly relations with him, his visit was most welcome to me and we talked about our personal, and chiefly about our financial problems. He asked me whether I able to find him a position. I had to explain him, of course, in what difficult situation I was in myself, and made him clear that there was no possibility of my helping him. After which we said goodbye to each other and he left, saying that he was going to find an apartement somewhere.

On 28 May 1946, returning from a work I had to do in Bologna, I found a man waiting for me at my front door, who was identified himself as Daniel Anzil, special investigator of the American War Crimes Branch. The above named investigator interrogated me then, on all facts I knew in connection with the killing of an American airman at Polino (Terni). As we came to the point of the whereabouts of Tito Roncaglia, accused as responsible for the killing of the American, I confessed that I have seen him in Rome. In another part of the interrogation I also confessed that I had heard Roncaglia himself state that he had killed the American in a house of the village Polino. I tried to defend Roncaglia's position as I did not think he was a bad man, and said that not everything he had boasted about should be given credit.

After the interrogation was finished I was released as it was evident that I was in no way involved in the killing of the American.

On 15 June 1946 I was again interrogated by the investigator Daniel Anzil, in which interview I confirmed my previous statements. On that occasion I learned that Tito Roncaglia had been apprehended, and the following day, 16 June 1946, I was taken to the Regina Coeli prison for a confrontation with Roncaglia, whom I identified. As I was brought to Roncaglia's presence I felt a great affection for him, as I always had considered him my friend, and in my emotion, forgetting the place we were at, we embraced each other in tears. After this I was taken away and left in liberty.

On the next day, 17 June 1946, I met Roncaglia's wife, who was in a pitiful state of moral depression, and, determined to save somehow my friend Roncaglia I informed his wife about my planes and purpose. His wife enquired about the state of mind and moral of her husband and I told her about the touching scene occurred between us when I was there to identify him. Then I said to her: "As in the group who took part in the action at Polino, there was, at that time, also the commissary Gaetano Pattarozzi, of whom it was almost stated for sure that he had been shot or that he escaped to Switzerland, I could perhaps help her husband in making a statement that Gaetano Pattarozzi was the responsible of the killing of the American" Thus I thought to be able to help my friend Tito Roncaglia, and that perhaps and amnesty or similar possibilities in his favour might help him to his way to regain his freedom.

In that moment, as I studied my plan together with Roncaglia's wife, I was of course far from any idea of doing any harm to Gaetano Pattarozzi, first, because I supposed he was dead, second because he also was a good friend of mine, though not quite so closely as Roncaglia. Nor did I think that this would lead to a disguidance in solving the case for the Allies.

With this in mind I suggested Mrs. Roncaglia to find the way of contacting her husband in order to inform him of our project and to give him the chance of acting accordingly. After which I left Mrs. Roncaglia and went on my way, and resumed my own activities.

The following day, Mr. Anzil, the investigator returned to my place bringing my former written statement for my signature with him. This statement contained all details of my previous interrogation.

By chance I met again Roncaglia's wife, and on my inquiry about her husband she told me he was still incarcerated, but she hoped that he would soon be tried, without mentioning, however, his reaction as to my advice.

On 3 September 1946 at 18:30 hrs I was arrested by the investigator Daniele Anzil, the same one to whom I had made my statements previously. He invited me to follow him to the Hotel Plaza, Rome, without informing me of his purposes, except telling me he wanted some information from me.

At the Hotel Plaza, we went up to room No. 232, from where Mr. Anzil gave orders by phone, to bring up some people immediately. In fact, a few minutes later it was knocked at the door and a person entered accompanying another man, whom I immediately recognized to be Capt. Gaetano Pattarozzi, This surprised me so much that I was almost paralyzed by the shock. Mr. Anzil asked me whether I knew these two people. I answered that I knew only one of them, and indicated Capt. Gaetano Pattarozzi. The other person was introduced to me as Prof. Avv. Domenico Uras, an official acting as deputy to the investigator Daniel Anzil.

Under a cross examination I had to confess the full truth as to the killing of the American at Rolino, carried out by Tito Roncaglia. During this interrogation Mr. Anzil made it clear to me that in spite my wish to help my friend I could not avoid making the present full statement, and I, compelled by this cross examination and by the presence of Capt. Pattarozzi, who, in contradiction to all information given previously on his execution was there, alive, before me, withdrew my previous deposition. I confirm, in fact, my present statement, in which I exclude definitely Gaetano Pattarozzi from any responsibility in the killing of the American airman.

I have read the present statement, compiled in my presence and before the special investigator Daniel Anzil, Prof. Avv. Domenico Uras, and the journalist Gaetano Pattarozzi, and declare that all facts stated therein are true and correct.

/s/ Giovanni Pitotti

Witnessed : /s/ Avv. Prof. Domenico Uras
Gaetano Pattarozzi, Journalist

Seen and confirmed: /s/ Daniel Anzil, Investigator WCC

I certify that the above is a true translation of the original to the best of my knowledge and ability.

Vera Kornis,
Translator, WCIS.

PROSECUTION'S EXHIBIT NO. 10 (pp 1-5)
C O N F I D E N T I A L

D I C H I A R A Z I O N E

Roma 4 Settembre 1946

Davanti allo speciale investigatore de... W.C.C. Daniele Anzil e presente l'Avv.Prof.Domenico Orsi e il giornalista Gaetano Pattarozzi, io sottoscritto PIIOTTI GIOVANNI di Michele e di Zenoni Quirellia, nato a Terni il 30 maggio 1901, residente a Roma in Via Ippocrate 96 int.32, di professione civile ora tecnico, dichiaro quanto segue:

Il giorno 8 Nov.1943 entrai a fare parte della Federazione fascista di Terni come addetto al trasferimento dei fascisti verso il Nord ricoprendo tale incarico fino al Febbraio del 1944.Durante questo periodo e precisamente il 24 Gennaio 1944 mi trovavo a casa mia nel paese di Marmore (prov.Terni) e verso le 20 pomeridiane dello stesso giorno venni chiamato dal centralino telefonico del paese per ricevere una comunicazione da parte della Federazione di Terni nella quale mi si ordinava di presentarmi subito alla Federazione.Giunto alla Federazione di Terni vi trovai solo alcuni fascisti i quali su mia interrogazione di come era avvenuto mi comunicarono che i componenti della Federazione erano andati al paese di Polino,a circa 15 chilometri da Terni,per recuperare delle salme di fascisti che erano stati uccisi dai partigiani.Un camion che si trovava in Federazione si accompagnò verso Polino.Durante il tragitto,a circa 3 chilometri dal paese di Polino,incontrai i primi automezzi che scendevano da Polino.Mi accorsi che su di un camioncino si trovavano delle salme.Domandai cosa fosse accaduto e mi fu riferito che durante il rastrellamento o perquisizione effettuata nelle abitazioni del paese di Polino era stato ucciso un partigiano [illegible] e che erano stati anche uccisi due fascisti nelle persone dell'Avv.Orsini e del milite Corti,i quali,mi fu detto,erano stati uccisi dai partigiani.In seguito a queste informazioni io mi unii al gruppo che rientrava a Terni.Si giunse così alla Federazione dove parlando con [illegible] di essa venni a conoscenza che l'[illegible]

C O N F I D E N T I A L

2 - Seconda dichiarazione Pitotti

il Brigadiere della M.V.S.N. RONCAGLIA TITO.Vidi che le salme dei due fascisti venivano depositate nel sacrario dei caduti della stessa Federazione e che la salma dell'americano veniva trasportata al cimitero di Terni.Dopo questi avvenimenti io ripresi le mie attività in alla Federazione.Nei giorni seguenti assieme ad altri compon Federazione si commentava l'accaduto dell fatto di Polin l'uccisione dell'americano.Sentii così dire dalle stess Roncaglia Tito, che durante una perquisizione in una ca Polino lui entrava dentro e si trovava di fronte ad un civile il quale al suo apparire cercava di andargli i un pugnale e che lui gli avrebbe sparato uccidendolo sentii raccontare ancora sia dal Roncaglia Tito che con i quali si discuteva.In seguito, precisamente mente al Federale Alberto Coppe,Comandante la Fe e ad altri della Federazione,venni a l'incarico di occuparmi delle amist da Terni.Il 7 giugno venne trasf il brigadi Tito assieme alla moglie e ad alt erazione con rispetti ve famiglie.~~Roncaglia~~ Il Ronca e con me fi orit luglio del 1944 con lo stesso mio i se.Dopo assie Briga Tito Roncaglia,ultimato il servizio per il quale erav tati dati,raggiungemo le nostre fa Candiana(Padova).Ivi rima sieme cà Roncaglia e ad al mponenti della Federazione,fin Agosto del 1944.Durante qu permanenza a Candiana aveve dei ti con il Federale Alberto Coppe,con l'ex Commissario del Amelia,Gaetano Pattarozzi e con altri della stessa Federazione.Siccome non esistevano buoni rapporti con alcuni componenti della Federazione,io assieme al Brigadiere Tito Roncaglia e al Dott.Forbici sferimmo,di nostra iniziativa,unitamente alle nostre famiglie,a per essere impiegati presso la Direzione del Partito.Ricordo inoltre che molte volte trovandomi con a nuovi arresti del partito.

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3 - <u>Come liberazione ritorni</u>

Il fatto dell'uccisione dell'americano avvenuta in una casa del paese di Palino, come ebbi modo con altri esponenti, che l'autore dell'uccisione era stato lui, Rico lo disse che si trattava del mese di settembre fu quando i suoi [illegible] Ronchetti lui mi raccontò che alla direzione del partito era arrivata una lettera e che lui [illegible] fosse stato merito [illegible] Scalotti Castillo, Bernaglia Alberto ed altri i quali erano dei fascisti e in base ai rapporti con lui, [illegible] la lettera contenesse che alla Direzione del partito non [illegible] dare importanza ai racconti riguardanti l'uccisione dell'americano nel paese di Palino. Io scelsi di dire: "Mai come ora è di estrema attività luce presso la Direzione del Partito mettendo in dubbio la mia azione sull'uccisione dell'americano nel paese di Palino mentre tu hai sempre sostenuto che sono stato io a ucciderlo". Durante la mia permanenza alla federazione di Terni [illegible] per reggere la Direzione del Partito. Ci [illegible] ricordo il Federale Alberto Bocco, il Ten. Rolando Mannori, Bertano Pietrozzi ed altri. Nel corso dell'insurrezione popolare, nel mese di Aprile 1945, io venni arrestato assieme ad altri compagni di partito dalanta e fra questi ricordo il Tito Ronchetti che era stato precedentemente promosso Tenente, ed altri ufficiali della stessa brigata. Venni portato prima al campo di concentramento di Piacenza poi a quello di Coltano, sotto il controllo degli alleati. Rimasi in tale campo fino al 10 giugno 1945 giorno in cui venni liberato in seguito alle disposizioni allora vigenti. Io seppi che il Ronchetti ed altri rimasero ancora prigionieri nel campo. Alcuni giorni dopo mi trasferii a Roma ove raggiunsi la mia famiglia. Rimasi in Roma fino al 2 Sett. 1945, data in cui venne emesso un ordine di fermo in base al quale venni tradotto alle Carceri di Regina Coeli ove rimasi fino al 13 gennaio 1946. Nel Carcere di Regina Coeli, trovandomi assieme ai altri detenuti politici, fra le notizie che ci scambiavamo durante l'ora di riposo all'aria, mi ven=

CONFIDENTIAL

4 -Segue deposizione Pitotti

riferito che il Capitano Gaetano Pattarozzi era stato condannato a morte e si presumeva fucilato da parte dei partigiani.Il 13 Gennaio del 1946 venni trasferito alla Casa di pena di Padova ove rimasi fino al 26 gennaio 1946.Durante questo periodo,fra le altre notizie appresi,seppi che Gaetano Pattarozzi era stato fucilato dai partigiani.Il 26 dello stesso mese venni rimesso in libertà non essendo emersi a mio carico elementi di accusa.Raggiunsi la mia famiglia a Roma.Qualche tempo dopo la mia liberazione,parlando con amici e con miei familiari,~~xxxxxxxxxxxxxxxx~~ preciso in famiglia,venni a sapere fra le tante cose che il Capitano Gaetano Pattarozzi era stato condannato a morte e che si diceva fosse stato fucilato ma che era possibile che fosse scappato in Svizzera.Verso i primi di aprile del 1946 mi trovavo a casa mia e ancora privo di lavoro quando in uno di quei giorni mi venne a trovare l'ex Tenente Tito Roncaglia assieme a sua moglie. Essendo io legato da forte amicizia con il Roncaglia Tito le ricevetti amichevolmente e con lui parlai della nostra posizione economica. Lui mi chiese se avevo la possibilità di trovargli un'occupazione.Naturalmente io gli spiegai la mia situazione e gli feci capire l'impossibilità di aiutarlo;dopo di che ci salutammo e lui andò via dicendomi che avrebbe trovato alloggio in qualche parte.Il 28 maggio 1946 ~~xxxxxxx~~ ritornando da un lavoro effettuato a Bologna trovai ad attendermi all'ingresso di casa mia un agente della polizia americana che si fece riconoscere per lo speciale investigatore Daniele Anzil della War Crimes Branch.Il sunnominato agente mi sottopose ad un interrogatorio relativo al fatto dell'uccisione di un americano avvenuta nel paese di Polino(Terni).Giunti al punto di sapere dove si potesse trovare il Tito Roncaglia,accusato come colpevole dell'uccisione dell'americano io confessai di aver visto il Tito Roncaglia in Roma.In un'altra parte dell'interrogatorio io confessai di aver sentito da Roncaglia stesso che lui aveva ucciso l'americano in una casa del paese di Polino.Io cercai di difendere la posizione di Tito Roncaglia poichè pensavo che il Roncaglia non era di animo cattivo e che non bisognava credere a tutto quello che lui raccontava.Terminato l'interrogatorio io venni rilasciato in libertà poichè non era risultato implicato nell'uccisio-

5 - Segue dichiarazione Pitotti

ne dell'americano. Il 15 Giugno 1946 venni nuovamente interrogato dall'Investigatore Daniele Anzil al quale confermai il precedente interrogatorio. In quell'occasione mi venne comunicato l'avvenuto arresto di Tito Roncaglia e il giorno dopo 16 giugno 1946 venni portato alle Carceri di Regina Coeli e portato alla presenza di Tito Roncaglia confermai il suo riconoscimento. Nel momento in cui fui portato alla presenza di Tito Roncaglia mi sentii molto commosso perchè ero legato a lui da sentimenti amichevoli e non pensando al luogo ove mi trovavo ci abbracciammo piangendo. Dopo tale gesto io venni allontanato dal Roncaglia e venni rilasciato in libertà. L'indomani giorno 17 incontrai la moglie di Tito Roncaglia da quale si trovava in uno stato di pietosa condizione morale. In quell'attimo pensai di salvare in qualche modo il mio amico Tito Roncaglia e parlando con la moglie la misi al corrente del mio piano e delle mie intenzioni. La moglie mi domandò in che stato avevo trovato suo marito e le raccontai la scena commovente che avevo vissuto in quell'attimo confermai il suo riconoscimento. Fu così che dissi alla moglie: come [illegible] che prese parte all'azione di Polino vi era l'allora Commissario [illegible] Pattarozzi e avendo avuto delle notizie di sicura fonte dell'avvenuta uccisione o fuga in Svizzera del Pattarozzi stesso, [illegible] suo marito Tito Roncaglia facendo una dichiarazione [illegible] nominato come autore dell'uccisione dell'americano [illegible] Pattarozzi Gaetano pensando così di poter aiutare il mio amico Roncaglia [illegible] una amnistia o qualche provvedimento in suo favore avrebbe potuto trovare la possibilità di fare una strada per ritornare libero. Naturalmente in quel momento in cui insieme alla moglie studiavo questo piano non ho avuto precisamente il pensiero di recare del danno al Pattarozzi Gaetano stesso, sia perchè lo ritenevo morto sia perchè anche lui in parte minore era mio amico. E nemmeno pensai di portare dei dirigenti sullo svolgimento per la risoluzione del fatto da parte degli alleati. E con questo ragionamento consigliai la moglie di trovare il mezzo di comunicare col marito al fine di metterlo a conoscenza della volontà del nostro aiuto affinchè anche lui si [illegible] come meglio [illegible]

6 - Segue dichiarazione Pitotti

portune.Dopo di ciò salutai la moglie e ripresi le mie attività.
L'indomani ritornato da me l'investigatore Daniele Anzil mi presentò da firmare la dichiarazione nella quale erano raccolti tutti i particolari dell'interrogatorio che mi fu fatto alcuni giorni prima.Questi particolari sono leggibili nella mia prima dichiarazione.Incontrai ancora per caso la moglie del Roncaglia Tito alla quale chiesi come stava suo marito:essa mi disse che si trovava sempre in carcere e sperava che presto si sarebbe svolto il processo senza però parlare dell'effetto che poteva aver fatto il mio consiglio.
Il giorno 3 Settembre 1946 alle ore 18/30 venni arrestato dall'investigatore che riconobbi subito nella figura del Signor Daniele Anzil al quale precedentemente avevo rilasciato una mia dichiarazione.Dallo medesimo venni invitato a seguirlo in un'auto sino all'Albergo Plaza di Roma.Seguii l'investigatore il quale non mi mise al corrente di che cosa si trattasse dicendomi solamente che aveva bisogno di chiedermi delle informazioni.Giunto al Plaza venni fatto salire nella stanza N°232 ove mi trovai solo con l'investigatore Daniele Anzil.Vidi l'investigatore Daniele Anzil avvicinarsi all'apparecchio telefonico e sentii che dava degli ordini per far venire colà medesima alcune persone.Alcuni minuti dopo diffatti fu bussato alla porta e vidi entrare una persona che non conoscevo che accompagnava un'altra persona che riconobbi subito nel Colonnello Pattazzi mi fece rimanere come paralizzato sulla sedia ove ero seduto.L'investigatore Daniele Anzil mi chiese se riconoscevo le persone:io risposi di conoscere una delle due e precisamente il Capitano Gaetano Pattazzi.L'altra persona mi fu comunicato che era il Prof.Avv.Domenico Uras, designato come segretario dell'investigatore Daniele Anzil.Sottoposto a stringente interrogatorio da parte dell'investigatore Daniele Anzil fui portato a dover confessare la verità dei fatti relativi all'uccisione dell'americano nel paese di Poline da parte di Tito Roncaglia.Durante l'interrogatorio l'investigatore mi fece profondamente comprendere e mi convinse con ogni part

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7 - <u>Sua deposizione Pitotti</u>

colari che malgrado io avessi avuto il desiderio di portare aiuto ad un caro amico non ero nelle condizioni di evitare la presente dichiarazione,Nonostante la mia profonda e sincera amicizia per il Moncaglia,e spinto dal convincente interrogatorio dell'investigatore,e dalla presenza del Capitano Gaetano Pattarozzi che vedevo vivo in mia presenza,contrariamente alle informazioni precedentemente avute,sulla sua uccisione,per scrupolo di coscienza ritrattai la mia precedente deposizione,confermando la presente ma in base alla quale escludo la responsabilità del Pattarozzi Gaetano.

La presente dichiarazione fatta in mia presenza e presenti lo Special investigatore Daniele Anzil,il Prof.Avvocato Domenico Uras e il giornalista Gaetano Pattarozzi,prima di pervi la firma è stata da me riletta in perfetto stato d'anime e trovata rispondente a verità in ogni suo punto.

(Avv.Prof.Domenico Uras)
av. Domenico Uras

Il Reo
(Pitotti Giovanni)
Pitotti Giovanni

(Giornalista Gaetano Pattarozzi)
Gaetano Pattarozzi

Visto e confermato
Special Agent.W.C.C.Daniele Anzil
Daniele Anzil

PROSECUTION'S EXHIBIT NO. 10 (pp 6-12)

RESTRICTED

WD QMC FORM 1042
(Rev. 1 Apr. 1945)
(Supersedes QMC Form 1)

REPORT OF ~~INTERMENT~~ REBURIAL
(AR 30-1810 and AR 30-1815)

DATE OF REPORT: 7 March 1946

Imprint Identification Tag If Possible. DO NOT TYPE

Section 1.—IDENTIFICATION.

NAME (*Last, first, middle initial*): UNKNOWN AMERICAN A-852

SERIAL NO.: Unknown

GRADE: Unknown

ORGANIZATION: Unknown

BRANCH OF SERVICE: "Belived to be" U. S. Army

RACE: White

RELIGION: Unknown

IF OTHER THAN U. S. DEAD, GIVE NAME OF COUNTRY:

PLACE OF DEATH: Pelino, Italy

CAUSE OF DEATH: Gun Shot

DATE OF DEATH: 29 Jan 1944

EMERGENCY ADDRESSEE (*Name, relationship, and address*): UNKNOWN

IDENTIFICATION TAGS FOUND ON BODY (*1, 2, or none*): None

WERE SUBSTITUTE TAGS PROVIDED? (*Yes or no*):

IF NO TAGS FOUND ON BODY, DESCRIBE MEANS OF IDENTIFICATION (*If unidentified, fill in section 8 on reverse*): Tooth Chart - Caretaker of Civilian Cemetery, Terni, Italy States He Was An American (See Reverse side)

LIST PERSONAL EFFECTS FOUND ON BODY AND DISPOSITION OF SAME: NONE

Section 2.—BURIAL. *If other than in established cemetery, furnish sketch and map coordinates on reverse.*

NAME, NUMBER, COORDINATES, AND LOCATION OF CEMETERY: U. S. Military Cemetery, Nettuno, Italy F-83-189

DATE OF BURIAL	HOUR	BURIED IN (*Shroud, blanket, or name of other*)	TYPE OF GRAVE MARKER	PLOT NO.	ROW NO.	GRAVE NO.
7 March 1946	0900	SHROUD	Temporary Wooden	27	24	6761

WAS THIS A REBURIAL? (*Yes or no*): Yes

IF A REBURIAL, INDICATE NAME, NUMBER, COORDINATES OF PREVIOUS CEMETERY, AND LOCATION OF GRAVE: Civilian Cemetery Terni, Italy — PLOT NO. 20 — ROW NO. 3 — GRAVE NO. 230

TYPE OF RELIGIOUS CEREMONY: General Service

PERSON CONDUCTING BURIAL RITES: Pfc John S. FROTEL 35967945, 262lst QMRU

IF IDENTIFICATION TAGS NOT USED, DESCRIBE IDENTIFICATION DATA AND CONTAINERS BURIED WITH BODY: One QMC Form FL-283, sealed in bottle and buried with body. One QMC Form FL-283, sealed in bottle and buried one foot below grave marker.

IDENTIFICATION TAG BURIED WITH BODY (*Yes or no*):

IDENTIFICATION TAG ATTACHED TO MARKER (*Yes or no*):

BODY BURIED ON DECEASED LEFT, NAME (*Last, first, middle initial*)	RANK	SERIAL NO.	ORGANIZATION	GRAVE NO.
				6762

BODY BURIED ON DECEASED RIGHT, NAME (*Last, first, middle initial*)	RANK	SERIAL NO.	ORGANIZATION	GRAVE NO.
PLOSHINSKI, Walter (NMI)	Marine Oiler	12206708	Merchant Marine	6760

SIGNATURE OF PERSON PREPARING REPORT:

SIGNATURE OF GRS OFFICER VERIFYING REPORT: /s/ JOSEPH F. [illegible]HAN 1st Lt. [illegible] O-731406 - 262lst QMRU

DISTRIBUTION OF REPORT: *Signed original for U. S. and allied dead, signed original and one copy for enemy dead, to the Quartermaster General through Headquarters GRS Officer. Copies for retention in theater as prescribed by theater commander.*

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EXHIBIT "F"

Pros. Ex. 11

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LEFT THUMB

LEFT INDEX FINGER

LEFT MIDDLE FINGER

LEFT RING FINGER

LEFT LITTLE FINGER

Impossible Hands in Skeleton Stage.

RIGHT THUMB

RIGHT INDEX FINGER

RIGHT MIDDLE FINGER

RIGHT RING FINGER

RIGHT LITTLE FINGER

Section 2.— UNIDENTIFIED REMAINS

INSTRUCTIONS:

(a) Great care will be taken to record the most minute clues for the future identity of unidentified remains. Fill in anatomical characteristics below, and any other clues under "Other," such as shoe size, social security number; position of body found in airplanes, vehicles, and tanks; and serial numbers of airplanes, vehicles, and tanks.

(b) A fingerprint, or prints, are the most valuable of all clues. Imprint all fingers and thumbs in blocks at left, or as many as possible. If no fingerprint or prints can be secured, the condition of each and every tooth will be indicated on the tooth chart in accordance with diagram below. Tooth chart will not be accomplished if one or more fingerprints are secured.

HEIGHT	WEIGHT	COLOR OF EYES	COLOR OF HAIR	BIRTHMARKS, SCARS, OR PECULIARITIES

WEAPON AND SERIAL No.	LAUNDRY MARKS	WHERE BODY WAS BURIED OR FOUND

OTHER IDENTIFICATION CLUES:

A CERTIFIED TRUE COPY:

D. M. BROWN,
Major, A.G.

FILLINGS — SILVER FILLING, GOLD FILLING

CAVITIES — CAVITY DECAYED

MISSING TEETH — TOOTH MISSING

CROWNED TEETH — PORCELAIN CROWN, GOLD CROWN

BRIDGE WORK — GOLD BRIDGE

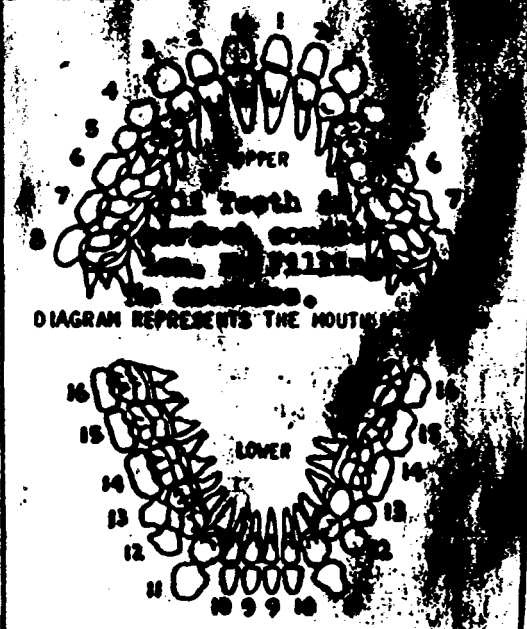

DIAGRAM REPRESENTS THE MOUTH

FURNISH SKETCH AND MAP REFERENCE AND COORDINATES FOR BURIAL IN OTHER THAN ESTABLISHED CEMETERY

Remains disinterred at CIVILIAN CEMETERY, TUPELO, ITALY (Grave 130, Block 10, Section 3)., and reinterred in U.S. Military Cemetery, Nettuno, Italy on 7 March 1946 by 262nd GRU (Graves Registration "F" Sanio).

Physical and Anatomical Characteristics:
Impossible; body in Skeleton Stage. A few patches of dark brown hair attached on skull.
Clothing present on Deceased.
G.I. Woolen Underwear.

REMARKS:

Sgt. Durndell, S.I.B. C.M.P. of the British Forces, who worked on this case as a War Crimes matter, States that Deceased lived in San Francisco, Cal., before induction or enlistment in the U.S. Army.

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16—42097-1 U. S. GOVERNMENT PRINTING OFFICE

AIR FORCE CASUALTY CLEARANCE DETACHMENT (OVHD)
MEDITERRANEAN THEATER OF OPERATIONS
APO 794 US ARMY

CERTIFICATE OF [illegible]
INVESTIGATION [illegible]

In order that no question may arise [illegible] American Soldier, and the body [illegible] and the same the following is set forth:

I have personally interviewed Vos. [illegible] and P. Dimmdall A/S 47, Sergeant, [illegible] Army, Special Investigation [illegible]. In addition have been searched and I find the following:

a. That RICCETTI, [illegible], Via S. [illegible] enrolled into the Square on a [illegible]

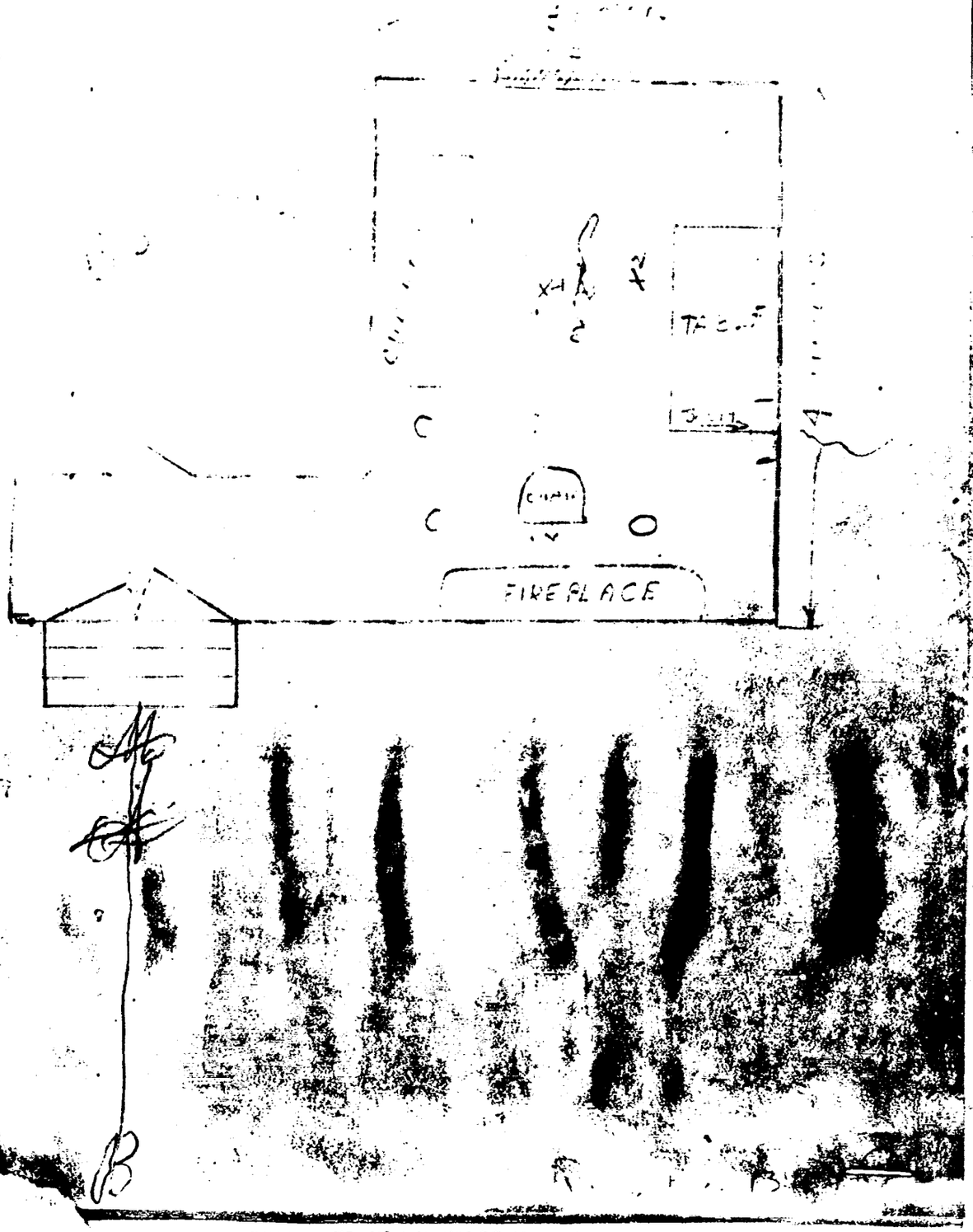
b. That he, RICCETTI, [illegible], placed [illegible] to the Civilian Company in Terni [illegible] over to COLLEMACCIO, [illegible], Ovvero [illegible]

c. That COLLEMACCIO, Massimo, Vicolo [illegible] the body in Grave 130, Block 10, [illegible] in Terni.

d. That the body recovered in Terni [illegible] Cemetery, Nettuno, Italy, Plot [illegible] the body of the unclaimed American [illegible]

EXHIBIT "E"

EXHIBIT "E"



PROSECUTION'S EXHIBIT No. 13
CONFIDENTIAL

S T A T E M E N T

I, the undersigned, DOLCI Vincenzo, called Gennaro, son of Vittorio and of Pier[illegible] Terziana, born at Cesi on 2 December 1920, residing at Cesi (Terni) No 5 Via della Rocca, state as follows:

In January 1944 I was a private in the G.N.R. (Republican Guard). At about midnight towards the end of January, which day I do not remember, I was called out of bed by Lt. Antonucci, who came with the news that Avv. Orsini had been killed and that we had to go immediately to Polino. I got up and saw a car waiting before my front door, but then the trip was put off until the next morning. The following morning infact, we left on a bus together with other vehicles and militi for Polino.

As we reached Arrone we halted and I noticed some Germans in the square of that village. The Federale Coppo, who lead the expedition asked the Germans to come to Polino, but they only sent a German commander with us. Then we proceeded to Polino. Arrived there I got off the bus and according to orders received by the commanding officers I stayed in the main square, while the others were scattered around in the village.

While I was in the square I saw two militi, one of them called Francesco [illegible] the other's name I do not remember, in company of a short and stout civilian with big moustache, who said: "Don't kill me, I'll tell you where an American is hidden". At this point I saw a certain Tito Roncaglia, in civilian cloth and armed with mashingun and pistol, and a certain Edoardo Lancia, also armed with pistol but in uniform and helmets. Then the two took the civilian and went off with him. Shortly after I heard a shot and immediately another one, and I thought there was some fighting going on with the partisans. I saw, instead, Roncaglia and Lancia coming back to the square and announcing: "Listen boys, we have just killed an American, you must go and get him"

So I ran, together with the others to the house and as I entered it I saw a body on the floor still breathing. We took a blanket and a ladder, on which we laid the body to carry him out of the room. I remember among the people present in the room Tito Roncaglia, Odoardo Lancia, Capt. Anastasio Nascani and two in civilian cloth. Nascani said: "We must take him down at once, to the hospital" As I carried the ladder, the head of the victim turned towards me, and at about 10-15 meters from the square I heard the wounded man take a deep breath, I said: He is dead. Blood was pouring out of his mouth and also his chest was bleeding. When we arrived with the body to the square Roncaglia said: "After all, we have killed an American" and Lancia added: " We fired at him one round each". Then the body was put on a vehicle and we all left for Terni. Arrived at Terni I reported at the barracks and went then home.

I remember the American as rather tall, in civilian cloth; he wore a knife (dagger), it was said, and on searching him a billfold was found, the content of which is not known to me.

No further details have come to my knowledge.

/s/ Dolci Vincenzo

I certify that the above is a true translation of the original to the best of my knowledge and ability.

Vera Kormis
Translator, WCIS.

Ex. 14(x)

DICHIARAZIONE

Io sottoscritto Dolci Vincenzo detto Gennaro di Vittorio e di Pierant[illegible] ti Terziana nato a Cesi il 2-12-1920 residente a Cesi(Terni)via della Rocc[illegible] N.(5).Dichiaro quanto segue:

Nel mese di gennaio del 1944 prestavo servizio presso la G.N.R.in [illegible] qualita di semplice soldato.Nei ultimi giorni del mese di gennaio 1944 verso l[illegible] la mezzanotte di uno di tali giorni che io non ricordo con precisione;mi trov[illegible] vavo a letto,quando venne il Tenente Antonucci il quale ci sveglio e di[illegible] hanno ammazzato l'Avvocato Orsini,ci disse che bisognava andare al pa[illegible] Polino.Io mi alzai e andai alla porta ove si trovava una macchina,pa[illegible] vece tutto fu rimandato alla mattina dopo.La mattina dopo a bordo d[illegible] tobus assieme ad altre macchine e ad altri militi partimmo verso Polino. Giunti ad Arrone ci fermammo,e mi accorsi che vi erano dei Tedeschi sulla piazza dello stesso paese.Il Federale Coppo che comandava la spedizione [illegible] disse hai Tedeschi che dovevano andare loro,invece i tedeschi non vennero con noi venne solo un Comandante Tedesco.Poi si parti.Giunti a Polino [illegible] scesi dalla macchina a seguito di un ordine dato dal Comandante.Rimasi [illegible] piazza,e mentre mi trovavo nella piazza mi accorsi che gli altri militi [illegible] erano sparsi nel interno del paese.[illegible]Mentre mi trovavo sulla piazza vidi due militi uno [illegible] chiamava Franceschini e l'altri non mi ricordo i quali avevano con loro un borghese di statura piccola e grossa portava i baffi grandi,il quale urlava che diceva:NON MAMMAZZATE CHE VI DICO D'OVE UN AMERICANO.A questo punto vi un certo Roncaglia Tito il quale era in abito civile armato di pistola e [illegible] mitra e un certo Lancia Edoardo anche armato di pistola pero portava [illegible] sa e degli stivaloni.Loro presero questo borghese ed assieme andarono con lui.Poco dopo udii un colpo di arma da fuoco,e subito dopo un altro [illegible] to pensai che fosse avvenuto qualche attacco da prte dei partigiani.Dopo vece vidi arrivare sulla piazza Roncaglia Tito e Lancia Odoardo i quali pena vennero giu ci dissero:RAGAZZI ABBIAMO AMMAZZATO UN AMERICANO BISOGNA ANDARE A PRENDERLO.Allora io assieme ad altri sono corso verso la casa ed appena entrato vidi un corpo disteso a terra il quale ancora respirava,ap[illegible] na noi ci siamo accorti che respirava ancora,abbiamo preso una coperta ed una scala abbiamo adagiato il corpo sulla scala e lo abbiamo sollevato per portarlo via.Ricordo che nell'interno della stanza si trovavano assieme a me Tito Roncaglia,Lancia Odoardo,il Capitano Nascani Ana[illegible] in abito civile;il Capitano Nascani disse:BISOGNA [illegible] SI PORTAVA ALL'OSPEDALE.Io portai il corpo a [illegible] la testa del Americano era rivolta verso il [illegible] 15 metri dalla piazza uddi che il ferito fece un profondo respiro,io dissi E' MORTO.Il ferito perdeva sangue dalla bocca ed aveva del sangue anche nel petto,quando noi abbiamo portato il corpo nella piazza,Roncaglia [illegible]

Pres. Ex. (5)

...oli ...e segue dichiarazione Doloi Vincenzo:

Tunto abbiamo ammazzato un americano, poi Ianoia disse: LE abbiamo sparato un colpo per ciascuno. Dopo il corpo venne messo sopra una macchina, e poco dopo si partì per Terni. Arrivato a Terni io ritornai alla Caserma, e in seguito raggiunsi casa mia. Ricordo che l'Amuricano era abbastanza alto, vestiva con abiti civili, portava, mi dissero un pugnale, addosso le venne trovato portafoglio che però non seppi cosa contenesse. Non sono a conoscenza di altri particolari, perciò mi firmo in fede:

Doloi Vincenzo

Doloi Vincenzo

ANYONE TRESPASSING WILL BE SHOT DEAD

CHIUNQUE PASSI QUESTO RECINTO VERRA' FUCILATO

jedermann, der den zaun überschreitet wird erschossen

WCT Rpt. #377.

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

24 March 1947

UNITED STATES)
)
vs) Case No. 000-50-2-1
Karl ADAMI, Adolf BALTES,)
Franz BAYER, Josef BOESCH,)
Andreas DEPPER, Georg KARPE,)
Anton SCHEIMAUL, Alfred SCHOLZ)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried jointly at Dachau, Germany
Date: 11 - 14 October 1946
Intermediate Military
Government Court.

ACCUSED	DATA	SENTENCE
ADAMI, Karl	Married, family Roumanian national Age 40 E.M. Roumanian Army 1930-31; also 1939-43 Drafted German Army July 1943 SS Guard Dachau, August 1943 to capitulation.	6 months confinement from 14 October 1946.
BALTES, Adolf	Marital status unknown Age 40 Drafted German Army 1941 SS Guard Dachau and out-camps, October 1944 to capitulation.	6 months confinement from 14 October 1946.
BAYER, Franz	Marital status unknown Age 55 Czechoslovakian national, German descent SS Guard Dachau and out-camps, August 1944 to capitulation.	6 months confinement from 14 October 1946

ACCUSED	DATA	SENTENCE
BOENSCH, Josef	Marital status unknown Age 47 German national Drafted Waffen SS February 1941 SS Guard and Detail Leader Dachau, September 1944 to capitulation.	3 years confinement from 14 October 1946
DEPNER, Andreas	Married, 3 children Age 43 Roumanian national Roumanian Army 1924-26 Drafted German Army 1943 SS Guard Dachau, August 1943 to capitulation.	6 months confinement from 14 October 1946
KARPE, Georg	Married Age 42 German national Drafted Waffen SS January 1940 SS Guard at Praezifix Factory, Dachau, 1941-45.	2 years and 6 months confinement from 14 October 1946.
SCHERMAUL, Anton	Married, 3 children Age 42 German national Drafted German Army January 1944 SS Guard Dachau (Kompton) September 1944 to capitu- lation.	6 months confinement from 14 October 1946
SCHOLZ, Alfred	Married Age 41 Member of Nazi Party Drafted German Army November 1940 SS Guard Dachau March 1944 to capitulation Rank, Corporal.	2 years confinement from 14 October 1946

FIRST CHARGE: Violation of the Laws and Usages of War.

PARTICULARS: In that Karl ADAMI, Adolf BALTES, Franz BAYER, Josef BOENSCH, Andreas DEPNER, Georg KARPE, Anton SCHERMAUL and Alfred SCHOLZ, acting in pursuance of a		Pleas	Findings
	ADAMI	NG	G
	BALTES	NG	G
	BAYER	NG	G

		Pleas	Findings
common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.	BOENSCH	NG	G
	DEPNER	NG	G
	KARPE	NG	G
	SCHERMAUL	NG	G
	SCHOLZ	NG	G

SECOND CHARGE: Violation of the Laws and Usages of War.

		Pleas	Findings
PARTICULARS: In that Karl ADAMI; Adolf BALTES, Franz BAYER, Josef BOENSCH, Andreas DEPNER, Georg KARPE, Anton SCHERMAUL, and Alfred SCHOLZ, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such peisoners of war being unknown but aggregating many hundreds.	ADAMI	NG	G
	BALTES	NG	G
	BAYER	NG	G
	BOENSCH	NG	G
	DEPNER	NG	G
	KARPE	NG	G
	SCHERMAUL	NG	G
	SCHOLZ	NG	G

4. RECOMMENDATIONS: That the findings and sentences be approved, except as to accused SCHERMAUL, and that the finding and sentence as to accused SCHERMAUL be disapproved.

3. EVIDENCE:

For the Prosecution: The Prosecution's case was based on extra judicial sworn testimony as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (U.S. vs Weiss et al 000-50-2, March 1946; E 7). Exhibits P-2 to P-9, inclusive, consist of extra judicial testimony of each of the accused.

Accused SCHOLZ was an SS guard at Camp Dachau from December 1944 to the liberation of the camp with the rank of corporal (R 20). He performed tower and escort guard duty at the main camp (R 22). He later served as tower guard at the Praezifix Factory at Camp Dachau which made aircraft parts. He was a guard on the prisoner march from Camp Dachau to Wolfratshausen. The Praezifix column in the march was made up of 116 Russians and Germans (P-9). He was on the Praezifix detail at the time a hanging took place (R 42).

Accused KALPE was an SS guard at Camp Dachau from February 1941 to the capitulation. He was promoted to sergeant in May 1944. He served as a guard on the Praezifix detail from March 1943 until July 1944, assisting the detail leader and taking his place when he was away (R 30). He worked in various other offices prior to his service on the Praezifix detail. He was familiar with all workings of the camp (P-7).

Accused ADAMI was drafted into the Waffen SS in August 1943 and sent to the SS clothing factory at Camp Dachau four days later. He worked every second week with prisoners on the night shift until he became sick in March 1944. From that time to the liberation of the camp he worked on the day shifts. Workers in the clothing factory were supervised by civilian technicians while ADAMI and one other SS trooper acted as guards (P-2).

Accused BOENSCH was drafted into the Waffen SS February 1941. He served in a field unit until September 1944 when he was made a guard at Camp Dachau and served in this capacity until the capitulation. He had charge of various small details around the camp, including the gardener's detail, which was made up of clergymen (P-5).

Accused DEPNER was drafted into the SS in August 1943 and transferred to Camp Dachau to the rabbit farm where there were 82 prisoners working under him (P-6). He held the rank of T/Sgt (R 64) until the capitulation in April 1945 (R 65).

Accused BALTES was a tower guard and a work-detail guard in the SS at Allach, an out-camp, from early in September to the middle of November 1944. Then with the same duties he served at Camp Dachau until 4 March 1945 and finally at the Augsburg sub-camp until the evacuation in April 1945. He stated that the food was bad in all three camps and the prisoners were undernourished. The prisoners at Allack working under JAROLIN (U.S. vs Weiss et al, 000-50-2) were compelled to work 12 hours a day. He saw the Allach deputy camp leader beat a prisoner. A typhoid fever epidemic broke out at Dachau in the winter of 1944 and many prisoners died. He saw many corpses go to the crematory. BALTES stated that Augsburg was a very bad camp and prisoners were in such poor health that many were too weak to walk from their work and had to be carried. They were kept at work by blows from capos. BALTES was a guard on the prisoner march from Augsburg out-camp southward on 23 April 1945 and was captured by the advancing Americans three days later (P-3).

Accused BAYER entered the Waffen SS in October 1944 and was immediately assigned guard duty at out-camp Kaufering No. VII. There were about 2000 male and female inmates of various nationalities in this camp. They were badly fed and clothed and lived under very unsanitary conditions. Johannes EICHELSDORFER was commandant of this camp where beatings were not only permitted but EICHELSDORFER beat the prisoners himself (U.S. vs Weiss et al, 000-50-2, R 1764). BAYER performed the same duties at out-camp Kaufering No. XI where three to four thousand male and female prisoners were incarcerated under conditions similar to those at out-camp Kaufering No. VII. BAYER saw prisoners beaten at both camps by capos/ Accused was a guard on one prisoner march from cut-camp Kaufering No. XI, which departed toward Wolfratshausen at the end of April 1945 (P-4).

Accused SCHELMAUL entered the Waffen SS in September 1944 and was transferred to out-camp Kempton where he served as both a tower guard and on escort guard until the capitulation. There were about 400 prisoners at this camp working for the Bavarian Motor Works (P-8).

For the Defense. Accused SCHOLZ testified that when he arrived at Camp Dachau he knew nothing of concentration camps (R 21). He never had trouble with prisoners and never reported any of them for punishment (R 22). He claimed that he was transferred to Camp Dachau and to the SS without his consent. His assignment was made arbitrarily by his superiors (R 23, 24). He was recalled to the stand by the Defense and stated that he knew nothing about the hangings in 1944 referred to in the testimony of the defense witnesses Henrik FUESER (R 42), Franz KAPSBERGER (R 48), and Ferdinand KAPPER (R 49), and that he, SCHOLZ, was in the hospital at the time. He identified the accused KARPE, whom he relieved on the Praezifix detail (R 25). He testified that KARPE was kind to the prisoners and treated them humanely (R 25). He also testified that KARPE'S duties were restricted because of extremely bad vision (R 25). On the prisoner march from Camp Dachau to Wolfratshausen, SCHOLZ was a guard and had two wagons with food for the prisoners. No losses occurred in his column (P-9).

Accused KARPE was drafted into the Waffen SS in January 1940 and was discharged in October 1940 because of faulty vision. After reinduction in February 1941 he tried to get a discharge but was unsuccessful. He denied knowing anything about the organization or responsibility for the care of inmates at Camp Dachau (R 30). He never had any trouble with prisoners nor did he have occasion to report them for infractions of the rules (R 30). He knew accused SCHOLZ in the camp and testified that SCHOLZ always treated the prisoners kindly and humanely (R 32). He saw prisoners beaten only once in the camp and never say anyone shot or hanged at Camp Dachau (R 34).

The defense witness, Henrik FUESER, was interned in Camp Dachau by the Gestapo in 1942 and remained until the liberation (R 36, 37). He knew accused KARPE in the camp, described KARPE'S duties at the Praezifix and testified that KARPE acted in a very humane manner toward the inmates (R 38). In 1944 FUESER witnessed one hanging in the Praezifix. KARPE, however, had been transferred from Praezifix before the hanging (R 42). On cross-examination, FUESER stated that KARPE had given him cigarettes and bread (R 41).

Another defense witness, Franz KAPSBERGER, a German national and former inmate at Camp Dachau from 1940 to 1945, testified that he was on the Praezifix detail from 1941 to 1945 (R 43). While on this detail, he became acquainted with accused KARPE who acted very humanely toward the prisoners (R 45) and had relaxed the discipline of the camp as much as he could (R 45, 46). This witness also knew SCHOLZ on the Praezifix detail and described him as a kind and humane guard (R 47).

The defense witness, Ferdinand KAPPER, a German national and resident of Dachau, was an inmate in the camp from 1938 to 1944 (R 50). He knew the accused KARPE in the camp and described him as being extremely humane and kindly (R 51). The witness was acquainted with accused SCHOLZ whom he described as being very strict but never guilty of harshness or mistreatment (R 53).

Accused ADAMI testified and denied any knowledge of concentration camp organization (R 57). At Camp Dachau he was detailed to the tailor shop and worked at a machine with the inmates from August 1943 to March 1944. He was hospitalized for tuberculosis from that time until October 1944 when he returned to work in the same shop with civilian labor(R 58). He got along very well with the inmates working under his supervision. On cross-examination, he stated that his records were taken away from him, making it impossible for him to prove any of his statements relative to his army service (R 60,61). He never saw prisoners mistreated and did not mistreat any himself (P-2).

Defense witness, Franz MRAAS, testified that he was interned at Camp Dachau in May 1943 because of political activity (R 91), that he is now detained in the War Crimes Enclosure and that he was denounced by former inmates (R 92). He was a capo in a clothing factory after August 1943. He knew and worked with the accused ADAMI in the factory and states that for three or four months ADAMI worked on the night shift instructing the inmates in the operation of the machines (R 92). During this time ADAMI did not perform any guard duty. The witness described the popularity of ADAMI with the inmates and observed that ADAMI treated those under him humanely and correctly (R 94).

Another defense witness, Simon HONHEISER, a former inmate of Camp Dachau for two years and now a tailor employed in the village of Dachau (R 95, 96), described in detail an act of kindness accused ADAMI had once done him when he fell ill at his machine in the clothing shop (R 97,98).

Defense witness, Rudolf DREIER, a German national and former inmate of Camp Dachau from 1941 to 1945, was incarcerated there upon conviction for forgery in 1938 (R 105). While an inmate, he became acquainted with accused DEPNER and ADAMI. He testified as to DEPNER'S friendly and cooperative attitude toward the prisoners and cited examples (R 106). He also described ADAMI'S reputation among the inmates as being good (R 107). He saw beatings in camp but never by DEPNER or ADAMI, or in their presence (R 108).

Accused DEPNER testified to the effect that he never had any trouble with inmates while at Camp Dachau (R 65) and that he was able to provide them with food above their regular ration (R 66). On cross-examination, he stated that he exercised no command functions over the members of the rabbit farm detail but that he acted in a technical supervisory capacity (R 66). No guards were needed or used as the farm was a fenced-in enclosure located inside the regular camp and the detail was marched over each morning directly from their quarters (R 67). He never saw any inmates shot, hanged, or beaten (R 68).

Defense witness, Doctor Paul HUSAREK, now a resident of Dachau and an investigator employed by Military Government, was an inmate at Camp Dachau from 1941 to 1945. He knew DEPNER in the concentration camp and often visited a close friend who worked on the rabbit farm, contrary to camp regulations and with DEPNER'S consent. He described DEPNER'S easy discipline and how DEPNER had supplemented the meager rations of members of the rabbit farm detail (R 71). He described in detail how DEPNER had been pointed out as a war criminal and claimed it was a gross mistake (R 72). HUSAREK was also acquainted with the accused ADAMI and stated he had the reputation of treating prisoners humanely (R 73).

Accused BAYER testified to the effect that he was drafted into the SS and sent to Camp Dachau for guard duty without his consent (R 89). He had no trouble with prisoners during his tour of duty at out-camps Kaufering Nos. VII and XI, and never struck a prisoner or reported one for punishment (R 90). He once saw OT men mistreating a prisoner but he stopped it immediately (P-4, par. 3). Capos who beat prisoners at out-camps Kaufering Nos VII and XI were not under his command (P-4, par. 5).

Accused SCHERMAUL denied knowing anything about operation of concentration camps, how the inmates were selected or who was responsible for their welfare after their incarceration (R 101). While at Kempton out-camp he never had any trouble with the prisoners and never abused them (R 102).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any errors or omissions which resulted in injustice to the accused. All of the accused were, by their own admissions, SS guards at Camp Dachau or its out-camps for considerable periods of time between the dates alleged (P-2 to P-9, inclusive).

The Court was required to take cognizance of the decision rendered in the parent Dachau Concentration Camp case, including the findings of the Court therein that the mass atrocity was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases," 14 October 1946, letters superseded thereby, and U.S. vs Weiss et al, 000-50-2, March 1946). With the exception of the accused SCHERMAUL, all accused were shown to have participated in the mass atrocity and the Court was warranted, by the evidence adduced, either in the parent Dachau case or in this subsequent proceeding, in concluding as to them that they not only participated to a substantial degree but that the nature and extent of their participation was such as to warrant the sentence imposed. Concerning accused SCHERMAUL, it was shown that he participated and the nature of his duties was also satisfactorily proved. However, a search of the record in the parent case and the record in this subsequent proceeding reveals no evidence as to atrocities committed at the Kempton out-camp. It is true that it was shown that 400 slave laborers were worked there but, if they were not otherwise mistreated and tortured, it is believed that SCHERMAUL'S participation in this mass atrocity was too remote to form a proper basis of sentencing by the Court. By virtue of the absence of evidence as to what occurred at the Kempton out-camp, he is not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of his participation to permit of arriving at an appropriate sentence. It could be contended with considerable merit that the Court, with propriety, could have inferred that the inmates of the Kempton out-camp were subjected to cruelties and torture substantially like those clearly proven to have been inflicted at the parent camp

and the other out-camps. If that view were adopted, at least theoretically, injustices could result and those too remotely connected with this or other mass atrocities might be severely punished without a proper gauge to measure the magnitude of their crimes.

6. CLEMENCY: There are no Petitions for Review. Consideration was given to letter from accused Josef BOENSCH dated 3 January 1947. No clemency is recommended.

7. CONCLUSIONS:

a. It is recommended that all the sentences, except the one as to accused SCHERMAUL, be approved.

b. It is recommended that the sentence as to accused SCHERMAUL be disapproved.

c. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

s/ Louie T. TISCHER
t/ LOUIE T. TISCHER,
Attorney,
Post Trial Section.

Having examined the record of trial, I concur.

C. E. STRAIGHT,
Colonel, JAGD,
Deputy Theater Judge Advocate
for War Crimes.

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-1
Strafsache Nr. 000-50-2-1

Order No.
Verfügung Nr._____

Whereas one Andreas DEPNER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participating in Dachau Concentratic Camp mass atrocity
Wegen der folgenden strafbaren Handlung Teilnahme an Massengreultate in Konzentrationslager Dachau

by the intermediate Military Court at Dachau, Germany
vom Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 6 months commencing 14 October 194
schuldig erkannt und zu Gefängnisstrafe von 6 Monaten mit wirkung ab 14 Oktober 1946.

by Judgement dated the 14 October 1946
durch Urteil vom 14 Oktober 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of 6 months commencing 14 October 1946.

Das der Befund und das Urteil bekräftigt werden. Der Kommandierende General, Militärbereich I, wird die inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, fur die Zeit von 6 Monaten mit wirkung ab 14 Oktober 1946 veranlassen.

Dated this
Gegeben am 21 April 1947

/s/J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

/t/J. L. HARBAUGH, JR.
Colonel JAGD
Acting Judge Advocate
(Title)
(Titel)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-1
Strafsache Nr. 000-50-2-1

Order No.
Verfügung Nr.____

Whereas one Georg KARPE
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the Intermediate Military Court at Dachau, Germany
vom Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 2 years and 6 months commencing 14 October 1946
schuldig erkannt und zu Gefängnisstrafe von 2 Jahren 6 Monaten mit Wirkung ab 14 Oktober 1946

by Judgement dated the 14 October 1946
durch Urteil vom 14 Oktober 1946
(Date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years and 6 months commencing 14 October 1946.

Dass der Befund und das Urteil bekräftigt werden. Der Kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 2 Jahren 6 Monaten mit Wirkung ab 14 Oktober 1946 veranlassen.

Dated this
Gegeben am 21 April 1947

/s/J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

/t/J. L. HARBAUGH, JR.
Colonel JAGD
Acting Judge Advocate

HEADQUARTERS
EUROPEAN COMMAND, FRANKFURT

AG 383 JAG

APO 757
April 23, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Andreas DEPNER, (Case NO. 000-50-2-1).

TO : Commanding General,
First Military District,
APO 1, U.S. Army.

Reference is made to letter, this Headquarters, AG 383 JAG-AGO, 26 February 1947, subject: "Designation of Prisons for War Criminals", and to the inclosed copies of the Order on Review in the above entitled case as to accused Andreas DEPNER.

Upon compliance with the Order on Review the Certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/Wm. E. Borgin
/t/WM. E. BORGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup).

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner was released from confinement on 13 April 1947, per expiration of sentence.

/s/George T. Lagish
/t/GEORGE T. LAGISH
(Signature and Rank)
Major, Infantry,
Prison Officer.
(Organization)

/s/Lloyd A. Wilson
/t/LLOYD A. WILSON, Capt. CMP.
(Countersignature and Rank of Witnessing Officer)

HEADQUARTERS
EUROPEAN COMMAND, FRANKFURT

AG 383 JAG

APO 757
April 23, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Georg KARPE (Case No. 000-50-2-1).

TO : Commanding General,
First Military District,
APO 1, U.S. Army.

Reference is made to letter, this Headquarters, AG 383 JAG-AGO, 26 February 1947, subject: "Designation of Prisons for War Criminals". and to the inclosed copies of the Order on Review in the above entitled case as to accused Georg KARPE.

Upon compliance with the Order on Review the Certificate below will be completed and returned to the Deputy Judge Advocate for war crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/Wm. E. Bergin
/t/WM. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 14 May (Date) 1947, at 0300 (Hour).

/s/George T. Lagish
/t/GEORGE T. LAGISH
(Signature and Rank)
Major, Infantry,
Prison Officer.
(organization)

/s/Lloyd A. Wilson
/t/LLOYD A. WILSON, Capt. CMP.
(Countersignature and Rank of Witnessing Officer)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-1
Strafsache Nr. 000-50-2-1

Order No.
Verfügung Nr._____

Whereas one Franz BAYER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the Intermediate Military Court at Dachau, Germany
vom Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 6 months commencing 14 October 194
shuldig erkannt und zu Gefängnisstrafe von 6 Monaten mit wirkung ab 14 Oktober 1946.

by Judgement dated the 14 October 1946
durch Urteil vom 14 Oktober 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of 6 months commencing 14 October 1946.

Dass der Befund und das Urteil bekräftigt werden. Der Kommandierende General, Militärbereich I, wird die inhaftierung des Betroffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, fur die Zeit von 6 Monaten mit Wirkung ab 14 Oktober 1946 veranlassen.

Dated this
Gegeben am 21 April 1947

/s/J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

/t/J. L. HARBAUGH, JR.
Colonel JAGD
Acting Judge Advocate
(Title)
(Titel)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-1
Strafsache Nr. 000-50-2-1

Order No.
Verfügung Nr.____

Whereas one Josef BOERSCH
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the Intermediate Military Court at Dachau, Germany
vom Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 3 years commencing 14 October 1946
schuldig erkannt und zu Gefängnisstrafe von 3 Jahren mit Wirkung ab 14 Oktober 1946

by Judgement dated the 14 October 1946
durch Urteil vom 14 Oktober 1946 and
(Date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechenden Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 3 years commencing 14 October 1946.

Dass der Befund und das Urteil bekräftigt worden. Der Kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, fur die Zeit von 3 Jahren mit wirkung ab 14 Oktober 1946 veranlassen.

Dated this
Gegeben am 12 April 1947

s/J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

t/J. L. HARBAUGH, JR.
Colonel JAGD
Acting Judge Advocate
(Title)
(Titel)

HEADQUARTERS
EUROPEAN COMMAND, FRANKFURT

AG 383-JAG

APO 757
April 23, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Franz BAYER (Case No. 000-50-2-1).

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, this Headquarters, AG 383 JAG-AGO, 26 February 1947, subject: "Designation of Prisons for War Criminals", and to the inclosed copies of the Order on Review in the above entitled case as to accused Franz BAYER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/Wm. E. Borgin
/t/WM. E. BORGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup).

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above-described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner was released from confinement on 13 April 1947, per expiration of sentence.

/s/George T. Lagish
/t/GEORGE T. LAGISH,
(Signature and Rank)
Major, Infantry,
Prison Officer.
(Organization)

/s/Lloyd A. Wilson
/t/LLOYD A. WILSON, Capt. CMP
(Countersignature and Rank of Witnessing Officer)

HEADQUARTERS
EUROPEAN COMMAND, FRANKFURT

AG 383 JAG

APO 757
April 23, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Josef BOENSCH (Case No. 000-50-2-1).

TO : Commanding General,
First Military District,
APO 1, U.S. Army.

Reference is made to letter, this Headquarters, AG 383 JAG-AGO, 26 February 1947, subject: "Designation of Prisons for War Criminals", and to the inclosed copies of the Order on Review in the above entitled case as to accused Josef BOENSCH.

Upon compliance with the Order on Review the Certificate below will be completed and returned to the Deputy Judge Advocate for war crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/Wm. E. Bergin
/t/WM. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1,Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 14 May (Date) 1947, at 0800 (Hour).

/s/George T. Lagish
/t/GEORGE T. LAGISH
(Signature and Rank)
Major, Infantry,
Prison Officer.
(Organization)

/s/Lloyd A. Wilson
/t/LLOYD A. WILSON, Capt, CMP.
(Countersignature and Rank of Witnessing Officer)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-1
Strafsache Nr. 000-50-2-1

Order No.
Verfügung Nr.____

Whereas one Adolf BAITZ
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the Intermediate Military Court at Dachau, Germany
vom Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 6 months commencing 14 October 1946
schuldig erkannt und zu Gefängnisstrafe von 6 Monaten mit wirkung ab 14 Oktober 1946.

by Judgement dated the 14 October 1946
durch Urteil vom 14 Oktober 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überpüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 6 months commencing 14 October 1946.

Dass der Befund und das Uteil bekräftigt werden. Der Kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, fur dis Zeit von 6 Monaten mit Wirkung ab 14 Oktober 1946 veranlassen.

Dated this
Gegeben am 21 April 1947

/s/J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
/t/J. L. HARBAUGH, JR.
Colonel JAGD
Acting Judge Advocate
(Title)
(Titel)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

"ORDER ON REVIEW"
Verfügung nach Überprüfung

Case No. 000-50-2-1 — Order No.
Strafsache Nr. 000-50-2-1 — Verfügung Nr._____

Whereas one Karl ADAM
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the Intermediate Military Court at Dachau Germany
vom Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 6 months commencing 14 October 1946.
schuldig erkannt und zu Gefängnisstrafe von 6 Monaten mit Wirkung ab 14 Oktober 1946.

by Judgement dated the 14 October 1946
durch Urteil vom 14 Oktober 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüg ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of 6 months commencing 14 October 1946.

Dass der Befund und das Urteil bekräftigt werden. Der Kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, fur die Zeit von 6 Monaten mit Wirkung ab 14 Oktober 1946 veranlassen.

Dated this
Gegeben am 21.April 1947

/s/J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

/t/J. L. HARBAUGH, Jr.
Colonel JAGD
Acting Judge Advocate
(Title)
(Titel)

HEADQUARTERS
EUROPEAN COMMAND, FRANKFURT

AG 383 JAG

APO 757
April 23, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Adolf BALTES (Case No. 000-50-2-1).

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, this Headquarters, AG 383 JAG-AGO, 26 February 1947, subject: "Designation of Prisons for War Criminals", and to the inclosed copies of the Order on Review in the above entitled case as to accused Adolf BALTES.

Upon compliance with the order on Review the Certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/Wm. E. Bergin
/t/WM. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup).

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner was released from confinement on 13 April 1947, per expiration of sentence.

/s/George T. Lagish
/t/GEORGE T. LAGISH,
(Signature and Rank)
Major, Infantry,
Prison Officer.

(Organization)

/s/Lloyd A. Wilson
/t/LLOYD A. WILSON, Capt, CMP.
(Countersignature and Rank of Witnessing Officer)

HEADQUARTERS
EUROPEAN COMMAND FRANKFURT

AG 383 JAG

APO 757

April 23, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Karl ADAMI (Case No. 000-50-2-1)

TO : Commanding General,
First Military District,
APO 1, U.S. Army.

Reference is made to letter, this Headquarters, AG 383 JAG-AGO, 26 February 1947, subject: "Designation of Prisons for War Criminals", and to the inclosed copies of the Order on Review in the above entitled case as to accused Karl ADAMI.

Upon compliance with the order on Review the Certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY

/s/Wm. E. Bergin
/t/WM. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup).

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner was released from confinement on 13 April 1947, per expiration of sentence.

/s/George T. Lagish
/t/GEORGE T. LAGISH
(Signature and Rank)
Major, Infantry,
Prison Officer.

(Organization)

/s/Lloyd A. Wilson
/t/LLOYD A. WILSON, Capt. CMP.
(Countersignature and Rank of Witnessing Officer)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-1
Strafsache Nr. 000-50-2-1

Order No.
Verfügung Nr.____

Whereas one Anton SCHERMAUL
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity .
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the Intermediate Military Court at Dachau, Germany
vom Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 6 months commencing 14 October 1946.
schuldig erkannt und zu Gefängnisstrafe von 6 Monaten mit wirkung ab 14 Oktober 1946.

by Judgement dated the 14 October 1946
durch Urteil vom 14 Oktober 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüg ich:

That the findings and sentence be disapproved. The Commanding General, First Military District, will release Anton SCHERMAUL from confinement at War Criminal Prison No. 1, Landsberg, Germany upon receipt of this Order on Review.

Dass der Befund und das Urteil nicht bestätigt werden. Der Kommandierende General, Militärbezirk I, wird nach Erhalt dieser Verfügung die Entlassung des Anton SCHERMAUL aus der Haft im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, veranlassen.

Dated this
Gegeben am 21 April 1947

/s/J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

/s/J. L. HARBAUGH, JR.
Colonel JAGD
Acting Judge Advocate
(Title)
(Titel)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-1
Strafsache Nr. 000-50-2-1

Order No.
Verfügung Nr.____

Whereas one Alfred SCHOLZ
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the Intermediate Military Court at Dachau, Germany
vom Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 2 years commencing 14 October 1946
schuldig erkannt und zu Gefängnisstrafe von 2 Jahren mit Wirkung ab 14 Oktober 1946
by Judgement dated the 14 October 1946
durch Urteil vom 14 Oktober 1946 and
(Date)
(Datum)

whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the Powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years commencing 14 October 1946.

Dass der Befund und das Urteil bekräftigt werden. Der Kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, fur die Zeit von 2 Jahren mit Wirkung ab 14 Oktober veranlassen.

Dated this
Gegeben am 21 April 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

/t/J. L. HARBAUGH, JR.
Colonel, JAGD
Acting Judge Advocate

HEADQUARTERS
EUROPEAN COMMAND, FRANKFURT

AG 383 JAG

APO 757
April 23, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Anton SCHERMAUL (Case No. 000-50-2-1).

TO : Commanding General,
First Military District,
APO 1, U.S. Army.

Reference is made to letter, this Headquarters, AG 383 JAG-AGO, 26 Feruary 1947, subject: "Designation of Prisons for War Criminals", and to the inclosed copies of the Order on Review in the above entitled case as to accused Anton SCHERMAUL.

Upon compliance with the Order on Review the Certificate below will be completed and returned to the Deputy Judge Advocate for war crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/Wm. E. Bergin
/t/WM. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup).

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner was released from confinement on 13 April 1947, per expiration of sentence.

/s/George T. Lagish
/t/GEORGE T. LAGISH
(Signature and Rank)
Major, Infantry,
Prison Officer.
(Organization)

/s/Lloyd A. Wilson
/t/LLOYD A. WILSON, Capt. CMP
(Countersignature and Rank of Witnessing Officer)

HEADQUARTERS
EUROPEAN COMMAND, FRANKFURT

AG 383 JAG

APO 757
April 23, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Alfred SCHOLZ (Case No. 000-50-2-1).

TO : Commanding General,
First Military District,
APO 1, U.S. Army.

Reference is made to letter, this Headquarters, AG 383 JAG-AGO, 26 February 1947, subject: "Designation of Prisons for War Criminals", and to the inclosed copies of the Order on Review in the above entitled case as to accused Alfred SCHOLZ.

Upon compliance with the Order on Review the Certificate below will be completed and returned to the Deputy Judge Advocate for war crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/Wm. E. Bergin
/t/WM. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup).

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany on 14 May (Date) 1947, at 0800 (Hour).

/s/George T. Lagish
/t/GEORGE T. LAGISH
(Signature and Rank)
Major, Infantry,
Prison Officer.
(Organization)

/s/Lloyd A. Wilson
/t/LLOYD A. WILSON, Capt, CMP.
(Countersignature and Rank of Witnessing Officer)

WCT 96
378

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

12 May 1947

UNITED STATES)
)
vs) Case No. 000-50-2-2
)
Johann BARZEN, Georg BAUER,)
Anton BIBER, Johann BIELZ,)
Josef HERBERT, Franz LAUTER,)
Paul Hermann RECHNER, Herbert)
SEHMISCH)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried jointly at Dachau, Germany
Date: 16 October 1946
Intermediate Military Government Court

ACCUSED	DATA	SENTENCE
BARZEN, Johann	Age 56 German national SS guard Dachau and out-camps Rothschweige and Allach, May 1944 to capitulation.	18 months confinement from 30 April 1945.
BAUER, Georg	Age 36 German national Married, no children SS guard and courier driver Dachau and out-camps Allach and Rothschweige, June 1944 to capitulation.	18 months confinement from 26 May 1945.
BIBER, Anton (Josef - see R-4)	Age 56 German national Married, 4 children SS Sergeant-of-the-Guard Dachau and out-camp Allach, August 1944 to capitulation.	18 months confinement from 17 July 1945.
BIELZ, Johann	Age 39 Roumanian national Married, 4 children SS guard Dachau and out-camp Allach, July 1943 to April 1945.	18 months confinement from 1 May 1945.

ACCUSED	DATA	SENTENCE
HERBERT, Josef	Age 38 Yugoslavian National SS Guard Dachau and out-camp Allach, November 1943 to December 1945.	18 months confinement from 1 May 1945.
LAUTER, Franz	Age 42 Yugoslavian National SS Guard Dachau and out-camp Allach, September 1944 to capitulation.	18 months confinement from 3 May 1945.
RECHNER, Paul Hermann	Age 42 German National SS Guard (Corporal) Dachau and out-camp Allach, September 1944 to capitulation.	Acquittal
SEHMISCH, Herbert	Age 43 German National SS Guard Dachau and out-camps Allach and Kaufering XI, September 1944 to capitulation.	18 months confinement from 4 May 1945.

FIRST CHARGE: Violation of the Laws and Usages of War

PARTICULARS: In that Johann BARZEN, Georg BAUER, Anton BIBER, Johann BIELZ, Josef HERBERT, Franz LAUTER, Paul Hermann RECHNER, Herbert SEHMISCH, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

	Pleas	Findings
BARZEN	NG	G
BAUER	NG	G
BIBER	NG	G
BIELZ	NG	G
HERBERT	NG	G
LAUTER	NG	G
RECHNER	NG	NG
SEHMISCH	NG	G

SECOND CHARGE: Violation of the Laws and Usages of War.		Pleas	Findings
PARTICULARS: In that Johann BARZEN, Georg BAUER, Anton BIBER, Johann BIELZ, Josef HERBERT, Franz LAUTER, Paul Hermann RECHNER, Herbert SEHMISCH, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.	BARZEN	NG	G
	BAUER	NG	G
	BIBER	NG	G
	BIELZ	NG	G
	HERBERT	NG	G
	LAUTER	NG	G
	RECHNER	NG	NG
	SEHMISCH	NG	G

2. RECOMMENDATIONS: That the findings and sentences be approved.

3. EVIDENCE:

For the Prosecution. The Prosecution's case was based on sworn extrajudicial/testimony as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (R 7; U.S. vs Weiss et al, 000-50-2, March 1946). Exhibits P-2 to P-9, inclusive, consist of extrajudicial sworn testimony of each of the accused. It was shown that during the period 1 January 1942 to 29 April 1945 each of the accused was an SS guard at Dachau Concentration Camp and/or subsidiary camps thereto as hereinafter indicated. At out-camp Allach where JAROLIN, who was convicted in parent Dachau case, was camp leader (U.S. vs Weiss et al, 000-50-2, March 1946, R 1211); Rothschweige, a sub-camp of Allach, where 500 Hungarian Jews were incarcerated under 20 capos (P-3, R 9); and out-camp Kaufering XI.

Accused BARZEN was a guard under JAROLIN at out-camp Allach from September 1944 to the capitulation (P-9, R 15; U.S. vs Weiss et al, 000-50-2, March 1946, R 1211).

Accused BAUER was a guard at out-camp Rothschweige, a sub-camp of Allach. He witnessed the public beating of a prisoner and knew of deaths in the camp from disease (P-3, R 9).

Accused BIBER was a sergeant who posted and controlled the guards at out-camp Allach (P-4, R 21).

Accused BIELZ was a guard at Camp Dachau and out-camp Allach He participated in the prisoner march with 1300 prisoners from Allach on 26 April 1945. Prisoners fell out from exhaustion on this march (P-5, R 10).

Accused HERBERT worked for over a year (1943-1944) in the troop kitchen at Camp Dachau under FILLEBROCK, convicted in the parent Dachau case (P-6; U.S. vs Weiss et al, 000-50-2, March 1946, R 291, 422, 485, 486, 487, P-107). He was then a guard at out-camp Allach for a few days (P-6, R 11).

Accused LAUTER was a guard at Camp Dachau assigned to the "railroad station" detail from 12 March to 27 April 1945. He was a guard on the prisoner march from Dachau to Wolfratshausen on which there were several thousand inmates, 27 April 1945 (P-7. R 11).

Accused MECHNER was an SS Corporal-of-the-Guard at out-camp Allach, September 1944 to capitulation(P-2, R 8).

Accused SEHMISCH was a guard at out-camps Allach and Kaufering XI, September 1944 to capitulation. He was also a guard on the three-day prisoner march Kaufering XI to Wolfratshausen, 26 April 1945 (P-8, R 14).

For the Defense. Accused BARZEN never saw prisoners beaten nor did he beat or report any for punishment (P-9, R 15).

Accused BAUER never beat prisoners with a stick either at Rothschweige or Allach out-camps, or reported any for punishment (P-3, R 9). He took care of the mail and drove the courier and laundry. He had nothing to do with the prisoners (R 25). He was drafted into the Waffen SS and was not a Party member (D-1, R 27).

Accused BIBER did not participate in any beatings or report anyone for punishment at out-camp Allach (P-4, R 21). His duty was outside the concentration camp and he was not allowed inside (R 24).

Accused BIELZ had guard duty exclusively. He never beat or reported prisoners for punishment. When prisoners fell out from exhaustion on the prisoner

march from out-camp Allach he left them by the side of the road (P-5, R 10). He was never on the inside of the camp and knew nothing of what went on therein (R 20).

Accused HERBERT never saw inmates beaten or beat them himself, nor report them for punishment while at Camp Dachau or out-camp Allach (P-6, R 11).

Accused LAUTER never beat or reported prisoners for punishment at Camp Dachau or out-camp Allach. When prisoners fell out on the prisoner march from out-camp Allach he left them to their fate by the side of the road. He knew of no one being shot on this march. (P-7, R 11).

Accused RECHNER was drafted into the SS in September 1944. He served as a guard for 8 months at out-camp Allach with duty at the Bavarian Motor Works, a factory nearby (P-2, R 8).

Accused SEHMISCH was an escort guard at out-camp Allach for 2 months beginning September 1944. He was hospitalized from November 1944 to March 1945. He was transferred to Landsberg as an escort guard and assigned to out-camp Kaufering XI. During his guard duty he claims nothing happened (P-8, R 14).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

The Court was required to take cognizance of the decision rendered in the parent Dachau Concentration Camp Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases," 14 October 1946, letters superseded thereby, and U.S. vs Weiss et al, 000-50-2, March 1946). With the exception of the accused RECHNER all accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the parent Dachau Case or in this

subsequent proceeding, in concluding as to them that they not only participated to a substantial degree but that the nature and extent of their participation was such as to warrant the sentences imposed.

While it was shown that accused RECHNER was a Corporal-of-the-Guard at out-camp Allach for 8 months, a search of the record in the parent case and the record inthis subsequent proceeding reveals no evidence as to atrocities committed at the Bavarian Motor Works, his "duty place", and his acquittal by the Court was therefore warranted.

6. CLEMENCY: There are no Petitions for Review. A Petition for Clemency on behalf of Anton BIBER dated 23 September 1946 and signed by Frau Wally BIBER, his wife, contains no new evidence which would justify a reduction of his sentence, and no clemency is recommended.

7. CONCLUSIONS:

a. It is recommended that the sentences be approved.

b. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

s/ Louie T. Tischer.
t/ LOUIE T. TISCHER
Attorney
Post Trial Section

Having examined the record of trial, I concur.

C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 23 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Johann BARZEN et al (Case No. 000-50-2-2)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Johann BARZEN.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

s/Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ (Date) 1947, at _____ (Hour).

Above named prisoner has been discharged upon completion of his sentence on 30 Dec 46.

s/ George T. Lagish
(Signature and Rank)

Maj. Inf.
Prison Officer
(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 23, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Johann BARZEN et al (Case No. 000-50-2-2)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Georg BAUER.

Upon compliance with the Order on Review the certificate below will be completed and return to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U. S. Army.

BY COMMAND OF GENERAL CLAY:

S/Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 30 Dec 46.

S/George T. Lagish
(Signature and Rank)

Maj. Inf.
Prison Officer
(Organization

(Countersignature and Rank
Of Witnessing Officer)

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 23 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Johann BARZEN et al (Case No. 000-50-2-2)

TO : Commanding General
First Military District,
APO 1, U. S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals, " 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Anton BIBER

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U. S. Army.

BY COMMAND OF GENERAL CLAY:

s/Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ (Date) 1947, at _____ (Hour).

The above prisoner has been discharged upon completion of his sentence on 23 Jan 47.

s/George T. Lagish
(Signature and Rank)

Maj. Inf.
Prison Officer
(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 23 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Johann BARZEN et al (Case No. 000-50-2-2)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Johann BIELZ.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U. S. Army.

BY COMMAND OF GENERAL CLAY:

s/Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above prisoner has been discharged upon completion of his sentence on 11 Dec 46.

s/George T. Leglish
(Signature and Rank)

Maj. Inf.
Prison Officer
(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 23 1947

SUBJECT: Execution of Sentence in the Case of United States vs. Johann BARZEN et al (Case No. 000-50-2-2)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals, "26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Josef HERBERT .

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 11 Dec 46.

s/ George T. Lagish
(Signature and Rank)

Maj. Inf
Prison Officer
(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 23 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Johann BARZEN et al (Case No. 000-50-2-2)

TO : Commanding General
First Military District.
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Franz LAUTER

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

s/Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ 1947, at _____.
(Date) (Hour)

The above maned prisoner has been discharged upon completion of his sentence on 30 Dec. 46.

s/George T. Lagish
(Signature and Rank)

Maj. Inf.
Prison Officer
(Organization)

(Countersignature of Witnessing Officer)

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 23 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Johann BERGEN et al (Case No. 000-50-2-2)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Herbert SCHMIDT.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

s/Wm. E. Borgin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ 1947, at _____.
(Date) (Hour)

The above named prisoner has been discharged upon completion of his sentence on 11 Dec 46.

s/ George T. Legish
(Signature and Rank)

Maj. Inf.
Prison Officer
(Organization)

(Countersignature and Rank of Witnessing Officer)

Legal Form No. 13

MILITARY GOVERNMENT COURT
Militaergericht

ORDER ON REVIEW
Verfuegung nach Ueberpruefung

Case No. 000-50-2-2
Strafsache Nr. 000-50-2-2

Order No.
Verfuegung. Nr.....

Whereas one..... Johann BARZEN
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreultation im Konzentrationslager Dachau

by the * ~~Summary~~ Intermediate Military Court
* ~~General~~
* ~~Einfachen~~
vom * Mittleren Militaergerichte
* ~~Obersten~~

at Dachau, Germany
in Dachau, Deutschland.....
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 30 April 1945
schuldig erkannt und zu Gefaengnisstrafe von 18 Monaten mit Wirkung ab 30 April 1945

by Judgment dated the 16 October 1946
durch Urteil vom 16 Oktober 1946.....194.....and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausuebung der mir uebertragenen Befugnisse verfuege ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months commencing 30 April 1945.

Dass der Befund und das Urteil bekraeftigt werden. Der Kommandierende General, Militaerbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefaengnis No. 1, Landsberg, Deutschland, fuer die Zeit von 18 Monaten mit Wirkung ab 30 April 1945 veranlassen.

Dated this
Gegeben am.....20.May.....194.7...

s/J.L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachpruefenden Behoerde)

J.L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

Legal Form No. 13

MILITARY GOVERNMENT COURT
Militaergericht

ORDER ON REVIEW
Verfuegung nach Ueberpruefung

Case No. 000-50-2-2
Strafsache Nr. 000-50-2-2

Order No.
Verfuegung Nr.....

Whereas one.....Georg BAUER.....
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *~~Summary~~ Intermediate Military Court
*~~General~~
*~~Einsatz~~
vom *Mittleren Militaergerichte
*~~Ober~~

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 26 May 1945
schuldig erkannt und zu Gefaengnisstrafe von 18 Monaten mit Wirkung ab 26 Mai 19..

by Judgment dated the 16 October 1946
durch Urteil vom 16 Oktober 1946.....194.....and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausuebung der mir uebertragenen Befugnisse verfuege ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months commencing 26 May 1945.

Dass der Befund und das Urteil bekraeftigt werden. Der Kommandierende General, Militaerbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefaengnis No. 1, Landsberg, Deutschland, fuer die Zeit von 18 Monaten mit Wirkung ab 26 Mai 1945 veranlassen.

Dated this
Gegeben am.....20 May.....194.7...

s/J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachpruefenden Behoerde)

J. L. HARBAUGH, JR.
Colonel, JAGD
Judge Advocate
(Title)
(Titel)

Legal Form No 13

MILITARY GOVERNMENT COURT
Militaergericht

ORDER ON REVIEW
Verfuegung nach Ueberpruefung

Case No. 000-50-2-2 Order No.
Strafsache Nr. 000-50-2-2 Verfuegung.....

Whereas one Anton BIBER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of paricipation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreultation im Konzentrationslager Dachau

by the *Summary *Intermediate Military Court *General *Special vom *Mittleren Militaergerichte *Obersten at Dachau, Germany in Dachau, Deutschland
(Address of Court) (Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 17 July 1945
schuldig erkannt und zu Gefaengnisstrafe von 18 Monaten mit Wirkung ab 17 Juli 1945

by Judgment dated the 16 October 1946
durch Urteil vom 16 Oktober 1946 194..... and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausuebung der mir uebertragenen Befugnisse verfuege ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months commencing 17 July 1945.

Dass der Befund und des Urteil bekraeftigt werden. Der Kommandierende General, Militaerbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefaengnis No. 1 Landsberg, Deutschland, fuer die Zeit von 18 Monaten mit Wirkung ab 17 Juli 1945 veranlassen.

Dated this
Gegeben am.....20 May.....194.7..

s/J.L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachpruefenden Behoerde)
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)

Legal Form No. 13

MILITARY GOVERNMENT COURT
Militaergericht

ORDER ON REVIEW
Verfuegung nach Ueberpruefung

Case No. 000-50-2-2
Strafsache Nr. 000-50-2-2

Order No.
Verfuegung Nr.

Whereas one Herbert SEDLISCH
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the Intermediate Military Court
vom * Mittleren Militaergerichte

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 4 May 1945
schuldig erkannt und zu Gefaengnisstrafe von 18 Monaten mit Wirkung ab 4 Mai 1945

by Judgment dated the 16 October 1946
durch Urteil vom 16. Oktober 1946 194... and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausuebung der mir uebertragenen Befugnisse verfuege ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months commencing 4 May 1945.

Dass der Befund und das Urteil bekraeftigt werden. Der Kommandierende General, Militaerbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefaengnis No. 1, Landsberg, Deutschland, fuer die Zeit von 18 Monaten mit Wirkung ab 4 Mai 1945 veranlassen.

Dated this
Gegeben am 20 May 194 7

s/J.L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachpruefenden Behoerde)

J.L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

Legal Form No. 13

MILITARY GOVERNMENT COURT
Militaergericht

ORDER ON REVIEW
Verfuegung nach Ueberpruefung

Case No. 000-50-2-2
Strafsache Nr. 000-50-2-2

Order No.
Verfuegung Nr.....

Whereas one ....Franz LAUTER....
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengraultaton im Konzentrationslager Dachau

by the *~~Summary~~ *Intermediate Military Court *~~General~~ *~~Field~~
von *Mittleren Militaergerichte *~~Special~~

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 3 May 1945
schuldig erkannt und zu Gefaengnisstrafe von 18 Monaten mit Wirkung ab 3 Mai 194

by Judgment dated the 16 October 1946
durch Urteil vom 16 Oktober 1946 194...and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausuebung der/uebertragenen Befugnisse verfuege ich:

mir

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months commencing 3 May 1945.

Dass der Befund und das Urteil bekraeftigt werden. Der Kommandierende General, Militaerbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefaengnis No. 1, Landsberg, Deutschland, fuer die Zeit von 18 Monaten mit Wirkung ab 3 Mai 1945 veranlassen.

Dated this 20 May 194.7
Gegeben am.....

s/J.L. Herbaugh, Jr.
(Signature of Reviewing Authority)
Unterschrift der nachpruefenden Behoerde

J. L. HERBAUGH,
Colonel J
Judge Advocate
(Title)
(Titel)

Legal Form No. 13

MILITARY GOVERNMENT COURT
Militaergericht

ORDER ON REVIEW
Verfuegung nach Ueberpruefung

Case No. 000-50-2-2
Strafsache Nr. 000-50-2-2

Order No.
Verfuegung Nr.

Whereas one Josef HERBERT
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Tielnahme an Massengreultaton im Konzentrationslager Dachau

by the *Summary *Intermediate *General *Einfachen *Mittleren *Besonderen Militaergerichte vom at Dachau, Germany in Dachau, Deutschland (Address of Court) (Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 1 May 1945
schuldig erkannt und zu Gefaengnisstrafe von 18 Monaten mit Wirkung ab 1. Mai 194

by Judgment dated the 16 October 1946
durch Urteil vom 16 Oktober 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausuebung der uebertragenen Befugnisse verfuege ich: / mir

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months commencing 1 May 1945.

Dass der Befund und das Urteil bekraeftigt werden. Der Kommandierende General, Militaerbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefaengnis No. 1, Landsberg, Deutschland, fuer die Zeit von 18 Monaten mit Wirkung ab 1 Mai 1945 veranlassen.

Dated this
Gegeben am 20 May 194 7.

s/J.L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachpruefenden Behoerde)

J.L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

Legal Form No. 13

MILITARY GOVERNMENT COURT
Militaergericht

ORDER ON REVIEW
Verfuegung nach Ueberpruefung

Case No. 000-50-2-2
Strafsache Nr. 000-50-2-2

Order No.
Verfuegung.....

Whereas one Johann BIELZ
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *~~Summary~~ *Intermediate military Court *~~General~~ *~~Special~~ vom *Mittleren Militaergerichte *~~Oberen~~

at Dachau, Germany
in Dachau, Deutschland.....
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 1 May 1945
schuldig erkannt und zu Gefaengnisstrafe von 18 Monaten mit wirkung ab 1 Mai 194

by Judgment dated the 16 October 1946
durch Urteil vom 16 Oktober 1946.....194.....and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausuebung der mir uebertragenen Befugnisse verfuege ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months commencing 1 May 1945.

Dass der Befund und das Urteil bekraeftigt werden. Der Kommandierende General, Militaerbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefaengnis No. 1, Landsberg, Deutschland, fuer die Zeit von 18 Monaten mit Wirkung ab 1 Mai 1945 veranlassen.

Dated this
Gegeben am.....20 May.....1947

s/J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachpruefenden Behoerde)

J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

WCT Rpt #
379.

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

31 March 1947

UNITED STATES)
)
vs) Case No, 000-50-2-4
)
Thomas BRUECKER, Erwin BURGHARD,)
Michael DIETLMAYER, Josef HELLER,)
Josef HOLLMAICHER, Josef JEISEL,)
Stefan JUNG, Ernst NORLOCK)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried jointly at Dachau, Germany
Date: 23 - 24 October 1946
Intermediate Military Government Court

ACCUSED	DATA	SENTENCE
BRUECKER, Thomas	Age 27 Roumanian national Civilian occupation: Barber SS guard out-camp Gendorf, October 1943 to 5 February 1945 Rank: Private	18 months confinement from 9 June 1945
BURGHARD, Erwin	Age 60 German national Civilian occupation: Clerk SS guard out-camp Utting, 15 August 1944 to capitulation Rank: Private	15 months confinement from 5 August 1945
DIETLMAYER, Michael	Married, 5 children Age 52 German national SS clerk at Gendorf- Muhldorf out-camp September 1944 to capitulation. Rank: Unknown	2 years confinement from 28 July 1945

ACCUSED	DATA	SENTENCE
HELLER, Josef	Married, 6 children Age 50 German national SS tower and work-detail guard Allach out-camp, September 1944 to capitualtion Rank: Sergeant	2 years confinement from 30 April 1945
HOLLNAICHER, Josef	Age 54 German national Civilian occupation: Farmer SS guard Camp Dachau and out-camp Gendorf Muhldorf, July 1944 to capitulation Rank: Pfc	2 years confinement from 30 April 1945
JEISEL, Josef	Married, 3 children Age 48 Hungarian national Civilian occupation: Farmer SS guard Camp Dachau, Allach and Muhldorf out-camp, February 1945 to capitulation Rank: Pfc	18 months confinement from 30 April 1945
JUNG, Stefan	Married, 2 children Age 34 Roumanian national Civilian occupation: Farmer SS guard out-camp Muhldorf, October 1943 to capitulation Rank: Unknown	18 months confinement from 30 April 1945
MORLOCK, Ernst	Married, 3 children Age 60 German national Civilian occupation: Jeweler-Farmer SS guard Camp Dachau Landsberg out-camp #7 and Muhldorf, June 1944 to capitulation Rank: Unknown	18 months confinement from 30 April 1945

FIRST CHARGE: Violation of the Laws and Usages of War.

	Pleas	Findings
BRUECKER	NG	G
BURGHARD	NG	G
DIETLMAYER	NG	G
HELLER	NG	G
HOLLNAICHER	NG	G
JEISEL	NG	G
JUNG	NG	G
MORLOCK	NG	G

PARTICULARS: In that Thomas BRUECKER, Erwin BURGHARD, Michael DIETLMAYER, Josef HELLER,, Josef HOLLNAICHER, Josef JEISEL, Stefan JUNG and Ernst MORLOCK, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and Camp subsidiary thereto, did, at, or in the vacinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

SECOND CHARGE: Violation of the Laws and Usages of War.

	Pleas	Findings
BRUECKER	NG	G
BURGHARD	NG	G
DIETLMAYER	NG	G
HELLER	NG	G
HOLLNAICHER	NG	G
JEISEL	NG	G
JUNG	NG	G
MORLOCK	NG	G

PARTICULARS: In that Thomas BRUECKER, Erwin BURGHARD, Michael DIETLMAYER, Josef HELLER, Josef HOLLNAICHER, Josef JEISEL, Stefan JUNG and Ernst MORLOCK, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vacinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

2. RECOMMENDATIONS: That the findings and sentence be approved except as to accused BURGHARD, and that the finding and sentence as to accused BURGHARD be disapproved.

3. EVIDENCE:

For the Prosecution. Prosecution's case was based on extra-judicial sworn testimony as hereinafter shown. Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (R 7; U.S. vs Weiss et al, 000-50-2, March 1946). Exhibits P-2 to P-13, inclusive, are extrajudicial sworn testimony of the accused.

Accused BRUECKER received his SS guard training at Oranienburg July to October 1943. He was then transferred to Gendorf, an out-camp of Camp Dachau, where he served until February 1945. There were 250 prisoners of various nationalities at Gendorf working in a chemical factory and on excavating details. He knew of beatings and mistreatment there (P-2, R 8).

Accused BURGHARD came to Camp Dachau as a guard in August 1944 and transferred to out-camp Utting on Ammersee. At Utting there were about 400 prisoners under 13 guards constructing a factory nearby. The prisoners worked 12 hours a day (P-3, R 9).

Accused DIETLMAYER was an SS clerk at Gendorf-Muhldorf, an out-camp, for 8 months. His duties included making up duty rosters of the guards (P-5, R 10). He was a member of the Nazi Party, 1933 to 1943 (P-6, R 10).

Accused HELLER served as a tower and work-detail guard, first at Allach out-camp, 2-1/2 months; Camp Dachau, on the Praezifix factory detail, 5 months. He knew one American Officer at Allach (P-7, p 3; R 12). He was a guard on the prisoner transport Muhldorf to Tutzing, 29 April 1945, on which there were 3600 inmates loaded into 60 to 70 box cars. Many died of exhaustion (P-7, pp 5 to 7, inclusive; R 12).

Accused HOLLNAICHER was a plantation and clothing factory work-detail guard at Camp Dachau and work detail guard at out-camp Gendorf-Muhldorf. The plantation detail consisted of approximately

300 prisoners and the clothing detail of about 30 men. The Gendorf Chemical Works detail was made up of 3000 prisoners (P-8, P-9, R 15, 16).

Accused JEISEL was a SS work-detail guard, first at Dachau-then at out-camp Allach and Muhldorf. He was a guard on the prisoner transport of 4000 inmates to Tutzing 27 April 1945, where he was captured (P-10, R 17).

Accused JUNG was a work-detail guard at Gendorf-Muhldorf, an an out-camp, for 17 months. He was also a guard on the prisoner transport to Tutzing just prior to capitulation (P-12, R 18). There were more than 3000 prisoners in the transport, and in an air attack on this transport at a station, some were injured and some were killed (P-12, R 46).

Accused MORLOCK served as an SS tower guard at Camp Dachau for 3 months, Landsberg Camp #7 (Kaufering #7, 2000 inmates, labor and recuperation camp for Jews, U.S. vs Weiss et al, 000-50-2, R 832, P. Ex. 118); 4 months at Muhldorf as messenger; and participated as a guard in the prisoner transport of 3000 prisoners from Muhldorf to Tutzing on 29 April 1945. Prisoners were crowded into box cars and had very little food. In an air attack on this transport on 29 April 1945 many prisoners, as well as guards, were killed (P-13, R 19).

For the Defense. Each of the accused took the stand in his own defense.

Accused BRUECKER's duties were on the outside of the camp only, and he never beat any prisoners himself (P-2, R 8, 22).

Accused BURGHARD had no duties inside the camp at Utting (R 27).

Accused DIETLMAYER's duties at out-camp Gendorf-Muhldorf were clerical and he claimed the rations at Gendorf were good (P-5, R 10)

Accused HELLER know of mistreatments at out-camp Allach but never saw any himself, nor did he participate in any mistreatment of inmates either at Allach or Camp Dachau (P-7, p 13; R 12).

Accused HOLLNAICHER was a guard on a work detail outside the

camp and knew nothing of what went on inside Camp Dachau. Prisoners at out-camp Gendorf-Muhldorf looked well (R 42). He never shot or beat a prisoner himself (P-8, R 15).

Accused JEISEL was drafted into the SS and held the rank of Pfc (R 43). He made an effort to get more food for prisoners on the prisoner transport but was unsuccessful (P-10, R 17).

Accused JUNG's guard duties were outside the camp. He was also quartered outside the camp. He did not see prisoners shot or mistreated on the prisoner transport (R 45, 48).

Accused MORLOCK never served on an outside guard detail. For one month at out-camp Landsberg #7 he guarded seven Jewish women cooks in the guard kitchen. He had messenger duty only at out-camp Muhldorf, for 4 months (P-13, R 19). He saw no guards mistreat prisoners on the prisoner transport to Tutzing (R 52).

4. JURISDICTION: The court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any error or ommission which resulted in injustice to the accused.

The court was required to take cognizance of the decision rendered in the parent Dachau Concentration Camp Case, including the findings of the Court therein that the mass atrocity oporation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG AGO, subject: "Trial of War Crimes Cases," 14 October 1946, letters superseded thereby, and U. S. vs Weiss et al, 000-50-2, March 1946).

With the exception of the accused BURGHARD, all accused were shown to have participated in the mass atrocity and the court was warranted, by the evidence adduced, either in the parent Dachau Case or in this subsequent preceeding, in concluding as to them that they not only participated to a substantial degree but that

the nature and extent of their participation was such as to warrant the sentences imposed. It was shown that accused BURGHARD participated and the nature of his duties was also established. However, a search of the record in the parent case and the record in this subsequent proceeding reveals no evidence as to atrocities committed at the Utting out-camp. While it was shown that there were approximately 400 prisoners working under 13 guards constructing a factory nearby, if they were not otherwise mistreated, tortured or starved, it is believed that BURGHARD'S participation in this mass atrocity was too remote to form a proper basis for sentencing by the Court. By virtue of the absence of evidence as to the operation of out-camp Utting and what occurred there, accused BURGHARD is not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and the extent of his participation to permit of arriving at a proper sentence. It could be contended with considerable merit that the Court, with propriety, could have inferred that the inmates of out-camp Utting were subjected to cruelties and torture substantially like those proven to have been inflicted at Camp Dachau and other out-camps. However, if that view were adopted, at least theoretically, injustices could result and those too remotely connected with this or other mass atrocities might be severely punished without a proper gauge to measure the magnitude of their crimes

6. CLEMENCY: There are no Petitions for Review. Consideration was given to a Petition for Clemency on behalf of accused Michael DIETLMAYER, undated, signed by Midi DIETLMAYER, his wife. No clemency is recommended.

7. CONCLUSIONS:

a. It is recommended that the sentences, except the one as to accused BURGHARD, be approved.

b. It is recommended that the sentence as to accused BURGHARD be disapproved.

c. Legal Forms No. 13 and No. 16 to accomplish this result are attached hereto, should it meet with approval.

s/ Louie T. Tischer
t/ LOUIE T. TISCHER
Attorney
Post Trial Section

Having examined the record of trial, I concur.

C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 303 JAG

APO 757
June 2 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Thomas BRUECKNER, et al. (Case 000-50-2-4)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq, USFET, file AG 303 JAG-AGO, subject: "Designation of Prisons for War Criminals, " 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Thomas BRUECKNER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7707 War Crimes Group, APO 170, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon comletion of his sentence on 31 Dec 46.

/s/ GEORGE T. LAGISH
(Signature and Rank)

Major, Inf.,
(Organization)

/s/ LLOYD A. WILSON, Capt, CWF
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
Jun 2 1947

SUBJECT: Release of Prisoner in the Case of the United States vs. Thomas HRUBCHER, et al. (Case No. 000-50-2-4)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prison for War Criminals," 25 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Erwin BURGHARD.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 17, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The release of prisoner covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

Above mentioned prisoner has been discharged on 31 Dec 46, upon completion of sentence.

/s/ GEORGE T. LAGISH
(Signature and Rank)

_____
(Organization)

/s/ LLOYD A. WILSON, Capt, CMP
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
June 2 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Thomas BRULOHR, et al. (Case No. 000-50-2-4)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, HQ. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Josef HELLER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 170, U.S. Army.

BY COMMAND OF GENERAL CLAY:

M. E. BURGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named was discharged upon completion of his sentence on 29 Apr. 47.

/s/ GEORGE T. LAGISH
(Signature and Rank)

Major Inf
(Organization)

/s/ LLOYD A. WILSON, Capt
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
Jun 2 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Thomas BRUECKER, et al. (Case No. 000-50-2-4)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Michael DIETHMER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 170, U.S. Army.

BY COMMAND OF GENERAL CLAY:

W. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 10 June (Date) 1947, at 0300 (Hours).

/s/ GEORGE T. LAGISH
(Signature and Rank)
GEORGE T. LAGISH, Maj. Inf.,
Prison Officer.
War Criminal Prison, Landsberg
(Organization)

/s/ LLOYD A. WILSON
(Countersignature and Rank)
Lloyd A. Wilson, Capt. CAC
Assistant Prison Officer

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
June 2 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Thomas BRUECKNER, et al. (Case No. 000-50-2-4)

TO : Commanding General
First Military District,
APO 1, U. S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Josef HOLLNAICHER

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 170, U. S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 10 June 1947 (Date) 1947, at 0900 (Hour).

/s/ GEORGE T. LAGISH
(Signature and Rank)
Prison Officer

War Criminal Prison, Landsberg
(Organization)

/s/ LLOYD A. WILSON, Capt, CMP
(Countersignature and Rank of Witnessing Officer)
Assistant Prison Officer

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
Jun 2 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Thomas BRUECKNER, et al. (Case No. 000-50-2-4)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject; "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Josef JEISEL.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7707 War Crimes Group, APO 170, U.S.Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ (Date) 1947, at _____ (Hour).

The above named prisoners was discharged upon completion of his sentence on 12 Dec 46.

/s/ GEORGE T. LAGISH
(Signature and Rank)

Major Inf
(Organization)

/s/ LLOYD A. WILSON, Capt, CMP
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
June 2 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Thomas BRUECKER, et al. (Case No. 000-50-2-4)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Stefan JUNG.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 170, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named was discharged upon completion of his sentence on 31 Dec 46.

/s/ GEORGE T. LAGISH
(Signature and Rank)
Major IGF
(Organization)

/s/ LLOYD A. WILSON, Capt, CMP
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
Jun 2 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Thomas BRUECKER, et al. (Case No. 000-50-2-4)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq, USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Ernst MORLOCK.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 170, U.S. Army.

BY COMMAND OF GENERAL CLAY:

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2510

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named was discharged upon completion of his sentence on 12 Dec 46.

/s/ GEORGE T. LEIGH
(Signature and Rank)

_____
(Organization)

/s/ LLOYD A. WILSON
(Countersignature and Rank of Witnessing Officer

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

„ ORDER OF REVIEW „
Verfügung nach Überprüfung

Case No. 000-50-2-4
Strafsache Nr. 000-50-2-4

Order No.
Verfügung Nr.

Whereas one Thomas BRUECHER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in the Dachau Concentration Camp Mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentration-Lager Dachau.

by the *Intermediate Military Court
*Criminal
*Einfachen
vom *Mittleren Militärgerichte
*Oberen

at Dachau; Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 1 months commencing 9 June 1945.
schuldig erkannt und zu Gefängnisstrafe von 10 Monaten mit Wirkung ab 9 Juni 1945.

by Judgment dated the 24 October 1946
durch Urteil vom 24 Oktober 1946 19 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach
consideration and in exercise of the powers conferred upon me, I hereby order:
entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military Dsitrict, will confine the individual in the Criminal Prison No. 1, Landsberg, Germany for a period of 1 months commencing 9 June 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, Militärbereich 1, wird die Inhaftierung des Betroffenden in Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 1 Monaten mit Wirkung ab 9 Juni 1945, veranlassen.

Dated this
Gegeben am 26 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)
J. L. HARBAUGH, Jr.,
Colonel JAGD
Judge Advocate.
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

„ORDER ON REVIEW"
Verfügung nach Überprüfung

Case No. 000-50-2-4 Order No.
Strafsache Nr. 000-50-2-4 Verfügung Nr.

Whereas one Erwin BURGARD
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten Konzentrations-Lager Dachau.

by the *Intermediate Military Court at Dachau, Germany
in Dachau, Deutschland
vom *Militärischen Militärgerichte
*Obersten (Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 15 months commencing 5 August 1945
schuldig erkannt und zu Gefängnisstrafe von 15 Monaten mit Wirkung ab 5 August 1945.
by Judgment dated the 24 October 1946
durch Urteil vom 24. Oktober 1946 und
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence be disapproved. The Commanding General, First Military District, will release the individual from War Criminal Prison No. 1, Landsberg, Germany, upon receipt of this Order on Review.

Dass der Befund und das Urteil nicht bestätigt werden sollen. Bei Erhalt dieser Verfügung wird der Kommandierende General, Militärbezirk 1, die Entlassung des Betroffenden aus dem Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, veranlassen.

Dated this
Gegeben am 25 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature and Rank)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

J. L. HARBAUGH, Jr.,
Colonel, JAGD
Judge Advocate
(Title)
(Titel)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-4
Strafsache Nr. 000-50-2-4

Order No.
Verfügung Nr. _____

Whereas one Michael DIETLMAYER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrations-lager Dachau.

by the *~~Summary~~ *Intermediate Military Court
*~~General~~ at Dachau, Germany
vom *~~Zusammen~~ *Mittleren Militärgerichte in Dachau, Deutschland
*~~Allgemeinen~~ (Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 2 years commencing 28 July 1945.
schuldig erkannt und zu Gefangnisstrafe von 2 Jahren mit Wirkung ab 28 Juli 194

by judgement dated the 24 October 1946
durch Urteil vom 24 Oktober 1946 194 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of 2 years commencing 28 July 1945.

Dass der Befund und das Urteil bekräftigt werden. Der Kommandierende General, Militärbereich 1, wird die Inhaftierung des Betreffenden in Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, für die Zeit von 2 Jahren mit Wirkung ab 28 Juli 1945 veranlassen.

Dated this
Gegeben am 26 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature and Reviewing Authority)
(Unterschift der nachprufenden Behorde)

J. L. HARBAUGH, Jr.,
Colonel, JAGD.
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable
*Nichtzutreffendes ist zu durchstreichen.

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

„ ORDER ON REVIEW "
Verfügung nach Überprüfung

Case No. 000-50-2-4 Order No.
Strafsache Nr. 000-50-2-4 Verfügung Nr _____

Whereas one Josef HELLER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten in Konzentrations-lager Dachau.

by the *Intermediate Military Court
at Dachau, Germany
In Dachau, Deutschland
vom *Mittleren Militärgerichte
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 2 years commencing 30 April 1945.
schuldig erkannt und zu Gefängnisstrafe von 2 Jahren mit Wirkung ab 30 April 1945.
by Judgment dated the 24 October 1946
durch Urteil vom 24 Oktober 1946 194 and
(date)
(datum)

Whereas the case has now come before me by way of review and after
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach due consideration and in exercise of the powers conferred upon me „, I hereby
entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen order:
Befugnisse verfüge ich:
That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of 2 years commencing 30 April 1945.

Dass der Befund und das Urteil bekräftigt werden. Der kommandierende General, „Militärbereich 1, wird Inhaftierung des Betreffenden in Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 2 Jahren mit Wirkung ab 30 April 1945 veranlassen.

Dated this
Gegeben am 26 May 1947.

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

J. L. HARBAUGH, Jr.,
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-4 Order No.
Strafsache Nr. 000-50-2-4 Verfügung Nr. _____

Whereas one Josef HOLLMAICHER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten Konzentration-lager Dachau.

by the *Intermediate Military Court at Dachau, Germany
in Dachau, Deutschland
vom *Mittleren Militärgerichte (Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 2 years commencing 12 July 1945.
schuldig erkannt und zu Gefängnisstrafe von 2 Jahren mit Wirkung ab 12 Juli 1945.

by Judgment dated the 24 October 1946
durch Urteil vom 24 Oktober 1946 194 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of 2 years commencing 12 July 1945.

Dass der Befund und das Urteil bekräftigt werden. Der kommandierende General, Militärbereich 1, wird die Inhaftierung des Betroffenden in Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 2 Jahren mit Wirkung ab 12 Juli 1945 veranlassen.

Dated this
Gegeben am 26 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)

J. L. HARBAUGH, Jr.,
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

„ORDER ON REVIEW"
Verfügung nach Oberprüfung

Case No. 000-50-2-4 Order No.
Strafsache Nr. 000-50-2-4 Verfügung Nr.___

Whereas one Josef JEISEL
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten Konzentrations-lager Dachau.
by the *Intermediate Military Court
[redacted] at Dachau, Germany
[redacted] in Dachau, Germany
vom *Mittleren Militärgerichte (Address of Court)
[redacted] (Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 30 April 1945.
schuldig erkannt und zu Gefangnisstrafe von 18 Monaten mit Wirkung ab 30 April 1945.
by Judgment dated the 24 October 1946
durch Urteil vom 24 Oktober 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsche ist mir zure Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfuge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of 18 months commencing 30 April 1945.

Dass der Befund und das Urteil bekraftigt werden. Der kommandierende General, Militerbereich 1, wird die Inhaftierung des Betreffenden in Kriegsverbrechergefängnis No. k, Landsberg, Deutschland, fur die Zeit von 18 Monaten mit Wirkung ab 30 April 1945 veranlassen.

Dated this
Gegeben am 26 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)
(Unterschrift der nachprufenden Behorde)

J. L. HARBAUGH, Jr.;
Colonel, JAGD,
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

"ORDER ON REVIEW"
Verfügung nach Überprüfung

Case No. 000-50-2-4 Order No.
Strafsache Nr. 000-50-2-4 Verfügung Nr.

Whereas one Stefan JUNG
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten Konzentrations-lager Dachau.

by the *Intermediate Military Court
at Dachau, Germany
vom *Mittleren Militärgerichte
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 30 April 1945.
schuldig erkannt und zu Gefangnisstrafe von 18 Monaten mit Wirkung ab 30 April 1945.

by Judgment dated the 24 October 1946
durch Urteil vom 24 Oktober 1946 194 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of 18 months commencing 30 April 1945.

Dass der Befund und das Urteil bekraftigt werden. Der kommandierende General, Militärbereich 1, wird die Inhaftierung des Betroffenden in Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, für die Zeit von 18 Monaten mit Wirkung ab 3- April 1945 veranlassen.

Dated this
Gegeben am 26 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

J. L. HARBAUGH, Jr.,
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

MILITARY GOVERNMENT COURT
MILITÄRGERICHT
ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-4 Order No.
Strafsache Nr. 000-50-2-4 Verfügung Nr.

Whereas one Ernst HORLOCK
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in the Dachau concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten Konzentrations-lager Dachau.
by the *Intermediate Military Court at Dachau; Germany
*[illegible] in Dachau, Deutschland
von *Mittleren Militärgerichte (Address of Court)
*[illegible] (Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 30 April 1945.
schuldig erkannt und zu Gefängnisstrafe von 18 Monaten mit Wirkung ab 30 April 1945.
by Judgment dated the 24 October 1946
durch Urteil vom 24 Oktober 1946 194 and
(date) (Datum)

Whereas the case has now come before me by way of review and after due
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach consideration and in exercise of the powers conferred upon me, I hereby order:
entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General First Military District, will confine the individual in the Criminal Prison No. 1, Landsberg, Germany for a period of 18 months commencing 30 April 1945.

Dass der Befund und das Urteil bekräftigt werden. Der kommandierende General, Militärbereich 1, wird die Inhaftierung des Betroffenden in Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 18 Monaten mit Wirkung ab 30 April 1945 veranlassen.

Dated this
Gegeben am 26 May 1947

/s/J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

/s/ J. L. HARBAUGH, Jr.;
Colonel, JAGD,
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

W.C.T. Rpt. # 380.

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

27 June 1947

UNITED STATES)
)
v.) Case No. 000-50-2-32
)
Wilhelm VELTEN, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried jointly at Dachau, Germany, 12 December 1946, before an Intermediate Military Government Court.

II. CHARGES AND PARTICULARS:

FIRST CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Wilhelm VELTEN, Josef VELTUM, Karl WALTER, Friedrich W.K. WARZINEK, Max WEINERT, Adolf WEITZEL, Johann Otto WIGIANEK, Nikolaus WOLF, Johann WRIA, Michael WUENSCHEL acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

SECOND CHARGE: Violation of the Laws and Usages of War,

Particulars: In that Wilhelm VELTEN, Josef VELTUM, Karl WALTER, Friedrich W.K. WARZINEK, Max WEINERT, Adolf WITZEL, Johann Otto WIGIANEK, Nikolaus WOLF, Johann WRIA, Michael WUENSCHEL acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

III. SUMMARY OF EVIDENCE:

For Prosecution: Each of the convicted accused were SS guards and participated in the Dachau Concentration Camp mass atrocity. Prosecution's Exhibit P-Ex 1 is a certified copy of the charges, particulars, findings and sentences in the Parent Dachau Case (U.S. vs WEISS, et al., 000-50-2, March 1946, hereinafter referred to as the "Parent Case", R 8, see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. WILHELM VELTEN

Nationality:	German
Age:	39
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG, First Charge; NG , Second charge
Findings:	G, First Charge; G, Second Charge
Sentence:	21 months confinement from 3 May 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from 1 September 1944 to 27 April 1945. He participated as a guard in three prison transports; 28 - 29 October 1944 from Allach to Ueberlingen. There were 350 prisoners and 30 guards; 5 17 November 1944 from Camp Dachau to Buchwald. There were 15 prisoners and 4 guards; 10 - 11 February 1945 from Trasberg to Allach. There were 200 prisoners and 20 guards. He also participated as a guard in a prisoner march 27 - 29 April 1945 from Camp Dachau to a point 60 KLM distant. There were 5000 prisoners and 1000 guards on the march (R 9; P-Ex 2).

Evidence for Defense: The defense relied solely upon his extra-judicial sworn questionnaire (R 9; P-Ex 2).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau, for a considerable period of time between the dates alleged. He

participated in three prisoner transports and a prisoner march. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and surrendered and unarmed prisoners of war to killings, cruelties and mistreatment.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. JOSEF VELTUM

Nationality:	German
Age:	58
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Technical Sergeant
Plea:	NG, First Charge; NG, Second Charge
Findings:	G, First Charge; G, Second Charge
Sentence:	21 months confinement from 28 May 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from February 1942 to December 1942 (R 9; P-Ex 3).

Evidence for Defense: Accused relied solely upon his extrajudicial sworn questionnaire (R 9; P-Ex 3).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau for a considerable period of time between the dates alleged. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and surrendered and unarmed prisoners of war to killings, cruelties and mistreatment.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

3. KARL WALTER

This accused was acquitted (R 31).

4. FRIEDRICH W.K. WARZINEK

This accused was acquitted (R 31).

5. MAX WEINERT

Nationality:	German
Age:	48
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG, First Charge, NG, Second Charge
Findings:	G, First Charge; G, Second Charge
Sentence:	21 months confinement from 3 May 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from 10 September 1944 to 10 October 1944; 10 October 1944 to 8 November 1944 outcamp Rotschweige; 8 November 1944 to 3 May 1945 outcamp Karlsfeld (R 12; P-Ex 6).

Evidence for Defense: Accused relied solely on his extrajudicial sworn questionnaire (R 12; P-Ex 6).

Sufficiency of Evidence: While it is true WEINERT was shown to have participated in the mass atrocity at Camp Dachau, his active duty there was only for a period of time between 10 September 1944 and 10 October 1944 which period of participation was so short his connection with the operation of Camp Dachau is too remote. It was shown that accused participated in the Dachau Concentration Camp system and the nature of his duties was also satisfactorily proven. However, a search of the record in the parent case and the record in this subsequent

proceeding reveals no evidence as to atrocities committed at outcamps Rotschweige and Karlsfeld. It is believed that HEINERT's participation in this mass atrocity was too remote to form a proper basis of sentencing by the Court. By virtue of the absence of evidence as to what occurred at outcamps Rotschweige and Karlsfeld he is not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of his participation to permit of arriving at an appropriate sentance. It could be contended with considerable merit that the Court, with propriety, could have inferred that the inmates of outcamps Rotschweige and Karlsfeld were subjected to cruelties and tortures substantially like those clearly proven to have been inflicted at the parent camp and other outcamps. If that view were adopted, at least theoretically, injustices could result and those too remotely connected with this or other mass atrocities might be severely punished without a proper gauge to measure the magnitude of their crimes.

The findings of guilty are not warranted by the evidence.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be disapproved.

6. ADOLF WEITZEL

Nationality:	German
Age:	59
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG, First Charge, NG, Second Charge
Findings:	G, First Charge, G, Second Charge
Sentence:	18 months confinement from 6 August 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from December 1941 to July 1943 (R 13; P-Ex 7).

Evidence for Defense: The accused did not take the stand and testify in his own defense. Defense witness Schaefer testified to the effect accused helped prisoners on the detail he was guarding. The prisoners talked to the accused as a comrade and as a human being (R 20).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau for a considerable period of time between the dates alleged. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and unarmed and surrendered prisoners of war to killings, cruelties and mistreatment.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

7. JOHANN OTTO WIGIANEK

Nationality:	German
Age:	49
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Sergeant
Plea:	NG, First Charge; NG, Second Charge
Findings:	G, First Charge; G, Second Charge
Sentence:	Two years confinement from 3 May 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from 26 February 1942 to 28 April 1945 (R 13; P-Ex 8).

Evidence for Defense: The accused relied solely upon his extrajudicial sworn questionnaire (R 13; P-Ex 8).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau for a considerable period of time between the dates alleged. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and unarmed surrendered prisoners of war to killings, cruelties and mistreatment.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

8. NIKOLAUS WOLF

Nationality:	Hungarian
Age:	37
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Pfc
Plea:	NG, First Charge; NG, Second Charge
Findings:	G, First Charge; G, Second Charge
Sentence:	21 months confinement from 5 May 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from 9 November 1943 to 25 August 1944 (R 14; P-Ex 9).

Evidence for Defense: The defense relied solely upon his extra-judicial sworn questionnaire (R 14; P-Ex 9).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau for a considerable period of time between the dates alleged. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and unarmed surrendered prisoners of war to killings, cruelties and mistreatment. Hungary was a co-belligerent of Germany.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

9. JOHANN HRLA

Nationality:	Czechoslovakian
Age:	36
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Corporal
Plea:	NG, First Charge; NG, Second Charge
Findings:	G, First Charge; G, Second Charge
Sentence:	21 months confinement from 1 May 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from 25 January 1943 to July 1944; July 1944 to April 1945 outcamp Sachsenhausen (R 15; P-Ex 10).

Evidence for Defense: Accused did not take the stand and testify in his own defense. Defense witness Kulpsch testified to the effect accused behaved comparatively decent towards prisoners and once allowed the witness to secure potatoes for himself when he was hungry. He did not do anything bad to the prisoners (R 24-25).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau and outcamp Sachsenhausen for a considerable period of time between the dates alleged. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and unarmed and surrendered prisoners of war to killings, cruelties and mistreatment.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

10. MICHAEL WEISCHEL

Nationality:	Roumanian
Age:	35
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Private
Plea:	NG, First Charge; NG, Second Charge
Findings:	G, First Charge; G, Second Charge
Sentence:	Two years confinement from 4 May 1945

Evidence for Prosecution: Accused was an SS guard at Camp Dachau from July 1943 to 24 April 1945 (R 16; P-Ex 11).

Evidence for Defense: The defense relied solely upon his extra-judicial sworn questionnaire (R 16; P-Ex 11).

Sufficiency of Evidence: Accused was an SS guard at Camp Dachau for a considerable period of time between the dates alleged. He is therefore presumed, in the absence of appropriate rebuttal evidence, to be guilty of participating in the common design to subject civilian nationals and unarmed and surrendered prisoners of war to killings, cruelties and mistreatment. Roumania was a co-belligerent of Germany.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

IV. QUESTIONS OF LAW:

Jurisdiction: The Court was legally constituted and had jurisdiction of the persons of the accused and of the subject matter.

Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Dachau Concentration Camp case including

the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, File AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). With the exception of HEINERT, all of the convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced either in the Parent Case or in this subsequent proceeding in concluding as to them that they not only participated to a substantial degree but the nature and extent of their participation was such as to warrant the sentences imposed.

Presumption of Law: In the trials of additional participants in a mass atrocity, the Court will presume, subject to being rebutted by appropriate evidence, that those shown by competent evidence to have participated in the mass atrocity knew of the criminal nature thereof (Paragraph 12, Letter, File AG 000.5 JAG-AGO, Supra). Presumption of law is a deduction which the law expressly directs to be made from particular facts. These are of two kinds, conclusive and disputable. The presumption applicable here is the disputable presumption which is an inference of law which holds good until it is invalidated by proof or a stronger presumption (Black's Law Dictionary, page 1409 - 10).

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved except that the findings and sentence imposed in the case of Max HEINERT be disapproved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

S/ ELMER MOODY
1st Lt.
Post Trial Branch

Having examined the record of trial, I concur.

C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

C /Cl 15. Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-32
Strafsache Nr. 000-50-2-32

Order No.
Verfügung Nr.

Whereas one Nikolaus WOLF
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *Intermediate Military Court
vom *Mittleren Militärgerichte
at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to twenty-one months confinement from 5 May 1945
schuldig erkannt und zu einundzwanzig Monaten Gefängnis verurteilt, mit Wirkung ab 5 Mai 1945

by Judgment dated the 12 December 1946
durch Urteil vom 12 Dezember 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of twenty-one months, commencing 5 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, des Militärbezirk I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von einundzwanzig Monaten, mit Wirkung ab 5 Mai 1945, veranlassen.

Dated this
Gegeben am 12 Aug 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

J. L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate,
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

A/Gl 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-32 Order No.
Strafsache Nr. 000-50-2-32 Verfügung Nr.....

Whereas one Johann Otto IGLANEK
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *~~Subsequent~~ *Intermediate Military Court *~~General~~ *~~Special~~ *Mittleren Militärgerichte *~~Military~~ at Dachau, Germany in Dachau, Deutschland
(Address of Court) (Anschrift des Gerichts)

and sentenced to two years confinement from 3 May 1945
schuldig erkannt und zu zwei jahren Gefängnis verurteilt, mit Wirkung ab 3 Mai 1945

by Judgment dated the 12 December 1946
durch Urteil vom 12 Dezember 1946 194.....and
(date) (Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of two years, commencing 3 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, vom Militärbezirk 1, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von zwei jahren, mit Wirkung ab 3 Mai 1945, veranlassen.

Dated this
Gegeben am 12 Aug 194 7

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate.
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

C./Gl 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-32 Order No.
Strafsache Nr. 000-50-2-32 Verfügung Nr.....

Whereas one Johann WALA
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *Intermediate Military Court
vom *Mittleren Militärgerichte

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to twenty-one months confinement from 1 May 1945
schuldig erkannt und zu einundzwanzig Monaten Gefängnis verurteilt, mit Wirkung ab 1 Mai 1945

by Judgment dated the 12 December 1946
durch Urteil vom 12 Dezember 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechen dem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of twenty-one months commencing 1 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, vom Militärbezirk I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von einundzwanzig Monaten, mit Wirkung ab 1 Mai 1945, veranlassen.

Dated this
Gegeben am 12 Aug 194 7

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

J. L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate.
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

CA/G1 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-32 Order No.
Strafsache Nr. 000-50-2-32 Verfügung Nr.....

Whereas one Michael MUENSCHEL
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilhahme an Massengreueltaten im Konzentrationslager Dachau

by the *Intermediate Military Court
vom *Mittleren Militärgerichte
at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to two years confinement from 4 May 1945
schuldig erkannt und zu zwei jahren Gefängnis verurteilt, mit Wirkung ab 4 Mai 194

by Judgment dated the 12 December 1946
durch Urteil vom 12 Dezember 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechn dem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of two years, commencing 4 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, vom Militärbezirk I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von zwei jahren, mit Wirkung a 4 Mai 1945, veranlassen.

Dated this
Gegeben am 12 Aug 194 7

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

J. L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

CA/G1.18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-32 Order No.
Strafsache Nr. 000-50-2-32 Verfügung Nr.

Whereas one Adolf WEITZEL
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *Intermediate Military Court
vom *Mittleren Militärgerichte

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to eighteen months confinement from 6 August 1945
schuldig erkannt und zu achtzehn Monaten Gefängnis verurteilt, mit Wirkung ab 6 August 1945

by Judgment dated the 12 December 1946
durch Urteil vom 12 Dezember 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, willlconfine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of eighteen months, commencing 6 August 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, im Militärbezirk I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von achtzehn Monaten, mit Wirkung ab 6 August 1945, veranlassen.

Dated this
Gegeben am 12 Aug 194 7

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

J. L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate.
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

CA/G1 18 Legal From No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-32 Order No.
Strafsache Nr. 000-50-2-32 Verfügung Nr.....

Whereas one .....Max WEINERT.....
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *~~Military~~ *Intermediate Military Court *~~General~~ *~~Special~~ *~~Military~~
vom *Mittleren Militärgerichte *~~Militärgerichte~~

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to twenty-one months confinement from 3 May 1945
schuldig erkannt und zu einundzwanzig Monaten Gefängnis verurteilt, mit Wirkung ab 3 Mai 1945

by Judgment dated the 12 December 1946
durch Urteil vom 12 Dezember 1946
(date) (Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence be disapproved. The commanding General, First Military District, will release Max WEINERT from confinement in War Criminal Prison No. 1, Landsberg, Germany.

Dass der Befund und das Urteil nicht geheissen würden. Der kommandierende General des 1 Militärbezirks wird die Entlassung des Max WEINERT aus der Haft vom Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, veranlassen.

Dated this
Gegeben am.....12.Aug.....194..7..

.....s/ J. L. Harbaugh, Jr.....
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

J. L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate.
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

C../G1 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-32 Order No.
Strafsache Nr. 000-50-2-32 Verfügung Nr.....,

Whereas one ....Josef VII TUM....
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *~~Summary~~
*Intermediate Military Court
*~~General~~
*~~Einzelrichter~~
vom *Mittleren Militärgerichte
*~~Obersten~~

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to twenty-one months confinement from 28 May 1945
schuldig erkannt und zu einundzwanzig Monaten Gefängnis verurteilt, mit Wirkung ab 28 Mai 1945

by Judgment dated the 12 December 1946
durch Urteil vom 12 Dezember 1946 .....194.....and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of twenty-one months, commencing 28 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General vom Militärbezirk 1, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von einundzwanzig Monaten, mit Wirkung ab 28 Mai 1945, veranlassen.

Dated this
Gegeben am.....12.Aug.....194..7..

.../s/ J. L. Harbaugh, Jr.:.....
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

J. L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

CA/G1 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-32 Order No.
Strafsache Nr. 000-50-2-32 Verfügung Nr.....

Whereas one Wilhelm VELTEN
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *Intermediate Military Court
vom *Mittleren Militärgerichte

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentnced to twenty-one months confinement from 3 May 1945
schuldig erkannt und zu einundzwanzig Monaten Gefängnis verurteilt, mit Wirkung ab 3 Mai 1945

by Judgment dated the 12 December 1946
durch Urteil vom 12 Dezember 1946.....194.....and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechen dem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of twenty-one months, commencing 3 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, vom Militärbezirk I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, für die Dauer von einundzwanzig Monaten, mit Wirkung ab 3 Mai 1945, veranlassen.

Dated this
Gegeben am.....12 Aug.....194.7...

/s/ J.L. HARBAUGH, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

J.L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate.
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm VELTEN et al., (Case No. 000-50-2-32)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Nikolaus WOLF.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ 1947, at _____.
(Date) (hour)

Prisoner Nikolaus WOLF has been released from confinement in Landsberg War Crimes Prison No. 1 on 4 February 1947 per expiration of sentence.

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CMP
Asst. Prison Officer

(Organization)

(Countersignature and Rank of Witnessing Officer)

MEG.I FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm VELTEN et al., (Case No. 000-50-2-32)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Johann Otto WIGLNEY.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ M. E. Bergin
M. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 12 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany.

on _____ (Date) _____ 1947, at _____ (hour).

Prisoner Johann Otto WIGLNEY has been released from confinement in Landsberg War Crimes Prison No. 1 on 2 May 1947 per expiration of sentence

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CAC
Asst. Prison Officer

(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm VELTEN et al., (Case No. 000-50-2-32)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals." 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Johann WELA.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

Prisoner Johann WELA has been released from confinement in Landsberg War Crimes Prison No. 1 per expiration of his sentence on 31 January 1947.

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CMP
Asst. Prison Officer

(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm VELTEN et al., (Case No: 000-50-2-32)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals." 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Michael JUENSCHEL.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ 1947, at _____.
(Date) (Hour)

Prisoner Michael JUENSCHEL has been released from confinement in Landsberg War Crimes Prison No. 1 on 3 May 1947 per expiration of his sentence.

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CLP
Asst. Prison Officer

(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm VELTEN et al., (Case No. 000-50-2-32)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Adolf WEITZEL.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ 1947, at _____.
(Date) (Hour)

Prisoner Adolf WEITZEL has been released from confinement in Landsberg War Crimes Prison No. 1 per expiration of sentence on 2 February 1947

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CMP
Asst. Prison Officer

(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Release of Prisoner ~~Extinction of Sentence~~ in the Case of the United States vs. Wilhelm VELTEN et al., (Case No. 000-50-2-32)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Max WEINERT.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

Release of Prisoner ~~Extinction of Sentence~~ covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ 1947, at _____.
(Date) (hour)

Prisoner Max WEINERT has been released from confinement in Landsberg War Crimes Prison No. 1 on February 1947 per expiration of sentence.

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CMP
Asst. Prison Officer

(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm VELTEN et al., (Case No. 000-50-2-32)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Josef VELTUM.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The santence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ (Date) 1947, at _____ (Hour).

Prisoner Josef VELTUM has been released from confinement in Landsberg War Crimes Prison No. 1, on 27 February 1947 por expiration of sentence.

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CMP
Asst. Prison Officer

(Organization)

(Countersignature and Rank of Witnessing Officer)

I.C.I. NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm VELTEN, et al., (Case No. 000-50-2-32)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGC, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Wilhelm VELTEN.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ (Date) 1947, at _____ (Hour).

Prisoner Wilhelm VELTEN has been released from confinement in Landsberg War Crimes Prison No. 1 on 2 February 1947 per expiration of sentence.

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CMP
Asst. Prison Officer

(Organization)

(Countersignature and Rank of Witnessing Officer)

WCTR 66
381

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMED GROUP
UNITED STATES FORCES, EUROPEAN THEATER

17 September, 1946.

Case No. 12-2018

U N I T E D S T A T E S)
vs)
Hans TOELLE and Herbert LANGNER, German Nationals)

REVIEW AND RECOMMENDATIONS OF THE DEPUTY THEATER JUDGE ADVOCATE FOR WAR CRIMES

1. TRIAL: The accused were tried at Dachau, Germany, on the 12th July 1946, before a General Military Government Court appointed by paragraph 20, Special Orders No. 184, Headquarters United States Forces, European Theater, dated 3 July, 1946.

2. FINDINGS: The offense involved was:

	Pleas: as to Charge and Particulars	Findings:
CHARGE: Violation of the Laws of War:		
Particulars: In that Hans TOELLE and Herbert LANGNER, German nationals, did, at or near THANHAM, Germany, on or about 16 April 1945, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of Donald E. HOWIE, a member of the United States Army who was then unarmed and in the act of surrendering himself as a prisoner of the then German Reich.		
As to Hans TOELLE	NG	G
As to Herbert LANGNER	NG	NG

3. SENTENCE:

The Court by at least two thirds vote of the members present at the time the vote was taken concurring sentenced the accused Hans TOELLE to be imprisoned for a term of six years commencing the 29th day of May 1945, at such place as may be designated by competent military authority.

The Court by at least two thirds vote of the members present at the time the vote was taken concurring, found the accused Herbert LANGNER not guilty and acquitted him of the charge and particulars. The record of trial has been forwarded to the Commanding General, United States Forces, European Theater, for

final action (paragraph 8d, Letter Headquarters, United States Forces, European Theater, File AG 000.5 JAG AGO, Subject: "Trial of War Crimes Cases," dated 14 October 1946).

4. DATA AS TO ACCUSED:

The accused Hans TOELLE is a German national, 39 years of age, and is unmarried. He stated that his parents were probably driven out of the Russian Zone of Occupation and he would have them to support. At the time of the offense for which he was found guilty he was a Corporal stationed at "Position Unit Pfau" and he had served at this position for a number of years prior to the 16th April 1945.

The accused Herbert LANGNER was acquitted of the charge and particulars. The record discloses that there was no evidence against the accused. Therefore the court was justified in its finding of not guilty and in acquitting the accused Herbert LANGNER of the offense charged. Therefore the remaining part of the review will deal with and refer only to Hans TOELLE.

5. RECOMMENDATION:

That the sentence as to the accused Hans TOELLE be approved and ordered executed.

6. EVIDENCE:

a. For the Prosecution: Briefly summarized, the evidence for the prosecution is as follows: On the 16th of April 1945 Second Lieutenant Donald E. HOWIE, an officer of the Air Corps of the United States Army, parachuted to earth near THANHAM, Germany (R 6). The flyer after landing walked across a field and into the woods (R 7). The weather was clear, and the hour was about three thirty in the afternoon (R 8.. 15). A guard from the prison camp at THANHAM had gone out to capture the flyer, had been within 500 meters from him and had shouted three times to the flyer to stop (R 15, 16). The flyer went into a small hole or depression in the ground. The witness KREILEDER testified that he was within eight meters from the flyer and that the flyer had a pistol in his hand; that the witness

rode on and met a soldier to whom he spoke (R 8). The soldier fired a warning shot to induce the flyer to come out and surrender (R 8). A group of three soldiers then came up, comprised of TOELLE, the accused, and MADL and ZOEHRER (R 9). MADL shouted to the flyer, "Hands up". The flyer then came out of the hole with his hands up over his head (R 9). TOELLE also shouted to the flyer, "Hands up", and immediately fired off four shots at the flyer from a machine pistol (R 9). The flyer had both hands raised over his head when the accused fired the shots, the accused shouting and firing about the same time (R 10). The flyer did not have anything in his hands when the shots were fired by the accused. He fell to the ground on his face in front of the hole (R 11). The flyer's pistol was found in the hole (R 7-12). The witness KREILEDER was four to five meters from the flyer and no effort on the victim's part to harm the witness was made (R 18).

Summarized in greater detail, the evidence of the prosecution is as follows: The first witness called by the prosecution was Georg KREILEDER who lived at KOESSLARN, THANHAM. By occupation a farmer, 32 years of age, he lived near the scene of the murder. On the 16th of April 1945 he observed twelve planes in the air, and one of them "tail-smoked" (R 6). From his home he saw the pilot walking across the field. Later he saw the same man at a distance of approximately a hundred meters. Witness shouted to him in German but the flyer did not reply or come to him. The witness then returned to his home and learned from his mother that a guard from the prison was out looking for the flyer (R 7). He joined the guard, whose name was Franz BINDER, and who at the time fired a shot into the air at a distance of about fifty meters. The flyer fell to the ground and rose and went into the forest (R 8). Later TOELLE, the accused, with two other soldiers whose names were MADL and ZOEHRER, came upon the scene, MADL saw the flyer and shouted at him "Hands up", at which time the flyer came out of the hole (R 9-22). At about the same time the accused TOELLE shouted "Hands up", pressed the trigger of his

machine gun pistol, and fired about four shots at the flyer, whose hands were raised at the time the shots were fired (R 9, 10, 22). On cross examination the witness did not vary or change his testimony (R 15, 17, 20, 22, 23).

The next witness called by the prosecution was Frau Annelies FINKE, whose occupation was a housewife. She was 30 years of age, and lived at DRIBURG. At the time of the murder she was working at the air force signal post as an operator. She testified that accused Lieutenant LANGNER was her superior in the work in the office (R 35), and that LANGNER, after receiving a report of the plane crash ordered the guard to hunt for the plane (R 35). Nowhere in the record does this witness testify that LANGNER ever gave any orders to shoot the flyer, and upon cross examination she admitted that LANGNER ordered the guard to hunt for the plane and not the flyer (R 37). LANGNER was talking to her and the other women present but at no time did he order anyone to hunt the flyer or shoot him down (R 37 and 39). There is no evidence anywhere in the record which connects the accused LANGNER with the murder or with giving an order to anyone to shoot the flyer.

Jakob KIENER, the next witness called by the prosecution, was 35 years of age, amd lived at HOTTHALLMUENSTE... His present occupation is to install stoves and lay tiles. He testified that he was a former Lieutenant in the German Army, and that at the time of the offense alleged he was at home on leave. During the air raid he went out to look for his father-in-law, heard the shots, and went directly to the scene (R 51). He heard someone call "Hands up" (R 52), but did not see the actual shooting. He saw the body of the flyer later, and removed his personal effects and wrapped them in a white cloth which he took from around the deceased's neck (R 55). He talked with the witness KREIDLER, who explained to him how the deceased was shot by TOELLE, the accused. TOELLE left the scene shortly after the shooting (R 57, 58).

The prosecution, with the consent of the defense, introduced Exhibit 3, which was a certificate of the investigating officer disclosing a document and a list of the personal belongings of the deceased flyer. It had been made by Captain FRIEDRICHS, who at the time of the murder was Company Commander of the German radio station (R 60). The prosecution and defense agreed that certain parts of the report of the medical officer of KOESSLARN who examined the dead body on 20th September 1945, should be admitted. The report is found on pages 61 and 62 of the record. The report identified the deceased flyer as Donald E. HOWIE, the victim named in the Particulars (R 61, 62).

b. For the Defense:

The defense called as its first witness Franz BINDER, who was a philosophy student, aged 26, and who lived in SALZBURG, Austria. This witness identified the two accused (R 69) and explained the duties of himself and the accused TOELLE (R 71). Lieutenant LANGNER ordered the witness to go look for the flyer (R 74). The order was go look for the flyer; but no order was given by the accused LANGNER to shoot the flyer (R 75). This witness talked with TOELLE a day or so after the shooting; TOELLE told him that he saw the flyer and that "if he had not fired the first shot he would have gotten away with his life" (R 76).

Walter BOEHM, the next witness called by the Defense, is 26 years of age, and a laborer living at GLISSRIENG (R 89, 90). This witness testified as to his duties at the radio station. He talked with Sergeant ZIDEK, who told him that a soldier was shot the day before (R 91). The witness also talked with MADL, who was the third member of the party. MADL told the witness that the flyer had thrown his pistol away, and that his hands were raised over his head (R 91), and that the accused TOELLE had been very excited when he fired at the deceased (R 92). This witness also testified as to the aircraft which had been flying low over that area (R 93). Most of the unit was composed of limited service men, and TOELLE was not a

soldier, but a business man, and was nervous and excitable (R 95).

The defense's next witness was Julius GABRIEL, 34 years of age, a business man, living at SCHWANENSTADT in Upper Austria (R 99). The testimony was hearsay evidence which other people had given him. He personally was not present, but was in the hospital at the time of the incident (R 100). He further testified as to the character and reputation of the accused TOELLE (R 101). The accused also had a bad heart (R 102).

Heinrich LEIMBERGER, 46 years of age, by occupation a construction engineer, lived at KOESSLARN. He had worked at the radio station and was acquainted with the accused LANGNER; they had worked together on the "No Resistance Movement" and discussed what they should do when the Americans came; they had agreed upon the positions that were not to be defended. Accused LANGNER told him about the death of the flyer, which was regretted by LANGNER. This witness personally had no information or knowledge concerning the shooting (R 104 and 105).

Otto HOFBAUER, by occupation a Chaplain, 34 years of age, living at KOESSLARN, was the next witness called by the defense. He stated that he was at the time stationed at the Air Force Signal Unit (R 108); that he had learned from the population that an American flyer had been shot down (R 109); and that he made a personal investigation of the matter and obtained permission to give the flyer a partial military burial and his blessings (R 140, 141).

Eugene ZIDEK (R 114) made an affidavit concerning the death of the pilot, which was admitted in evidence for the defense upon agreement of the prosecution and the defense. In this affidavit he stated he had heard MADL shout, "Hands up", and saw the flyer stand up with one hand raised. About the same time he heard the shots and saw TOELLE stare at the flyer from above the machine pistol which TOELLE had discharged. TOELLE still had his finger on the trigger, and from the muzzle powder smoke could still be seen rising (R 115).

Wilhelm RITZAU was the next witness called by the defense. He was a merchant by occupation and was 33 years of age. He lived at LAEGARN, near KOESSLARN, and had been stationed with the German Army at the Army Area Unit called Position Pfau. Here he had been first sergeant and responsible for general company duties. He had returned to KOESSLARN the last part of April 1945, and talked with soldiers concerning the shooting of an American flyer. He discussed this with MADL and TOELLE, the accused. MADL told him that TOELLE had shot the American flyer, that MADL had called "Hands up", and that TOELLE also called "Hands up" and immediately thereafter had shot the pilot, and that in his opinion TOELLE had fired because he was scared (R 141-142). Accused TOELLE did general company duties and was used for special jobs. During witness' tour of duty as first sergeant at this station the accused TOELLE had nothing to do with weapons, and had no training with machine pistols (R 122-123). TOELLE had the reputation of being a business man, not a soldier. He was excitable, and had physical disabilities consisting of a heart ailment, asthma, and a bad foot, due to a bone fracture. His eyesight was bad and he was forced to wear glasses. Accused TOELLE graduated from high school and had several semesters at the university. This witnesses's testimony was all from information he had received from other people, since he personally was not acquainted with the facts concerning the shooting of the flyer.

Lt. Jakob RIENER was called as a witness for the defense (R 128) and testified that he had six years of experience in combat and had an opportunity to observe reactions of Germans when they first encountered armed enemies (R 128). In his opinion a solder untrained in the use of weapons, when first encountering armed enemies, might fire from pure excitement, and would be unable at the moment to concentrate. He knew the accused TOELLE only by sight (R 131).

Gerhard SCHLEIDER, 26 years of age, who lived at KOESSLAIN was the next witness called by the defense (R 135). He identified the accused TOELLE, having been acquainted with him since the summer of 1944. TOELLE had been a guest in his home. TOELLE had considered the war as lost and they had tuned in on an English broadcasting station (R 136). TOELLE was not a Nazi, nor was this witness. TOELLE had said he wished the war was over so he could start life all over. Witness had discussed the shooting of the American soldier with TOELLE and with other people. The version of the shooting in the community was that the people were sorry about it, and were of the opinion that the deed was committed in excitement due to a first experience with the enemy (R 137). TOELLE had made the statement to other people that he was confronted with the decision either to shoot or to be shot at. The accused TOELLE was unhappy, and was regretful about it (R 138). On cross-examination the witness testified that the people thought that the American was not threatening TOELLE, and that therefore it had to be a deed committed in excitement (R 139).

Franz RUEDL was recalled by the Defense, and testified that an additional flyer to the one shot by TOELLE had landed in the vicinity of KOESSLAIN; that this flyer was wounded; and that he was given medical attention and quarters (R 141).

Herbert LANGNER, one of the accused, took the stand and testified in his own behalf (R 143). He said he was 26 years of age, and that his profession was in a business firm. He lived at KOESSLAIN and he had reported to the prison camp on 1 June, after proclamation of Military Government that all Germans who did not have discharge papers should report.

He went to the Position Unit Pfau in September 1944 and remained there until May 1945. He was at the time the technical officer at the Unit (R 144). During air raids and heavy attacks he was also in the message center and on the morning of the 16th April 1945, he remained in the message center until the attack had

subsided. He then went to the listening post where he remained during the afternoon (R 145). When he returned to the observation post he was told by the helpers that an airplane had crashed near THANHAM. The hour was about three thirty to four o'clock in the afternoon. He went to Captain FRIEDRICHS to advise him concerning this. FRIEDRICHS told accused LANGNER that he had already sent soldiers to search the plane. He requested that LANGNER also send soldiers to look so LANGNER sent Sergeants RUEDL and ZIDEK (R 151). He did not send TOELLE out to look for anyone, but he met TOELLE on his way to the administrative barracks. TOELLE advised that Captain FRIEDRICHS had ordered him to take part in the search and to go to the officers' barracks and get the machine pistol. Accused did not order TOELLE to get the machine pistol, but returned to the observation post and did not bother about TOELLE any more (R 152). The women working in the message center asked him about the crash and what would happen if the pilot would not give up. He said that "if the man resists it is a matter of course that our soldiers may make use of their weapons if necessary, he has got to be laid low". His remark was solely a statement of his opinion. He said it only to the girls who were there; soldiers were not present and it was not an order (R 153). He further testified that he at no time had given an order to the effect that enemy flyers would be "laid down" (R 160-161).

Accused LANGNER also testified on behalf of TOELLE and stated that TOELLE was not a soldier at all, but a civilian in uniform, who did not have the reputation of being blood thirsty (R 166). LANGNER was very much surprised when he heard that the American flyer had been shot. He felt sorry for the pilot because he was young and felt sorry for TOELLE because it had to happen to him and that this "had to happen almost at the end of the war". Neither on the 16th April nor before were orders given to shoot prisoners or to lay prisoners low or shoot pilots (R 167).

Accused LANGNER, upon being cross-examined, testified that he heard about the plane crash. He went to Captain FRIEDRICHS and advised him about the message. The Captain told him he knew already about the case, and that he had already sent out soldiers to search. He repeated his testimony as to meeting the accused TOELLE and denied having given any orders to him (R 110), or that he did not give TOELLE the machine pistol (R 141). When he first saw TOELLE the latter was on his way to get the machine pistol. LANGNER did not know what orders had been given to TOELLE, but he personally gave no orders (R 173).

Hans TOELLE took the witness stand and testified in his own behalf (R 180). He was 39 years of age, by occupation a merchant, and lived at ROHTENHL, MUENSTER. On 16 April 1946 he was a member of the Air Force stationed at Position Pfau. His rank between that of a corporal and private first class (R 180). His work was to keep records and operate the canteen, and particularly to keep the records on weapons. There was only one machine gun pistol and it was taken to the officers' quarters. He had never received any instructions in the use of this weapon (R 181). He finished high school and a few semesters in college, studying economics at KÖLN and at KÖNIGSBERG. He never had any training as a soldier (R 182). He was a limited service soldier and was not capable of combat duty (R 183). He was troubled with heart ailment and had a fracture of the foot; excitement bothered his heart and he would have headaches; he wore glasses and is unable to see without them (R 183). His only experience in air raids was the one in question. He learned of the plane's having crash-landed at about 1600 hours, through a civilian who came to the station (R 186). During the conversation with the civilian who reported the plane crash, his telephone rang and he received from Captain FRIEDRICHS an order to go out and hunt the pilot. The captain advised him that the pilot had a pistol and did not want to surrender, and in case of resistance a weapon had to be used (R 187). Captain FRIEDRICHS ordered the

accused to go to the barracks and obtain a machine gun pistol (R 191). He met KREILEDER and Sergeant ZIDEK at the edge of the forest. They said that a guard from THANHAM had fired in the air, but that the flyer did not surrender. The flyer then ran into the forest. He was armed with a big pistol (R 191). The accused testified that he was excited because it was his first encounter with the enemy. The three of them spread out to look for the flyer (R 192). Accused saw the American flyer at about from fifty to a hundred meters, but did not see the other two soldiers who were with him (R 193). The flyer had a pistol in his hand and was sitting in a hole holding the pistol out towards the accused (R 195). Accused shouted "Hands up", and at the same time the pistol in his hand went off before he could fire a shot into the air as a warning (R 196, 219). When he shouted "Hands up" the pistol went off (R 197-219). Things happened so quickly that he could not see the pistol in the flyer's hands because he was surprised (R 198). After he had shot the flyer he ran to him and saw he was unconscious. Accused then ran to get a medical officer. He was very sorry, and he only had one thing in his mind, and that was to get medical aid to the flyer (R 198). He did not think it over, but just shouted "Hands up", and with the call the pistol went off (R 200, 221). He had no intentions to shoot the flyer (R 202-221). The others came up and talked, but he did not remember what was said, due to his excitement (R 204). On his way he met Captain FRIEDRICHS and told him he had shot the flyer, and was on his way for medical help. The Captain told him to go and make his report later. He returned with the medical man (R 205, 219).

Throughout the cross-examination by the prosecution and members of the court, the accused testified that he shot the flyer, that it was not his intention to do so, but that it was, on account of his excitement, accidental. The shooting was not as a result of orders from a superior officer (R 221).

7. JURISDICTION:

The charge and particulars alleged a violation of the laws of war committed on the 16th April 1945, by an enemy national against a member of the United States Army Forces, at a time when a state of war existed between Germany and the United States of America. Accordingly the court which was appointed to hear the case had jurisdiction of the persons and subject matter in accordance with previous decisions of this office in similar cases. See United States vs Richard DRAUZ (1946) and United States vs Clemens WIEGAND (1945).

8. SUFFICIENCY:

There is sufficient evidence to sustain the finding of guilty as to Hans TOELLE. Not only does the evidence presented by the prosecution establish the guilt of the accused but also the testimony of the accused Hans TOELLE himself establishes beyond any reasonable doubt, that he was guilty of the shooting of Donald E. HOWIE who was at the time in the act of surrendering himself. The evidence fully discloses that eye-witnesses did observe the victim rise from the small depression in the ground with his hands raised in the air over his head. The court did not, by its sentence apparently believe that the accused deliberately, with pre-meditation and malice aforethought shot the deceased, and must be concluded to have entered its findings based upon an act of manslaughter or second degree murder. There is sufficient evidence in the record of trial as to the identity of the alleged deceased, and to show that he was a member of the United States Army at the time he was killed.

In the record of trial it is stated (R 1) that the General Military Government Court which tried the case was appointed by Paragraph 2, Special Orders No. 4, (Headquarters, United States Forces, European Theater) dated 3 July 1946. This is clearly erroneous, since there are no such numbered Special Orders of that headquarters appointing courts for the trial of war crimes cases.

The case was actually tried by a General Military Government Court appointed by paragraph 20, Special Orders No. 184, this headquarters, and the error appears to have occurred as a result of a failure of the duplicating machine to print on all copies of the orders all the digits in the paragraph and order numbers. It is clear that no substantial right of either accused was prejudiced by the failure of the record correctly to recite the authority for the trial.

There are no errors or irregularities which affect any of the substantial rights of the accused. The trial was held without partiality, and adequate opportunity was given to the accused to present any matters in his defense that he might have desired. There have been no questions raised in the record that were not decided by the court upon hearing of the evidence presented. Two-thirds of the members of the court present at the time of the findings and sentence concurred in the same.

At the end of the Prosecution's case the Defense moved for a finding of not guilty as to the accused Herbert LANGNER (R 62, 63, 64). The court overruled the request and denied the motion for a finding of not guilty. Since the record discloses that the court found the accused LANGNER not guilty it becomes unnecessary to discuss the point raised by this motion and the exception taken thereto by the defense. The matter has become moot.

9. SENTENCE:

A general Military Court may impose any lawful sentence including death or imprisonment for life in proper cases. The maximum punishment for all war crimes is death, although the court in this case sentenced the accused to a lesser punishment. The court was presented with facts which might have been found to constitute murder. In the instant case the court, by its sentence evidently had some doubt as to elements of murder being present, and chose to consider the crime more in the light of manslaughter. The action of the court under the circumstances does not appear to be unwarranted, and the sentence imposed appears to be adequate.

10. CLEMENCY: Attached to the record of trial is a letter from accused TOELLE to his counsel, dated 28 August 1946, in which he professes his innocence. Other than that it adds nothing, which has not already been brought out in evidence and discussed in the foregoing Review and Recommendations.

11. RECOMMENDATIONS:

It is therefore recommended that the findings and sentence as to the accused Hans TOELLE be approved by the Theater Judge Advocate under the provisions of paragraph 8d, Letter, Headquarters, United States Forces European Theater, AG 000.5, JAG-AGO, subject: "Trial of War Crimes Cases," dated 14 October 1946. A form of action designed to carry the foregoing recommendation into effect should it meet with approval is submitted herewith.

s/ Samuel Sonenfield
t/ SAMUEL SONENFIELD,
Attorney,
Chief, Post Trial Section

Having examined the record of trial I concur:

s/ C E Straight
t/ C. E. STRAIGHT,
Colonel, JAGD,
Deputy Theater Judge Advocate
for War Crimes

CA/G1 18

Legal Form No. 13

MILITARY GOVERNMENT COURT
Militaergericht

ORDER ON REVIEW
Verfuegung nach Ueberpruefung

Case No.
Strafsache Nr. 12-2018

Order No.
Verfuegung Nr.

Whereas one Hans TOELLE, a German National
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of wrongfully killing a prisoner of war
wegen der folgenden strafbaren Handlung gesetzwidrige Toetung eines Kriegsgefangenen

by the *~~Summary~~ Military Court
*General
*~~Military Government~~
vom *~~Militaer~~ Militaergerichte
*Oberen

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for six (6) years commencing 29 May 1945.
shuldig erkannt und zu einer Freiheitsstrafe von sechs Jahren, ab 29 Mai 1945.

by Judgment dated the 16 July
durch Urteil vom 16 Juli 194.6 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden und nach entsprechendem Studium des Sachverhabtes und in Susuebung der mir uebertragenen Befugnisse verfuege ich:

That the findings and sentence are approved. The Commanding General, Third United States Army Area, will place Hans TOELLE in confinement in the War Criminal Prison, Landsberg, Germany, for the term of six years commencing 29 May 1945,

Dass der Befund und das Urteil hiermit bestaetigt werden. Der kommandierende General im Bereich der Dritten Armee der Vereinigten Staaten wird dafuer Sorge tragen, dass Hans TOELLE im Kriegsverbrechergefaengnis, Landsberg, Deutschland, fur die Dauer von 6 Jahren ab 29 Mai 1945 inhaftiert wird.

Dated this
Gegeben am 9 January 194.7.

s/ C. B. Mickelwait
(Signature of Reviewing Authority)
(Unterschrift der nachpruefenden Behoerde

C. B. MICKELWAIT
Colonel, JAGD,
Theater Judge Advocate
(Title)
(Titel)

APO 757
13 January 1947

HEADQUARTERS
US FORCES, EUROPEAN THEATER

LEGAL FORM NO: 16

SUBJECT: United States v. Hans TOELLE, et al (Case No: 12-2018

TO : Commanding General, Third US Army Area, APO 403, US Army.

Reference is made to letter, this Headquarters, File AG 013-37 GAP-AGO, dated 11 July 1946, subject: "Designation of Prison for War Criminals," and to the inclosed copies of the Order on Review as to accused Hans TOELLE in the above entitled case.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Theater Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, US Army.

By Command of General McNARNEY:

s/George F. Herbert
GEORGE F. HERBERT
Colonel AGD
Adjutant General

Telephone: Frankfurt 22310

CERTIFICATE OF COMPLIANCE

The above sentence imposed on Hans TOELLE, a German National, was put into execution at the War Criminal Prison, Landsberg, Germany, on 7 August 1946 (Date), at 1230 (Hour).

s/Collin J. Boyd
COLLIN J. BOYD
Maj. INF
Prison Officer
(Signature and Rank)
WAR CRIMES PRISON
Landsberg
(Organization)

s/ Joseph H. Williams
JOSEPH H. WILLIAMS
1st Lt. INF
Assistant Prison Officer
(Countersignature and Rank of Witnessing Officer)

W.C.T.Rpt.
#382

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
UNITED STATES FORCES, EUROPEAN THEATER

25 February 1947

UNITED STATES)
)
vs) Case No. 12-2034
)
Anton DOERR, Aloys NEIS,)
August STURM, and Karl MAI,)
German Nationals)

REVIEW AND RECOMMENDATIONS OF THE
DEPUTY THEATER JUDGE ADVOCATE
FOR WAR CRIMES

1. TRIAL: The accused were tried at Dachau, Germany, on 24 October 1946, before an Intermediate Military Court appointed by Special Orders No. 250, paragraph 2, Headquarters, United States Forces, European Theater, APO 757, dated 7 September 1946.

2. FINDINGS: The offense involved was:

CHARGE: Violation of the laws of war.

Particulars: In that Anton DOERR, Aloys NEIS, August STURM and Karl MAI, German nationals, did, at WEHRDEN, Germany, on or about August 1944, wrongfully encourage, aid, abet and participate in an assault upon an unknown member of the Armed Forces of the United States who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich by hitting him with their fists, with a stick, and with a rifle butt, and by kicking him.

	Pleas to the Charge and Particulars	FINDINGS
DOERR, Anton	NG	G
NEIS, Aloys	NG	G
STURM, August	NG	NG
MAI, Karl	NG	G

3. SENTENCE: The court, by at least a two-thirds vote of the members present at the time the vote was taken concurring, imposed the following sentences:

DOERR, Anton	17 Months	Commencing 13 June 1945
NEIS, Aloys	16 Months	Commencing 2 July 1945
STURM, August	Acquittal	
MAI, Karl	14 Months	Commencing 10 October 1945

The record of trial has been forwarded to the Commanding General, United States Forces, European Theater, for approval (paragraph 8d, Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO subject, "Trial of War Crimes Cases", dated 14 October 1946).

4. DATA AS TO ACCUSED:

a. Accused DOERR is a German national, 39½ years of age (R 3). He was a master electrician and a former member of the German Labor Front (R 52). He is married and has five children dependent on him for support (R 63).

b. Accused NEIS is a German national 34 years of age, (R 4), married with one child and was employed as a master mechanic (R 44 and P. Ex. 1, R 9).

c. Accused STURM is a German national, 50 years of age (R 3), married, has eight children and was employed as a coal mine foreman (R 37).

d. Accused MAI is a German national (R 4), 52 years of age, was employed as a mine worker (P.Ex. 2, R 9), is married and has five children (R 64).

5. RECOMMENDATION: That the findings and the sentence of the Military Government Court as to each accused be approved by the Theater Judge Advocate under the provisions of paragraph 8d of the letter referred to in paragraph 3, supra.

6. EVIDENCE:

a. For the Prosecution: The case for the Prosecution is based on the testimony of five witnesses, including, as against the accused MAI, that of the accused DOERR, together with three

exhibits consisting of sworn testimony of the accused, NEIS, STURM and DOERR received in evidence (R 45, 53).

The accused NEIS and DOERR admitted striking the flyer. In addition, the unimpeached testimony of the witnesses Anna WEBER and Heinrich KARRENBAUER, who testified that they saw DOERR strike the flyer (R 11, 18), would be conclusive, if necessary.

The testimony of the witness Anna WEBER was to the effect that she saw the accused MAI strike the flyer (R 11). This testimony was also supported by the accused DOERR (R. 56).

Three sworn statements by the accused DOERR (P.Ex. 3, R 22), NEIS (P.Ex. 1, R 9) and STURM (P.EX. 2, R 9) were introduced by the prosecution and received in evidence by the Court.

DOERR, in his statement, admitted being at the scene because of having a desire for retaliation at having lost his wife in an air-raid and testified he saw MAI strike the flyer. He also states that he saw the Sturm Abteilung man, STURM, "ram the flyer in the back with the butt of his rifle." (P.Ex. 3, R 22).

NEIS, in his statement, admits being at the scene of the incident and striking the flyer (P.EX. 1, R 9).

STURM, in his statment, admits taking his rifle from his house and running to the place where the parachuting flyer landed (P.Ex. 2, R 9).

b. For the Defense: On behalf of and in mitigation of his act, the accused DOERR testified that he had no intention of molesting the flyer when he went to the scene but that when he arrived there he suddenly thought of his deceased wife who had been killed in an air raid and was overcome with excitement and he hit the flyer on the shoulder (R 53, 54).

On behalf of and in mitigation of his act, the accused NEIS claimed that he only slapped the flyer with the back of his hand in the face and this only because his boy, who was with him,

complained that he had been kicked. He later learned that this was an accident and that the flyer had stepped on the child (R 45).

The accused MAI, although admitting having been present, testified that he never struck the flyer at any time and denied participating in any of the beating (R 49). In explanation of the testimony of the witness for the prosecution, Anna WEBER, he stated that he worked for a local firm as gateman detailed to factory security. His duties included searching all of the workers twice every week. Anna WEBER's husband was among the people searched (R 50).

On behalf of the accused STURM, the testimony of the witness Peter SCHUH was to the effect that STURM was dressed in work clothes and not only did not strike the flyer but that he protected the flyer by pushing the crowd away and helping the flyer when he sank to his knees. Furthermore there was a uniformed Sturm Abteilung man who beat the flyer with his rifle, but that he, the accused, did not (R 26, 27).

The testimony of Ludwig KARRENBAUER on behalf of the accused STURM was to the effect that STURM wore no uniform but that he was in his work clothes and that he did not beat the flyer (R 33).

The accused STURM, testifying on his own behalf stating that he had put on his work clothes and when he saw the parachute about to land he got his rifle by reason of a standing order to all Sturm Abteilung men to take into custody any jumping parachutist and deliver him to the nearest army installation. When he arrived at the scene, however, the pilot had landed and was being escorted by two soldiers to a flak position. He made a passage through the crowd with the aid of his rifle and helped the flyer by telling the crowd "further mistreatment must be stopped" (R 38, 39). He further testified that he did not strike the flyer or mistreat him in any way (R 40).

Two sworn statements were introduced by the defense and received in evidence by the Court consisting of that portion (D.Ex. 1, R 36) of the statement of August STURM specifically excluded from the prosecution's exhibit (P.Ex. 2, R 22) and the statement of the witness Jacob THEISEN (D.Ex. 2, R 44).

The portion of the statement of the accused Anton DOERR introduced by the defense (D.Ex. 1, R 36) was to the effect that the accused STURM had to make way with his rifle butt through the crowd to get to the prisoner. Subsequently while the anti-aircraft soldiers led the flyer away he followed them and kept the crowd away with his rifle butt. During this entire time he did not strike the flyer. The statement of the witness Jacob THEISEN made no mention whatsoever of any of the four accused but instead named two entirely different people.

7. JURISDICTION:

The particulars allege a violation of the laws and usages of war which were committed before 9 May 1945 by enemy nationals against a member of the United States Armed Forces at a time when a state of war existed between Germany and the United States of America. Accordingly, the court which was specially appointed to hear the case had jurisdiction of the persons and subject matter in accordance with previous decisions of this office in similar cases (See UNITED STATES v. CLEMENS WIEGAND, November 1945; UNITED STATES v. RICHARD DRAUZ, April 1946).

8. SUFFICIENCY:

The evidence and exhibits before the Court clearly establish the guilt of the two accused DOERR and NEIS. The accused MAI denied having struck or molested the flyer in any way (R 49), and hence there is a direct conflict in the testimony of the witness on the one hand and the accused MAI on the other. However, the accused MAI admits being on the scene (R 49) and it is apparent

from the record that there was ample evidence in the testimony before the Court upon which to base the finding of guilty.

The only testimony that was introduced against the accused STUHM was contained in a sworn statement dated 3 October 1945 made by the accused DOERR. In this statement DOERR stated STUHM rammed the flyer in the back with the butt of his rifle but the testimony of the accused DOERR who made the statement (P.Ex. 3, R 22) introduced in evidence is barren of any reference whatsoever as to any hostile act of STUHM against the flyer. However, according to the statement, he did see a Sturm Abteilung man with a rifle walk behind the flyer and strike him. He did not recognize STUHM but was later told it was this accused. This testimony was stricken. There was direct testimony on the part of the witnesses Peter SCHUH and Ludwig KAHLENBAUER that not only did the accused STUHM not beat the flyer but that he attempted to help and protect him. STUHM's testimony, which was to the same effect, remained unimpeached upon examination by the Court. Consequently, there was no evidence in the testimony produced before the Court to connect the accused STUHM with the beating so that it would seem that a finding of guilty with respect to this accused could not have been supported and the Court was fully justified in acquitting him and, in fact, was in duty bound to do so.

The case for the Prosecution is based on the confessions of the two accused DOERR and NEIS with additional statements and testimony sufficient to establish that an American or Allied flyer was beaten and that the three accused who were found guilty participated in the beating. The denial on the part of the accused MAI was natural and in view of the direct testimony of the two witnesses, the Court could determine both the value of the positive eye-witness testimony and of the accused MAI's denials.

9. SENTENCES:

An Intermediate Military Court may impose a prison sen-

tence not exceeding ten years. The Court was presented with facts sufficient to warrant the sentences imposed. In imposing sentence upon the three accused the Court obviously took into consideration the length of the detention of each and the sentences imposed are not considered excessive.

10. RECOMMENDATIONS:

a. It is recommended that the findings and sentences be approved as to the accused Anton DOERR, Aloys NEIS and Karl MAI.

b. Forms of action designed to carry the foregoing recommendation into effect, should it meet with approval, are submitted herewith.

s/ Jacob Silberman.
t/ JACOB SILBERMAN,
Attorney,
Post Trial Section

Having examined the record of trial I concur.

C. E. STRAIGHT,
Colonel JAGD,
Deputy Theater Judge Advocate
for War Crimes

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG-AGO

APO 757
13 March 1947

SUBJECT: United States v. Anton DOERR (Case No. 12-2034)

TO : Commanding General, Third US Army Area, APO 403, US Army.

Reference is made to letter, this Headquarters, AG 013-37 GAP-AGO, dated 11 July 1946, subject: "Designation of Prison for War Criminals," and to the inclosed copies of the Order on Review in the above entitled case as to accused Anton DOERR.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Theater Judge Advocate for War Crimes, 7708 War Crimes Group, APO 179, US Army.

BY COMMAND OF GENERAL McNARNEY:

1 Incl:
1 Form 13 (in dup)

Tele. Frankfurt 2-2310

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

CERTIFICATE OF COMPLIANCE

The above sentence imposed on Anton DOERR, German national, was put into execution at The War Criminal Prison, Landsberg, Germany, on 1st of November (Date) 1946, at 1200 (Hour).

/s/ COLLIN J. BOYD, Maj, Inf
(Signature and Rank)

Prison Officer

/s/ LLOYD A. WILSON, Capt, CMP
(Countersignature and Rank of Witnessing Officer)
Prison Officer

LEGAL FORM NO: 16
APO 757
13 March 1947

HEADQUARTERS
US FORCES, EUROPEAN COMMAND

AG 383 JAG-AGO

SUBJECT: United States v. Aloys NEIS (Case No. 12-2034).

TO : Commanding General, Third US Army Area, APO 403, US Army.

Reference is made to letter, this Headquarters, AG 014-37 GAP-AGO, dated 11 July 1946, subject: "Designation of Prison for War Criminals", and to the inclosed copies of the Order on Review in the above entitled case as to accused Aloys NEIS.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Theater Judge Advocate for War Crimes, 770th War Crimes Group, APO 172, U.S. Army.

BY COMMAND OF GENERAL McNARNEY:

1 Incl:
1 Form 13 (in dup)

Tele. Frankfurt 2-2310

/s/ Wm. E. BERGIN
Brigadier General, USA
Adjutant General

CERTIFICATE OF COMPLIANCE

The above sentence imposed on Aloys NEIS, a German national, was put into execution at the War Criminal Prison, Landsberg, Germany,

on 1st of November (Date) 1946 at 1200 (Hour).

/s/ COLLIN J. BOYD, Maj., Inf.
(Signature and Rank)
Prison Officer

/s/ LLOYD A. WILSON, Capt., CMP
(Countersignature and Rank of Witnessing Officer)
Asst. Prison Officer

LEGAL FORM NO: 16

HEADQUARTERS
US FORCES, EUROPEAN COMMAND

AG 383 JAG-AGO

APO 757
13 March 1947

SUBJECT: United States v. Karl HAI (Case No. 12-2034).

TO : Commanding General, Third US Army Area, APO 403, US Army.

Reference is made to letter, this Headquarters, AG 013-37 GAP-AGO, dated 11 July 1946, subject: "Designation of Prison for War Criminals", and to the enclosed copies of the Order on Review in the above entitled case as to accused Karl HAI.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Theater Judge Advocate for War Crimes, 770th War Crimes Group, APO 170, US Army.

BY COMMAND OF GENERAL McNARNEY:

1 Incl:
1 Form 13 (in dup)

Tele. Frankfurt 2-2310

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

CERTIFICATE OF COMPLIANCE

The above sentence imposed on Karl HAI, a German national, was put into execution at War Criminal Prison, Landsberg, Germany, on 1st of November 1946, at 1200 (Hour).

/s/ COLLIN J. BOYD, Maj., Inf.
Prison Officer
(Organization)

/s/ LLOYD A. WILSON, Capt., C.M.P.
(Countersignature and Rank of Witnessing Officer)

Asst. Prison Officer

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER OF REVIEW
Verfügung nach Überprüfung

Case No.
Strafsache Nr. 12-203

Order No.
Verfügung Nr.

Whereas one Anton DOERR
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of wrongfully assaulting a prisoner of war
wegen der folgenden strafbaren Handlung Einen Kriegsgefangenen ungerechtiger-
weise angegriffen zu haben

by the *Intermediate Military Court
at Dachau; Germany
in Dachau, Deutschland
von *Mittleren Militärgerichte
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment at hard labor for a term of 17 months commencing 13 June 1945
schuldig erkannt und zu 17 Monate Gefangnis mit Zwangsarbeit verurteilt, mit Wirkung ab 13 Juni 1945

by Judgment dated the 24 October 1946
durch Urteil vom 24 Oktober 1946 1946 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach
due consideration and in exercise of the powers conferred upon me, I hereby
entsprechenden Studium des Sachverhaltes und in Ausübung der mir übertragenen
order:
Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, Third United States Army Area, will place Anton DOERR in the War Criminal Prison, Landsberg, Germany, for a term of seventeen months beginning 13 June 1945.

Dass der Befund und das Urteil hiermit bekräftigt werden. Der kommandierende General des Bereiches der dritten Armee der Vereinigten Staaten wird veranlassen, dass Anton DOERR in Kriegsverbrechergefängnis in Landsberg, Deutschland für die Dauer von 17 Monate, mit Wirkung ab 13 Juni 1945, inhaftiert wird.

Dated this
Gegeben am 11 March 1947

/s/ C. B. MICKELWAIT
(Signature of Reviewing Authority)
(Unterschrift der nachprufenden Behorde)

C. B. MICKELWAIT
Colonel JAGD
Theater Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No.
Strafsache Nr. 12-2034

Order No.
Verfügung Nr. _____

Whereas one Aloys REIS
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of wrongfully assaulting a prisoner of war.
wegen der folgenden strafbaren Handlung Einen Kriegsgefangenen in ungerichtigerweise angegriffen zu haben.

by the *Intermediate Military Court at Dachau, Germany
von *Mittleren Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment at hard labor for a term of 16 months, commencing 2 July 1945.
schuldig erkannt und zu 16 Monate Gefängnis mit Zwangsarbeit verurteilt, mit Wirkung ab 2 Juli 1945.

by Judgment dated the 24 October 1946
durch Urteil vom 24 Oktober 1946 1947 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

The the findings and sentence are approved. The Commanding General, Third United States Army Area, will place Aloys REIS in the War Criminal Prison, Landsberg, Germany, for a term of sixteen months, commencing 2 July 1945.

Dass der Befund und das Urteil hiermit bekräftigt werden. Der Kommandierende General des Bereiches der dritten Armee der Vereinigte Staaten wird veranlassen, dass Aloys REIS in Kriegsverbrechergefängnis in Landsberg, Deutschland für die Dauer von 16 Monate, mit Wirkung ab 2 Juli 1945, inhaftiert wird.

Dated this
Gegeben am 11 March 1947

/s/ C. B. MICHELAIT
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

*Strike out words not applicable.
*Nicht Zutreffendes ist zu durchstreichen.

C. B. MICHELAIT
Colonel JAGD
Theater Judge Advocate
(Title)
(Titel)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No.
Strafsache Nr. 12-2034

Order No.
Verfügung Nr. _____

Whereas one Karl MAI
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of wrongfully assaulting a prisoner of war.
wegen der folgenden strafbaren Handlung Einen Kriegsgefangenen in ungerschtiger-weise angegriffen zu haben.

by the *Intermediate Military Court at Dachau, Germany
vom *Mittleren Militargerichte in Dachau, Deutschland
(Address of Court)

and sentenced to imprisonment at hard labor for a term of 14 months, commencing on 10 October 1945.
schuldig erkannt und zu 14 Monate Gefängnis mit Zwangsarbeit verurteilt, mit Wirkung ab 10 Oktober 1945.

by Judgment dated the 24 October 1946 and
durch Urteil vom (Date) (Datum)

Whereas the findings and sentences are approved. The Commanding General, Third United States Army Area, will place Karl MAI in the War Criminals Prison, Landsberg, Germany, for a term of fourteen months commencing 10 October 1945.

Dass der Befund und das Urteil hiermit bekräftigt werden. Der kommandierende General des Bereiches der dritten Armee der Vereinigten Staaten wird veranlassen, dass Karl MAI im Kriegsverbrechergefängnis in Landsberg, Deutschland für die Dauer von 14 Monate, mit Wirkung ab 10 Oktober 1945, inhaftiert wird.

Dated this
Gegeben am 11 March 1947

/s/ C. B. MICKELWAIT
(Signature of Reviewing Authority)
(Unterschrift der nachprufenden Behorde)

C. B. MICKELWAIT
Colonel JAGD
Theater Judge Advocate.

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

WCT Rpt
383

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 178

25 June 1947

UNITED STATES)
)
v.) Case No. 12-2114
)
Peter SCHERF.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 14 April 1947, before an Intermediate Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

PARTICULARS: In that Peter SCHERF, a German national, did, at or near WALDRACH, Germany, on or about 9 August 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in committing assaults upon a member of the Armed Forces of a nation then at war with the then German Reich, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. EVIDENCE AND RECOMMENDATIONS:

PETER SCHERF

Nationality:	German
Age:	56
Civilian Status:	Mayor of town of Waldrach from 1931 until end of war
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Imprisonment at hard labor for five years, commencing 1 June 1945

Evidence for Prosecution: On or about 9 August 1944 an American pilot parachuted to safety in the vicinity of Waldrach, Germany (P-Ex 1a, 2a, 11a). He surrendered to a German civilian and was taken into custody by some soldiers of a guard detachment who searched him (P-Ex 1a, 3a). The flyer, who had suffered an injury to one leg in landing, was mistreated by the soldiers and members of a crowd that gathered (P-Ex 1a-3a, 5a, 7a, 9a, 10a). The accused SCHEIF arrived and jabbed or beat the flyer several times with a hunting rifle (P-Ex 1a-4a, 6a, 8a, 11a). The flyer was forced to limp 200 to 300 meters, followed by the crowd, to a camp where he was hospitalized and given medical treatment for a fractured leg and a bruised eye (P-Ex 5a, 10a, 11a). There is some evidence that the flyer was severely mistreated and that the accused participated in this mistreatment by kicking the flyer and by beating him with his rifle butt while he was lying on the ground (P-Ex 2a, 5a, 7a-9a).

Evidence for Defense: The accused SCHEIF elected to testify in his own behalf in substance as follows: The accused was Mayor of the village of Waldrach at the time of the incident and in that capacity took charge of the flyer when he arrived at the scene (R 14, 20). He directed that the flyer be taken to a camp where French prisoners of war were interned, a distance of approximately 200 meters. He attempted to disperse the crowd and touched the flyer on the side with the muzzle of his rifle in an effort to get him to move faster and get off the street (R 15, 16, 21). He did not kick or beat the flyer, but a non-commissioned officer kicked him once in the buttocks, knocking him to the ground (R 17, 19-21, 24). The accused could not have prevented this mistreatment because he saw it only after it happened (R 21).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: There are no Petitions for Review nor Petitions for Clemency.

Recommendation: That the findings and sentence be approved.

IV. QUESTIONS OF LAW:

The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses. Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

The Court overruled an objection by defense counsel to the admission of Exhibit P-1, on the ground that the statement was taken in Waldrach in the French Zone that witnesses from the French Zone were readily available. It is clear that this testimony was admissible. The Deputy Theater Judge Advocate for War Crimes in a letter AG 000.5, subject: "Admissibility of Reports of Investigation in the Trial of Suspected War Criminals," dated 6 October 1945, stated "numerous factors make it impracticable in many cases to secure the personal presence of witnesses, and, in such cases, the trial should not be needlessly delayed nor should admissible evidence be excluded by reason of their absence."

At the time the prosecution rested, defense counsel moved for a finding of not guilty on the ground that no evidence was presented to the Court to establish the identity of the accused. When questioned by the Court at the beginning of the trial the accused identified himself as Peter SCHEEF, Mayor of the town of Waldrach at the time of the incident which resulted in the trial of the accused. Evidence was presented in Exhibits P-1 and P-1a that one Peter SCHEEF, Oberbuergermeister of Waldrach, participated in this incident.

V. CONCLUSIONS:

1. It is recommended that the findings and the sentence be approved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

NORA G. SPRINGFIELD
1st Lt., WAC
Post Trial Branch

Having examined the record of trial, I concur.

C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

13 August 1947
APO 757

AG 383 JAG

SUBJECT: Execution of Sentence in the Case of the United States vs. Peter SCHERF (Case No. 12-2114).

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, Subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Peter SCHERF.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 25 August 1947 (Date) 1947, at 1330 (Hour).

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON
Captain CMP
Asst. Prison Officer
(Organization)

/s/ Joseph H. Williams
(Signature and Rank of Witnessing Officer)
1st Lt.

CA/G1 18 MILITARY GOVERNMENT COURT Legal Form No. 13
MILITÄRGERICHT

Order on Review
Verfügung nach Überprüfung

Case No. 12-2114 Order No.
Strafsache Nr. 12-2114..... Verfügung Nr.....

Whereas one Peter SCHERF
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of wrongfully participating in assaulting a prisoner of war
wegen der folgenden strafbaren Handlung rechtswidriger Teilnahme an dem Überfall auf einen Kriegsgefangenen

by the *~~Summary~~ *Intermediate Military Court *~~General~~ *~~Field~~
vom *Mittleren Militärgerichte *~~Obersten~~

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment at hard labor for five years, commencing 1 June 1945
schuldig erkannt und zu fünf Jahren zur schwer Arbeit in Gefängnis verurteilt, mit Wirkung ab 1 Juni 1945

by Judgment dated the 14 April 1947
durch Urteil vom 14 April 1947 194... and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in the Criminal Prison No. 1, Landsberg, Germany, for a period of five years at hard labor, commencing 1 June 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, vom Militärbezirk I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von funf Jahren zur schwer Arbeit, mit Wirkung ab 1 Juni 1945, veranlassen.

Dated this
Gegeben am 12 Aug 194 7

s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

J. L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate
(Title)
(Titel)

WCT Rpb # 384.

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

12 May 1947

U N I T E D S T A T E S	)	
	)	
vs	)	Case No. 000-50-2-5
Otto BECKER, Claus FRANZEN, Rudolf Max HOEHNE, Alois LANG, Michael LANZL, Nickolaus PFLAUM, (Valentin REHHORN), Otmar Martin ZELBES	)	

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried at Dachau, Germany
Date: 21-23 October 1946
Intermediate Military
Government Court

ACCUSED	DATA	SENTENCE
BECKER, Otto	Age 61 German National SS guard, Dachau and outcamps Kaufering XI and Mattenheim, July 1944 to capitulation.	1 year and 9 months confinement from 2 May 1945
FRANZEN, Claus	Age 48 German National SS guard, out-camp Landsberg I, 24 July 1944 to capitulation Rank, Sergeant.	3 years confinement from 27 April 1945
HOEHNE, Rudolf Max	Age 39 German National Joined Allgemein SS 1933; Joined Waffen SS 1938 Dentist at out-camp Landsberg, February 1945 to capitulation.	5 years confinement from 5 May 1945.
LANG, Alois	Married, 1 child Age 44 German National Civilian occupation, City employee SS guard out-camp Landsberg, October 1944 to capitulation.	2 years confinement from 2 July 1945.

ACCUSED	DATA	SENTENCE
LANZL, Michael	Age 58 German National SS guard, Dachau and out-camp #4, September 1944 to capitulation.	3 years confinement from 21 May 1945.
PFLAUME, Nickolaus	Age 50 Yugoslavian National SS guard, out-camp Landsberg, 25 February 1945 to capitulation.	18 months confinement from 3 May 1945.
ZERBES, Otmar Martin	Age 31 Roumanian National SS dentist, out-camp Landsberg I, September 1944 to capitulation Rank, Sergeant	18 months confinement from 27 April 1945.

FIRST CHARGE: Violation of the Laws and Usages of War.		Pleas	Findings
PARTICULARS: In that Otto BECKER, Claus FRANZEN, Rudolf Max HOEHNE, Alois LANG, Michael LANZL, Nickolaus PFLAUM, (Valentin REHHORN), Otmar Martin ZERBES, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.	BECKER FRANZEN HOEHNE LANG LANZL PFLAUM ZERBES	NG NG NG NG NG NG NG	G G G G G G G

SECOND CHARGE: Violation of the Laws and Usages of War.		Pleas	Findings
PARTICULARS: In that Otto BECKER, Claus FRANZEN, Rudolf Max HOEHNE, Alois LANG, Michael LANZL, Nickolaus PFLAUM, (Valentin REHHORN), Otmar	BECKER FRANZEN HOEHNE LANG	NG NG NG NG	G G G G

		Pleas	Findings
Martin ZERBES, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals acting in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.	LANZL	NG	G
	PFLAUM	NG	G
	ZERBES	NG	G

2. RECOMMENDATIONS: That the findings and sentences be approved.

3. EVIDENCE:

For the Prosecution. The Prosecution's case was based on extrajudicial sworn testimony as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (U.S. vs Weiss et al 000-50-2, March 1946, R 9). Exhibits P-2 to P-8, inclusive, consist of extrajudicial sworn testimony of each of the accused (R 9 to R 13).

Accused BECKER was a tower and work-detail guard at out-camp Kaufering II for five months, where approximately 2500 male and female Lithuanian and Hungarian Jews were incarcerated. He knew that large numbers of inmates died at Kaufering II from neglect and disease. On numerous occasions he saw dead bodies carried out of Mattenheim out-camp (P-2, R 9).

Accused FRANZEN'S guard duty was at out-camp Landsberg I (Kaufering I) for nine months, where around 2000 Lithuanian male and female Jews were imprisoned. He knew of the bad condition at this camp, the hard work at Moll Construction Company, and that prisoners died of sickness and age. He was ordered to Chiemsee to a rifle marksmanship course on 15 April 1945 (P-3, R 10).

Accused HOEHNE had a long career in the NSDAP, SA, Allgemein SS and Waffen SS. He was a dentist at various concentration camps before going to out-camp Landsberg I in February 1945. On one occasion gold teeth were removed from bodies of prisoners by dentists under his supervision. He once saw his camp commander and the roll-call leader beating prisoners with sticks (P-4, R 11). Thirty to forty bodies per day were brought into the morgue and one AKABAS, a prisoner under HOEHNE, removed gold teeth therefrom (R 37). Defense witness AKABAS testified from the stand that HOEHNE was not liked by and was unsympathetic to the prisoners under him (R 30). Everyone was afraid of HOEHNE (R 36).

Accused LANG was a work-detail guard. He trained 5 weeks at Camp Dachau and was then sent to Landsberg out-camp. His detail contained approximately 500 Jewish prisoners on a construction job. He joined the NSDAP in 1941 (P-5, R 12).

Accused LANZL was a Nazi propaganda leader from May 1937 to September 1944, when he joined the Waffen SS. He was a tower and plantation work-detail guard and for a while was a guard on the inside of Camp Dachau. He was a block leader for 5 or 6 weeks at Out-Camp #4. He saw prisoners beaten with sticks four or five times. He was a guard on the prisoner march from out-camp Kaufering to Camp Dachau just before the capitulation (P-6, R 12).

Accused PFLAUM, an SS man since 1944, was a guard at Landsberg out-camp from 25 February 1945 to 28 April 1945. He was a guard on the prisoner march from Landsberg to Dachau 28 April 1945 (P-7, R 12).

Accused ZEHBES joined the Waffen SS in November 1943. He was a dentist at out-camp Landsberg from September 1944 to the capitulation. Five dental technicians, two assistants and two women worked for him. He had control of the dental station. His men removed gold teeth from the bodies of prisoners, cleaned the gold and forwarded it to Camp Dachau. This was done from November 1944 to the capitulation, and bodies were buried at Landsberg since corpses were no longer sent to Camp Dachau (P-8, R 13).

For the Defense. Accused BECKER never saw prisoners beaten, never beat any himself, or reported any for punishment during his tour at Kaufering II or at out-camp Mattenheim (P-2, R 9).

Accused FRANZEN denied he ever saw prisoners beaten or that he beat any himself, or reported them for punishment (P-3, R 10). Defense witness Johann KASTLER, company commander over FRANZEN, now a prisoner at Dachau, testified that he ordered FRANZEN to the rifle course on 15 April 1945 and that he promoted FRANZEN to Staff Sergeant on his return therefrom because of his long service (R 15).

Accused HOEHNE. The Defense witness AKABAS testified that while HOEHNE was not liked by people working with him he never reported AKABAS for punishment nor did he ever see HOEHNE mistreat prisoners (R 31).

Accused LANG was drafted into the Waffen SS, was trained at Camp Dachau for guard duty, and transferred to an out-camp at Landsberg in November 1944. He never saw prisoners mistreated (P-5, R 12). Theresentia HUFF of Krumback, Germany, averred in a sworn statement that she knew LANG since Autumn 1944. She once gave him food for the prisoners. She knew of his reluctance to be a member of the SS (D-5, R 25). Maris KAPOU said and Ahhanel ESCEBARET, former prisoners at Landsberg, in a sworn statement stated LANG treated them well (D-4, 24).

Accused LANZL never did guard duty inside the prison at Camp Dachau. He was a block leader at Landsberg out-camp #4. He never saw any prisoners killed nor could he remember seeing any prisoners beaten on the prisoner transport (P-6, R 12).

Accused PFLAUM. There is nothing in the sworn statement of this accused which might be considered in his favor (P-7, R 12a).

Accused ZELBES stated the orders came from Berlin in November 1944 to extract gold from teeth of deceased prisoners at Landsberg, and that he received his orders directly from his chief, Willy ROST, who was in charge of the dental station (P-8. R 13). Defense witness AKABAS testified that ZELBES, his immediate superior, was good to him as well as to the other prisoners, and cited examples (R 34).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

It was shown that all of the accused were, at some time during the period 1 January 1942 to 29 April 1945, by their own admissions, SS guards and supervisors over prisoners at Dachau Concentration Camp and/or subsidiary camps thereto with varying ranks and duties (P-2 to P8, inclusive; R 9 to R 13, inclusive).

The Court was required to take cognizance of the decision rendered in the parent Dachau Concentration Camp case, including the findings of the Court therein, that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases," 14 October 1946, letters superseded thereby, and U.S. vs Weiss et al, 000-50-2 March 1946). All of the accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the parent case or in this subsequent proceeding, in concluding that they not only participated to a substantial degree but that the nature and extent of their participation was such as to warrant the sentence imposed.

The name of Valentin REHHORN, an accused, was deleted from the charge sheet due to his confinement in hospital (R 3).

6. CLEMENCY: There are no Petitions for Review. Consideration was given to Petitions for Clemency on behalf of Alois LANG, signed by Marie LANG, his wife, dated 21 January 1947 and 1 November 1946 with attached letters, and Rudolf Max HOEHNE, signed by Kirt KOHNKE, a German lawyer, dated 18 February 1947, attaching six testimonials. No clemency is recommended.

7. CONCLUSIONS:

a. It is recommended that the sentences be approved.

b. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with your approval.

s/ Louie T. Tischer
t/ LOUIE T. TISCHER
Attorney
Post Trial Section

Having examined the record of trial, I concur.

C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
23 May 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Otto BECKER, et al (Case No. 000-50-2-5)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Otto BECKER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above prisoner has been discharged upon completion of his sentence on 1 Feb 47.

/s/ George T. Lagion
Major, Infantry
Prison Officer

_____ (Organization)

_____ (Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-5 Order No.
Strafsache Nr. 000-50-2-5 Verfügung Nr. _____

Whereas one Otto BECKER
(Name of Accused) (Name des (der) Angeklagten
was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an massengreultaten im Konzentrationslager Dachau
by the *Intermediate Military Court at Dachau, Germany
*[illegible] in Dachau, Deutschland
vom *Mittleren Militärgerichte (Address of Court)
*[illegible] (Anschrift des Gerichts)
and sentenced to imprisonment for 1 year and 9 months commencing 2 May 1945
schuldig erkannt und zu Gefängnisstrafe von 1 Jahre 9 Monaten mit Wirkung ab 2 Mai 1945
by Judgment dated the 23 October 1946
durch Urteil vom 23 Oktober 1946 194__ and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachvernaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 1 year and 9 months commencing 2 May 1945.

Dass der Befund und das Urteil bekräftigt werden. Der kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 1 Jahre 9 Monaten mit Wirkung ab 2 Mai 1945 veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
23 May 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Otto BOHLER, et al (Case No. 000-50-2-5)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Claus FRANZEN.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 11 June (Date) 1947, at 0800 (Hour).

/s/ George T. Lagisn
(Signature and Rank)
GEORGE T. LAGISH, Maj. Inf.
Prison Officer
War Criminal Prison Landsberg
(Organization)

/s/ Lloyd A. Wilson
(Countersignature and Rank of Witnessing Officer)
LLOYD A. WILSON, Capt. CMP
Assistant Prison Officer

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-5 — Order No.
Strafsache Nr. 000-50-2-5 — Verfügung Nr. _____

Whereas one Claus FRANZEN
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau
by the *Intermediate Military Court
*~~General Military Court~~
*~~Special Military Court~~
vom *mittleren Militärgerichte
*~~Militärgerichte~~
at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)
and sentenced to imprisonment for 3 years commencing 27 April 1945
schuldig erkannt und zu Gefängnisstrafe von 3 Jahren mit Wirkung ab 27 April 1945

by Judgment dated the 23 October 1946
durch Urteil vom 23 Oktober 1946 194__ and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 3 years commencing 27 April 1945.

Dass der Befund und das Urteil bekräftigt werden. Der kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 3 Jahren mit Wirkung ab 27 April 1945 veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
23 May 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Otto BECKER, et al (Case No. 000-50-2-5)

TO : Commanding General,
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Rudolf Max HOEHNE.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 11 June (Date) 1947, at 0600 (Hour).

/s/ George T. Lagish
(Signature and Rank)
GEORGE T. LAGISH, Maj. Inf.
War Criminal Prison Landsberg
(Organization)

/s/ Lloyd A. Wilson
(Countersignature and Rank of Witnessing Officer)
LLOYD A. WILSON, Capt. Inf.

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-5 Order No.
Strafsache Nr 000-50-2-5 Verfügung Nr._____

Whereas one Rudolf Max HOCHNE
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an massengreultaten im konzentrationslager Dachau
by the *Intermediate Military Court at Dachau, Germany
*~~General~~ in Dachau, Deutschland
vom *Mittleren Militärgerichte (Address of Court)
*~~General~~ (Anschrift des Gerichts)
and sentenced to imprisonment for 5 years commencing 5 May 1945
schuldig erkannt und zu Gefängnisstrafe von 5 Jahren mit Wirkung ab 5 Mai 1945
by Judgment dated the 23 October 1946
durch Urteil vom 23 Oktober 1946 194___ and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved, but one year of confinement imposed is remitted. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of four (4) years commencing 5 May 1945.

Das Urteil wird mit der Massgabe bestaetigt, dass die erkannte Freiheitstrafe auf vier Jahre herabgesetzt wird. Der Beginn der Strafverbuessung wird auf den 5 Mai 1945 festgesetzt. Der Kommandierende General des I. Militaerbezierks wird die Ueberfuehrung des Verurteilten in die Strafanstalt fuer Kriegsverbrecher, No. 1, in Landsberg anordnen.

Dated this
Gegeben am 21 May 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable
*Nichtzutreffendes ist zu durchstreichen

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
23 May 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Otto BECKER, et al (Case No. 000-50-2-5)

TO : Commanding General,
First Military District,
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Alois LANG

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 11 June (Date) 1947, at 0800 (Hour).

/s/ George T. Lagish
(Signature and Rank)
GEORGE T. LAGISH, Maj. Inf.
Prison Officer
War Criminal Prison, Landsberg
(Organization)

/s/ Lloyd A. Wilson
(Countersignature and Rank of Witnessing Officer)
LLOYD A. WILSON, Capt. CmC
Assistant Prison Officer

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-5 Order No.
Strafsache Nr. 000-50-2-5 Verfügung Nr. _____

Whereas one Alois LANG
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau
by the *~~Intermediate~~ Military Court at Dachau, Germany
*~~General~~ in Dachau, Deutschland
vom *Mittleren Militärgerichte (Address of Court)
*~~Obersten~~ (Anschrift des Gerichts)
and sentenced to imprisonment for 2 years commencing 2 July 1945
schuldig erkannt und zu Gefängnisstrafe von 2 Jahren mit Wirkung ab 2 Juli 1945
by Judgment dated the 23 October
durch Urteil vom 23 Oktober 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years commencing 2 July 1945.

Lass der Befund und das Urteil bekräftigt worden. Der kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 2 Jahren mit Wirkung ab 2 Juli 1945 veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J.L. Harbaugh, Jr.
(Signature of Reviewing Authority
(Unterschrift der nachprüfenden Behörde)
J.L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
23 May 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Otto SECKER, et al (Case No. 000-50-2-5)

TO : Commanding General,
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-GCO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Michael LANZL.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 11 June (Date) 1947, at 0800 (Hour).

/s/ George T. Lagish
(Signature and Rank)
GEORGE T. LAGISH, Maj. Inf.
War Criminal Prison Landsberg
(Organization)

/s/ Lloyd A. Wilson
(Countersignature and Rank of Witnessing Officer)
LLOYD A. WILSON, Capt. CMP

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-5
Strafsache Nr. 000-50-2-5

Order No.
Verfügung Nr._____

Whereas one Michael LANZL
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreultaten im Konzentrationslager Dachau
by the *Intermediate Military Court
*~~[illegible]~~
*~~[illegible]~~
vom *Mittleren Militärgerichte
*~~[illegible]~~
at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)
and sentenced to imprisonment for 3 years commencing 21 May 1945
schuldig erkannt und zu Gefängisstrafe von 3 Jahren mit Wirkung ab 21 Mai 1945
by Judgment dated the 23 October 1946
Durch Urteil vom 23 Oktober 1946 194__ and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 3 years commencing 21 May 1945.

Dass der Befund und das Urteil bekräftigt werden. Der kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No 1, Landsberg, Deutschland, für die Zeit von 3 Jahren mit Wirkung ab 21 Mai 1945 veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
23 May 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Otto BECKER, et al (Case No. 000-50-2-5)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGC subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Nickolaus PFLAUM.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 11 Dec 46.

/s/ George T. Lagisn
(Signature and Rank)
Major, Infantry
Prison Officer

_____
(Organization)

_____
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-5 Order No.

Strafsache Nr. 000-50-2-5 Verfügung Nr. _____

Whereas one Nickolaus PFLAUm
(Name of Accused) (Name des (der) angeklagten)
was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massenverbrechen im Konzentrationslager Dachau
by the *Intermediate Military Court at Dachau, Germany
*~~General Military Court~~ in Dachau, Deutschland
vom *Mittleren Militärgerichte (address of Court)
*~~Militärgerichte~~ (Anschrift des Gerichts)
and sentenced to imprisonment for 18 months commencing 3 May 1945
schuldig erkannt und zu Gefängnisstrafe von 18 Monaten mit Wirkung ab 3 Mai 1945
by Judgment dated the 23 October 1946
durch Urteil vom 23 Oktober 1946 194__ and
(date) (Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months commencing 3 May 1945.

Dass der Befund und das Urteil bekräftigt werden. Der kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 18 Monaten mit Wirkung ab 3 Mai 1945 veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
23 May 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Otto BECHER, et al (Case No. 000-50-2-5)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGC subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Otmar Martin ZERBES.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 11 Dec 46.

/s/ George T. Lagisa
(Signature and Rank)
Major, Infantry
Prison Officer

(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-5
Strafsache Nr. 000-50-2-5

Order No.
Verfügung Nr._____

Whereas one Otmar Martin ZERBES
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau
by the *Intermediate Military Court
vom *Mittleren Militärgerichte
at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 27 April 1945
schuldig erkannt und zu Gefängisstrafe von 18 monaten mit Wirkung ab 27 April 1945

by Judgment dated the 23 October 1946
durch Urteil vom 23 Oktober 1946 194___ and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months commencing 27 April 1945.

Dass der Befund und das Urteil bekräftigt werden. Der kommandierende General, Militärbereich I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Zeit von 18 Monaten mit Wirkung ab 27 April 1945 veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde
J. L. HARBAUGH, JR.
Colonel, JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable
*Nichtzutreffendes ist zu durchstreichen

WCT Rpt. # 385.

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

21 May 1947

U N I T E D S T A T E S	)	
	)	
vs	)	Case No. 000-50-2-7
	)	
Rudolf DIPPE, August DRECHSEL, Georg GOETZ, Roland GROSSMANN, (Josef HOELL), Ernst HOLLER, Benno LEIMINGER, Robert LENZ, all German nationals	)	

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried at Dachau, Germany
Date: 25 - 29 October 1946
Intermediate Military Government Court

ACCUSED	DATA	SENTENCE
DIPPE, Rudolf	Age 41 Porcelain factory manager, SS, out-camp Allach Rank: 1st Lieutenant	5 years confinement from 19 May 1945
DRECHSEL, August	Age 37 Porcelain factory foreman, SS, out-camp Allach Rank: Unknown	Acquittal
GOETZ, Georg	Age 41 Shoe shop foreman, SS. Camp Dachau Rank: Unknown	5 years confinement from 12 May 1945
GROSSMAN, Roland	Age 25 Factory clerk, SS, Camp Dachau Rank: Unknown	Acquittal
HOLLER, Ernst	Age 45 Shoe shop worker, SS, Camp Dachau Rank: Pfc	2 years confinement from 9 May 1945
LEIMINGER, Benno	Age 44 SS, laborer, Camp Dachau Rank: Unknown	Acquittal

ACCUSED	DATA		SENTENCE
LENZ, Robert	Age 45 SS guard, Camp Dachau Rank: Unknown		2 years confinement from 2 May 1945

FIRST CHARGE: Violation of the Laws and Usages of War.

	Pleas	Findings
DIPPE	NG	G
DRECHSEL	NG	NG
GOETZ	NG	G
GROSSMANN	NG	NG
HOLLER	NG	G
LEIMINGER	NG	NG
LENZ	NG	G

PARTICULARS: In that Rudolf DIPPE, August DRECHSEL, Georg GOETZ, Roland GROSSMANN, (Josef HOELL), Ernst HOLLER, Benno LEIMINGER, Robert LENZ, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

SECOND CHARGE: Violation of the Laws and Usages of War.

	Pleas	Findings
DIPPE	NG	G
DRECHSEL	NG	NG
GOETZ	NG	G
GROSSMANN	NG	NG
HOLLER	NG	G
LEIMINGER	NG	NG
LENZ	NG	G

PARTICULARS: In that Rudolf DIPPE, August DRECHSEL, Georg GOETZ, Roland GROSSMANN, (Josef HOELL), Ernst HOLLER, Benno LEIMINGER, Robert LENZ, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the

custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

2. RECOMMENDATIONS: That the findings and sentences be approved except that the sentence imposed in the case of Rudolf DIPPE be reduced to confinement for a period of 3 years.

3. EVIDENCE:

For the Prosecution. The prosecution's case was based on the testimony of two witnesses, WORCHOLSKI (R 10) and KALUGA (R 13), former inmates of Camp Dachau, and extrajudicial sworn testimony as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (U.S. vs Weiss et al., 000-50-2, March 1946; R 9). Exhibits P-2 thru 8 are extrajudicial sworn testimony of each of the accused with the exception of Josef HOELL, whose name was stricken from the charges and particulars (R 3).

All of the accused were, by their own admissions, members of the SS at Camp Dachau and/or its out-camps, with varying ranks and duties, for considerable periods of time between the dates alleged (P-Ex 2 thru 8).

For the Defense. The defense's case was based on oral testimony on behalf of some of the accused and sworn extrajudicial testimony of the accused. Accused DIPPE took the stand in his own defense. All of the accused deniedhaving mistreated prisoners and some claimed to have no knowledge of the operation of the concentration campp.

Accused DIPPE. A porcelain factory employee since 1939, was made manager of the procelain manufacturing plant at Allach in May 1944, where 100 prisoners worked. He joined the SS in 1940 (P-Ex 2, R 21); was promoted to 1st Lieutenant in the SS in April 1943, and wore the SS uniform from May 1943 (R 71). The use of inmates in the Allach porcelain factory began in 1941. Polish, Czech, Dutch,

Belgian, Russian and Austrian political prisoners were assigned to work there (R 72). He heard of beatings and executions inside Camp Dachau. He knew of Dr. SCHILLING'S malaria experiments and the transports to and from Camp Dachau (R 74). He was a member of the NSDAP since 1935 (R 85). Georg KOEDELSPERGER, a defense witness and a former inmate, testified from the stand that DIPPE chose the SS in order to avoid going to the front lines with the armed forces (R 63).

In defense, DIPPE stated that prisoners in the porcelain factory at out-camp Allach were never beaten, mistreated or reported for punishment by him (P-Ex 3, R 21). Defense witness Karl SCHWENDEMANN, a former inmate, testified that he worked at the porcelain factory under DIPPE and that DIPPE'S treatment of his workers was excellent; that he procured extra rations for them and interceded for them when reported by others for punishment (R 39, 40). Defense witness Georg KOEDELSPERGER, a former inmate, testified he worked for a while in the porcelain factory under DIPPE and that he got better treatment at the porcelain factory than on other details. Prisoners were treated as human beings and were protected (R 48).

Accused Goetz was manager of the shoe shop at Camp Dachau where 60 to 170 prisoners made shoes for the Waffen SS. Reports of offenses by prisoners came to GOETZ from a civilian foreman and he passed them on to the manager of the clothing factory. Prisoners were then punished (P-Ex 4, R 22). Josef SANDECK, a former inmate, testified that it was the duty of GOETZ as manager of the shoe shop to report prisoners for punishment (R 96).

In defense, it was shown that GOETZ was manager of the shoemaker's shop at Camp Dachau. He claims no prisoners were beaten by the capos, SS men, or by him (P-Ex 4, R 22). Defense witness Georg STEINBECKER, a former inmate on the shoe shop detail, testified GOETZ never beat anyone or reported anyone for punishment; that he was liked by the majority of prisoners (R 100). Josef SANDECK, a defense witness, testified GOETZ treated prisoners well. SANDECK talked

with other prisoners on the detail about mistreatment and no one denounced GOETZ (R 93). Peter BOGDAMSKI, a defense witness, testified he never saw GOETZ mistreat anyone nor did GOETZ mistreat him (R 140). Defense witness, Jan UFEL, a former inmate, testified GOETZ supervised the entire factory (R 147).

Accused HOLLER was taken into the SS in October 1942 and was assigned to the shoemaker's shop, Camp Dachau, where there were 68 to 72 prisoners of German, Italian, Yugoslavian, Polish, Ukranian and French nationalities (P-Ex 6, R 24). Prosecution witness Josef KALU- testified he saw HOLLER at the hanging of two Russians near the clothing shop and HOLLER, as well as other guards, were laughing. HOLLER was a capo in the shoe shop (R 15). All guards and prisoners, 400 in all, were present at this hanging (R 19).

In defense, HOLLER stated that he was a cutter and stitcher in the shoe factory, and that he never saw prisoners beaten or mistreated. He had no connection with the concentration camp itself (P-Ex 6, R 24). Defense witness STEINBECHER testified he knew HOLLER well, worked under him, and was never mistreated by him, nor did he ever hear of HOLLER mistreating prisoners (R 153). Peter BOGDAMSKI, a defense witness, testified he never saw HOLLER mistreat anyone, nor did HOLLER mistreat him (R 140). Jan UFEL, a former inmate, testified HOLLER not only treated prisoners well but helped them. He did not hear of HOLLER making reports of misconduct of prisoners (R 146,147).

Accused LENZ was sent to Camp Dachau in July 1941 to become a work detail guard at the tailor and shoemaker's shop. There were about 200 prisoners of various nationalities in the two shops with 3 to 10 guards over them. LENZ was a guard on the prisoner march from Dachau to Bad Toelz, 28 - 29 April 1945 (P-Ex8, R 25). Defense witness Franz MRAZ testified that LENZ was a guard in the tailor and shoe shops where beatings and mistreatment occurred (R 165).

In defense, LENZ stated he never saw prisoners beaten or mistreated by guards. He claimed to know nothing about the operation of the concentration camp itself and made no inquiries to learn

(P-Ex 8, R 25). Defense witness Stefert ADAMUS, a former inmate, testified he never saw or heard of LENZ mistreating prisoners during LENZ'S tour as a work detail guard (R 157). Franz MAAZ, a witness for the defense and now a prisoner, was a capo in the tailor shop. He testified LENZ never beat any prisoners and that none of the prisoners were afraid of LENZ (R 163). LENZ did not denounce or file a report against the two Russians who were hanged (R 164).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

The Court was required to take cognizance of the decision rendered in the parent Dachau Concentration Camp Case, including the findings of the Court therein, that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, torture, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 24 October 1946, letters superseded thereby, and U.S. vs Weiss et al., [illegible]-50-2, March 1946). All the accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the parent Dachau Concentration Camp Case or in this subsequent proceeding, in concluding that they not only participated to a substantial degree but that the nature and extent of their participation was such as to warrant the sentences imposed.

After weighing the evidence the Court acquitted accused DRECHSEL, GROSSMAN and LEIMINGER.

Concerning accused DIPPE, it is true he was shown to have been manager of the Allach porcelain factory; that he joined the SS in order to retain his position in his chosen profession, the manufacture of porcelain ware; however, it was shown by competent testimony

that his conduct with respect to the prisoners working in his factory was such as to cause many inmates working on other details to want to be assigned to work there, because of the fact that DIPPE did not allow mistreatment in the procelain factory. It is therefore believed that the sentence imposed by the Court as to DIPPE is excessive.

6. CLEMENCY: A Petition for Review, inclosing 11 testimonials, was filed on 11 February 1947 on behalf of accused Rudolf DIPPE, Georg GOETZ, Ernst HOLLER and Robert LENZ by Dr. Max RAU. Consideration has been given to a Petition for Clemency, dated 14 April 1947 on behalf of accused Georg GOETZ, signed by his brother Adam GOETZ. No clemency is recommended.

7. CONCLUSIONS:

a. It is recommended that the sentences be approved except as to Rudolf DIPPE.

b. It is recommended that the sentence imposed in the case of Rudolf DIPPE be reduced to confinement for a period of three years.

d. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

s/ Louie T. Tischer
t/ LOUIE T. TISCHER
Attorney
Post Trial Section

Having examined the record of trial, I concur.

C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-7 Order No.
Strafsache Nr. 000-50-2-7 Verfügung Nr.

Whereas one Rudolf DIPPE
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentration-lager Dachau.

by the *~~General~~ Military Court
*~~General~~ at Dachau; Germany.
*~~Tribunal~~ in Dachau, Deutschland
vom *Mittleren Militärgerichte (Address of Court) (Anschrift des Gerichts)

and sentenced to imprisonment for 5 years commencing 19 May 1945.
schuldig erkannt und zu 5 Jahren Gefangnis verurteilt, mit Wirkung ab 19 Mai 1945.
by Judgment dated the 29 October 1946
durch Urteil vom 29 Oktober 1946 194 and
(Date) (Datum)

Whereas the case has now come before me by way of review and after
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach due consideration and in exercise of the powers conferred upon me, I hereby
entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen order:
Befugnisse verfüge ich:

That the findings and sentence are approved (but the period of confinement is reduced to 3 years). The Commanding General, First Military District, will confine the individual in War Criminal Prison No, 1, Landsberg, Germany, for a period of 3 years commencing 19 May 1945.

Dass der Befund und das Urteil bestatigt werden (die Dauer der Haft jedoch auf 3 Jahren vermindert wird). Der kommandierende General, Militärbezirk 1, wird die Inhaftierung des Betreffenden in Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, fur die Zeit von 3 Jahren mit Wirkung ab 19 Mai 1945, veranlassen.

Dated this
Gegeben am 16 June 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-7 Order No.
Strafsache Nr. 000-50-2-7 Verfügung Nr.

Whereas one Ernst HOLLER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrations-lager Dachau.

by the *Intermediate Military Court
vom *Mittleren Militärgerichte

at Dachau; Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 2 years commencing 9 May 1945.
schuldig erkannt und zu 2 Jahren Gefangis verurteilt, mit Wirkung ab 9 Mai 1945.

by Judgment dated the 29 October 1946
durch Urteil vom 29 Oktober 1946 194 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order;
Diese Strafsache ist mir zure Überprufung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of two years commencing 9 May 1945.

Dass der Befund und das Urteil bestatigt werden. Der kommandierende General, Militarbezirk 1, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, fur die Dauer von 2 Jahren mit Wirkung ab 9 Mai 1945.

Dated this
Gegeben am 16 June 1947.

/s/ J. L. HARBAUGH, Jr.
(Signature of Reviewing Authority)

J. L. HARBAUGH, Jr.,
Colonel JAGD
Judge Advocate
(Title)

(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-7 Odor No.
Strafsache Nr. 000-50-2-7 Verfugung Nr.

Whereas one Georg GOETZ
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrations-lager Dachau.

by the *Intermediate Military Court at Dachau, Germany
vom *Mittleren Militargerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 5 years commencing 12 May 1945.
schuldig erkannt und zu 5 Jahren Gefangnis verurteilt, mit Wirkung ab 12 Mai 1945.

by Judgment dated the 29 October 1946.
durch Urteil vom 29 Oktober 1946. 194 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprufung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of five years commencing 12 May 1945.

Dass der Befund und das Urteil bestatigt werden. Der kommandierende General, Militärbezirk 1, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, für die Dauer von 5 Jahren mit Wirkung ab 12 Mai 1945 veranlassen.

Dated this
Gegeben am 16 June 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
19 Jun 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Rudolf DIPPE, et al. (Case No. 000-50-2-7)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Rudolf DIPPE.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 28 June (Date) 1947, at 1000 (Hour).

/s/ GEORGE T. LAGISH, Maj., Inf.
(Signature and Rank)

Prison Officer

/s/ LLOYD A. WILSON, Capt., CMP
(Countersignature and Rank of Witnessing Officer)

Asst. Prison Officer

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-7
Strafsache Nr. 000-50-2-7

Order No.
Verfügung Nr.____

Whereas one Robert LEIZ
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp Mass atrocity,
wegen der fulgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrations-lager Dachau.

by the *Intermediate Military Court
vom *Mittleren Militergerichte

at Dachau; Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 2 years commencing 2 May 1945.
schuldig erkannt und zu 2 Jahren Gefangnis verurteilt, mit Wirkung ab 2 Mai 1945.

by Judgment dated the 29 October 1946.
durch Urteil vom 29 Oktober 1946. 194 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby
Diese Strafsache ist mir zur Überprufung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of two years commencing 2 May 1945.

Dass der Befund und das Urteil bestatigt werden. Der kommandierende General, Militärbezirk 1, wird die Inhaftierung des Betroffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von 2 Jahren mit Wirkung ab 2 Mai 1945 veranlassen.

Dated this
Geschehen am 16 June 1947.

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)
Colonel JAGD.
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
19 Jun 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Rudolf DIPPE, et al. (Case No. 000-50-2-7)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Ernst HOLLER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 170, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 17 May 1947.

/s/ GEORGE T. LAGISH, Maj., Inf.
(Signature and Rank)

Prison Officer
(Organization)
War Criminal Prison, Landsberg

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
19 June 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Rudolf DIPPE, et al. (Case No. 000-50-2-7)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Georg GOETZ.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frnakfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 28 June 1947 (Date), at 1000 (Hour).

/s/ GEORGE T. LAGISH, Maj, Inf
(Signature and Rank)

War Criminal Prison, Landsberg
(Organization)

/s/ LLOYD A. WILSON, Capt, CIP
(Countersignature and Rank of Witnessing Officer)

Asst. Prison Officer

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
19 Jun 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Rudolf DIPPE, et al. (Case No. 000-50-2-7)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Robert LEIZ.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 4 Apr 1947

/s/ GEORGE T. LAGISH, Maj., Inf
(Signature and Rank)

Prison Officer
(Organization)

War Criminal Prison, Landsberg

(Countersignature and Rank of Witnessing Officer

WCT Rpt # 386

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

2 May 1947

UNITED STATES)
)
vs) Case No. 000-50-2-9
)
Franz BEZAK, Hans EBERT;)
Josef ERDLE, Karl GASTL,)
Johann KRAFFT, Karl LANG-)
STEIN, Stefan SCHAEFFLER)
and Franz VITZTHUM)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried jointly at Dachau, Germany
Date: 4 November 1946
Intermediate Military Government Court

ACCUSED	DATA	SENTENCE
BEZAK, Franz	Age 38 Czechoslovakian national Drafted Waffen SS March 1943, ordered to Dachau July 1943 Duties: Orderly to camp commandant. No guard duty Rank: Pfc	Acquittal
EBERT, Hans	Age: 23 German national SS guard out-camp Augsburg, September 1944 to March 1945 Front-line unit until capitulation Rank: Unknown	2 years confinement from 4 May 1945
ERDLE, Josef	Age 38 German national SS guard Dachau and out-camp Augsburg-Haunstetten October 1944 to capitulation Rank: Unknown	2 years confinement from 12 May 1945
GASTL, Karl	Age 42 Married, 2 children German national SS guard Dachau, September to December 1944, and out-camp Augusburg-Pfersee, February 1945 to capitulation Rank: Unknown	Acquittal

ACCUSED	DATA	SENTENCE
KRAFFT, Johann	Age 22 Roumanian national Drafted German Army July 1943. Training Dachau, July 1943 to October 1943 SS guard Augsburg October 1943 to March 1945 Rank: Unknown	Acquittal
LANGSTEIN, Karl	Age 36 German national, formerly Czechoslovakian Drafted German Army August 1939 SS guard Dachau and out-camp Augsburg-Pfersee, July 1944 to April 1945 Rank: Sergeant	2 years confinement from 2 May 1945
SCHAEFFLER, Stefan	Age 37 German national SS guard out-camp Kempton March 1944 to April 1945 Rank: Unknown	2 years confinement from 13 May 1945
VITZTHUM, Franz	Age 41 German national Drafted German Army February 1942 SS guard out-camps Friedrichshafen and Saulgau, July 1944 to April 1945 Rank: Unknown	2 years confinement from 27 August 1945

FIRST CHARGE: Violation of the Laws and Usages of War.

	PLEAS	FINDINGS
BEZAK	NG	NG
EBERT	NG	G
ERDLE	NG	G
GASTL	NG	NG
KRAFFT	NG	NG
LANGSTEIN	NG	G
SCHAEFFLER	NG	G
VITZTHUM	NG	G

PARTICULARS: In that Franz BEZAK, Hans EBERT, Josef ERDLE, Karl GASTL, Johann KRAFFT, Karl LANGSTEIN, Stefan SCHAEFFLER and Franz VITZTHUM, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals

being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

SECOND CHARGES: Violation of the Laws and Usages of War.

PARTICULARS: In that Franz BEZAK, Hans EBERT, Josef ERDLE, Karl GASTL, Johann KRAFFT, Karl LANGSTEIN, Stefan SCHAEFFLER and Franz VITZTHUM, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

	Pleas	Findings
BEZAK	NG	NG
EBERT	NG	G
ERDLE	NG	G
GASTL	NG	NG
KRAFFT	NG	NG
LANGSTEIN	NG	G
SCHAEFFLER	NG	G
VITZTHUM	NG	G

2. RECOMMENDATIONS: That the findings and sentences be approved except as to accused SCHAEFFLER, and that the finding and sentence as to accused SCHAEFFLER be disapproved.

3. EVIDENCE:

For the Prosecution. The Prosecution's case was based on extrajudicial sworn testimony as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (R-7; U.S. vs Weiss et al, 000-50-2, March 1946). Exhibits P-2 to P-9, inclusive, are extrajudicial sworn testimony of each of the accused.

It was shown that during the period 1 January 1942 to 29 April 1945 each of the accused was an SS guard at Dachau Concentration Camp and/or subsidiary camps thereto, namely, Augsburg-Haunstetten, where there were 1500 to 2000

prisoners working at a Messerschmitt Factory (P-3, R-8; P-4, R-9); Augsburg-Pfersee, where 1200 to 1400 inmates were incarcerated (P-5, R-10; P-6, R-11; P-7, R-13); Kempten, which had over 400 prisoners (P-8, R-13); and the Friedrichshafen group which included Radrach, Saulgau and Ueberlingen, where work-camps were maintained for the Zeppelin Works and the manufacture of V-weapons (P-9, R-14).

For the Defense, The defense elected to make no opening statement nor call any witnesses (R-15) and relied upon the extrajudicial testimony of the accused (P-2 to P-9, inclusive). The accused were informed of their rights and elected not to testify.

Accused EBERT was transferred from the Air Corps to the Waffen SS on 1 September 1944 and sent to out-camp Augsburg as a guard. He performed this duty until 12 March 1945, when he was transferred to a front-line unit. Out-camp Augsburg consisted of 1500 to 2000 prisoners of various nationalities working at the Messerschmitt Factory (P-3, R-8; U.S. vs Weiss et al, 000-50-2, March 1946, R-531, 873).

In defense, EBERT claims he never saw prisoners beaten, nor did he beat prisoners, or report them for punishment (P-3, R-8).

Accused ERDLE was a guard at Dachau Concentration Camp from 23 August 1944 to 10 January 1945, when he was transferred to out-camp Augsburg-Haunstetten, where he remained as guard until the capitulation in April 1945. He was also a guard on the prisoner march from Augsburg to Klonach just prior to the capitulation (P-4, R-9).

In defense, ERDLE denied any prisoners were beaten on any of his details at either Dachau Concentration Camp or out-camp Augsburg-Haunstetten. He also claimed no prisoners were beaten or shot on the prisoner march upon the evacuation of out-camp Augsburg. Whether the prisoners dies of illness he did not know (P-4, R-9).

Accused LANGSTEIN was sergeant-of-the-guard at out-camp Augsburg-Pfersee where there were 1200 to 1400 prisoners. His duties from the middle of August 1944 until the capitulation consisted of guarding approximately 200 prisoners in transit back and forth from the Augsburg-Pfersee work-camp to the Messerschmitt works, a distance of approximately 10 kilometers.

In defense, accused LANGSTEIN claims the prisoners were delivered to civilians at the Messerschmitt Factory and that the transit or escort guards had nothing to do with the work of the prisoners. In performing these duties he never saw prisoners beaten by guards or civilian workers, nor did he beat or report any prisoners for punishment himself (P-7, R-13).

Accused SCHAEFFLER was a work-detail and tower guard at out-camp Kempten where there were 400 to 440 prisoners. He participated in the prisoner march, consisting of 400 prisoners, from Kempten to Fuessen on 27 April 1945 (P-8, R-13).

In defense, SCHAEFFLER claims food and sanitation conditions at out-camp Kempten were good. He assisted two prisoners who fell out on the prisoner march from Kempten in April 1945. He was never personally in Dachau nor inside the out-camp at Kempten (P-8, R-13).

Accused VITZTHUM was ordered to Dachau Concentration Camp on 5 July 1944 where he remained almost a week. After receiving instructions he was ordered to out-camp Friederichshafen, which was 45 minutes to one hour's distance from Radrach where the prisoners were quartered. After the railroad was destroyed it was necessary for the prisoners to walk this distance wearing wooden shoes. The noon meal was brought in buckets by trucks. Upon deactivation of the prison camp at Radrach in September 1944, half of the prisoners were sent to out-camp Ueberlingen and the other half to out-camp Saulgau. In Saulgau the same conditions prevailed as at out-camp Friederichshafen with the exception that the factory where the prisoners worked was adjacent to the camp. The food was the same as at Friederichshafen. He was a guard on the prisoner march evacuating out-camp Saulgau, which started toward Friederichshafen at 4:00 AM on 22 April

1945. This march was forced to return to Saulgau after a few hours. A tank alarm caused the camp to be evacuated. Accused VITZTHUM left his unit and went to Munich, arriving there on 25 April 1945 (P-9, R-14).

In defense, VITZTHUM states that he frequently gave food and bread to the prisoners as he knew they were hungry. He did not see any "mistreatment or rudeness, except some boxes in the ear because of thefts or some other offense like that" (P-9, R-14).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any errors or omissions which resulted in injustice to the accused.

The Court was required to take cognizance of the decision rendered in the parent Dachau Concentration Camp Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject "Trial of War Crimes Cases," 14 October 1946, letters superseded thereby, and U.S. vs Weiss et al, 000-50-2, March 1946). With the exception of the accused SCHALLMEIER, all accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the parent Dachau case or in this subsequent proceeding, in concluding as to them that they not only participated to a substantial degree but that the nature and extent of their participation was such as to warrant the sentences imposed. Concerning the accused SCHAFFLER, it was shown that he participated and the nature of his duties was also satisfactorily proved. However, a search of the record in the parent case and the record in this subsequent proceeding reveals no evidence

as to atrocities committed at the Kompten out-camp. It is true that it was shown that 400 slave laborers were worked there but, if they were not otherwise mistreated and tortured, it is believed that SCHAEFFLER's participation in this mass atrocity was too remote to form a proper basis of sentencing by the Court. By virtue of the absence of evidence as to what occurred at the Kompten out-camp he is not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of his participation to permit of arriving at an appropriate sentence. It could be contended with considerable merit that the Court, with propriety, could have inferred that the inmates of the Kompten out-camp were subjected to cruelties and torture substantially like those clearly proven to have been inflicted at the parent camp and the other out-camps. If that view were adopted, at least theoretically, injustices could result and those too remotely connected with this or other mass atrocities might be severely punished without a proper gauge to measure the magnitude of their crimes.

Accused BEZAK was shown to have been an orderly and had no duties at the concentration camp. Accused GASTL, father of eight children, was inducted into the SS as punishment for having left his war job without permission. Accused KRAFFT, 22 years of age, a Roumanian national, was not shown to have participated sufficiently in the mass atrocity to warrant conviction. The Court, therefore, properly acquitted them.

6. CLEMENCY: There are no Petitions for Review. The Defense, after verdict, offered to the Court for "what they were worth" two instruments on behalf of accused SCHAEFFLER, signed by the Burgomeister: one to the effect SCHAEFFLER had never been a member of the Nazi Party, and the other that he does not subscribe to Nazi principles. Both were received in evidence in mitigation of SCHAEFFLER's sentence.(D-1, D-2; R-16).

7. CONCLUSIONS:

a. It is recommended that all the sentences except that as to accused SCHAEFFLER be approved.

b. It is recommended that the sentence as to accused SCHAEFFLER be disapproved.

c. Legal Forms 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

LOUIE T. TISCHER
Attorney
Post Trial Section

Having examined the record of trial, I concur.

C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

LEGAL FORM NO: 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-9 ORDER NO.
Strafsache Nr. 000-50-2-9 Verfügung Nr.

Whereas one Karl LANGSTEIN
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *~~Summary~~ *Intermediate Military Court *~~General~~ *~~Circuit~~ vom *Mittleren Militärgerichte *~~Oberen~~ at Dachau; Germany In Dachau, Deutschalnd (Address of Court) (Anschrift des Gerichts)

and sentenced to imprisonment for two years, commencing 2 July 1945.
schuldig erkannt und zu zwei Jahren Gefangnis verurteilt, mit Wirkung ab 2 Juli 1945.

by Judgment dated the 4 November 1946
durch Urteil vom 4 November 1946 194 and
(Date) (Datum)

Whereas the case has now come before me by way of review and after due
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach
consideration and in exercise of the powers conferred upon me, I hereby order:
entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years, commencing 2 July 1945.

Dass der Befund und das Urteil Bestatigt werden. Der kommandierende General, von Militärbezirk 1, wird die inhaftierung des Betroffenden im Kriegsverbrechergefangnis No. 1, Landsberg, Deutschalnd, fur die Dauer von zwei Jahren mit Wirkung ab 2 Juli 1945, veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 21 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Franz BEZAK, et al (Case No. 000-50-2-9)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Karl LANGSTEIN.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 11 June (Date) 1947, at 0300 (Hour).

/s/ GEORGE T. LAGISH, Maj., Inf.
(Signature and Rank)

War Criminal Prison, Landsberg
(Organization)

/s/ LLOYD A. WILSON, Capt., Inf.
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

"ORDER ON REVIEW"
Verfügung nach Überprüfung

Case No. 000-50-2-9 Order No.
Strafsache Nr. 000-50-2-9 Verfügung Nr.

Whereas one Hans EBERT
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *~~Summary~~ *Intermediate Military Court at Dachau; Germany
*~~General~~ in Dachau, Deutschland
von *~~Kleinen~~ *Mittleren Militärgerichte (Address of Court)
*~~Obersten~~ (Anschrift des Gerichts)

and sentenced to imprisonment for two years, commencing 4 May 1945.
schuldig erkannt und zu zwei Jahren Gefangnis verurteilt, mit Wirkung ab 4 Mai 1945.

by Judgment dated the 4 November 1946
durch Urteil von 4 November 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach consideration and in exercise of the powers conferred upon me, I hereby order:
entsprechenden Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years, commencing 4 May 1945.

'Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, von Militärbezirk 1, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, fur die Dauer von zwei Jahren, mit Wirkung ab 4 Mai 1945, veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. HARBAUGH, Jr.
(Signature of Reviewing Authority)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 21 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Franz HEZAK, et al (Case No. 000-50-2-9)

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled cases to accused Hans EBERT.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The prisoner named above has been discharged upon completion of his sentence on 3 May 1947.

/s/ GEORGE T. LAGISH, Maj. In.
(Signature and Rank)

Prison Officer
(Organization)

(Countersignature and Rank of Witnessing Officer)

MILITARY GOVERNMENT COURT
MILITARGERICHT

„ ORDER ON REVIEW „
Verfugung nach Uberprufung

Case No. 000-50-2-9 — Order No.
Strafsache Nr. 000-50-2-9 — Verfugung Nr.

Whereas one Josef ERDLE
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *Intermediate Military Court
at Dachau, Germany
in Dachau, Deutschland
vom *Mittleren Militargerichte
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for two years, commencing 12 July 1945
schuldig erkannt und zu zwei Jahren Gefangnis verurteilt, mit Wirkung ab 12 Juli 1945

by Judgment dated the 4 November 1946
durch Urteil vom 4 November 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Uberprugung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausubung der mir ubertragenen Befugnisse verfuge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years, commencing 12 July 1945.

Dass der Befund und das Urteil bestatigt werden. Der kommandierende General, von Militarbezirk 1, wird die Inhaftierung des Betroffenden im Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, fur die Dauer von zwei Jahren, mit Wirkung ab 12 July 1945, veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes isr zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 21 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Franz BEZAK, et al (Case No. 000-50-2-9)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Josef ERDLE.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7707 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2710

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No.1, Landsberg, Germany, on 11 June (Date) 1947, at 0800 (Hour).

/s/ GEORGE T. LAGISH, Maj., Inf.
(Signature and Rank)

War Criminal Prison, Landsberg
(Organization)

/s/ LLOYD A. WILSON, Capt., CE
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Uberprüfung

Case No. 000-50-2-9
Strafsache Nr. 000-50-2-9

Order No.
Verfugung Nr.

Whereas one Stefan SCHAEFFLER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der fulgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the *~~Summary~~ *Intermediate Military Court
vom *~~Allgemeinen~~ *~~Einfachen~~ *Mittleren Militargerichte *~~Obersten~~

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to ijprisonment for two years, commencing 13 May 1945
schuldig erkannt und zu zwei Jahren Gefangnis verurteilt, mit Wirjung ab 1. Mai 1945

by Judgment dated the 4 November 1946
durch Urteil vom 4 November 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Uberprufung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausubung der mir ubertragenen Befugnisse verfuge ich:

That the findings and sentence be disapproved. The Commanding General, First Military District will release Stefan SCHAEFFLER from confinement in War Criminal Prison No. 1, Landsberg, Germany

Dass der Befund und das Urteil nicht geheissen wurden. Der kommandierende General des 1 Militarbezirks wird die Entlassung des Stefan SCHAEFFLER aus der Haft vom Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)
(Unterschrift der nachprufenden Behorde)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

Legal From No: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 21 1947

SUBJECT: Release of Prisoner in the Case of the United States vs. Franz BEZAK, et al (Case No. 000-50-2-9)

TO Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Stefan SCHAEFFLER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7707 War Crimes Group, APO 170, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1. Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried inot execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 12 May 1947.

/s/ GEORGE T. LAGISH, Maj Inf.
(Signature and Rank)

Prison Officer
(Organization)

(Countersignature and Rank of Witnessing Officer)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-9
Strafsache Nr. 000-50-2-9

Order No.
Verfügung Nr.

Whereas one - Franz VITZTHUM
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau

by the ~~Summary~~ *Intermediate Military Court
~~General~~
~~Special~~
vom ~~Ober~~ *Mittleren Militargerichte
~~Theater~~

at Dachau; Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for two years, commencing 27 August 1945
schuldig erkannt und zu zwei Jahren Gefangnis verurteilt, mit Wirkung ab 27 August 1945.

by Judgment dated the 4 November 1946
durch Urteil vom 4 November 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved, The Commanding General, First Military District; will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years, commencing 27 August 1945.

Dass der Befund und das Urteil bestatigt werden. Der kommandierende General, von Militarbezirk 1, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, fur die Dauer von zwei Jahren, mit Wirkung ab 27 August 1945, veranlassen.

Dated this
Gegeben am 20 May 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
May 21 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Franz BEZAK, et al (Case No. 000-50-2-9)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Franz VITZTHUM.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310.

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 11 June (Date) 1947, at 0800 (Hour).

/s/ GEORGE T. LAGICH, Maj., Inf.
(Signature and Rank)

War Criminal Prison, Landsberg
(Organization)

/s/ LLOYD A. WILSON, Capt., CMP
(Countersignature and Rank of Witnessing Officer)

WCT Rpt # 387

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

17 May 1947

U N I T E D S T A T E S	)	
	)	
vs	)	Case No. 000-50-2-10
	)	
Wilhelm BUEHLER, Robert GERHARDT, Josef GREINER, Otto HAUSWIRTH, Wendel KIRSCHBAUM, Alfred Rudolf KORFF, Hugo UNTERPAINTNER	)	

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried jointly at Dachau, Germany
Date: 30 October 1946
Intermediate Military Government Court

ACCUSED	DATA	SENTENCE
BUEHLER, Wilhelm	Age 50 German national SS guard Rank: Sergeant	18 months confinement from 2 August 1945
GERHARDT, Robert	Age 42 German national SS guard Rank: Unknown	18 months confinement from 2 May 1945
GREINER, Josef	Age 45 German national SS guard Rank: Unknown	18 months confinement from 7 July 1945
HAUSWIRTH, Otto	Age 48 German national SS guard Rank: Unknown	18 months confinement from 3 May 1945
KIRSCHBAUM, Wendel	Age 39 Roumanian national SS guard Rank: Pfc	18 months confinement from 9 June 1945
KORFF, Alfred Rudolf	Age 28 German national SS guard Rank: Corporal	18 months confinement from 7 July 1945

ACCUSED	DATA	SENTENCE
UNTERPAINTNER, Hugo	Age 39 German National SS guard Rank: Sergeant	18 months confinement from 1 May 1945

FIRST CHARGE: Violation of the Laws and usages of War.

	Plees	Findings
BUEHLER	NG	G
GERHARDT	NG	G
GREINER	NG	G
HAUSIRTH	NG	G
KIRSCHBAUM	NG	G
KORFF	NG	G
UNTERPAINTNER	NG	G

PARTICULARS: In that Wilhelm BUEHLER; Robert GERHARDT, Josef GREINER, Otto HAUSIRTH, Wendel KIRSCHBAUM, Alfred Rudolf Korff, Hugo UNTERPAINTNER, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

SECOND CHARGE: Violation of the Laws and Usages of War.

	Pleas	Findings
BUEHLER	NG	G
GERHARDT	NG	G
GREINER	NG	G
HAUSIRTH	NG	G
KIRSCHBAUM	NG	G
KORFF	NG	G
UNTERPAINTER	NG	G

PARTICULARS: In that Wilhelm BUEHLER; Robert GERHARDT, Josef GREINER, Otto HAUSIRTH, Wendel KIRSCHBAUM, Alfred Rudolf KORFF, Hugo UNTERPAINTER, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed

forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

2. RECOMMENDATION: That the findings and sentences be approved except as to accused KORFF and UNTERPAINTNER be disapproved.

3. EVIDENCE:

For the Prosecution. The prosecution's case was based on extrajudicial sworn testimony as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings, and sentences in the parent Dachau Concentration Camp Case (U.S. vs Weiss et al., 000-50-2, March 1946; R 10). Exhibits P-2 thru 8 consist of extrajudicial testimony of each of the accused (R11 thru 17).

It was shown that during the period 1 January 1942 to 29 April 1945 each of the accused was an SS guard for considerable periods of time in Dachau Concentration Camp and/or its out-camps (P-Ex 2 thru 8).

For the Defense. The defense called no witnesses, relying solely on extrajudicial sworn testimony of the accused introduced by the prosecution (P-Ex 2 thru 8; R11 thru 17), and a statement signed by seven former inmates on behalf of accused UNTERPAINTNER (D-Ex 1, R 18).

Accused BUEHLER was a guard for six months at out-camp Kaufering 111, which contained 1000 Hungarian and Lithuanian Jewish men and women. It appears the Fischen detail, working out of out-camp Kaufering 111, consisted of 220 prisoners of various nationalities working at an armament factory (P-Ex 2, R-10; reference Kaufering 111, see U. S. vs Weiss et al., 000-50-2, March 1946, R 621, 741, 1339).

In defense, BUEHLER denies having seen prisoners beaten at either out-camp Kaufering III or on the Fischen detail, although he heard that "Organization Todt" men beat prisoners at Kaufering III. He claims never to have beaten prisoners nor reported them for punishment (P-Ex 2, R 10).

Accused GERHARDT was an SS tower and work detail guard at Camp Dachau and out-camps Kottern, Fischen, Kempten and Muhldorf-Mettenheim for a period of one year. He described the bad condition of prisoners at Muhldorf-Mettenheim where there were approximately 700 Hungarian Jewish prisoners, and each day some dies from lack of medical care due to a typhoid fever epidemic (P-Ex 3, R 12).

In defense, GERHARDT denied ever having beaten prisoners or reported them for punishment at any of the out-camps where he had guard duty (P-Ex 3, R 12).

Accused GREINER joined the SA and the Nazi Party in 1932 because he had no job. He joined the German Army in 1941. In August 1944 he was ordered to out-camp Lauingen on the Danube and to out-camp Augsburg, where he performed the duty of tower guard and guard on the road. He was taken into the SS on 1 November 1944 (P-Ex 4A, 4B, R 12).

In denfense, GREINER stated he knows nothing about mistreatments and beatings. From 27 September 1944 to 6 December 1944 he was hospitalized, after which he received a 16-day furlough. He was again hospitalized 1 January 1945 for 10 days. He left out-camp Lauingen on 18 April 1945; the transports left Lauingen on 10 April 1945 (P-Ex 4A, 4B, R 12).

Accused HAUSWIRTH came to Camp Dachau 13 July 1944. His duties were that of tower guard on the plantation detail for 8 days, after which he was hospitalized and furloughed. He returned to Camp Dachau in October 1944 and was assigned to out-camp Baumenheim. Upon the evacuation of this out-camp he was sent to Kaufering. He was a guard on the prisoner march Kaufering to Camp Dachau on 28 or 29 April 1945.(P-Ex 5, R 13).

In defense, HAUSWIRTH, disclaimed any knowledge of beating or mistreatment of prisoners at Camp Dachau and out-camp Baumenheim, or that prisoners suffered any mistreatment on the prisoner march on which he was guard (P-Ex 5, R 13).

Accused KIRSCHBAUM was a work detail guard in Camp Dachau on the Wuelfert canned meat factory detail, where 200 to 300 prisoners of various nationalities were worked and guarded by 15 to 20 guards (P-Ex 6, R 15).

In defense, KIRSCHBAUM stated that no prisoners dies at the canned meat factory. Prisoners ate and slept at the factory and did not go into the main camp at Dachau. His guard duty was on the outside of the factory. He did not know what went on inside. He denied knowing anything about atrocities inside Camp Dachau until he read about them in the newspapers after the capitulation (P-Ex 6, R 15).

Accused KORFF joined the Nazi Party in March 1944. He was an SS guard with the rank of corporal. He received his guard training at Camp Dachau and, after approximately 5 weeks, was sent to out-camp Fischon, a small out-camp where prisoners worked at a Messerschmitt factory which produced patterns and stencils. The work shifts consisted of 50 men in the daytime and 50 men at night.(P-Ex 7, R 16).

In defense, KORFF stated he was drafted into the Waffen SS in October 1944. No prisoners were mistreated or killed at out camp Fischon. Prisoners had a day off every 14 days when the night and day shifts changed. The food, so far as he could judge, was good and sufficient at this out-camp. On 12 March 1945 he was again sent to the front and remained there until the capitulation (P-Ex 7, R 16).

Accused UNTERPAINTNER was transferred into the Waffen SS from the German Army on 6 July 1944. On 12 July 1944 he was transferred from Camp Dachau to out-camp Seehausen, near Murnau, Germany. On 18 October 1944 he

was made work detail leader. His detail varied from 27 to 49 prisoners who were employed in a small armament factory. He was in charge of from 12 to 15 guards and performed these duties until the dissolution of the camp on 30 April 1945, when the guard crews surrendered and were arrested (P-Ex 8, R 17).

In defense, UNTERPAINTNER stated that he never beat prisoners nor reported them to Camp Dachau for punishment. He also denied knowing of one of his guards beating a prisoner (P-Ex 8, R 17). In a statement purportedly signed by 7 former inmates in UNTERPAINTNER's detail, it is stated that no atrocities occurred under his command and that he definitely opposed any mistreatment of prisoners (D-Ex 1, R 18).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

All of the accused were, by their own admissions, SS guards at Camp Dachau and/or its out-camps for considerable periods of time between the dates alleged (P-Ex 2 thru 8).

The Court was required to take cognizance of the decision rendered in the parent Dachau Concentration Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in the pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature there of (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases," 14 October 1946, and U.S. vs Weiss et al., 000-50-2, March 1946). With the exception of accused KORFF and UNTERPAINTNER all accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the parent Dachau

Case or in this subsequent proceeding, in concluding as to them that they not only participated to a substantial degree but the nature and extent of their participation was such as to warrant the sentences imposed. Concerning accused KORFF and UNTERPAINTNER, it was shown that they participated and the nature of their duties was also satisfactorily proved. However, a search of the record in the parent case and the record in this subsequent proceeding reveals no evidence as to atrocities committed at out-camp Fischen or out-camp Seehausen. It is true that it was shown that approximately 100 slave laborers were at out-camp Fischen and approximately 50 at out-camp Seehausen, but if they were not otherwise mistreated or tortured it is believed that KORFF's and UNTERPAINTNER's participation in this mass atrocity was too remote to form a basis of sentencing by the Court. By virtue of the absence of evidence as to what occurred at the Fischen and Seehausen out-camps, they are not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of their participation to permit of arriving at an appropriate sentence. It could be contended with considerable merit that the Court, with propriety, could have inferred that the inmates of the Fischen and Seehausen out-camps were subjected to cruelties and tortures substantially like those clearly proven to have been inflicted at the parent camp and the other out-camps. If that view were adopted, at least theoretically, injustice could result and those too remotely connected with this or other mass atrocities might be severely punished without a proper gauge to measure the magnitude of their crimes.

6. CLEMENCY: There are no Petitions for Review nor Petitions for Clemency.

7. CONCLUSIONS:

a. It is recommended that all the findings and sentences except those as to accused KORFF and UNTERPAINTNER be approved.

b. It is recommended that the findings and sentences as to accused KORFF and UNTERPAINTNER be disapproved.

c. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ LOUIE T. TISCHER
Attorney
Post TRIAL Section

Having examined the record of trial, I concur.

/s/ C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

LEGAL FORM NO: 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2--10
Strafsache Nr. 000-50-2--10

Order No.
Verfügung Nr. 566

Whereas one Hugo UNTERPAINTNER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrations-lager Dachau

by the *~~Summary~~ *Intermediate Military Court *~~General~~ *~~Dachau~~
vom *~~Zusammen~~ *Mittleren Militargerichte *~~Obersten~~

at Dachau, Germany
In Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 1 May 1945
schuldig erkannt und zu achtzehn Monaten Gefangnis verurteilt, mit Wirkung 1 Mai 1945

by judgment dated the 30 October 1946
durch Urteil vom 30 Oktober 1946 194 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechenden Studium des Sachverhaltes und in Ausubung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence be disapproved. The Commanding General, First Military District, will release the individual from War Criminal Prison No. 1, Landsberg, Germany, upon receipt of this Order on Review.

Dass der Befund und das Urteil nicht bestatigt werden sollen. Bei Erhalt dieser Verfugung wird der Kimmandierende General, Militarbezirk 1., die Entlassung des Betreffenden aus dem Kriegsverbrechergefangnis, No. 1, Landsberg, Deutschland, veranlassen.

Dated this
Gegeben am 16 June 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)
(Unterschrift der nachprufenden Behorde)

~~Major~~ Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

19 June 1947

SUBJECT: Release of Prisoner in the Case of the United States vs. Wilhelm BUEHLER et al (Case No. 000-50-2-10)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation or Prisons for War Criminal," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Hugo UNTERPAINTNER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. EBACIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

Release of prisoner covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany. on _____ (Date) 1947, at _____ (Hour).

_____
(Signature and Rank)

_____
(Organization)

_____
(Countersignature and Rank of Witnessing Officer)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

LEGAL FORM NO: 13

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-10
Strafsache Nr. 000-50-2-10

Order No.
Verfügung Nr.

Whereas one Alfred Rudolf KORFF
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity.
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrations-lager Dachau

by the *Intermediate Military Court at Dachau, Germany
vom *Mittleren Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 7 July 1945
schuldig erkannt und zu achtzehn Monaten Gefängnis verurteilt, mit Wirkung 7 Juli 1945

by Judgment dated the 30 October 1946
durch Urteil von 30 Oktober 1946 194 and
(date)
(datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zure Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence be disapproved. The Commanding General, First Military District, will release the individual from War Criminal Prison No. 1, Landsberg, Germany, upon receipt of this Order on Review.

Dass der Befund und das Urteil nicht bestätigt werden sollen. Bei Erhalt dieser Verfügung wird der kommandierende General, Militärbezirk 1, die Entlassung des Betreffenden aus dem Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, veranlassen.

Dated this
Gegeben am 16 June 1947

/s/ J. L. HARBAUGH, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG 19 June 1947

SUBJECT: Release of Prisoner in the Case of the United States vs. Wilhelm BUEHLER et al (Case No. 000-50-2-10)

TO : Commanding General
First Military Post
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Alfred Rudolf KORFF

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm E. BERGIN
Brigadier General
Adjutant General

1 Incl.
1 Form No. 13 (in dup)

Frankfurt 7108

CERTIFICATE OF COMPLIANCE

Release of prisoner covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

_____
(Signature and Rank)

_____
(Organization)

_____
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-10
Strafsache Nr. 000-50-2-10

Order No.
Verfügung Nr. 55

Whereas one Wendel KIRSCHBAUM
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrations-lager Dachau

by the *~~Summary~~ *Intermediate Military Court *~~General~~ *~~Circuit~~
von *~~Zusammenfassenden~~ *Mittleren Militärgerichte *~~Obersten~~

at Dachau; Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 9 June 1945
schuldig erkannt und zu achtzehn Monaten Gefangnis verurteilt, mit Wirkung 9 Juni 1945

by Judgment dated the 30 October 1946
durch Urteil vom 30 Oktober 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months, commencing 9 June 1945.

Dass der Befund und das Urteil bestatigt werden. Der kommandierende General, vom Militarbezirk 1, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefangnis No. 1, Landsberg, Deutschland, fur die Dauer von achtzehn Monaten, mit Wirkung ab 9 Juni 1945, veranlassen.

Dated this
Gegeben am 16 June 1947

/s/ J. L. HARBAUGH, Jr.
Signature of Reviewing Authority,

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 13

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG 19 June 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm BUEHLER et al (Case No. 000-50-2-10)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq, USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case to accused Wendel KIRSCHBAUM.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

_____
(Signature and Rank)

_____
(Organization)

_____
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-10 Order No.
Strafsache Nr. 000-50-2-10 Verfügung Nr. ____

Whereas one Otto HAUSWIRTH
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrations-lager Dachau

by the *~~Summary~~ *Intermediate Military Court *~~General~~ *~~Special~~ at Dachau, Germany
vom *~~Zusammenfassenden~~ *Mittleren Militärgericht *~~Obersten~~ in Dachau, Deutschland
(Address of Court) (Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 3 May 1945
schuldig erkannt und zu achtzehn Monaten Gefangnis verurteilt, mit Wirkung 3 Mai 1945
by Judgment dated the 30 October 1946
durch Urteil von 30 Oktober 1946 194 and
(date) (Datum)

Whereas the case has now come before me by way of review and after due
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach
consideration and in exercise of the powers conferred upon me, I hereby order:
entsprechenden Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months, commencing 3 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, vom Militärbezirk 1, wird die Inhaftierung des Betreffenden im Kreigsverbrechergefangnis No. 1, Landsberg, Deutschland, für die Dauer von achtzehn Monaten, mit Wirkung ab 3 Mai 1945, veranlassen.

Dated this
Gegeben am 16 June 1947

/s/ J. L. HARBAUGH, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG 19 June 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm BUEHLER et al (Case No. 000-50-2-10)

TO : Commanding General
First Military District,
APO 1, U.S. Army,

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Otto HAUSWIRTH.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany on _____ (Date) 1947, at _____ (Hour).

_____ (Signature and Rank)

_____ (Organization)

_____ (Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-10
Strafsache Nr. 000-50-2-10

Order No.
Verfügung Nr._____

Whereas one Josef GREINER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrations-lager Dachau

by the *Intermediate Military Court
vom *Mittleren Militärgerichte

at Dachau; Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 7 July 1945.
schuldig erkannt und zu achtzehn Monaten Gefängnis verurteilt, mit Wirkung 7 Juli 1945.

by Judgment dated the 30 October 1946
durch Urteil vom 30 Oktober 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No1, Landsberg, Germany, for a period of 18 months, commencing 7 July 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, vom Militärbezirk 1, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von achtzehn Monaten, mit Wirkung ab 7 Juli 1945, veranlassen.

Dated this
Gegeben am 16 June 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
19 Jun 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm FUHRLER et al (Case No. 000-50-2-10)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Josef GREINER

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 170, U.S. Army.

BY COMMAND OF GENERAL CLAY:

W. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 15 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

_____
(Signature and Rank)

_____
(Organization)

_____
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO: 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

"ORDER ON REVIEW"
Verfügung nach Überprüfung

Case No. 000-50-2-10
Strafsache Nr. 000-50-2-10

Order No.
Verfügung Nr._____

Whereas one Robert GERHARDT
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten in Konzentrations-lager Dachau

by the *Intermediate Military Court at Dachau, Germany
vom *Mittleren Militärgerichte in Dachau, Deutschland
(Address of Court)
(Anschrifft des Gerichts)

and sentenced to imprisonment for 18 months commencing 2 May 1945
schuldig erkannt und zu achtzehn Monaten Gefängnis verurteilt, mit Wirking 2 Mai 1945

by Judgment dated 30 October 1946
durch Urteil vom 30 Oktober 1946 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach
due consideration and in exercise of the powers conferred upon me, I hereby
entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen
Befugnisse verfuge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany for a period of 18 months, commencing 2 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, vom Militärbezirk 1, wird die Inhaftierung des Betroffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von achtzehn Monaten, mit Wirkung ab 2 Mai 1945, veranlassen.

Dated this
Gegeben am 16 June 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature and Rank)
(Unterschrift der nachprüfenden Behörde)

Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

19 June 1947
APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm BUEHLER et al (Case No. 000-50-2-10).

TO : Commanding General
First Military District,
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Robert GERHARDT.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, U.S.A.
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

_____
(Signature and Rank)

_____
(Organization)

_____
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

"ORDER ON REVIEW"
"Verfügung nach Überprüfung"

Case No 000-50-2-10 Order No.
Strafsache Nr. 00065--2-10 Verfügung Nr. ____.

Whereas one Wilhelm BUEHLER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten in Konzentrations-Lager Dachau

by the *~~Summary~~ *Intermediate Military Court *~~General~~ *~~Review~~ at Dachau, Germany
von *Mittleren Militärgerichte *~~Obersten~~ in Dachau, Germany
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 18 months commencing 2 August 1945.
schuldig erkannt und zu achtzehn Monaten Gefangnis verurteilt, mit Wirkung ab 2 August 1945.

by Judgment dated the 30 October 1946
durch Urteil vom 30 October 1946 194 and
(Date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 18 months, commencing 2 August 1945.

Dass der Befund und das Urteil bestatigt werden. Der kommandierende General, vom Militärbezirk 1, wird die Inhaftierung des Betreffenden in Kriegsverbrecherhaft mit Wirkung ab 2 August 1945, veranlassen.

Dated this
Gegeben am 16 June 1947

/s/ J. L. HARBAUGH, Jr.,
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
Judge Advocate

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

Colonel JAGD
(Title)
(Titel)

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
19 June 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Wilhelm BUEHLER et al (Case No. 000-50-2-10).

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Wilhelm BUEHLER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7703 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

_____
(Signature and Rank)

_____
(Organization)

_____
(Countersignature and Rank of Witnessing Officer

WCT Rpt # 388.

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

10 April 1947

UNITED STATES)
)
vs.)
)
Josef GOMBKOTO, Anton HALTER,) Case No. 000-50-2-11
Michael JAUCH, Georg KATZIAN,)
Josef KOBEL, Josef THOMASETH,)
Franz Erich ZINGK)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried jointly at Dachau, Germany
Date: 31 October 1946
Intermediate Military Government Court

ACCUSED	DATA	SENTENCE
GOMBKOTO, Josef	Age 32 Czechoslovakian national SS Guard Camp Dachau and out-camps Rank - Corporal	2 years confinement from 1 May 1945
HALTER, Anton	Age 34 Yugoslavian national SS Guard Camp Dachau and out-camps Rank - Pfc.	2 years and 6 months confinement from 2 May 1945
JAUCH, Michael	Age 41 Yugoslavian national SS Guard at out-camps Landsberg and Ueberlurgen Rank - Private	Acquittal
KATZIAN, Georg	Age 33 Czechoslovakian national SS Guard at out-camps Friedrichshafen, Radraca and Ueberlingen Rank - Private	2 years confinement from 1 May 1945
KOBEL, Josef	Age 43 German national SS Guard Camp Dachau and out-camps Rank - Pfc.	3 years confinement from 2 May 1945
THOMASETH, Josef	Age 36 German national SS Guard Camp Dachau and out-camps Rank - Corporal	Acquittal

ACCUSED	DATA	SENTENCE
ZINGK, Franz Erich	Age 48 German national SS Guard Camp Dachau and out-camps Rank - Sergeant	2 years confinement from 2 May 1945

FIRST CHARGE: Violation of the Laws and Usages of War.

	Pleas	Findings
GOMBKOTO	NG	G
HALTER	NG	G
JAUCH	NG	NG
KATZIAN	NG	G
KOBEL	NG	G
THOMASETH	NG	NG
ZINGK	NG	G

PARTICULARS: In that Josef GOMBKOTO, Anton HALTER, Michael JAUCH, Georg KATZIAN, Josef KOBEL, Josef THOMASETH, Franz Erich ZINGK, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

SECOND CHARGE: Violation of the Laws and Usages of War.

	Pleas	Findings
GOMBKOTO	NG	G
HALTER	NG	G
JAUCH	NG	NG
KATZIAN	NG	G
KOBEL	NG	G
THOMASETH	NG	NG
ZINGK	NG	G

PARTICULARS: In that Josef GOMBKOTO, Anton HALTER, Michael JAUCH, Georg KATZIAN, Josef KOBEL, Josef THOMASETH, Franz Erich ZINGK, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

2. RECOMMENDATIONS: That the findings and sentences be approved.

3. EVIDENCE:

For the Prosecution. Prosecution's case was based on extrajudicial sworn testimony as hereinafter indicated. Prosecution's exhibit A is a certified copy of the charges, particulars, findings and sentences in the parent Dachau case (U.S. vs Weiss et al., 000-50-2, March 1946; R 7). Prosecution's exhibits 2 thru 9 consist of extrajudicial testimony of each of the accused.

It was shown that for considerable periods of time between 1 January 1942 to 29 April 1945 each of the convicted accused was an SS guard at Dachau or one of the out-camps Friedrichshafen, Ueberlingen, Radrach, or Kaufbeuren (P-Ex 2 thru P-Ex 9, R 8, 10, thru 15). It was further shown that each of the accused participated in April 1945, in prisoner transports or marches (supra, P-Ex 2 thru P-Ex 9; R 8 thru 15

For the Defense. Each of the accused took the stand and testified in his own defense that no prisoners were beaten or mistreated by the accused (R 18, 20, 21, 23, 24, 26, and 33).

Accused GOMEKOTO was a tower and work detail guard at Camp Dachau January 1943 to July 1943 (P-Ex 2, R 8). Accused then served as guard at out-camps Friedrichshafen until April 1944 and Radrach until October 1944. Out-camps Friedrichshafen and Radrach had approximately 1000 prisoners of different nationalities that worked at the Zeppelin plant The Camp Commander for the first part of the accused's tour of duty at Friedrichshafen was Master Sergeant WELTER, who was convicted in the parent Dachau case (U.S. vs Weiss et al., 000-50-2, March 1946). Accused, from October 1944 to April 1945, was a guard at out-camp Ueberlingen. Approximately 700 prisoners were held there that were used in constructing tunnels. On 20 April 1945 all prisoners were transferred to KARLSFELD by train. On 25 April 1945, the accused participated as a guard in a prisoner march from KARLSFELD to WOLFRATSHAUSEN. During the prisoner march prisoners fell out from the ranks and remained behind. Some of these were those who were too exhausted to march (P-Ex 2, R 8).

In defense, the accused testified on direct examination that as a

guard he never beat or mistreated any prisoners (R 18); that he never saw any prisoners beaten or mistreated in any of the camps nor were any prisoners beaten or shot on the prisoner march of 25 April 1945 (P-Ex 2, R 8).

Accused WALTER was an SS guard at Dachau from December 1943 to July 1944 (P-Ex. 3, R 9). From July 1944 to September 1944 he was guard at out-camps Friedrichshafen and Radrach. From September 1944 - April 1945 he was guard at out-camp Ueberlingen (P-Ex. 3, R 9). Accus participated as a guard on prisoner transport from Ueberlingen to Karlsfeld. On prisoner march from Karlsfeld approximately 800 prisone started on the prisoner march (R 20).

In defense, the accused testified on direct examination that as a guard he never beat or mistreated any prisoners (R 20). After 2 or 3 days on the prisoner march from Karlsfeld he deserted his unit due to the enemy being close at hand (R 20).

Accused KATZIAN was an SS guard at out-camp Friedrichshafen from the summer of 1943 to April 1944; at out-camp Radrach until September 1944, out-camp Ueberlingen until 20 April 1945 (P-Ex. 5, R11). On 20 April 1945 all prisoners and guards went by prisoner transport to out-camp Allach. After 3 days at out-camp Allach they proceeded to Starnberg. The prisoners consisted of Russians, Poles and Germans (P-Ex. 5, R 11).

In defense, the accused testified on direct examination that as a guard he never beat or mistreated any prisoners (R 23). He was forced to join the Waffen SS or become a prisoner in a Slovakian punishment camp; having a family to support he joined the SS (R 24). He only guarded outside the out-camps as he was not allowed on the inside of any of the camps (P-Ex. 5, R 11).

Accused KOBEL joined the party in May 1937 holding the position of zellenleiter (Precinct Leader) (R 25). From July 1944 to December 1944 he was an SS guard at out-camp Friedrichshafen (P-Ex. 6, R 12). He was guard in the Zeppelin's wharf where prisoners of all nationalities worked. In December 1944 he participated in prisoner transpor

from Friedrichshafen to Nordhausen as a guard and also participated in a prisoner transport of approximately 700 prisoners from Dachau to Ueberlingen as a guard. He was a guard at Ueberlingen from December 1944 to April 1945. During this time approximately 20 persons died at out-camp Ueberlingen due to the bad food. On 23 April 1945 he participated as a guard in the transfer of all prisoners from Ueberlingen to Karlsfeld by prisoner transport and from Karlsfeld to Wolfratshausen. Prisoners on the march fell out due to sickness (P-Ex. 6, R 12).

In defense, accused testified on direct examination that as a guard he never beat or mistreated any prisoners (R 24); he never saw any prisoners beaten or mistreated at Dachau or any of the out-camps or factories; and he never saw or heard of prisoners being beaten or shot on prisoner transports (P-Ex. 6, R 12).

Accused ZINGK was an SS sergeant of the guard and tower guard at out-camp Kaufbeuren from August 1944 to March 1945 (P-Ex. 8 and 9, R 14). During the month of October 1944, the accused was at Camp Dachau (P-Ex. 8, R 14); from March 1945 to April 1945 he was guard at out-camp Ueberlingen. In April 1945 accused participated in prisoner transport as a guard from Ueberlingen to Karlsfeld. The prisoner transport consisted of freight cars (P-Ex. 8, R 12) and lasted 2 days (R 24). Upon examination by the Court, defense witness WITTCHEN testified that prisoners were beaten at Kaufbeuren by the bad guards at work or on order of the Camp Commander (R 38, 39).

In defense, accused testified on direct examination that as a guard he never beat or mistreated any prisoners (R 33). During the prisoner transport prisoners were not locked in the cars and were permitted to get off at regular periods and no prisoners died. On the prisoner transport to Karlsfeld there was enough food, bread and canned meat (R 34). Defense witness WITTCHEN testified on direct examination that he was an inmate at out-camp Kaufbeuren from June 1944 to 9 April 1945 (R 35). Accused was considered to belong to the decent elements of the camp (R 37). His donduct was decent and correc

undated, and accused Josef KOBEL, dated 2 February 1947 and on benalf of accused Josef KOBEL, signed by Wally KOBEL, his wife, dated 20 February 1947. No clemency is recommended.

7. CONCLUSIONS:

a. It is recommended that tne findings and tne sentences be approved.

b. Legal Forms Nos. 13 and 16 to accomplisn this result are attached nereto, should it meet witn approval.

/s/ Elmer Moody
ELMER MOODY,
1st Lt. Inf.
Post Trial Section.

Having examined tne record of trial, I concur.

/s/ C. E. Straight
C. E. STRAIGHT,
Colonel, JAGD,
Deputy Judge Advocate
for War Crimes.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Josef GOMBKOTO, et al (Case No. OOO-50-2-11).

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AG subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Josef GOMBKOTO.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 30 April 1947.

/s/ George T. Lagish
(Signature and Rank)
GEORGE T. LAGISH, Maj. Inf.
Prison Officer
War Criminal Prison Landsberg
(Organization)

/s/ Lloyd A. Wilson
Capt. CMP
(Countersignature and Rank of Witnessing Officer.

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-11 Order No.
Strafsache Nr. 000-50-2-11 Verfügung Nr. _____

Whereas one Josef GOMBKOTO
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau
by the *Intermediate Military Court
at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
vom *Mittleren Militärgerichte (Anschrift des Gerichts)
and sentenced to imprisonment for a period of 2 years, commencing 1 May 1945
schuldig erkannt und zu 2 Jahren Gefängnis verurteilt, mit Wirkung ab 1 Mai 1945
by Judgment dated the 31 October
durch Urteil vom 31 Oktober 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years commencing 1 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, Militärbezirk I, wird die Inhaftierung des Betreffendes im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von 2 Jahren, mit Wirkung ab 1 Mai 1945, veranlassen.

Dated this
Gegeben am 10 June 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Josef GOMBKOTO, et al (Case No. 000-50-2-11).

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGC subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Anton HALTER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 24 June (Date) 1947, at 0800 (Hour).

/s/ George T. Laglsh
(Signature and Rank)
GEORGE T. LAGLSH, Maj. Inf.
Prison Officer
War Criminal Prison Landsberg
(Organization)

/s/ Lloyd A. Wilson
(Countersignature and Rank of Witnessing Officer)
LLOYD A. WILSON, Capt. CmP
Asst. Prison Officer

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-11 Order No.
Strafsache Nr. 000-50-2-11 Verfügung Nr._____

Whereas one Anton HALTER
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltate im Konzentrationslager Dachau
by the *Intermediate Military Court
at Dachau, Germany
in Dachau, Deutschland
vom *Mittleren Militärgerichte (Address of Court)
(Anschrift des Gerichts)
and sentenced to imprisonment for a period of 2 years and 6 months commencing 2 May 1945
schuldig erkannt und zu 2½ Jahren Gefängnis verurteilt, mit Wirkung ab 2 Mai 1945
by Judgment dated the 31 October
durch Urteil vom 31 Oktober 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years and 6 months commencing 2 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, Militärbezirk I, wird die Innaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von 2½ Jahren, mit Wirkung ab 2 Mai 1945, veranlassen.

Dated this
Gegeben am 10 June 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Josef GOMBOTO, et al (Case No. 000-50-2-11).

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGC subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Georg KATZIAN.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup).

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 30 April 1947

/s/ George T. Lagish
(Signature and Rank)
GEORGE T. LAGISH, Maj. Inf.
Prison Officer
War Criminal Prison Landsberg
(Organization)

_____
(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-11 — Order No.
Strafsache Nr. 000-50-2-11 — Verfügung Nr. _____

Whereas one Georg KATZIAN
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau
by the *Intermediate Military Court
at Dachau, Germany
in Dachau, Deutschland
vom *Mittleren Militärgerichte
(Address of Court)
(Anschrift des Gerichts)
and sentenced to imprisonment for a period of 2 years commencing 1 May 1945
schuldig erkannt und zu 2 Jahren Gefängnis verurteilt, mit Wirkung ab 1 Mai 1945
by Judgment dated the 31 October
durch Urteil vom 31 October 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years commencing 1 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, Militärbezirk I, wird die Innaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von 2 Jahren, mit Wirkung ab 1 Mai 1945, veranlassen.

Dated this
Gegeben am 10 June 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-11
Strafsache Nr. 000-50-2-11

Order No.
Verfügung Nr. _____

Whereas one Josef KOBEL
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltate im Konzentrationslager Dachau
by the *Intermediate Military Court at Dachau, Germany
*~~General~~ in Dachau, Deutschland
vom *Mittleren Militärgerichte (Address of Court)
*~~Gericht~~ (Anschrift des Gerichts)
and sentenced to imprisonment for a period of 3 years commencing 2 May 1945
schuldig erkannt und zu 3 Jahren Gefängnis verurteilt, mit Wirkung ab 2 Mai 1945
by Judgment dated the 31 October
durch Urteil vom 31 Oktober 1946 and
(date)
(Datum).

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 3 years commencing 2 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, Militärbezirk I, wird die Innaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von 3 Jahren, mit Wirkung ab 2 Mai 1945, veranlassen.

Dated this
Gegeben am 10 June 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel, JAGD
Judge Advocate
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO. 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG APO 757

SUBJECT: Execution of Sentence in the Case of the United States vs. Josef GOMBROTO, et al (Case No. 000-50-2-11).

TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Franz Erich ZINGK.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 2-2310

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on _____ (Date) 1947, at _____ (Hour).

The above named prisoner has been discharged upon completion of his sentence on 1 May 1947.

/s/ George T. Lagisn
(Signature and Rank)
GEORGE T. LAGISH, Maj. Inf.
Prison Officer
War Criminal Prison Landsberg
(Organization)

(Countersignature and Rank of Witnessing Officer)

LEGAL FORM NO. 13

MILITARY GOVERNMENT COURT
Militärgericht

ORDER ON REVIEW
Verfügung nach Überprüfung

Case No. 000-50-2-11 Order No.
Strafsache Nr. 000-50-2-11 Verfügung Nr._____

Whereas one Franz Erich ZINGK
(Name of Accused) (Name des (der) Angeklagten)
was convicted of the offence of participation in the Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an massengreueltaten im Konzentrationslager Dachau
by the *Intermediate Military Court
vom *Mittleren Militärgerichte
at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)
and sentenced to imprisonment for a period of 2 years commencing 2 May 1945
schuldig erkannt und zu 2 Jahren Gefängnis verurteilt, mit Wirkung 2 Mai 1945
by Judgment dated the 31 October
durch Urteil vom 31 Oktober 1946 and
(date)
(Datum)

Whereas the case has now come before me by way of review
Diese Strafsache ist mir zur Überprüfung vorgelegt worden

and after due consideration and in exercise of the powers conferred
und nach entsprechendem Studium des Sachverhaltes und in Ausübung

upon me, I hereby order:
der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years commencing 2 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, Militärbezirk I, wird die Innaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von 2 Jahren, mit Wirkung ab 2 Mai 1945, veranlassen.

Dated this
Gegeben am 10 June 1947

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
J. L. HARBAUGH, JR.
Colonel, JAGD
Judge Advocate.
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

WCT Rpt #389

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 207-1

12 June 1947

UNITED STATES)
)
v.) Case No. 000-50-2-62
)
Willi FISCHER, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA:

Tried jointly at Dachau, Germany
Date: 26 February - 6 March 1947
General Military Government Court

ACCUSED	DATA	SENTENCE
FISCHER, Willi	Age 33 German national Inmate, Capo Rank: None	Death by hanging
JENTNER, Kurt Walter	Age 27 German national SS guard Rank: Corporal	2 years confinemen from 1 May 1945
JOREWITZ, Josef	Age 52 German national SS guard Rank: Staff Sergeant	Life imprisonment
LIPPMANN, Albert	Age 56 German national SS guard Rank: Pfc.	Acquittal
SCHREYER, Martin Philipp	Age 44 German national SS guard Rank: Sergeant	Death by hanging

FIRST CHARGE: Violation of the Laws and Usages of War

		Pleas	Findings
PARTICULARS: In that Willi FISCHER, Kurt Walter JENTNER, Josef JOREWITZ, Albert LIPPMANN, Martin Philipp SCHREYER, acting in pursuance of a common design to commit the acts hereinafter alleged,	FISCHER	NG	G
	JENTNER	NG	G
	JOREWITZ	NG	G
	LIPPMANN	NG	NG
	SCHREYER	NG	G

and as individuals aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the German Reich in exercise of belligerent control.

SECOND CHARGE: Violations of the Laws and Useges of War		Pleas	Findings
PARTICULARS: In that Willi FISCHER, Kurt Walter JENTNER, Josef JOREWITZ, Albert LIPPMANN, Martin Philipp SCHREYER, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully encourage, aid abet and participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.	FISCHER	NG	G
	JENTNER	NG	G
	JOREWITZ	NG	G
	LIPPMANN	NG	NG
	SCHREYER	NG	G

2. RECOMMENDATIONS: That the findings and sentences be approved.

3. EVIDENCE:

For the Prosecution. The prosecution's case was based on the sworn, oral testimony of 36 witnesses, including seven rebuttal witnesses, and the extrajudicial sworn testimony and extrajudicial sworn questionnaires as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (U.S. vs Weiss et al., 000-50-2, March 1946, hereinafter referred to as the "Parent Case";N 7). Exhibits P-2-6 are extrajudicial sworn questionnaires of the accused (R 7 - 10). Exhibits P-7, 6 and 11 are extrajudicial sworn testimony of three of the accused (R 325, 326, 330). Exhibits P-9 and 10 are extrajudicial sworn statements of a prosecution witness (R 327 - 329).

For the Defense. The defense's case was based on the sworn trial testimony of three witnesses in behalf of the accused SCHREYER (R 340 - 376); a deposition of one witness (D-Ex 2, R 378); the extrajudicial sworn testimony and extrajudicial sworn questionnaires of the accused introduced by the prosecution (P-Ex 2 - 8, 11, R 7 - 10, 325, 326, 330).

Accused FISCHER, a criminal prisoner, was transferred to Buchenwald Concentration Camp in 1943 and after seven months therein was transferred to the Lublin Concentration Camp, where he served as capo for about one year. In July 1944, he was transferred to Dachau Concentration Camp, and after three weeks he was made camp capo at outcamp Kaufering II and, except for a brief period as camp capo at outcamp Kaufering XI in the winter of 1944 - 1945, remained in that position until the evacuation in April 1945. In April 1945 he was given an SS uniform and rifle. He admitted beating prisoners at Kaufering II (P-Ex 2, 7, E 8, 325). Prosecution witness Jacob Lewin, testified to the effect that he was beaten with a stick by FISCHER at Kaufering II; that he saw FISCHER beat eight to eleven prisoners and that seven of these prisoners, whom he named, died, and that he later saw some of their bodies (R 22 - 24). Witness Scheliten testified that

he saw FISCHER beat prisoners with a rubber hose until they fell to the ground (R 64). Witness Drider testified that FISCHER beat two persons, one a Russian, to death at Kaufering XX (M 122, 123). Witness Lewman testified that he saw FISCHER beat prisoners and that he saw three or four cartloads of dead bodies brought from the Mell work detail when FISCHER was capo; that FISCHER was wearing an SS uniform and carrying a machine pistol when taking 122 Russian prisoners on a prisoner march in April 1945; and that witness later heard that the Russians had been killed (R 132, 133). Witness Bregman gave testimony, corroborated by witness Jed, that FISCHER helped accused SCHREYER beat a Greek prisoner to death at Kaufering II (R 145, 146, 228, 229). Witnesses Mlynarski and Pawlovski testified to the general mistreatment of prisoners by FISCHER and to his beating to death of one prisoner at Kaufering XI (R 163 - 165, 194 - 198). Witness Idel Fried testified that he saw continual beatings of prisoners by FISCHER and that he later saw the corpses of some of these prisoners (R 203). Witnesses Salomon Fried and Techertok testified to beatings of prisoners by FISCHER (R 209, 214). Witness Ickowies testified that he saw FISCHER beat 30 to 40 prisoners to death at Kaufering XI (R 268). Witness Ludgin testified that he saw FISCHER beat Ludgin's father-in-law over the head with a club so badly that he died within two days. (R 261, 262). Witness Arapapzki testified that FISCHER beat an American sailor about the head (R 274). Witness Cukerman testified that FISCHER was a master of all the instruments of beating, including board, stick, stone and hose (R 305).

In defense, FISCHER relied solely upon his extrajudicial sworn questionnaire and his extrajudicial sworn testimony in which he stated that he knew nothing of what happened to the 112 Russian prisoners which he started with on a prisoner march in April 1945. He denied that he beat prisoners so badly that they died from the beatings (P-Ex 2, 7, R 8, 325).

Legal Sufficiency of Evidence. The evidence is sufficient to support the findings and sentence of the Court.

Accused FISCHER was shown, by the testimony of many witnesses, not only to have participated in the subjection to cruelties and killings of many prisoners who were nationals of countries then at war with the then German Reich, but to have, as an individual and without any regard for the generally accepted rules of humanity, committed such acts of cruelty and murder as are beyond comprehension. Originally a criminal prisoner himself, he demonstrated his ability to commit acts of cruelty and murder which were not surpassed by members of the SS under whom he served, and by the end of the war he was apparently accepted as an SS member and issued a uniform and weapon.

Accused JENTNER was transferred to Camp Dachau 29 August 1942 and to Kaufering II 8 September 1944. He transferred from the Wehrmacht to the Waffen SS on 1 September 1944. He took part in two prisoner transports in 1944 and 1945, and in a prisoner march from Kaufering to Wolfratshausen in April 1945. He beat prisoners with his hands and rifle butt, although this was against orders (P-Ex 5, 8, R 10, 326). Prosecution witness Mylnarski testified that JENTNER pushed weak prisoners with a rifle butt (R 171).

In defense, JENTNER relied solely upon his extrajudicial sworn questionnaire and his extrajudicial sworn testimony. JENTNER admitted slapping and hitting prisoners but denied that they were acts of any severity (P-Ex 5, 8, R 10, 326). Witness Mylnarski testified that JENTNER did not beat prisoners while they were at work but that accused would push and drive them along with his rifle butt and that witness never heard of any mistreatment of prisoners by JENTNER (R 166).

Legal Sufficiency of Evidence. The evidence is sufficient to support the findings and sentence of the Court.

Accused JENTNER was not shown to have committed any individual severe acts of cruelty or mistreatment other than beating prisoners with his hands and rifle butt and pushing and shoving prisoners with his rifle butt. However, the findings and sentence of the Court in his case were fully

justified since he was an SS guard within the Dachau Concentration Camp organization for a period of nearly three years.

Accused JOREWITZ arrived at Kaufering VII as a guard on a prisoner transport 28 August 1944 and was transferred to Kaufering II on 17 November 1944, where he served as block leader. He transferred from the Wehrmacht to the Waffen SS on 1 October 1944. He took part as guard on a prisoner transport in August 1944 and as a guard on a prisoner march from Kaufering XI to Duchberg in April 1945. He beat prisoners with a stick, although such was forbidden (P-Ex 3, 11, R 8, 234). Prosecution witness Schalitan gave sworn testimony that he saw JOREWITZ beat prisoners at Kaufering XI and that three of these prisoners were dead when brought into the dispensary (R 66,67). Witness Kleiner named one prisoner who died within a few hours after being beaten over the head by JOREWITZ (R 101, 102). Witness Rosenberg named another prisoner from Kaufering XI who died as the result of a beating by JOREWITZ (R 114). Witness Legman testified that at Kaufering XI and that three of these prisoners were dead when brought into the dispensary (R 66, 67). Witness Kleiner named one prisoner who died within a few hours after being beaten over the head by JOREWITZ (R 101, 102). Witness Rosenberg named another prisoner from Kaufering XI who died as the result of a beating by JOREWITZ (R 114). Witness Lesman testified that at Kaufering XI he saw JOREWITZ beat prisoners and that two or three days later he saw the dead bodies of the same prisoners (R 133, 134). Witness Bregman testified that at Kaufering XI he saw JOREWITZ beat a Polish prisoner, whom he named, so badly that the prisoner died during the following night (R 151). Witnesses Mylnarski and Igdalski testified to beatings of prisoners by JOREWITZ at Kaufering XI (R 169). Witnesses Idel Fried and Saloman Fried testified that they and other prisoners had been beaten by JOREWITZ (R 203, 208, 209, 243). Witness Ickewicz testified that he saw JOREWITZ beat a prisoner to death with an axe handle for attempting to roast potatoes between the barracks at Kaufering XI (R 268-272). Witness Dr. Siegfried testified that JOREWITZ was one of the few people who constituted an integral part of the design which resulted in deaths of so many prisoners who died on account of bad living conditions, hard work, starvation and mistreatment they received at Kaufering XI (R 253).

In defense, JOREWITZ relied solely upon his extrajudicial sworn questionnaire and his extrajudicial sworn testimony. Although admitting beatings of prisoners, JOREWITZ testified he only did what was necessary to keep prisoners from getting out of control; that he did not beat prisoners about the face; and that no prisoners were beaten or killed on the prisoner march in which he took part (P-Ex 3, 11, R 8,334).

Legal Sufficiency of Evidence. The evidence is sufficient to support the findings and sentence of the Court.

Accused JOREWITZ was shown to have individually committed many acts of cruelty and murder. In addition, it was abundantly shown that he was one of the moving forces in the common design to commit the acts alleged in the particulars under each of the charges.

Accused SCHREYER joined the Waffen SS 20 May 1941 and transferred to Camp Dachau 20 January 1942 for guard duty. On 2 December 1943 he became a guard at outdetail Friedrichshafen, and on 29 July 1944 became roll call leader at Kaufering (Landsberg) XI. He served as roll call leader on a prisoner march from Kaufering to Wolfratshausen in April 1945 (P-Ex 4, R9). Accused Fischer gave extrajudicial sworn testimony that accused SCHREYER beat, or ordered beaten, many prisoners at Kaufering II; that a rubber hose was used; and that prisoners fell to the ground from the beatings (P-Ex 7, R325). Prosecution witness Jacob Lewin testified that he saw accused SCHREYER beat prisoners at Kaufering II and that five or six prisoners died as a result of such beatings; that SCHREYER made prisoners stand barefooted in the cold for 24 or more hours; that SCHREYER ordered a Russian prisoner hanged by the wrists at Kaufering XI; and that SCHREYER reported five prisoners of Kaufering II for making foot rags of blankets, and that these prisoners were hanged at Kaufering I on SCHREYER's orders (R 16 - 37; Vol. I, p 63, Vol. VI, p. 656, Parent Case). Witness Dr. Klibanski testified to the effect that SCHREYER was acting commander at Kaufering II; that SCHREYER selected prisoners who were to be exterminated and had them sent on invalid transports; that he later saw the corpses of many prisoners who

had died as a result of beatings by SCHREYER; and that the food and shelter at Kaufering II were entirely inadequate, resulting in unnecessary deaths (R 41 - 45.) Witness Schalitan testified that at Kaufering II he saw SCHREYER kill a lawyer prisoner by striking him on the head with a rifle butt; that SCHREYER made Schalitan stand at attention for many hours in the bitter cold with very few clothes, and later caused him to be placed in a tank of ice cold water (R 53 -62). Witness Sandler testified that he saw SCHREYER beat two prisoners at Kaufering XI so badly that they both died; that one Russian prisoner died after SCHREYER had ordered him to stand in the cold; that he now accused SCHREYER cause one Polish prisoner to be hanged by the wrists (R 79 - 85). Witness Rosenberg testified that SCHREYER caused a prisoner to be hanged by the wrists and that two days later the victim died (R 111 - 113). Witness Brider testified that he saw his brother beaten to death by SCHREYER at Kaufering XI (R 118, 119). Witness Lesman testified that SCHREYER made prisoners stand for two or three hours in the cold at roll call formations with very little clothing, and that SCHREYER took gold and jewelry from prisoners (R 129, 131). Witness Dregman testified that SCHREYER and FISCHER beat a prisoner to death at roll call at Kaufering II and that at the same camp SCHREYER ordered prisoners to be placed in a pit without food or clothing for two or three days, and that some of them died as a result (R 145 - 148). Witness Andnarski testified to general mistreatment of prisoners by SCHREYER and that one Greek prisoner died after SCHREYER had ordered him to stand for long hours in the cold (R 159 - 162). Witness Kessel Lewin testified to the effect that SCHREYER ordered sick prisoners to be placed in an uncovered cellar for considerable periods of time without food and with very little clothing during severe weather, causing the death of a prisoner when Lewin knew, and that SCHREYER required gold teeth to be extracted from dead prisoners and turned over to the accused SCHREYER (R 178 - 180). Witness Saloman Fried testified that SCHREYER beat many prisoners and caused prisoners to be placed between the barbed wire of the camps (R 209, 210). Witness Tschartok testified that SCHREYER beat prisoners many times and named one prisoner who died as a result, and that

SCHREYER used some of the rations of the prisoners to manufacture liquor for himself (R 214 - 217). Witness Jed testified that he and other prisoners were beaten many times by SCHREYER; that he saw a Greek prisoner beaten and kicked into the mud by SCHREYER until he died (R 224 - 229). Witness Karapatkin testified that he saw SCHREYER beat 10 or 15 prisoners, who died from such beatings (R 269, 290). Witness Cuckerman testified that shortly after SCHREYER became acting commander of Kaufering II a liquidation of the camp began and that prisoners died in great numbers from poisoning of food, tortures, overwork, beatings and lack of clothing in cold weather (R 308, 309). Defense witness Dr. Fay, in extrajudicial sworn testimony, testified that SCHREYER, in committing atrocities against prisoners, knew right from wrong but that SCHREYER, along with the rest of the 85, did not consider mistreatment and killing of Jews wrongful (D-Ex 2, R 378). Prosecution witness Dr. Siegfried testified that he saw SCHREYER beat one prisoner at Kaufering II so badly that the prisoner died, and that SCHREYER was one of the most important persons in the design to mistreat prisoners, resulting in many deaths caused by lack of food, clothing, shelter and sanitary conditions, aggravated by beatings (R 244 - 253).

In defense, SCHREYER relied solely upon his extrajudicial sworn questionnaire and the testimony of three witnesses in his behalf (P-Ex 4, R 9, 349 - 378). Defense witness Rottkapp testified that he knew SCHREYER at Camp Dachau from January 1941 until some time in 1943, and that SCHREYER never mistreated any prisoners (R 349 - 351). Witness Weber testified that she, at SCHREYER's request, gave food to prisoners when SCHREYER brought to the restaurant where she worked, and that at SCHREYER's request she took clothing and toilet articles to women prisoners at Kaufering XI (R 352 - 356). Witness Kutane testified that up until 1943 he had known SCHREYER as a guard at Camp Dachau; that SCHREYER had never mistreated any prisoners; and that the prosecution witnesses were attempting to get SCHREYER hanged (R 357 - 376). Witness Dr. Fey gave extrajudicial sworn testimony to the effect that SCHREYER had tried to improve the conditions of the camp, and that SCHREYER was once arrested for taking prisoners into a restaurant (D-Ex 2, R 376).

Legal Sufficiency of Evidence. The evidence is sufficient to support the findings and sentence of the Court.

Accused SCHREYER was not only shown to have committed many acts of cruelty and murder on his own, but was also shown to have been, by reason of his position as roll call leader and acting camp commander, one of the main moving forces in the mass atrocities committed at outcamps Kaufering II and XI. The testimony of many witnesses for the prosecution and one witness for the defense shows that SCHREYER did not merely ignore the cruelties and mistreatments which went on about him, but that he took a strongly aggressive part in instituting such inhuman treatment as brought on the deaths of hundreds, and possibly thousands, of prisoners who came under his control.

The Court, after weighing the evidence, acquitted accused LIPMANN.

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to any of the accused.

All of the accused except FISCHER were, by their own admissions, members of the SS at Camp Dachau and/or its outcamps for considerable periods of time between the dates alleged. Accused FISCHER joined, or at least was considered a member of, the SS in April 1945 when he was issued a uniform and rifle.

The Court was required to take cognizance of the decision rendered in the Parent Case, including the findings of the Court therein, that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases," 14 October 1946, and the Parent-Case). All of the convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the

evidence adduced, either in the Parent Case or in this subsequent proceeding, in concluding as to them that they not only participated to a substantial degree but the nature and extent of their participation was such as to warrant the sentences imposed.

6. CLEMENCY: There are no Petitions for Review. Consideration has been given to Petition for Clemency dated 27 March 1947, signed by Katherina Schreyer, wife of accused SCHREYER. No clemency is recommended.

7. CONCLUSIONS:

a. It is recommended that the findings and the sentences be approved.

b. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

Gordon E. Lentz
Captain, JAGD
Post Trial Branch

Having examined the record of trial, I concur.

C.E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

HEADQUARTERS
EUROPEAN COMMAND
OFFICE OF THE JUDGE ADVOCATE

UNITED STATES	)	
	)	RECOMMENDATION OF THE
vs.	)	JUDGE ADVOCATE
	)	
Willi FISCHER, et al.	)	No. 000-50-2-62
	)	

I have examined the record of trial and I concur in the views expressed by the Deputy Judge Advocate for War Crimes in his Review and Recommendations to the effect that the findings and the sentences as to accused FISCHER, Kurt Walter JENTNER, Josef JOREMIA, and Martin Philipp SCHREYER should be approved.

_____
Date

J. L. HARBAUGH, JR.
Colonel, JAGD
Judge Advocate

I concur.

_____
Deputy Chief of Staff

I concur.

_____
Chief of Staff

A/G1 18 Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

"ORDER ON REVIEW"
Verfügung nach "Berufung"

Case No. 000-50-2-62 Order No.
Strafsache Nr. 000-50-2-62 Verfügung Nr. _____

Whereas one Willi FISCHER
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity.

wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau.

by the *General Military Court at Dachau, Germany
vom *Oberen Militärgerichte in Dachau, Deutschland
(address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang

by Judgment dated the 6 March 1947
durch Urteil vom 6 März 1947 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in
Diese Strafsache ist mir zur "Berufung" vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

exercise of the powers conferred upon me, I hereby order:

That the findings and sentence are approved. The Commanding General, First Military District, will carry the sentence into execution at War Criminal Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General Militärbezirk I, wird die Vollstreckung des Urteils in dem Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, zu einer von ihm festegesetzten Zeit, veranlassen.

Dated this
Gegeben am 6 September 1947

(s) WADE M. FLEISCHER
WADE M FLEISCHER
Lt Col. AC
*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

/s/ Lucius D. Clay
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief

Incl 4

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
SEP 10 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Willi FISCHER et al. (Case No. 000-50-2-62)

TO : Commanding General
First Military District
APO 1, U.S.Army

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused Willi FISCHER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S.Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 19 Sept 1947 (Date) 1947, at 1029 (Hour).

(s) L.H. JOHNSON, Jr.
Maj.
(Signature and Rank)

Hq 1st Mil Div
(Organization)

LLOYD A WILSON
(Countersignature and Rank of Witnessing Officer)
Capt CMP

Incl 3

Legal Form No. 13

MILITARY GOVERNMENT COURT
Militärgericht

Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-62 Order No.
Strafsache Nr. 000-50-2-62 Verfügung Nr.

Whereas one Kurt Walter JETTER
(Name of accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager Dachau.

by the *General Military Court at Dachau, Germany
vom *Oberen Militärgerichte in Dachau, Deutschland
(address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for 2 years commencing 1 May 1945
schuldig erkannt und zu zwei Jahren Gefängnis verurteilt mit Wirkung ab 1 Mai 1945

by Judgment dated the 6 March 1947
durch Urteil vom 6 März 1947 19__ and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in the Criminal Prison No. 1, Landsberg, Germany, for a period of 2 years commencing 1 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, Militärbezirk I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer von zwei Jahren mit Wirkung ab 1 Mai 1945, veranlassen.

Dated this.
Gegeben am 6 September 1947

CERTIFIED A TRUE COPY:

(s) Jade M. Fleischer
JADE M. FLEISCHER
Lt. Col. AC

/s/ Lucius D. Clay
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
Sep 10 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Willi FISCHER et al. (Case No. 000-50-2-62)

TO : Commanding General
First Military District
APO 1, U.S.Army

Reference is made to letter, Hq USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused

Kurt Walter JETTNER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S.Army.

BY COMMAND OF GENERAL CLAY:

(s) Wm. E. BERGIN
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in duo)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on _____ (Date) 1947, at _____ (Hour).

Prisoner Kurt Walter JETTNER has been released from confinement at Landsberg War Crimes Prison No. 1 on 30 April 1947 per expiration of sentence.

LLOYD A. WILSON
(Signature and Rank)

LLOYD A. WILSON
Captain CMP
Prison Officer

(Organization)

Joseph H. Williams
(Countersignature and Rank of Witnessing Officer)

Joseph H. WILLIAMS
1st Lieutenant Inf

Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

"Order on Review
Verfügung nach Überprüfung

Case No. 000-50-2-62
Strafsache Nr. 000-50-2-62

Order No.
Verfügung Nr. _____

Whereas one Josef JORDITZ
(Name of accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im Konzentrationslager, Dachau.

by the *General Military Court
vom *Oberen Militärgerichte

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to imprisonment for life, commencing forthwith
schuldig erkannt und zu lebenslänglicher Freiheitsstrafe verurteilt, mit Wirkung ab sofort
by Judgment dated the 6 March 1947
durch Urteil vom 6 März 1947 194 and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-
exercise of the powers conferred upon me, I hereby order:
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine the individual in War Criminal Prison No. 1, Landsberg, Germany, for the duration of his life.

Dass der Befund und das Urteil bestätigt werden. Der kommandierende General, Militärbezirk I, wird die Inhaftierung des Betreffenden im Kriegsverbrechergefängnis No. 1, Landsberg, Deutschland, für die Dauer seines Lebens veranlassen.

Dated this
Gegeben am 6 September 1947

CERTIFIED A TRUE COPY:
MADE M. FLEISCHER (s)
MADE M. FLEISCHER
1t. Col. AC

/s/ Lucius D. Clay
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757

SEP 10 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Willi FISCHER et al. (Case No. 000-50-2-62)

TO : Commanding General
First Military District
APO 1, U.S.Army

Reference is made to letter, No. USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused

Josef JOETZ.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S.Army.

BY COMMAND OF GENERAL CLAY:

(s) M. E. BERGIN
Wm. E. BERGIN
Brigadier General, USA
Adjutant General.

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany,

on 18 September (Date) 1947, at 1430 (Hour).

LLOYD A WILSON
(Signature and Rank)

LLOYD A. WILSON
Captain CMP
Prison Officer

(Organization)

Joseph H. Williams
(Countersignature and Rank of Witnessing Officer)
JOSEPH H. WILLIAMS
1st Lieutenant Inf

Legal Form No. 13

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW*
Verfügung nach Überprüfung

Case No. 000-50-2-62
Strafsache Nr. 000-50-2-62

Order No.
Verfügung Nr. _____

Whereas one Martin Philipp SOHREYER
(Name of accused) (Name des (der) Angeklagten)

was convicted of the offence of participation in Dachau Concentration Camp mass
wegen der folgenden strafbaren Handlung Teilnahme an Massengreueltaten im
Konzentrationslager Dachau

by the *General Military Court
vom *Oberen Militärgerichte

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang

by Judgment dated the 6 March 1947
durch Urteil vom 6 März 1947 194_____ and
(date)
(Datum)

Whereas the case has now come before me by way of review and after due consideration and in
Diese Strafsache ist mir zur Überprüfung vorgelegt worden und nach entsprechendem Studium des Sach-
verhaltes und in Ausübung der mir übertragenen Befugnisse verfüge ich:

exercise of the powers conferred upon me, I hereby order:

Dass der Befund und das Urteil bestätigt werden. Der Kommandierende General, vom Urteils im Kriegsverbrechergefängnis Nr. 1, Landsberg, Deutschland, zu einer von ihm festgesetzten Zeit, veranlassen.

Dated this
Gegeben am 6 September 1947

CERTIFIED A TRUE COPY:
MADE M. FLEISCHER (s)
Lt. Col. AC

/s/ Lucius D. Clay
(Signature of Reviewing Authority)
(Unterschrift der nachprüfenden Behörde)
LUCIUS D. CLAY
General USA
Commander-in-Chief

*Strike out words not applicable.
*Nichtzutreffendes ist zu durchstreichen.

Incl 2

LEGAL FORM NO: 16

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG SEP 10 1947

SUBJECT: Execution of Sentence in the Case of the United States vs. Willi FISCHER, et al. (Case No. 000-50-2-62)

TO : Commanding General
First Military District,
APO 1, U.S.Army

Reference is made to letter, Hq USFET, file AG 383 JAG-AGO, subject: "Designation of Prisons for War Criminals," 26 February 1947 and to the inclosed copies of the Order on Review in the above entitled case as to accused

Martin Philipp SCHREYER.

Upon compliance with the Order on Review the certificate below will be completed and returned to the Deputy Judge Advocate for War Crimes, 7708 War Crimes Group, APO 178, U.S.Army.

BY COMMAND OF GENERAL CLAY:

Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was carried into execution at War Criminal Prison No. 1, Landsberg, Germany, on 19 Sept 47 (Date) 1947, at 1013 (Hour).

L.H. JOHNSON
(Signature and Rank)

Hq, 1st Mil Dist
(Organization)

LLOYD A WILSON
(Countersignature and Rank of Witnessing Officer)
Capt CIP

Incl I

WCT Rpt # 398

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 207-1

26 August 1947

UNITED STATES)
)
v.) Case No. 000-50-2-107
)
Christian Georg HELLER, et al)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 24-25 July 1947 before a General Military Government Court.

11. CHARGES AND PARTICULARS:

FIRST CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Christian Georg HELLER and Otto SCHMELZIE, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual (s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the German Reich in exercise of belligerent control.

SECOND CHARGES: Violation of the Laws and Usages of War.

Particulars: In that Christian Georg HELLER and Otto SCHMELZIE, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual (s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the

custody of the then German Reich, to cruelties' and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. DATA AS TO ACCUSED:

1. CHRISTIAN GEORG HELLER

This accused was acquitted (R 87).

2. OTTO SCHMELZIE:

This accused was acquitted (R 88).

IV. SUMMARY OF EVIDENCE: Accused HELLER, a German national, was a capo at Hallein, an outcamp of Dachau Concentration Camp, for a considerable period of time between the dates alleged. As a capo over a small number of prisoners at the outcamp he had immediate disciplinary supervision over them (R 14). Outcamp Hallein kept an average of 50 prisoners (R 64). On several occasions the accused slapped prisoners for violations of the rules of the camp (R 14-18). On one occasion he struck a prisoner named Myrda across the face with a broom stick, causing some blood to flow (R 27, 31). It was shown, however, that Myrda did not hold this against accused HELLER since Myrda admitted it was his own fault (R 63). Accused SCHMELZIE, also a German national, was a detail leader at outdetail Schleisshcim, working out of Camp Dachau, and had 32 prisoners under his supervision (R35). On several occasions he slapped prisoners for violations of camp regulations (R 43, 44). Prosecution's P-Ex 3 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (United States v. Weiss et al., 000-50-2, March 46; R 10). The Court apparently concluded that the evidence concerning the nature and extent of their participation in the mass atrocity operation was inadequate to form a proper basis for sentencing the accused.

V. JURISDICTION:

It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

VI. CONCLUDIONS:

It is recommended that the record of trial be filed in the records of this office and that a copy of this Review and Recommendations be forwarded to the Judge Advocate, European Command, for his information.

LOUIE T. TISCHER
Attorney
Post Trail Branch

Having examined the record of trial, I concur.

/s/ C. E. STRAIGHT (17 Oct 47)
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes

WCT Rpb. # 391.

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND

9 August 1947

UNITED STATES)
)
v.) Case No. 11-23
)
Alois Hackert.)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 12 August - 17 October 1946, before a General Military Government Court.

11. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws of War.

PARTICULARS: In that Alois HACKERT, German soldier, did, at or near VALOGNES, France, on or about 12 June 1944, wilfully and wrongfully encourage, aid, abet and participate in the killing of two unknown members of the United States Army, who were then unarmed, surrendered prisoners of war in the custody of the then German Reich.

111. DATA AS TO ACCUSED:

1. ALOIS HACKERT

This accused was acquitted (R 184).

1V. SUMMARY OF EVIDENCE: On or about 14 June 1944, near Valognes, France, the accused, leading a squad, of which he was in command, met three German soldiers, who were escorting three American prisoners of war, under orders to conduct them to Valognes (R 47, 49, 57, 107, 132; P-Ex 1, pp 8, 17; P-Ex 3, Bassa, p. 1; P-Ex 3, Engstle, pp. 1, 2; P-Ex 13, p. 4; P-Ex 15, p. 1). Two witnesses testified under oath, extrajudicially, that the accused told the members of the escorting group, the commander of which may have been of higher rank than himself, not to take the prisoners to Valognes but to kill them (P-Ex 3, Bassa, pp. 3, 9; P-Ex 3, Engstle, pp. 3, 9). The testimony of one Witness, who testified before the Court, and of one witness, who testified unde oath, extrajudicially, tended to support the testimony, above mentioned, that the accused told the members of the escorting group to kill the prisoners but neither of these two witnesses testified directly to that effect (R 50, 55, 65, 67; P-Ex 13, p. 6). Immediately after the meeting between the squad, led by the accused, and the group escorting the prisoners, and subsequent conversation between the accused and members of the escorting group on this occasion, members of the escorting group led the prisoners away and killed two of the

prisoners a short distance from the place where the two groups had met. One of the prisoners escaped.(R 52, 53, 175; P-Ex 3, Bassa, pp 4, 5, 6; P-Ex 3, Engstle pp 3, 4, 5; P-Ex 13, pp 6, 7). The accused, in his unsworn testimony before the court, stated that he could not recall having told members of the party escorting the prisoners anything to the effect that they should kill the prisoners. He did not, in his unsworn testimony, unequivocally deny having made any such statement (R 132). In his sworn testimony, taken extrajudicially before his trial, the accused denied that he had told members of the escorting party to kill the prisoners (P-Ex 1, p. 15). The Court had jurisdiction of the person of the accused and of the subject matter.

V. CONCLUSIONS:

It is recommended that the record of trial be filed in the records of this office and that a copy of this Review and Recommendations be forwarded to the Judge Advocate, European Command, for his information.

RAYMOND J. HEILMAN
Major, Infantry
Post Trail Branch

Having examined the record of trial, I concur.

/s/ C. E. STRAIGHT (26 Sept 47)
Lieutenant Colonel, JAGD
Deputy Judge Advocate
For War Crimes

WCT Rec'd 3925

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 207-1

19 August 1947

UNITED STATES)
)
v.) Case No. 12-1949
)
Heinz Franz Herbert MINX)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 4 - 5 June 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

PARTICULARS: In that Heinz Franz Herbert MINX, German national, did, at or near MUENSTEDT, Germany, on or about 24 August 1944, deliberately and wrongfully encourage, aid, abet and participate in the killing of two unidentified airmen, believed to be members of the United States Army, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich.

III. DATA AS TO ACCUSED:

1. HEINZ FRANZ HERBERT MINX

This accused was acquitted (R 78).

IV. SUMMARY OF EVIDENCE: On or about 24 August 1944, in the vicinity of Schmedenstedt, Germany, several American airmen parachuted to safety from their disabled bomber (R 10, 11, 37; R 8; P-Ex 7). The accused MINX, in company of three other SS men, proceeded to the village of Schmedenstedt by automobile where they received two of the American fliers who had parachuted to safety (R 12, 38). MINX, who was driving the car, and the other three SS men and the two captured American fliers, then proceeded towards Braunschweig, Germany (R 39). Upon reaching the vicinity of Muenstedt, Harms, the senior SS officer, ordered MINX to stop the car and let the SS men and the captured fliers out to wait while MINX went for another vehicle and returned for them (R 39). After the SS men and the fliers were out of the car MINX started the vehicle and drove away. After proceeding approximately one hundred meters, the car

stopped and at that point MINX heard shots being fired behind him. MINX then returned to where Harms was standing and upon arriving was informed by Harms that the prisoners had attempted to escape and that he had shot them (R 32, 33, 39). MINX then returned to Schmedenstedt and reported the shooting to the Mayor and the police (R 40). The fliers were buried alongside of the road where they had been shot by Harms, by civilian persons under the orders of the police (R 26).

V. CONCLUSIONS:

It is recommended that the record of trial be filed in the records of this office and that a copy of this Review and Recommendations be forwarded to the Judge Advocate, European Command, for his information.

EIMER MOODY
1st Lt., Inf
Post Trial Branch

Having examined the record of trial, I concur.

/s/ C. E. STRAIGHT (17 Oct 47)
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes

J 393

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted], SCAP (TOKYO)
(Reporting Office)

File Number 7 - 62 Date of Report 11 September 1947

Title of Case U. S. vs Kiyofusa SAKAGUCHI et al

PART A

1. Names and Nationalities of Accused

Japanese: Kiyofusa SAKAGUCHI
Keiichi SAITO
Mario IKUKE

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Kanagawa, Japan

13 August 1947 - 5 September 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Kiyofusa SAKAGUCHI - Two years imprisonment at hard labor.
Yoshi SAITO - 25 years imprisonment at hard labor.
Morio INOUYE - 15 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

Legal Section, GHQ, SCAP, (Tokyo)
(Reporting Office)

File Number 2-62 Date of Report 20 July 46

Title of case UNITED STATES vs SAKAGUCHI, Kiyofumi & Others

PART A

1. Names and Nationalities of Accused

SAKAGUCHI, Kiyofumi - Japanese
SAITO, Yoichi - Japanese
INOUE, Moriz - Japanese

2. Nature, Place and Date of Offense

Between 1 January 1943 and 1 September 1945 the accused at the Fukuoka Branch Prisoner of War Camp #4, Moji, Kyushu, Japan, did violate the Laws and Customs of War.

3. Names and Nationalities of Victims

Americans: Walter W. Cole; James W. Kinder; William E. Breye; Ernest E. Tahlian; Paul G. Inzer; K. F. Horton; George W. Spencer; George R. Powell; John Sullivan; Arthur R. Converse; Dale E. Meeder; Joseph J. Bush; Charles D. Mallee; Samuel R. Kerr; Oscar W. Upshaw; Arthur C. Louis; John Sullivan.

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan --.1 August 1946

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the ca: (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number Y - 154 Date of Report 26 August 1947

Title of Case U. S. vs Shichi ITO

PART A

1. Names and Nationalities of Accused

Japanese - Shichi ITO

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

14 August 1947 - 21 August 1947

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - Eight years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 134 Date of Report 5 Nov 46

Title of case U.S. vs ITO, Eiichi

PART A

1. Names and Nationalities of Accused

ITO, Eiichi - Japanese

2. Nature, Place and Date of Offense

Beating, forcing sick POW'S to work, torture, mass punishment

Yodogawa POW Camp, Osaka Area, Honshu, Japan and Maibara POW Camp, Osaka Area, Honshu, Japan

Nov 1942 to Aug 1945

3. Names and Nationalities of Victims

Americans: Ch.Qm. Daniels
Yeo. Perry (deceased)
Capt. Frank L. Richardson
Cpl. Frank W. Hoover
Cpl. Robert J. Travers
S/Sgt. Herschel G. Heimann
Pfc. Jesse W. Ward
Pvt. Stover
Sgt. Ray J. Vanden brouche

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 30 November 1946

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P-M 000.5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number 7 - 1[illegible] Date of Report 16 September 1947

Title of Case U. S. vs Hichiro TSUCHIYA

PART A

1. Names and Nationalities of Accused

Japanese: Hichiro TSUCHIYA

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

10 September 1947 - 21 September 1947

WD AGO Form R-5392
21 June 1946

(Over)

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - 15 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

~~LEGAL SECTION, GHQ, SCAP (TOKYO)~~
(Reporting Office)

File Number ~~2-164~~ Date of Report 23 Dec 46

Title of case U.S. vs TSUCHIYA, Hichiro

PART A

1. Names and Nationalities of Accused

TSUCHIYA, Hichiro - Japanese

2. Nature, Place and Date of Offense

Beating, starving, torturing and abusing, POW's

Sendai Area Prisoner of War Camp #6, Hanawa, Honshu, Japan

September 1944 - August 1945

3. Names and Nationalities of Victims

AMERICANS:

William N. Arterburn
Dillard D. Darneal
Vernon V. Reed
Wilton E. White
Mitchel J. Teleride
Donald E. Sellenberger
Thomas M. Litch
John Lesanski
Edward W. White

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 20 January 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

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8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

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9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

Japanese: [redacted]

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

31 July 1947 - 8 August 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

[redacted] - Ten years imprisonment at hard labor.
[redacted] - Seven years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 202 Date of Report 27 May 1947

Title of case U. S. vs Masaji ISO et al

PART A

1. Names and Nationalities of Accused

Japanese

Masaji ISO
Shosuke ONOZAWA
Takeo WAJIMAKE
Masumi HARNO

2. Nature, Place and Date of Offense

Beating, shooting, causing death, torture and gross mistreatment.

Tokyo Area Prisoner of War Detached Camp Number 11-D also known as Camp Number 14 -B Yokohama, Honshu, Japan.

1 December 1944 - 15 August 1945

3. Names and Nationalities of Victims

Australians
A. J. Harper (deceased)
I. C. Hahn (deceased)
Albert Forth (deceased)
William Hayne
J. E. Bennett
William R. Smith
Francis J. McGovern
Victor R. Duncan
A. S. Hunt
William P. Webb
Harold Ramsey

American
Fred E. Thompson
Robert M. Jaures

British
Albert Forth (deceased)
Reginald C. Millington
Geo Atkins

Dutch
Wilhelmus Voorjans (deceased)
Ferdinand A. Van Heerden (deceased)

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 15 June 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P 000.5 (20 Jun 46)WDSCA)21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

Japanese: [redacted]

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

[redacted]

WD AGO Form R-5392
21 June 1946

(Over)

6. Judgement and Sentence (Relate to Specific Accused)

[redacted]

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, CSD, SCAP, (TOKYO)
(Reporting Office)

File Number 2 - 209 Date of Report 5 June 1947

Title of case U. S. vs Shigeru HOMMA et al

PART A

1. Names and Nationalities of Accused

Japanese: Shigeru HOMMA
Shgao KIKUCHI
Tsujiro KUBA
Shuzo TAKAHASHI
Minoru KURAKAZU

2. Nature, Place and Date of Offense

Tokyo Area Prisoner of War Camp Number 9-B, Ashio, Honshu, Japan

Abusing, causing death, misappropriated Red Cross Supplies, Torture and gross mistreatment.

1 November 1943 - 20 October 1945

3. Names and Nationalities of Victims

Americans:

George F. Gallion (deceased)
Wallace Hall
John Hayes
Jose L. Quintana
Basil W. Wycal
Paul R. Murphy
Leo Pena
Jimmy Durr
Crosby S. Tuggle
John A. O'Connor
Lee Magurale
Charles W. Lieb
Oliver F. Prummits
Clayton E. Rubland
Jack Cole
John Conner

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 15 June 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P [illegible] 5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSC, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

[redacted]

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

[redacted] - Guilty - 25 years imprisonment at hard labor.
[redacted] - Guilty - Death by hanging.
[redacted] - Life imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 213 Date of Report 27 June 1947

Title of Case U. S. vs Shineba HIGUCHI et al

PART A

1. Names and Nationalities of Accused

Japanese:

Shineba HIGUCHI
Masaneba NIGHIHUTA
Minee NOJIMA

2. Nature, Place and Date of Offense

Beating, torturing, abusing and contributing to death.

Mitsubishi Prisoner of War Camp - also known as Number 12 Branch Camp and Number 2 Detached Camp, Nagano Prefecture, Tokyo Area, Honshu, Japan.

1 January 1943 and 31 July 1943

3. Names and Nationalities of Victims (d) - deceased

American:
Raymond Chaves (d)
Roger G. Derr (d)
Sherwood B. Francis (d)
Garth Gardner (d)
Winford G. Hayes (d)
Clarence H. Hendrickson (d)
Kenneth G. Hunger (d)
Asa A. Jackson (d)
Gusta R. Krause (d)
William B. Richardson (d)
Albert H. Roberts (d)
Gunerald M. Simpson (d)
Alfred G. Smith (d)
Robert G. Tees (d)
James L. Vitelli, Jr. (d)

Alfred J. Burns (d)
Elmer E. Engle (d)

British:
James Harvey (d)
Henry Halfour Greeves (d)
Sydney Charles Marven (d)
Arthur Leonard Tasker (d)
Wilfred Harry Charman (D)
Ng Heen Seak (d)
K. W. Holmes (d)
R. Mitchell (d)
H. H. Lawley (d)
Tan Teak Wah (d)
H. J. Colver (d)
G. H. Ainder (d)

A. J. Coe (d)
H. Chandler (d)
W. D. Street (d)
A. A. Ainsworth (d)
S. G. B. Adlard (d)

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 1 July 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-RM 000.5 (20 June 46) WDSCA) 21 June 1946

Incl 9

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report 25 August 1947

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

Japanese: [redacted] Toraichi TAKASHIMA

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

29 July 1947 - 15 August 1947

6. Judgement and Sentence (Relate to Specific Accused)

Seinjiro ARAMAKI - 20 years imprisonment at hard labor.
Akiyoshi KODA - 25 years imprisonment at hard labor.
Nobuyasu SUEYASU - 20 years imprisonment at hard labor.
Fukuma YAMAGUCHI - 25 years imprisonment at hard labor.
Takematsu FUJISAKI - 20 years imprisonment at hard labor.
Tomio HIROTSUKA - 15 years imprisonment at hard labor.
Toyoichi TAKAGUCHI - 15 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number 7 - 215 Date of Report 17 June 1947

Title of Case U. S. vs Saburo ARAMAKI et al

PART A

1. Names and Nationalities of Accused

Japanese:

Saburo ARAMAKI	Takemasuke FUJINAKI
Akiyoshi HOGA	Tomeo NISHIMURA
Nobuyasu SUGIYAMA	Tomoichi TAKASHIYA
Fukuma YAMAGUCHI	

2. Nature, Place and Date of Offense

Beating, abusing, torture, contributing to death.

Hiroshima Prisoner of War Camp, Sixth Branch, Omine Machi, Honshu, Japan

September 44 - September 45

3. Names and Nationalities of Victims

Americans:

Cpl. Floyd A. Dishman	Herbert M. Linton
S/Sgt. Robert L. Miller	George Sporer
S/Sgt. Joseph P. Zagarri	Richard Hilyer
Stephen Turchak	Cpl Cutsgm
CHM John E. Pascal	John B. Quinn
Sgt/ Arthur B. Thomas	
Cpl. Paul A. Debyns	
Cpl Floyd Dishman	
Robert J. Fanbin	
Wilson Jones	
Pvt. Paul D. Calvin (deceased)	
Pfc LaFleur	
Robert E. Kay	
Robert J. Russell	
Wilmot W. Jones	

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 1 July 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

Encl 11

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Add No. 1-4000

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case U.S. vs Masaji TAKAKU

PART A

1. Names and Nationalities of Accused

Japanese: Masaji TAKAKU

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to AG letter (AGAM-P-M 000.5 (20 June 46) DSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Commanding General Eighth Army - 24 November 1947

APPROVED - 2 months confinement remitted.

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

9. Date and Place of Execution of Sentence

4 August 1947 - Sugamo Prison, Tokyo, Japan

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

400 J

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report 25 August 1947

Title of Case U. S. vs Shoji TAKAKU

PART A

1. Names and Nationalities of Accused

Japanese:

Shoji TAKAKU

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

1 August 1947 - 4 August 1947

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - 10 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

abeyance.

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted] (YOKOHAMA)
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case U. S. vs [redacted] TANAKA

PART A

1. Names and Nationalities of Accused

[redacted]:

[redacted] TANAKA

2. Nature, Place and Date of Offense

[redacted]

Ofuna Prisoner of War Camp, Ofuna, Honshu, Japan

1 January 1945 - 1 September 1945

3. Names and Nationalities of Victims

[redacted]:

E. D. Collier
Billy D. Webb
Joel T. Wanzer
Robert L. Miller
Walter O. Salberg
Max L. Parnell
H. O. Sheridan

4. Probable Place and Date of Trial

[redacted], Yokohama, Japan 15 July 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Add No. 1 - 401J

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number 2 - 220 Date of Report 5 February 1948

Title of Case U. S. vs Shigekazu KIYA

PART A

1. Names and Nationalities of Accused

Japanese: Shigekazu KIYA

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Commanding General Eighth Army - 12 January 1948

17 months confinement remitted

APPROVED

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

9. Date and Place of Execution of Sentence

12 August 1947 - Sugamo Prison, Tokyo, Japan

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number 2 - 220 Date of Report 25 August 1947

Title of Case U. S. vs Shigemasa KIYA

PART A

1. Names and Nationalities of Accused

Japanese:

Shigemasa KIYA

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

4 August 1947 - 12 August 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - Two years imprisonment at Hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89521-300

abeyance

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

Shigetaro KIYA

2. Nature, Place and Date of Offense

Beating, abusing, contributing to death, refusing medical attention.

Taiho Prisoner of War Camp, Osaka Area, Honshu, Japan

6 November 1943 - 1 May 1945

3. Names and Nationalities of Victims

[redacted]
John Hugh Patterson
William E. Brandhuber

[redacted]
Lewis Wright (deceased)
Fred Hedrick (deceased)
William Gray
Geoffrey O. Palmer

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 15 July 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

Japanese: [redacted]

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

7 August 1947 - 8 August 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - Three years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Abeyance.

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

2. Nature, Place and Date of Offense

[redacted]

3. Names and Nationalities of Victims

[redacted]

4. Probable Place and Date of Trial

[redacted]

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

403 J

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted], GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

Yoshio HOKI
Ryuichiro KAKIYASUKIRA
Shigeji SHIMIZU
Hisatsuki YAMAZAKI
Takiso YAMAZA

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Kanagawa, Japan

25 July 1947 - 15 August 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Yoshio HOKI - 25 years imprisonment at hard labor.
Ryotaro KAKIYASUHIRA - 20 years imprisonment at hard labor.
Hachiyuki YAMAZAKI - 30 years imprisonment at hard labor.
Tokino TANAKA - Acquitted
Shigeji SHIKIHU - 25 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

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8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

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9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89521-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

2. Nature, Place and Date of Offense

Beating, abusing, contributing to death.

Nagoya Area Prisoner of War Camp Number 3, Fukuoka, Honshu, Japan

21 October 1944 - 15 August 1945.

3. Names and Nationalities of Victims

[redacted]

4. Probable Place and Date of Trial

[redacted] 15 July 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

404J

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report 16 September 1947

Title of Case U. S. vs Kanaichi HOKKE

PART A

1. Names and Nationalities of Accused

Japanese: Kanaichi HOKKE

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

9 September 1947 - 12 September 1947

WD AGO Form R-5392
21 June 1946

(Over)

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - Four years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

abeyance

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

Japanese:

[redacted]

2. Nature, Place and Date of Offense

Unlawful killings.

[redacted], Formosa.

19 February 1945 - 16 May 1945

3. Names and Nationalities of Victims

[redacted]

Ralph Robertson Hartley (deceased)
Bobbie Lee Lawrence (deceased)
Henry Junius Ridley (deceased)
Merlin Hinton Riggs (deceased)
Freddie McCreary (deceased)
Harry Hershley Aldre (deceased)
Charles Edward McVay (deceased)
Harwood Stephens Sharp (deceased)

4. Probable Place and Date of Trial

Yokohama, Honsiu, Japan 15 July 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSGA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case U. S. vs Hiroo [redacted] et al

PART A

1. Names and Nationalities of Accused

Japanese:
[redacted], Hiroo
[redacted], Kiyotomi
[redacted], Norio
[redacted], Ruichi
[redacted], Hideo
[redacted], Yorio
[redacted], Kenji
[redacted], Michio

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

18 July 1947 - 28 August 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

[redacted] - Guilty - 30 years [redacted] at hard labor.
[redacted] - Guilty - Death by hanging.
[redacted] - Guilty - 25 years imprisonment at hard labor.
[redacted] - Guilty - 20 years imprisonment at hard labor.
[redacted] - Guilty - 10 years imprisonment at hard labor.
[redacted] - Guilty - Three years imprisonment at hard labor.
[redacted] - Guilty - Three years imprisonment at hard labor.
[redacted] - Guilty - Three years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

abeyance

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

Japanese:
[redacted]
OKA, Yuzio
[redacted]

2. Nature, Place and Date of Offense

Unlawful executions.

Osaka, Honshu, Japan

15 May 1945 - 19 July 1945

3. Names and Nationalities of Victims

[redacted]

4. Probable Place and Date of Trial

[redacted] 15 July 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

406 J

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number Y - 228 Date of Report 25 August 1947

Title of Case U. S. vs Tomikuni WATANABE

PART A

1. Names and Nationalities of Accused

Japanese:

Tomikuni WATANABE

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

Yokohama, Honshu, Japan

5 August 1947

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - 5 Five years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

abeyance

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted], SCAP (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case U. S. vs Tsuneharu WATANABE

PART A

1. Names and Nationalities of Accused

Japanese:

Tsuneharu WATANABE

2. Nature, Place and Date of Offense

Beating, abusing, mistreating.

Ofuna Prisoner of War Camp, Ofuna, Kanagawa, Japan

1 January 1945 - 1 September 1945

3. Names and Nationalities of Victims

Americans:

William R. Martin
Fred Turnbull, Jr.

4. Probable Place and Date of Trial

Yokohama, Kanagawa, Japan [redacted]

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

add No.1 - 4073

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case U. S. vs Shinichi TANAKA

PART A

1. Names and Nationalities of Accused

Japanese: Shinichi TANAKA

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Commanding General Eighth Army - 12 January 1948

12 months confinement remitted.

APPROVED

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

9. Date and Place of Execution of Sentence

12 August 1947 - Sugamo Prison, Tokyo, Japan

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

[redacted]

1 August 1947 - 12 August 1947

(Over)

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - One and one half years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case U. S. vs [redacted]

PART A

1. Names and Nationalities of Accused

Japanese:
[redacted]

2. Nature, Place and Date of Offense

Abuse, contributing to death, misappropriating Red Cross supplies, forced to sign false medical death certificates.

Osaka Branch Prisoner of War Camp, Osaka Area, Honshu, Japan

1 April 1943 - 15 May 1945

3. Names and Nationalities of Victims

Americans:

Robert M. Brown (deceased)
Edward R. Hall

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 1 August 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

TRIAL SECTION, CHR, SCAP (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case U. S. vs Keiichi HARATANI

PART A

1. Names and Nationalities of Accused

Japanese

Keiichi HARATANI

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

27 August 1947 - 29 August 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

[redacted]

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2 ab

WAR CRIMES TRIAL STATUS REPORT

[redacted], GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report 18 July 1947

Title of Case U. S. vs Keiichi NAKATANI

PART A

1. Names and Nationalities of Accused

Japanese:

Keiichi NAKATANI

2. Nature, Place and Date of Offense

Mistreat, abuse, beat.

Yokohama Branch Prisoner of War Camp, Omaka Area, Honshu, Japan

18 July 1944 - 13 April 1945

3. Names and Nationalities of Victims

American:
Pvt. Willis A. Dixon
Sgt. David J. McNally
Sgt. Frank E. Prevallet
Sgt. Walter A. Caldwell
Robert C. Davis
[redacted] Cooney
Corvallius Gallegos
S/Sgt. Sadler
Marvin Bowey

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 1 August 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

Incl 4

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case U. S. vs Keiichi [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

Keiichi [redacted]

2. Nature, Place ad Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

[redacted], Honshu, Japan

27 August 1947 - 29 August 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Acquitted

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2 ab

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report 18 July 1947

Title of Case U. S. vs Eiichi NAKATSU

PART A

1. Names and Nationalities of Accused

Japanese:

Eiichi NAKATSU

2. Nature, Place and Date of Offense

Mistreat, abuse, beat.

Yamagata Branch Prisoner of War Camp, Osaka Area, Honshu, Japan

18 July 1944 - 13 April 1945

3. Names and Nationalities of Victims

American:

Pvt. Willis A. Dimon
Sgt. David J. McCully
Sgt. Frank R. Fresolone
Sgt. Walter A. Cotsonelis
Robert C. Davis
Edward Conroy
Cornelius Gallagher
S/Sgt. Sadler
Marvin Rooney

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 1 August 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

Incl 4

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 232 Date of Report 11 September 1947

Title of Case U. S. vs Tokio TOMITA

PART A

1. Names and Nationalities of Accused

Japanese: Tokio TOMITA

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

21 August 1947 - 29 August 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - 30 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS: -

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [illegible] Date of Report 25 August 1947

Title of Case U. S. vs Noboru SEKI

PART A

1. Names and Nationalities of Accused

Japanese

Noboru SEKI

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial — Yokohama, Honshu, Japan

18 August 1947 - 22 August 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - twenty years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89521-300

Reports Control Symbol WDSCA-2

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WAR CRIMES TRIAL STATUS REPORT

[redacted] (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

2. Nature, Place and Date of Offense

[redacted]

3. Names and Nationalities of Victims

[redacted]

4. Probable Place and Date of Trial

[redacted]

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Encl 9

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report 16 September 1947

Title of Case U. S. vs Iju SUGIYAMA et al

PART A

1. Names and Nationalities of Accused

Japanese:

Iju SUGIYAMA
Kazutaka SUEMATSU
Teruzo IWANUMA
Masakatsu HOZUMI

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

3 September 1947 - 10 September 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

All four accused sentenced to death by hanging.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report 18 July 1947

Title of Case U. S. vs [redacted] et al

PART A

1. Names and Nationalities of Accused

[redacted]

Yin SUGAMOTO
[redacted]
Tsuyoshi IKAMURA
[redacted]

2. Nature, Place and Date of Offense

Chained, shot, stabbed and otherwise abusing POW.

Camp Prisoner of War Camp, also known Fukuoka Number 6-B Prisoner of War Camp, Fukuoka Area, Kyushu, Japan.

21 August 1943

3. Names and Nationalities of Victims

[redacted]

U. A. Irwin

4. Probable Place and Date of Trial

[redacted], Kanagawa, Japan 1 August 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case U. S. vs Kja SUGASAWA et al

PART A

1. Names and Nationalities of Accused

Japanese:

Kja SUGASAWA
[redacted] SUEMATSU
Tsugus IWABUCHI
[redacted] HOSOKI

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

3 September 1947 - 10 September 1947

WD AGO Form R-5392
21 June 1946

(Over)

6. Judgement and Sentence (Relate to Specific Accused)

All four accused sentenced to death by hanging.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [illegible] Date of Report 18 July 1947

Title of Case U. S. vs Lt. SUGAMOTO et al

PART A

1. Names and Nationalities of Accused

[illegible]

Lt. SUGAMOTO
[illegible]
[illegible] IWAMURA
[illegible]

2. Nature, Place and Date of Offense

Clubbed, shot, stabbed and otherwise abusing PW.

Omic Prisoner of War Camp, also known Fukuoka Number 6-B Prisoner of War Camp, Fukuoka Area, Kyushu, Japan.

21 August 1945

3. Names and Nationalities of Victims

[illegible]

U. S. Army Nurse

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 1 August 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Incl #1

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, CMFD, SCAP (TOKYO)
(Reporting Office)

File Number Y - 244 Date of Report 3 September 1947

Title of Case U. S. vs Yoshio AKUTSU

PART A

1. Names and Nationalities of Accused

Japanese: Yoshio AKUTSU

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

26 August 1947 - 9 September 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - Five years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number W - 24b Date of Report 18 July 1947

Title of Case U. S. vs Toshi AKUTSU

PART A

1. Names and Nationalities of Accused

Japanese: Toshi AKUTSU

2. Nature, Place and Date of Offense

Command responsibility, abuse, torture, gross mistreatment.

Town of Capas, Tarlac, Luzon, Philippine Islands

13 May 1942 - 12 July 1942

3. Names and Nationalities of Victims.

Americans

Robert Johnston (deceased)

Pvt. Clayton Kimbrough (deceased)
Stanley J. Fisher (deceased)
T/Sgt. Ray A. Mahrgunch (deceased)
Pvt Johnnie M. Mahan (deceased)
Sgt. Clyde C. Brown (deceased)
S/Sgt. Clyde L. Bussing (deceased)
Pvt. Frank B. Williams (deceased)
Pvt. Alfred J. Gerdisen (deceased)
Pvt. C. W. Hankins (deceased)
M/Sgt. Dank Soren (deceased)
Pvt. Victor Bandal (deceased)
Cpl. Henry S. Blair (deceased)
Edward Nortara (deceased)
Willis J. Holcomb (deceased)
Sgt. Joseph J. Rankin (deceased)

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 1 August 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Legal Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

[redacted]

WD AGO Form R-5392
21 June 1946

[redacted]

(Over)

Inclosure 2 to WD Letter (AGAM-P-M 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

[redacted] - Guilty - Life imprisonment at hard labor.
[redacted] - Guilty - Life imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 257 Date of Report 11 September 1947

(Mutsuo)
Title of Case U. S. vs Matsuo OKUBO

PART A

1. Names and Nationalities of Accused

Japanese - Matsuo OKUBO
(Mutsuo)

2. Nature, Place and Date of Offense

Beating and abusing.

Davao Penal Colony, Mindanao, Philippine Islands

23 October 1942 - 6 June 1944

3. Names and Nationalities of Victims

Americans:

Lt. Colonel William Robinson
Sgt. Schrock
Lt. Colonel George Orr

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 1 September 1947

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

9 September 1947 - 9 September 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - Two years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of Case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]:

Chosuke OKUHIRA

Hanaji ITO

2. Nature, Place and Date of Offense

[redacted], mistreating, torturing, contribute to death.

Tokyo Area Prisoner of War Detached Camp, Number 11-D, also known as Camp Number 14-B, Yokohama, Honshu, Japan.

25 December 1[redacted] August 1945

3. Names and Nationalities of Victims

Dutch

[redacted]

American:
[redacted]

British:
[redacted]

Australians:
[redacted]

4. Probable Place and Date of Trial

[redacted], Honshu, Japan 1 September 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

Exc 9

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the ompletion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

415

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 266 Date of Report 16 September 1947

Title of Case U. S. vs Takeyasu NISHI

PART A

1. Names and Nationalities of Accused

Japanese: Takeyasu NISHI

2. Nature, Place and Date of Offense

Beating and abusing.

Hiroshima Prisoner of War Camp, Shinichi Branch, Onino-Machi, Honshu, Japan.

2 September 1944 - 1 September 1945

3. Names and Nationalities of Victims

Americans:
Stephen Turchak
CDR John D. Pantel
Cpl Kesler
WO Harold Tipp
James Ted Domanski
Cpl Cooper
Cpl Ace
John P. Zagarri
Pfc George LaFleur

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 15 September 1947

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

15 September 1947 - 15 September 1947

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

Guilty - Eight years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

AT TIME OF FILMING

CASE No. 416 WAS
NOT FILED.

Ch. 417 J.

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

Legal Section, GHQ, SCAP (Tokyo)

(Reporting Office)

File Number [redacted] Date of Report 20 July 46

Title of case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted], Kenichi - Japanese

[redacted] and Date of Offense

Between 21 January 1945 and 15 August 1945 at Headquarters Prisoner of War Camp and Omuta Prisoner of War Camp, Omuta Area, Honshu, Japan, the accused then a private in the armed forces of Japan, did violate the Laws and Customs of War.

[redacted] Victims

Cpl David W. Smith	John Emery Jr	CIVILIAN
Cpl Robert V. Hans	John [redacted] Bewley	C T Bowdin
Sgt [redacted]	[redacted]	
Sgt [redacted] H. Yantsa		MARINE
Pvt Felice J. Ordoyne		Robert M. Barker
Pvt Lyle Yates		
Pvt John M. Smith		
Pvt Howard Bottles		

4. Probable Place and [redacted] of Trial

[redacted]shima, Honshu, [redacted]

[redacted]ace and Date of Trial

WD AGO [redacted]-5392
21 [redacted] 1946

(over)

[redacted] 2 to WD Letter (AG [redacted] 000.5 (20 Jun 46)WDSCA)21 Jun 46

1.

...t and Sentence (Re... ...ecific Accused)

...

...ction of Rev... Auth... (Specify authority and date and relate to spec... accu...

8. Action of Confirming Auth... (Specify authority and date and relate to specific accused)

9. Date and Place of Exec...

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Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

duplicate

417 J

VOLUME I

R E C O R D O F T R I A L
(Fifth Carbon Copy)

in the case of :

: UNITED STATES
vs
K E N I C H I K O N D O
Case Docket No. 61

MILITARY COMMISSION
Appointed By
Commanding General, Eighth Army

Tried at
Yokohama, Japan
5 August 1946 - 1 November 1946

152

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

8 March 1947

SUBJECT: Transmittal of Record of Trial.

TO : Commanding General, 8th Army, APO 343.

Transmitted herewith is the completed record of trial in the case of United States vs KENICHI KONDO tried by Military Commission.

For and in the absence of Colonel George W. Easterday:

Gerald L. Church

GERALD L. CHURCH,
Lieut-Col., CMP,
Senior Member of
Court.

GEORGE W. EASTERDAY
Colonel, CAC
President

Incls:
Vol I - Record of trial
Vol II - Exhibits, etc.

MILITARY COMMISSION DATA SHEET

Name (including aliases) - Nationality - Military status at time of alleged offenses

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
1. Was the Commission ordered by proper authority?	✓					
2. Are all orders showing membership of the commission properly entered in record?	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?	✓					
4. Were there less than three members detailed or present at any meeting?		✓				
5. Was the law member designated by the convening authority?	✓					
6. Did the commission have jurisdiction of the person and the offense?	✓					
7. Does the record show the place, date and hour the commission convened?	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?	✓					
b. If absent is reason for absence given?	✓					
c. Was accused asked whom he desired as counsel?	✓					
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?	✓					
9. Was accused given an opportunity to challenge for cause any member of the commission?	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?	—	—				
b. Was the action of the commission upon challenges regularly and properly taken?	✓					
10. Was the commission sworn?	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?		✓				
12. Were the personnel for the prosecution sworn?	✓					
13. Were the reporters sworn?	✓					

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
14. Were the interpreters sworn?	✓					
15. Was the accused properly arraigned?	✓					
16. Are there copied or incorporated into the record:						
a. Charges and specifications?	✓					
b. Name, grade and organization of person signing the charges?	✓					
c. Affidavit to the charges and specifications?	✓					
d. Name of the person who administered the oath verifying the charges and his official capacity?	✓					
e. The order of reference for trial?	✓					
17. Does each specification state an offense?	✓					
18. Are the pleas of the accused regularly entered?	✓					
19. Are the findings properly entered?	✓					
20. Was the vote upon each finding in closed session?	✓					
21. Was the vote upon the sentence in closed session?	✓					
22. Did at least two-thirds of the members present at time vote on each finding was taken concur therein?	✓					
23. Did at least two-thirds of the members present at time vote was taken concur in the sentence?	✓					
24. Does the evidence sustain the findings of the commission?						
25. Are the findings legal?						
26. Is the sentence legal?						
27. Does any ruling of the commission on the admission of evidence or other matters injuriously affect the substantial rights of the accused?						
28. Is the record properly authenticated?	✓					
29. Does it sufficiently appear that the defense counsel accepts the record as correct?	✓					
30. After each adjournment during trial, is presence or absence of members of the commission, prosecution and defense, and the accused properly accounted for?	✓					

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
31. Is action of the reviewing authority properly entered in the record and signed?.....						
32. In the action of the reviewing authority:						
a. In cases not adjudging death, if the action approves sentence in whole or in part, does it order execution of the sentence and designate a proper place of confinement, if confinement approved?.....						
b. In death cases does the action refer the case to SCAP for final action?.....						
33. Is clemency recommended by the commission?.....						

Richard S. Emmons
Prosecutor

15 May 1947
Date

Staff Judge Advocate of Convening Authority

Legal Advisor of Confirming Authority

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

BEFORE A MILITARY COMMISSION	)	UNITED STATES OF AMERICA
CONVENED BY AUTHORITY OF	)	
THE COMMANDING GENERAL	)	VS
UNITED STATES EIGHTH ARMY	)	
_____July 1946	)	KENICHI KONDO

CHARGE

That between 21 January 1945 and 15 August 1945, at Headquarters Prisoner of War Camp and Osaka Prisoner of War Camp, Osaka Area, Honshu, Japan, KENICHI KONDO, then a private in the Armed Forces of Japan, a nation then at war with the United States of America and its Allies, did violate the Laws and Customs of War.

SPECIFICATIONS

1. That in or about February 1944, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat and contribute to the death of Petty Officer First Class David W. Smith, an American Prisoner of War, by beating him, by forcing him to work when he was physically unable to do so and by denying him necessary medical treatment.

2. That in or about May 1944, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat and contribute to the death of Petty Officer First Class Robert W. Rose, an American Prisoner of War, by forcing him to work when he was physically unable to do so, and by denying him necessary medical treatment.

3. That in or about January 1945, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat and contribute to the death of G. B. Serafin, an Italian, by forcing him to work when he was physically unable to do so and by denying him necessary medical treatment.

4. That between 1 January and 16 February 1944, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat Robert M. Barber, a British Prisoner of War, who was then sick, by striking him about the face.

5. That on 4 July 1944, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, did, willfully and unlawfully, mistreat Sergeant John F. Hauck, Sergeant Sherwood R. Vonton, Private Malice J. Cydagne, Private Lilyle Vance and Private John M. Smith, American Prisoners of War, by brutally striking them about the body and head with fists and a bamboo stick and by kicking them.

6. That on 11 July 1944, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, did, willfully and unlawfully, mistreat Private Howard Mottice, an American Prisoner of War, by striking him about the body with fists and by kicking him.

7. That in or about August 1944, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat John Doherty, Jr., an American Prisoner of War, who was then sick, by striking him about the head with a leather slipper.

8. That in or about August 1944, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat John William Moreley, a British Prisoner of War, who was then sick, by striking him about the body and head with fists.

9. That in or about August 1944, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat Aage Herreby Hundson, an American Prisoner of War, who was then sick, by striking him about the head and body with a leather slipper.

10. That between 31 January 1945 and 8 May 1945, at Headquarters Prisoner of War Camp, the accused, Kenichi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat and abuse numerous Allied Prisoners of War by failing, neglecting and refusing to provide them necessary medicine and medical attention, and by striking, kicking and beating them and forcing them to work when they were physically unfit to do so.

11. That between 8 May 1945 and 15 August 1945, at Oqyama Prisoner of War Camp, the accused, Kenichi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat certain American Prisoners of War by forcing them to work while physically unable to do so.

5 July 1946

/s/ Alva C. Carpenter
/s/ ALVA C. CARPENTER
Chief, Legal Section
General Headquarters
Supreme Commander for the Allied Powers

AFFIDAVIT

Before me personally appeared the above named accuser this 5th day of July, 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John R. Pritchard
Name

Captain, Infantry
Rank

Summary Court

A CERTIFIED TRUE COPY:
Frank M. Winston
FRANK M. WINSTON
1st Lt., QMC

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Jul 46)LS

APO 500
5 July 1946

SUBJECT: Trial of Kenichi Kondo.

TO : Commander-in-Chief,
United States Army Forces, Pacific.

1. It is desired that a Military Commission be appointed for the trial of the following named person, member of or serving with the Imperial Japanese Forces; for the alleged offenses indicated on the attached charges:

Kenichi KONDO

2. The trial will be held in the city of Yokohama, Honshu, Japan. All trials held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

/s/ R. S. Hersey
for /t/ JOHN B. COOLEY
Colonel, AGD
Adjutant General

1 Incl:
Chgs vs Kenichi Kondo

A CERTIFIED TRUE COPY:
Frank H. Winston
FRANK H. WINSTON
1st Lt., QMC

BASIC: Ltr, CINC, SCAP, file AG 000.5 (5 Jul 46)LS, 5 July 1946, subject: "Trial of Kenichi Kondo".

AG 000.5 (5 Jul 46)LS 1st Ind

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC, APO 500, 5 July 1946.

TO: Commanding General, Eighth Army, APO 343.

1. Pursuant to authority delegated the Commander-in-Chief, United States Army Forces, Pacific, contained in letter, file AG 000.5 (5 Jul 46)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Trial of Kenichi Kondo", 5 July 1946, said power is redelegated to you and you are hereby directed to appoint a Military Commission for the trial of the following named person, member of or serving with the Japanese Imperial Government:

Kenichi KONDO

2. The trial will be held in the city of Yokohama, Honshu, Japan. The trial held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

4. The following named persons assigned to General Headquarters, Supreme Commander for the Allied Powers, have been made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

1 Incl: Mr. Leonard E. Hand, Chief Prosecutor
Mr. Abraham Fisch, Assistant Prosecutor

By command of General MacARTHUR:

1 Incl:
Chge vs Kenichi Kondo

/s/ R. O. Harvey
/t/ R. O. HARVEY
Lt. Col., AGD,
Asst. Adj. Gen.

A CERTIFIED TRUE COPY:

Frank M. Winston

FRANK M. WINSTON
1st Lt., QMC

BASIC: L&P, GHQ, SCAP, file AG 000.5 (5 Jul 46)LS, 5 July 1 946, subject: "Trial of Kenichi Kondo."

AG 000.5 (KK) 2nd Ind 3 August 1946

Headquarters Eighth Army, APO 343.

TO: Colonel George W. Hasterday, 028076, CAC, President of the Military Commission appointed pursuant to Paragraph 16, Special Orders Number 197, this Headquarters, 2 August 1946, APO 343.

The attached charges against Kenichi Kondo, are referred for trial to you as president of the military commission appointed by Paragraph 16, Special Orders Number 197, this Headquarters, 2 August 1946, APO 343. Copies of the charges have been furnished to the prosecution and to the defense as noted below:

For the Prosecution: MR. LEONARD N. REED
MR. ABRAHAM BLACK

For the Defense: MAJ WILLIAM T. MARTIN, JR.
1ST LT HAROLD NEIL

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

OTIS M. LUCKMAN
1st Lt, AGD
Asst Adj Gen

1 Incl:
Charges against K. Kondo.

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

SPECIAL ORDERS
NUMBER 197

2 August 1946

EXTRACT

16. Appointment of a Military Commission.

Pursuant to authority contained in letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 6 December 1945, AG 000.5 (6 Dec 45) LS, Subject: "Detention, Interrogation and Trial of Suspected Japanese War Criminals", a Military Commission is hereby appointed to meet at the Yokohama District Court Building, Yokohama, Japan, on or about 5 August 1946, or as soon thereafter as practicable, at the call of the president to try such persons as may be properly brought before it.

DETAIL FOR THE COMMISSION

COL GEORGE W. EASTERDAY, 02896, CAC, Hq Eighth Army, LAW MEMBER
COL SELTON BERG, 06101, IG, Hq Yokohama Base
LT COL GERALD L. CHURCH, 0288207, MI, Hq Yokohama Base
CAPT ROBERT W. MISSLEY, 0352657, Inf, Hq 11th Airborne Div
CAPT WILLIAM E. ROSS, 020[illegible]7120, Cav, Hq 1st Cavalry Div

FOR THE PROSECUTION

MR. LEONARD M. MAND, CHIEF PROSECUTOR
MR. ABRAHAM BLACK, ASSISTANT PROSECUTOR

FOR THE DEFENSE

MAJ WILLIAM T. MARTIN, JR., 0237226, Inf
1ST LT HAROLD WEIL, 01329652, Inf

The proceedings of the Commission will be governed by letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945, AG 000.5 (5 Dec 45)LS, Subject: "Regulations Governing the Trials of Accused War Criminals," letter this Headquarters, 5 February 1946, AG 000.5 (YO), Subject: "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", and such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers. The employment of an enlisted or civilia court reporter is authorized. (AG 334)

BY COMMAND OF LIEUTENANT GENERAL HODGE/BERGER:

OFFICIAL:

J. M. GLESON
Colonel, AGD
Adjutant General

CLOVIS E. BYERS
Major General, GSC
Chief of Staff

HQ EIGHTH ARMY OFFICE OF THE ADJUTANT GEN'LS. OFFICE

(Kondo, Case #61)

author of the statement is at the time of trial present in either the Philippine Islands, the Ryukyus, Japan or Korea.

3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is nowise to be limited to matters brought out on direct examination.

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

SPECIAL ORDERS
NUMBER 197

2 August 1946

EXTRACT

16. Appointment of a Military Commission.

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DETAIL FOR THE COMMISSION

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COL SEXTON BERG, 06101, IG, Hq Yokohama Base
LT COL GERALD L. CHURCH, 0288207, MI, Hq Yokohama Base
CAPT ROBERT W. KISSLEY, 0352657, Inf, Hq 11th Airborne Div
CAPT WILLIAM E. ROSS, 02077120, Cav, Hq 1st Cavalry Div

FOR THE PROSECUTION

MR. LEONARD M. RAND, CHIEF PROSECUTOR
MR. ABRAHAM BLACK, ASSISTANT PROSECUTOR

FOR THE DEFENSE

MAJ WILLIAM T. MARTIN, JR., 0237226, Inf
1ST LT HAROLD WEIL, 01329652, Inf

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BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

OFFICIAL:

J. M. GLESON
Colonel, AGD
Adjutant General

CLOVIS E. BYERS
Major General, GSC
Chief of Staff

HQ EIGHTH ARMY OFFICE OF ADJUTANT GEN'L'S OFFICE COPY

(Kondo, Case #61)

Extract, SO 197, Hq Eighth Army, 2 Aug 46, contd.

DISTRIBUTION:
2 - Each indiv named Par 1
2 - CG, FACUSA
5 - G-1 Sec
6 - CG, Hq Yokohama Base
6 - CG, Hq 11th Airborne Div
6 - CG, Hq 1st Cavalry Div
10 - JA Sec
20 - War Crimes Def Sec
20 - War Crimes Adm Sec
10 - Legal Sec, SCAP
7 - JA Sec, Court Reporters
1 - PRO
2 - CinC, AFPAC
1 - SCAP
2 - CofS Sec
2 - PM Sec
5 - File

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

SPECIAL ORDER
NUMBER 266

19 October 1946

EXTRACT

1. Par 16, SO 197, this Hq, cs, announcing the appointment of the Military Commission to meet at the Yokohama District Court Building, Yokohama, Japan on or about 25 September 1946, is amended as follows:

MAJ BURTON K. PHILLIPS, 0298829, JAGD, Hq Eighth Army, is hereby detailed as a member of the defense vice MAJ WILLIAM T. MARTIN, JR, 0237226, Inf, Hq Eighth Army, APO 343. MR THOMAS J. DUFFY, is hereby detailed as a member of the defense vice 1ST LT HAROLD WEIL, 01329652, Inf, Hq Eighth Army, APO 343.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

OFFICIAL:

CLOVIS E. BYERS
Major General, GSC
Chief of Staff

J. M. GLASCO
Colonel, AGD
Adjutant General

HQ EIGHTH ARMY
OFFICIAL COPY
ISSUING OFFICE

DISTRIBUTION:
2 - Each indiv named par 1
2 - CG, PacUSA
5 - G-1 Sec
6 - CG, Hq KOBAS
6 - CG, 11th A/B Div
6 - CG, Hq 1st Cav Div
10 - JA Sec
20 - War Crimes Def Sec
20 - War Crimes Adm Sec
10 - Legal Sec, SCAP
7 - JA Sec, Court Reporters
1 - PRO
2 - CinC AFPAC
1 - SCAP
2 - CofS Sec
2 - PM Sec
5 - File

(Kondo - Case # 61)

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45)LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500.
Commanding General, Sixth Army, APO 442.
Commanding General, Eighth Army, APO 343.
Commanding General, XXIV Corps, APO 235.

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons which he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

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shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

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conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

c. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to

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submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of

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a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

AG 000.5 (YO) 5 February 1946

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO: Presidents of War Crimes Commissions.

SECTION I: RULES OF PROCEDURE

The following rules of procedure, in addition to and supplemental to regulations governing the trials of accused war criminals, as outlined in Letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (5 Dec 45)LS, Subject: "Regulations Governing the Trials of Accused War Criminals," dated 5 December 1945, will govern the trial of persons, units and organizations accused as war criminals.

1. Affidavits, Statements, Documents, and Preliminary Motions.

a. Copies of all statements, affidavits and other documents which the prosecution proposes to introduce into evidence will be furnished to the defense at the time a case is referred for trial. At least 24 hours prior to arraignment, the defense will furnish to the prosecution copies of all statements, affidavits and other documents then in its possession which the defense proposes to introduce into evidence. Subsequent to this time, any other statements, affidavits and documents proposed to be introduced into evidence by the defense will be furnished opposing counsel as soon as possible.

b. Either side will indicate to opposing counsel the portions of any statement, affidavit or other document it proposes to offer as evidence in the trial. Such indication will be made at the time copies thereof are furnished or made available to opposing counsel.

c. If, either before or during the trial, but after copies of the documents have been furnished to opposing counsel, as set out above, either side receives or is apprised of additional documents which will be used in the trial, it will notify opposing counsel thereof as promptly as possible, and thereafter furnish copies as soon as practicable. Opposing counsel will then promptly take such action as may be necessary with the view of avoiding any delay in the trial of the case.

d. The rules set out in a, b, and c above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission.

e. Prior to trial, both prosecution and defense will furnish opposing counsel copies of any preliminary motions to be made to the Commission.

2. Affidavits.

In offering affidavits or other written statements of testimony the prosecution will preface the offer with a statement as to whether or not to the best of the prosecution's knowledge or information the affiant or the author of the statement is at the time of trial present in either the Philippine Islands, the Ryukyus, Japan or Korea.

3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is nowise to be limited to matters brought out on direct examination.

b. If he remains silent, the Commission may draw such inference from his failure to testify as may seem fair and competent to a reasonable mind, after taking into consideration all the competent evidence in the case.

c. The prosecution may in argument comment to the Commission on an accused's failure to testify.

4. Identification of Accused.

The accused may be required to testify for the purpose of identification, respecting his name, age, rank, occupation, identifying marks or characteristics and his status and whereabouts during the period alleged in the charges and specifications, excepting therefrom all testimony relative to the issue of guilt or innocence.

5. In case in which the defense moves for a finding of not guilty after the conclusion of the prosecution's case, and upon the overruling of the motion rests its case without offering evidence in defense, and the court after submission of the case, finds the accused guilty, the court before imposing sentence may permit the defense to offer competent evidence in extenuation or mitigation of the offense alleged, subject to the right of the prosecution to rebut such evidence.

6. Interpreters and Interpretation.

a. No criticism of an interpreter, direct or implied, will be made in open court by counsel of either side until the following steps have been taken:

(1) The Chief Interpreter will be advised of a complaint during the next court recess.

(2) The Chief Interpreter will investigate the matter and:

(a) Convince the complaining party that no substantial error exists; or

(b) Caution and advise the interpreter if necessary; or

(c) Prepare a correction of the record to be entered as a stipulation upon reconvening of the Commission; or

(d) Prepare an opinion to be given to the Commission if required.

(3) If the Chief Interpreter cannot satisfy both the prosecution and the defense, the complaining party will send a message to the Commission requesting an off-record conference in the matter.

b. Counsel are reminded that:

(1) Interpreting between oriental and occidental language is not comparable to coding and decoding cypher messages, but requires a distressing amount of circumlocution and re-arrangement of thought.

(2) Counsel is advised, when working through an interpreter:

(a) To use short, simple questions as free from artifice as if examining a small child.

(b) Whenever it is necessary to refer to previous testimony, to lay a foundation to insure that both the interpreter and the witness understand the reference to previous testimony.

(3) The following types of questions are particularly to be avoided as leading to misunderstanding and futile descussions:

(a) Long questions. (Impossible for interpreter and witness to remember)

(b) Complicated questions. (Dependent clauses confuse both interpreter and witness)

(c) Conditional questions. (Usually beyond comprehension of an oriental witness)

(d) Sarcastic questions. (Usually depend on untranslatable emphasis or play on words; waste effort)

(e) Negative questions. ("You did not see them, did you?" Answer will be, "Yes, I did not see them" or "No — I saw them")

(f) Questions hinging on the precise meaning of a single word. (The interpreter picks from several choices that English word which he believes will most closely express his understanding of the witness. To question the witness about the English word is futile)

(4) The senior member of the staff of both prosecution and defense are charged with instructing their assistants in these rules and thereafter to apply prompt corrective action to stop at once any violation of the principles announced herein.

7. Authentication of Record of Trial.

a. The record of trial will be prepared under the supervision of the prosecution for the signature of the President of the Commission and the senior member of the prosecution staff.

b. The record will be submitted to the Defense Counsel for check by him before the record is authenticated by the prosecution and the President of the Commission. The Defense Counsel will note on the record the fact that the record has been submitted to him and checked by him prior to authentication.

c. In the event the record cannot be authenticated by the President of the Commission and the senior member of the prosecution staff, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member of the Commission in lieu of the president and by another member of the prosecution staff, if there be one, in lieu of the senior member of the prosecution staff, otherwise by another member of the commission.

SECTION II: OUTLINE OF PROCEDURE

The following outline of procedure will govern the conduct of trials before military commissions of persons, units and organizations accused as war criminals.

There will be present:
- Commission
- Accused
- Prosecution Staff
- Defense Staff
- Interpreters
- Commission Reporters
- Press Representatives
- Photographers
- Spectators

All persons in the courtroom will be seated prior to the time set for arraignment. The "Bailiff" for the Commission will announce the entrance

of the Members of the Commission by calling "Attention". All present in the courtroom will stand and remain standing until the Members of the Commission are seated.

SEATING OF THE COMMISSION: The presiding Member (senior officer) will be seated in the center, with the Law Member on his left. Remaining Members will be seated alternately to the right and left of the Presiding Member in order of seniority.

When the Commission is ready, the trial proceeds substantially as follows:

PRESIDING OFFICER: "The Commission is in session and is ready to hear any matter to be brought before it."

PROSECUTOR: "The prosecution is ready to proceed with the trial of the United States of America against" (name of accused as read form the captien).

PROSECUTOR: "The accused is present, together with defense counsel appointed by the convening authority. The prosecution is ready to proceed."

PRESIDING OFFICER: "You may proceed."

PROSECUTOR: "The Reporters will be sworn."

(The Reporters rise. The Prosecutor facing the Reporters repeats the following oath:)

"You (names of Reporters) swear that you will faithfully perform the duties of reporters to this Commission. So Help you God."

REPORTERS: "I do."

(Reporters sit down and thereafter are not required to rise until the oath is administered to the Commission and Prosecutors, after which they resume their seats and remain seated throughout the trial.)

PROSECUTORS: "The Interpreters will be sworn."

(Interpreters rise, and the Prosecuter facing them repeats the following oath:)

"You (names of Interpreters) swear that you will truly interpret in the case now in hearing. So Help you God."

INTERPRETERS: "I do."

(Interpreters are then seated.)

PROSECUTOR: "The following Members of the Commission appointed by Paragraph _____, Special Orders No. _____, Headquarters _____, dated _____ (as amended by Paragraph _____, Special Orders No. _____, dated _____) are present."

(The Prosecutor announces by name and rank the Members present.)
"There are no Members absent."
(Or: "Absent, Colonel Janes, sick in hospital.")

PROSECUTOR: "The Prosecution submits, for incorporation into the record of these proceedings, the following documents:

"Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being 'Regulations Governing the Trials of Accused War Criminals.'

Ltr Hq Eighth Army, AG 000.5 (YO), 5 Feb 46, Subject: "Rules of Precedure and Outline of Precedure for Trials of Accused War Criminals," contd.

"Letter Order AG 000.5 (10 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated _____, with the subject being "Trials of _____."

"Letter Order AG 000.5 (10 Dec 45), General Headquarters, United States Army Forces, Pacific, dated _____, with the subject being 'Trials of _____.'

"Paragraph ____ of Special Orders ____, Headquarters Eighth Army, dated ____, (entitled 'Appointment of a Military Commission')."

(Any changes in Special Orders will be noted by the Prosecutor. Defense Counsel will have been given an opportunity to examine these documents prior to their being offered.)

PRESIDING OFFICER: "There being no objections, the orders will be received and incorporated into the record of these proceedings. Does the Prosecution desire to challenge any Member of the Commission for cause?"

PROSECUTOR: "The prosecution has no Challenges" (or as the case may be).

PRESIDING OFFICER: "Does the Defense desire to Challenge any Member of the Commission for cause?"

DEFENSE: "The Defense has no challenge for cause (or 'The Defense challenges Colonel _____ for cause.' The Defense then states reasons for challenge)."

PROSECUTOR: "The Prosecution is ready to proceed with the arraignment of _____(name of accused)."

PRESIDING OFFICER: "The Commission will be sworn."

(All persons in the room will rise and stand until the swearing of the Commission and of the Prosecution is completed. Each Member of the Commission raises his hand as his name is called by the Prosecutor who administers the following oath:)

PROSECUTOR: "You Colonel _____, Colonel _____, etc., do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor or affection, according to your conscience, the best of your understanding, and the Custom of War in like cases; and you do further swear that you will not divulge the findings or sentence of the Court until they shall be published by the proper authority or duly announced by the court, except to the Prosecutor and Assistant Prosecutor; neither will you disclose or discover the vote or opinion of any particular Member of the Commission upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So Help you God."

EACH MEMBER OF THE COMMISSION: "I do."

(Members of the Commission lower their hands but remain standing while the Presiding Officer administers the following oath to the Members of the Prosecution Staff.)

PRESIDING OFFICER: "The Prosecution will be sworn. You Major _____, Captain _____, do swear that you will faithfully and impartially perform the duties of Prosecutor in the case now brought before this Commission. So Help You God."

EACH MEMBER OF THE PROSECUTION: "I do."

(All now resume their seats except the Prosecutor.)

DEFENSE: "The Charge and Specifications were received by the Defense Counsel and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 5 b of Letter AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, entitled 'Regulations Governing the Trials of Accused War Criminals', heretofore introduced into the record of these proceedings."

PRESIDING OFFICER: "Whom does the accused desire to introduce as Defense Counsel?"

(If the accused desires the regularly appointed Defense Counsel, the proceedings will continue. If accused desires Counsel of his own selection to the exclusion of regularly appointed Defense Counsel, and the desired Counsel is present, then the regularly appointed Defense Counsel will be excused and the proceedings will continue. If accused desires Counsel of his own selection and requests that the proceedings be continued until such Counsel be made available to him, the Commission will consider the availability of desired Counsel and if the request of the accused is granted will continue the case until such time as Counsel can be secured. If the request of the accused is denied, he will be given an opportunity to make another selection but the arraignment will continue with the regularly appointed Defense Counsel. If accused elects to conduct his own defense and fails to designate Special Counsel, the regularly appointed Defense Counsel will be present with the accused and available in the event he desires its advice.)

PRESIDING OFFICER: "The Charge and Specifications will be read to the accused."

(Prosecutor will read the complete Charge and Specifications, together with affidavit of accuser and reference for trial.)

PROSECUTOR: "With permission of Commission, the Prosecution introduces the Charge and Specifications which have been read to the accused for incorporation into the record of these proceedings."

(Prior to offer, Defense Counsel will be given an opportunity to examine Charge and Specifications.)

PRESIDING OFFICER: "There being no objection, the Charge and Specifications are received and will be incorporated into the Record. Are there any special Pleas by the Defense?"

DEFENSE: "There are no special pleas (or as the case may be)."

PRESIDING OFFICER: "_____ (Naming accused) at this time the Commission will hear your plea to the Charge and Specifications which have been read to you. You may plead either 'Guilty' or 'Not Guilty'".

(Accused and Defense Counsel will rise and accused will plead "Guilty" or "Not Guilty" to each specification and to the charge. If accused has not determined his plea and if he so requests, Commission will set a time for receipt of plea and continue the proceedings until that time. If accused refused to plead, the Presiding Officer will then state:)

PRESIDING OFFICER: "The accused having failed to plead to the Charge and Specifications, there will be entered in his behalf upon the record the plea of "Not Guilty".

PRESIDING OFFICER: "The Prosecution will make its opening statement."

(Prosecution makes opening statement.)

PROSECUTOR: "The Prosecution calls as its first witness:_____."

(Witness presents himself in front of and faces the Presiding Officer, and if a member of the Military Services salutes the Presiding Officer. After which, the Prosecutor, standing, administers the following oath to the witness: NOTE: Witness will be sworn according to his particular belief)*

"You swear (or affirm) that the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So Help you God."

*NOTE: Japanese Witnesses will be sworn by the following oath:

"In accordance with my conscience I swear that I will tell the truth, I will hide nothing and I will conceal nothing."

PROSECUTOR: "Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission, or any other American Court or Commission?"

(Prosecution proceeds with direct examination. This is followed by Cross-Examination by the Defense, and Examination by the Commission in the case of each witness called by the Prosecutor).

(Documentary Evidence will be introduced as follows:)

PROSECUTOR: "The Prosecution offers in evidence (the original) (a certified copy) (a photostatic copy) of an affidavit (or other document) to be attached to the record and marked Exhibit ____, (to be withdrawn at the conclusion of the trial and an authenticated copy substituted therefor).

(After the Prosecution presents its evidence, the Prosecutor announces:)

"The Prosecution rests."

PRESIDING OFFICER: "The Defense will make its Opening Statement."

(The Defense makes its Opening Statement).

DEFENSE COUNSEL: "The Defense calls as its first witness_____."

(Defense presents its case in the same manner as outlined above for the prosecution. The Prosecutor administers the oath to the witnesses. Defense then proceeds with direct examination, followed by cross-examination by the Prosecution, re-direct examination by the Defense, and examination by the court, if desired. When the Defense has completed its case, the Defense Counsel announces:)

DEFENSE COUNSEL: "The Defense rests."

(The Prosecution now presents any rebuttal witnesses, followed by presentation of any rebuttal witnesses for the Defense.)

PRESIDING OFFICER: "The Commission will now hear the Arguments for the Prosecution and Defense." (Arguments to be conducted as directed by the Commission)

PRESIDING OFFICER: "The Commission will be closed."

(When the Commission arrives at its judgment and sentence, the Commission will be opened. In the presence of the Accused, his Counsel, and the personnel of the Prosecution (all of whom remain standing), the Presiding Officer announces the judgment and sentence.)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

Ward W. Conquest

WARD W. CONQUEST
Colonel, AGD
Adjutant General

CIVILIAN REPORTERS CERTIFICATE

DATE 8 March 1947

Case No. 6 U.S. vs Kenichi Kondo

I, the undersigned hereby certify, that I reported the trial proceedings in the above case of which the attached record of trial is a true transcription, that I am a civilian court reporter, in the civil service of, and paid for my said services by, the United States.

Homer J. Chigos

CIVILIAN REPORTER'S CERTIFICATE

25 June 1947

Case No.61, U.S. vs Kenichi Kondo

I, the undersigned hereby certify, that I reported the trial proceedings in the above case of which the attached record of trial is a true transcription, that I am a civilian court reporter, in the civil service of, and paid for my said services by, the United States.

Bernard Nyce

BERNARD NYCE

RECORD OF TRIAL

of

KENICHI KONDO

by

MILITARY COMMISSION

APPOINTED BY THE COMMANDING GENERAL

HEADQUARTERS EIGHTH ARMY

Tried at

Yokohama, Japan 5 August 1946

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PROCEEDINGS OF A MILITARY COMMISSION

which convened at Yokohama, Japan, pursuant to Paragraph No. 16, Special Orders No. 197, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 2 August 1946.

The Commission met at the Yokohama District Courthouse at 0800 hours, 5 August 1946.

PRESIDENT: The Commission is in session and is ready to hear any matter to be brought before it.

PROSECUTION: The prosecution is ready to proceed with the trial of the United States of America against Kaniehi Kondo. The accused is present together with the defense counsel, appointed by the convening authority. The prosecution is ready to proceed.

PRESIDENT: You may proceed.

PROSECUTION: The reporter will be sworn.

Mr. Bernard W. Hyes was then sworn as reporter.

PROSECUTION: The interpreters will be sworn.

Mr. Seichi Isobe and Mr. Suso Ito were then sworn as interpreters.

PROSECUTION: The following members of the Commission appointed by Paragraph 16, Special Orders No. 197, Headquarters, Eighth Army, dated 2 August 1946 are present:

DETAIL FOR THE COMMISSION

COL GEORGE W. EASTERDAY, 02696, CAC, Hq Eighth Army, LAW MEMBER
COL SEXTON BERG, 06101, IG, Hq Yokohama Base
LT COL GERALD L. CHURCH, 0286807, MI, Hq Yokohama Base
CAPT ROBERT W. WISELEY, 0352657, Inf, Hq 11th Airborne Division

FOR THE PROSECUTION

MR. LEONARD M. RAND, CHIEF PROSECUTOR
MR. ABRAHAM BLACK, ASSISTANT PROSECUTOR

FOR THE DEFENSE

MAJ WILLIAM T. MARTIN, JR., 0237226, Inf
1ST LT HAROLD WEIL, 01289638, Inf

ABSENT

CAPT WILLIAM E. ROSS, 02097120, Cav, Hq 1st Cavalry Div
By verbal order of the appointing authority

PROSECUTION: The prosecution submits for incorporation into the record of these proceedings the following documents:

Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, Subject: Regulations Governing the Trials of Accused War Criminals.

Letter Order AG 000.5 (5 Jul 46) LS, General Headquarters, Supreme Commander for the Allied Powers, Subject: Trial of Kenichi Kondo, together with first and second indorsements thereto.

Paragraph 16, Special Orders 197, Headquarters Eighth Army dated 8 August 1946, entitled: Appointment of a Military Commission.

PRESIDENT: There being no objections, the orders will be received and incorporated into the record of these proceedings.

Does the prosecution desire to challenge any member of the Commission for cause?

PROSECUTION: The prosecution has no challenges.

PRESIDENT: Does the defense desire to challenge any member of the Commission for cause?

DEFENSE: The defense has no desire to challenge any member of the Commission for cause. However, the defense would like to address a few questions to the members of the Commission.

Has any member of this Commission suffered any experience in combat against the Japanese during the war which may prejudice him in any way, in his determination of the evidence before him on the trial of this accused?

PRESIDENT: To whom are you addressing that?

DEFENSE: All members of the Commission.

PRESIDENT: Specifically to each member?

DEFENSE: Yes. I take it from your silence, gentlemen, that your answers are negative?

PRESIDENT: Repeat that once more.

DEFENSE: I ask if any member of the Commission has been in combat with the Japanese and has suffered any experience which may prejudice him in any way in his determination of the evidence before him, so far as the trial of this accused is concerned.

PRESIDENT: The Commission will reply in turn.

(Each member of the Commission replied in the negative)

DEFENSE: Are all members of the Commission familiar with the rule that the accused is presumed innocent until his guilt is proven beyond a reasonable doubt, and are all members of the Commission willing to apply that rule in determining the evidence as to the guilt or innocence of this accused at the close of this trial?

DEFENSE: I take it from your silence, gentlemen, that your answer would be in the affirmative.

(All members of the Commission then replied in the affirmative)

PROSECUTION: Prosecution has no desire to challenge any member of the court for cause, nor does it desire to exercise its right to a peremptory challenge.

The prosecution is ready to proceed with the arraignment of Kenichi Kondo.

PRESIDENT: The Commission will be sworn.

(The members of the Commission and the personnel of the prosecution were then sworn)

DEFENSE: The Charge and specifications were received by defense counsel on the 17th of July, 1946 and served upon the accused that same day. The accused has been fully advised of each offense charged by reason of receiving a certified copy written in the Japanese language. The accused has also been advised of his rights as provided for in paragraph 8 B of Letter AGO 000.5 (5 Dec 1945) L8, General Headquarters, Supreme Commander for the Allied Powers, entitled: Regulations Governing the Trials of Accused War Criminals, heretofore introduced into the record of these proceedings.

PRESIDENT: Whom does the accused desire to introduce as defense counsel?

DEFENSE: The accused desires to be represented by the regularly appointed defense counsel and wishes to introduce at this time as associat counsel, a Japanese lawyer, Mr. Toshiro Okai.

PRESIDENT: The Charge and specifications will be read to the accused.

PROSECUTION: (Reading)

CHARGE

That between 21 January 1945 and 15 August 1945, at Headquarters Prisoner of War Camp and Omuta Prisoner of War Camp, Omuta Area, Honshu, Japan, KENICHI KONDO, then a private in the Armed Forces of Japan, a nation then at war with the United States of America and its Allies, did violate the Laws and Customs of War.

SPECIFICATIONS

1. That in or about February 1944, at Hdq quarters Prisoner of War Camp, the accused, Kenichi Kondo, as medical

orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat and contribute to the death of Petty Officer First Class David W. Smith, an American Prisoner of War, by beating him, by forcing him to work when he was physically unable to do so and by denying him necessary medical treatment.

2. That in or about May 1944, at Headquarters Prisoner of War Camp, the accused, Keniehi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat and contribute to the death of Petty Officer First Class Robert W. Hess, an American Prisoner of War, by forcing him to work when he was physically unable to do so, and by denying him necessary medical treatment.

3. That in or about January 1945, at Headquarters Prisoner of War Camp, the accused, Keniehi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat and contribute to the death of C. E. Scarfia, an Italian, by forcing him to work when he was physically unable to do so and by denying him necessary medical treatment.

4. That between 1 January and 16 February 1944, at Headquarters Prisoner of War Camp, the accused, Keniehi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat Robert M. Barber, a British Prisoner of War, who was then sick, by striking him about the face.

5. That on 4 July 1944, at Headquarters Prisoner of War Camp, the accused, Keniehi Kondo, did, willfully and unlawfully, mistreat Sergeant John F. Runck, Sergeant Sherwood R. Vanten, Private Eulice J. Ordoyne, Private Lisle Vance and Private John M. Smith, American Prisoners of War, by brutally striking them about the body and head with fists and a bamboo stick and by kicking them.

6. That on 11 July 1944, at Headquarters Prisoner of War Camp, the accused, Keniehi Kondo, did, willfully and unlawfully, mistreat Private Howard Kettles, an American Prisoner of War, by striking him about the body with fists and by kicking him.

7. That in or about August 1944, at Headquarters Prisoner of War Camp, the accused, Keniehi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat John Doherty, Jr., an American Prisoner of War, who was then sick, by striking him about the head with a leather slipper.

8. That in or about August 1944, at Headquarters Prisoner of War Camp, the accused, Keniehi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat John William Horsley, a British Prisoner of War, who was then sick, by striking him about the body and head with fists.

9. That in or about August 1944, at Headquarters Prisoner of War Camp, the accused, Keniehi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat Aage Herreby Kundson, an American Prisoner of War, who

was then sick, by striking him about the head and body with a leather slipper.

10. That between 21 January 1945 and 8 May 1945, at Headquarters Prisoner of War Camp, the accused, Koniehi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully mistreat and abuse numerous Allied Prisoners of War by failing, neglecting and refusing to provide them necessary medicine and medical attention, and by striking, kicking and beating them and forcing them to work when they were physically unfit to do so.

11. That between 9 May 1945 and 15 August 1945, at Ofuyama Prisoner of War Camp, the accused, Koniehi Kondo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat certain American Prisoners of War by forcing them to work while physically unable to do so.

5 July 1946

/s/ Alva C. Carpenter
/t/ ALVA C. CARPENTER
Chief, Legal Section
General Headquarters
Supreme Commander for the Allied
Powers

AFFIDAVIT

Before me personally appeared the above named accuser this 5th day of July, 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John K. Pritchard
Captain, Infantry
Summary Court.

PRESIDENT: There being no objections, the Charge and specifications are received and will be incorporated into the record.

(The Charge and specifications were then received into evidence)

Are there any special pleas by the defense?

DEFENSE: If it please the Commission, there is a special plea: To the jurisdiction of the Commission to try this accused under Specification 5 of the Charge.

Specification 5 charges the accused with willfully and unlawfully mistreating and contributing to the death of G. B. Serafin, an Italian.

Now, the letter of 5 December 1945, AG 000.5, previously introduced into evidence before this Commission sets forth the jurisdiction of the Commission, and it sets forth in paragraph 2 that the court has jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

Of course, we do not question the jurisdiction of this court to try this accused for war crimes. However, we maintain that the court does not have jurisdiction over the offense as set forth in Specification 3.

The same letter sets forth under paragraph 2b that the Military commission established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression (which is the Class "A" trials up at Tokyo) or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) Violations of the laws or customs or war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; (and the next phrase is the important phrase) murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere.

And further, the next paragraph is the ill-treatment of civilian population before the beginning of the war.

Now, at this stage of the proceedings, we are called upon to plead to the Charge and to the specifications. The specifications must be drawn consistently so that the accused may plead thereto and prepare a defense, and it must set forth an act over which this court or Commission, rather, has jurisdiction.

Now, we are charged with the death of an Italian. It is our contention that there is no allegation that the Italian was a prisoner of war. There is no allegation that he was an internee within the meaning of paragraph 2b of the letter previously quoted from.

It is our belief that the authority to constitute these legal commissions is limited. We are confined solely to the letter of SCAP in which it says jurisdiction shall be assumed over the ill-treatment of prisoners of war and internees.

It is our contention that those prisoners of war must have been Allied prisoners of war -- soldiers, sailors, marines or if they are internees, Allied civilians overrun in the Philippines or elsewhere when the Japanese first started this war.

There is no allegation in this specification as to how Serafin was ever in the jurisdiction of the Japanese. Perhaps,

gentlemen, he committed some offense against the Japanese and was thrown in jail, was thrown in the prisoner of war camp. But that specification must be ruled upon as it stands. Evidence cannot be brought before this court to substantiate it in this argument. We don't care what the evidence is. The specification must be drawn so that the court knows that it has jurisdiction over the offense charged under the letter of SCAP.

It is our contention that the mere wording "J. B. Serafin, an Italian" does not give this court jurisdiction because the Italians were never Allies of the United Nations. I do recognize that after the Italian surrender, they were given the status of co-belligerents against Germany, but never against the Japanese, and under that status, an Italian could not become a prisoner of war or an internee within the meaning of the SCAP directive so as to give this court jurisdiction.

On that basis, I ask that this court rule that it does not have jurisdiction to try the accused under Specification 3, and that the specification be stricken.

PROSECUTION: Anticipating, if the court please, before the trial started some time ago, that this objection would come up, prosecution addressed to the Director of Civilian Affairs Division, Washington, D. C., a letter requesting clarification of the status of Italy on or about January, 1945, and setting forth the facts as regard to the man Serafin who is charged with dying at the contributing hands of Keniohi Kondo in Specification 3.

In response to our letter under date of July 17, 1946, the prosecution was in receipt of a cablegram from the State Department which advised substantially as follows: That on or about 13 October, 1943, Italy declared war on Germany and was at that time accepted by the Allied Powers -- Britain, Russia and the United States as a co-belligerent. She did not declare war on Japan until 15 July, 1945 and at that time, she declared war unofficially.

Serafin is charged with dying in Japan in January, 1945. Therefore, the State Department advised as follows: That under these circumstances, only Japan as sovereign power could rule as to the status of Italian Nationals insofar as their relationship to Japan was concerned.

In the absence of any ruling in this connection, they told us to consider each individual case on its own merits. If Serafin was, in fact, treated as a prisoner of war and war atrocities were committed against him by Japanese, then they would be held responsible for such acts, because such acts would be overt acts on their part, considering Serafin as a prisoner of war.

Therefore, such overt act would spell out an intention on their part to treat that particular individual as a prisoner of war and they would, therefore, be held responsible for those war atrocities, if they were in fact committed.

The prosecution would like to incorporate into the record of these proceedings the answer to our letter on Serafin, dated 17 July 1946, which is the answer from the State Department on this very point.

DEFENSE: I am going to object to this introduction of this or the incorporation of this into the record, on the grounds that it is not signed. We don't know who sent it. There is no signature to it at all.

Now, from the contents of it, you might think it was sent by the Secretary of State. Perhaps it was sent by a clerk in his office -- someone who might not be competent to comment on whether or not this court has jurisdiction.

I think in the second place, whatever the State Department feels about this matter is entirely incompetent. The jurisdiction requirements of this court are set forth. This specification must meet it. Whether or not somebody in Washington thinks this court has jurisdiction is not controlling at all. It's for the court to decide. This person -- we do not know who he is -- has stated only Japan as sovereign power could rule as to status of Italian Nationals insofar as their relationship to Japan was concerned, and I think that is the controlling feature.

The Italians declared war on Japan the 15th day of July, 1945. This man could not be a prisoner of war or interned at the time of his death under the definition of prisoners of war and internees as set forth in the SCAP directive.

I object to the admission of this into the record on the ground that it is not signed.

PROSECUTION: If the Commission please, this is an official answer on official heading of an Agency of the War Department, and, therefore, as an official record, I believe there should be no question as to its admissibility.

PRESIDENT: The objection as to the admission of this cablegram is overruled, not sustained, and it will be admitted into the record.

PROSECUTION: If it please the Commission, in further argument, the prosecution feels that the only question that this Commission has to decide with respect to Specification 3 is whether or not this man was in fact a prisoner of war, whether he was treated as a prisoner of war, and whether Kaniahi Kondo, the defendant, committed any overt acts, any war crimes against Serafin.

The prosecution is prepared to prove by affidavit and live testimony that in fact, Serafin was treated as a prisoner of war.

DEFENSE: If the Commission please, I am going to object at this time to the offering of any evidence to prove the specification. This argument is on the specification alone and it makes no difference what proof he has. He has charged us with contributing to the death of an Italian.

We maintain the court doesn't have jurisdiction, no matter what his proof is. He cannot argue his proof at this time.

PROSECUTION: The court may in its discretion, on motion of the prosecution amend the specification to include the words "prisoner of War", which I have stated we propose to prove.

Therefore, at this juncture of the proceedings, the prosecution requests permission of the Commission to amend Specification 2 by adding the words after C. B. Sarfin, an Italian "Prisoner of War".

I have made a motion. Do you object?

DEFENSE: I object to it, on this ground: There has just been introduced before this Commission a copy of a cablegram received from the State Department signed by someone we don't know, who sent it, and because that person is of the opinion that if this man were treated as a prisoner of war, this court can assume jurisdiction.

Now, I object strenuously against the introduction of that cablegram unless it is shown by whom it is sent. It could have been sent by anybody. He is merely expressing an opinion and just because it comes from the State Department, sir, does not lend it authenticity.

PRESIDENT: This has been admitted in evidence. I overrule the objection.

DEFENSE: Now, the prosecution is seeking to amend his specification to conform with someone's opinion from the State Department.

Now, the State Department didn't set up these courts. The State Department didn't give jurisdiction. Jurisdiction is given under a certain letter from SCAP and SCAP received this jurisdiction from a joint declaration of the Chief of Staff.

These are the documents that should be before this court to show jurisdiction -- not a cablegram from somebody in the State Department. That's why I objected to the introduction of that cablegram, because someone has expressed an opinion and now, they are seeking to amend their specification, to conform to that cablegram, and, therefore, argue that the court can assume jurisdiction. The court is now assuming jurisdiction on the opinion of someone they know not whom in Washington, D. C., in the State Department who received a letter and we don't know what the letter said and on the basis of that, rendered an opinion. We do not know whether he consulted anybody -- whether he looked at anything at all. I object to the amendment of the specification on those grounds.

PROSECUTION: If the Commission please, we would like to additionally offer with the radiogram previously admitted into evidence, a copy of the letter sent out to the Civil Affairs Division, requesting information upon which that is an answer, dated 28 June, 1946, signed by Frank E. Meek, Lt. Col., FA, Executive Officer of the Legal Section of SCAP. (Handing paper to defense)

DEFENSE: Sir, this letter requests advice as to the exact status of Japanese Nationals, and the answer to that question -- whoever sent that cablegram, took it upon himself --

PRESIDENT: You mean the Italian Nationals?

DEFENSE: I mean Italian Nationals, I am sorry, and in answer to that question, somebody took it upon himself to render his opinion as to what the jurisdiction of this court was.

I think it's highly improper to accept that in evidence. I ask now that it be withdrawn and I object to the introduction of this letter.

PROSECUTION: So far as the radiogram is concerned, I think that the court has stated three times that it has been admitted in evidence and I don't think counsel should constantly make reference to it. An objection has been made to the letter. I feel that if the radiogram is incorporated into the record, that the letter upon which that is an answer should also be brought in.

PRESIDENT: On what grounds are you objecting?

DEFENSE: I object to it, sir, because of my objection to the cablegram; the objection is against the whole transaction.

PRESIDENT: The objection is overruled. The letter will be admitted into evidence.

PROSECUTION: If the Commission please, I still have before the Commission my motion to amend Specification 3, to include the words "Prisoner of War". I would like also to point out that after the insertion of the words "Prisoner of War, if the Commission so determines, the problem becomes academic. If the Prosecution fails to meet the proof of the Specification that Serafin was, in fact, a prisoner of war and treated as such, then the defendant, may, of course, be cleared of the specification. Therefore, the burden is still on the prosecution as to the specification and we propose to prove it.

I, therefore, renew my motion as to the amendment to include those words.

PRESIDENT: You want the words inserted --

PROSECUTION: After the word "Italian".

PRESIDENT: After the word "Italian"?

PROSECUTION: Yes, sir.

PRESIDENT: What are the words exactly?

PROSECUTION: "Prisoner of War".

PRESIDENT: Does the defense have any comment to make on this motion to amend the specification?

DEFENSE: I object to it on this ground, sir: The letter giving jurisdiction gives jurisdiction over ill-treatment of prisoners of war. Now, a prisoner of war is a combatant of a nation at which the Japanese -- with which the Japanese were at war, or prisoners we hold, a nation we hold a war against. An interpreter would be a non-combatant.

Now, this man died in January, 1945. Italy declared war on Japan in July, 1945. Up until that time, they were allied nations -- Japan and Italy. I say this court cannot assume jurisdiction over the offense as charged because even though you amend that specification and you prove that he was in a prisoner of war camp or that he was treated as a prisoner of war, that does not make him a prisoner of war, according to the definitions as laid down of rules of land and warfare, and that's what we are governed by. We are not governed by anybody's opinions as to who was a prisoner of war. There is a definition as to who was a prisoner of war and it's set forth in the Manual, and the charges in this case are drawn in violation of the laws and customs of war which are all set forth in the rules of land warfare. We should abide by that in determining whether or not this man is a prisoner of war.

Merely saying he was treated as a prisoner of war -- because that is the only proof he intends to offer -- on the basis of the cablegram signed by lord knows who in Washington, he seeks to give the court jurisdiction over this offense.

I object to the amendment on those grounds.

PROSECUTION: If the Commission please, the defense counsel seems to take great issue of the fact that this radiogram is signed by lord knows who. It might have been signed by a clerk or it might have been his opinion. I would also like to point out to the Commission that in addition to whoever sent this, this anonymous character from the State Department, the legal section of SCAP is of the opinion that Kenichi Kondo is guilty of a war offense against J. G. Serafin. If they weren't of that opinion, the specification would not have been sent down to this Commission for its consideration.

DEFENSE: If the court please, I am going to object to that. I ask that it be stricken from the record and ask the

court to disregard it. What the legal section of SCAP thinks has nothing to do with this case. They have affidavits; they receive charges and they forward them. What their opinion is doesn't make any difference. The legal section of SCAP can't give this court jurisdiction. This court's jurisdiction is derived from the directives it receives and not from any opinion.

PRESIDENT: We have a motion to modify Specification 3 by inserting the words "A prisoner of war" after the word "Italian", right?

PROSECUTION: Yes.

PRESIDENT: The motion is granted and the specification will be so modified.

Kenichi Kondo, at this time, the Commission will hear your plea to the charge and specifications read to you. You may plead either "guilty" or "not guilty".

ACCUSED: I plead not guilty.

DEFENSE: Let the record show of the Charge, and on each and every specification.

PRESIDENT: Are you pleading for all of the specifications or each one in turn?

DEFENSE: Plead to the charge and all of the specifications.

PRESIDENT: You plead not guilty to the Charge and all eleven specifications?

DEFENSE: Yes, sir.

PRESIDENT: As read to you?

DEFENSE: Yes, sir.

PRESIDENT: The prosecution will make its opening statement.

PROSECUTION: If the Commission please, the prosecution desires to make a short opening statement in this case.

The accused, Kenichi Kondo, was a medical orderly, a medical Superior Private in two camps in the Osaka Area; from 21 January 1945 until 8 May 1945, the accused was at the Headquarters Main Camp in the Osaka Area known as "Hoinsho Camp". From about 9 May 1945 till about the 15th of August 1945, he was at the Osayama Prisoner of War Camp, also in the Osaka Area, the bulk of this time in handling the prisoners of war at the Headquarters Main Camp where we allege the accused committed atrocities as set forth in specifications one to ten.

At Headquarters, Main Camp, there was, of course, a dispensary for American and Allied Prisoners of War. At this dispensary, there were various medical personnel --

Those are Specifications 1 to 3. Specifications 4 to 10 allege the usual run of beatings and mistreatment of Allied prisoners of war, except that in this case, which is slightly different from the others, most of these prisoners of war were sick patients which in the eyes of the prosecution makes the acts of the defendant more aggravated.

The prosecution has to offer approximately fifteen affidavits from American prisoners of war which all will show to the Commission a line of action by the accused with respect to sick prisoners of war, which show how he mistreated them.

In addition, very fortunately, the prosecution has two live witnesses: Chief Boatswain's Mate Phillip K. Saunders, who was the American commander of Headquarters Prisoner of War Camp for several years and who knows the defendant intimately and will testify at length about him.

In addition, we also have an interpreter, the English interpreter who was at the camp during the time that Tsuichi Kondo was there.

The prosecution feels that it can prove all the allegations and charges that Kondo was, in fact, ruthless in his treatment of sick American and Allied prisoners of war.

At this time, before the offer of any affidavits, the

American medical personnel set up to take care of the sick American prisoners of war and Allied prisoners of war. One of those medical men was a Lieutenant Hochman, who was the American doctor in charge of the dispensary. The only other Japanese who was there most of the time was the accused, Kenichi Kondo.

Now, Kenichi Kondo had two months' medical training. Dr. Hochman was a doctor -- graduated from a medical school. When American prisoners of war came to sick call every morning, they would be examined by Dr. Hochman, and he, in turn, would tell Kondo what was the matter. In some cases, he would suggest that the prisoner of war stay in because he was sick, or something was the matter with him. Kenichi Kondo would determine in his own mind if that man was sick and if he decided he wasn't, he would send him out to work.

In addition, the prosecution will prove that at sick call in the mornings, Kondo beat sick prisoners of war -- that he beat sick prisoners of war outside of the dispensary.

Prosecution proposes to prove that Kondo was partially responsible for the deaths of two American prisoners of war and Serafin, an Italian, by refusing them medication when Dr. Hochman told him that they needed medication -- by denying them rest and treatment when Dr. Hochman said they should have rest and treatment and by sending them out to work when they were sick.

prosecution would like to request the permission of this Commission at the close of the case to withdraw all original affidavits and substitute therefor certified true copies, by reason of the fact that it is anticipated that certain of these affidavits will be used in other cases.

DEFENSE: No objection, sir.

PRESIDENT: No objection.

PROSECUTION: At this time, the prosecution would also like to state for the record that to the best of our knowledge or information, none of the affiants or authors of the statements or affidavits which the prosecution proposes to offer are at the present time in the Philippines, Ryukyus, Japan or Korea.

At this time, the prosecution offers in evidence as Prosecution's Exhibit No. 1, the original affidavit of Clayton Woodrow Atwood, Pharmacist Mate, Second Class, US Navy.

DEFENSE: Before these documents are introduced into evidence, we wish to make a blank objection to the reception of all signed or unsigned statements into evidence, on the grounds that they are hearsay.

I ask that the Commission take that objection against each and every affidavit, or of a signed or unsigned statements.

PROSECUTION: I have made the offer.

PRESIDENT: You make the objection to that affidavit?

DEFENSE: I make the objection to all affidavits on the grounds that all affidavits are hearsay, the accused not having been advised that they were taken, the accused not having an opportunity to cross-examine or examine the affiants.

PRESIDENT: The objection is overruled.

DEFENSE: I have this specific objection, sir, to make: The third paragraph of the second answer, the seventh line, beginning with the word "because" and ending on the eighth line "degrees", on the grounds that it is a conclusion. A witness cannot testify as to his conclusions. The witness is not competent to testify as to conclusions. He can testify to what he saw and what he heard the accused say.

PRESIDENT: The objection is overruled. The commission will consider the affidavit for what it is worth.

DEFENSE: Certain portions of this affidavit are stricken. However, by agreement with the defense, the prosecution is going to read it. It's the first two lines or the three lines that are agreed to be stricken on the first page.

PROSECUTION: Does the Commission desire the prosecution to indicate to them what specification each affidavit will apply to?

PRESIDENT: Yes, it does.

PROSECUTION: Reading now from Prosecution's Exhibit 1, affidavit by Clayton Woodrow Atwood, referring to Specification No. 1, "I was confined...."

The affidavit of Clayton Woodrow Atwood, Pharmacist Mate Second Class was then received in evidence, was read and marked Prosecution's Exhibit No. 1.

PROSECUTION: Prosecution offers in evidence as Prosecution's Exhibit No. 2, the original affidavit of Dr. David Hochman.

DEFENSE: I have no specific objection to the introduction of this affidavit. However, I would like to call the court's attention when you receive your copies, it's prefaced as "Testimony of Dr. David Hochman". I call the court's attention to the fact that this is not testimony. This is a sworn statement or affidavit, and it should not be given the weight that testimony is entitled to receive.

I also call upon the court to disregard the descriptive phrase in the box, "In the matter of the atrocities committed at Hoinaho POW Camp, Japan, on or about March, 1944" on the grounds we know not by whom it is given and they are not the words of the affiant.

PROSECUTION: Has the court ruled on its admissibility?

PRESIDENT: It will be received.

The affidavit of Dr. David Hochman was then received in evidence, was read and marked Prosecution's Exhibit No. 2.

PROSECUTION: This affidavit is offered as to Specification 1.

Prosecution offers in evidence as Prosecution's Exhibit No. 3 the original affidavit of Staff Sergeant John Harold Zimmer.

DEFENSE: I have this specific objection to this affidavit. Do you want to give the law member a copy of it?

(Prosecution hands copy to law member)

DEFENSE: The last question, sir, on the first page, I object to the answer and to the question on the ground that it's leading. The question is: "State what you saw and

heard regarding the complete details surrounding the deaths of BM 2/c Smith and BM 1/C Moss in February 1944, and tell to what extent Moniehi Kondo, Japanese Medical Orderly, was a contributing factor."

The objection to the answer and the question is on the grounds it's leading and not proper.

PRESIDENT: You are objecting to what?

DEFENSE: To that question and to the entire answer on that ground first. I have further specific objections to portions of the answer.

PRESIDENT: The objection is overruled.

DEFENSE: On the fifth line, sir, of the answer to that question, on page 2, beginning with the word "as" to the end of the sentence "work", on the ground it is a conclusion. This witness is attempting to testify as to what someone else felt, something which he is not competent to do. If he were here as a witness, he couldn't testify to that and the court cannot place any probative value on anything he might say as to what went on in somebody's else mind.

I ask that that portion of the answer be stricken.

PRESIDENT: Where does it start?

DEFENSE: It starts "as --

PRESIDENT: The objection is overruled.

DEFENSE: On the eleventh line, sir, the same answer, commencing with the word "Smith" and ending with the word "bed" -- purely a conclusion on the part of the witness and not competent evidence upon which this court can base its findings. He is drawing a conclusion as to why somebody did something.

PRESIDENT: The objection is overruled. The court will consider it for what it is worth. Change that from "court" to "commission".

DEFENSE: Sir, I object to the entire next paragraph with the exception of the last sentence. I object to this portion:

"I do not know what the cause of Smith's death was, nor do I know just what time he died. An American lieutenant named Kauffman, who was from New York City, and who was a doctor in the Medical Corps, should be able to give more information about this incident, as he was present at sick call every day with Kondo."

We already have his affidavit.

"I was told that Kondo refused to let Smith stay away from work by Sergeant Hector J. Bussey of Shawnee, Oklahoma, who was a close friend of Smith and who had heard the story

from Smith directly. (It's hearsay twice removed) I did not actually witness any of the above incident, except that it was easy to see that Smith was ill."

I ask that it be stricken on the grounds that it is hearsay, except the last sentence where he finally tells us something what he did see or did not see. "I did not see Kondo beat Smith at any time, nor did I hear that he did."

It's the only portion of that testimony that he can testify to, and the rest of it is all hearsay and I ask that it be stricken.

PRESIDENT: The objection is overruled and the Commission will consider it for what it is worth.

PROSECUTION: "In the matter of the manner in which Koniahi Kondo, Japanese --

DEFENSE: I object to that, Mr. Read. That has happened once before.

PROSECUTION: Just a moment. The affidavit is admitted in evidence as is.

DEFENSE: That is not part of the affidavit. The man has sworn to the answers contained herein and the prosecution is attempting to read the face piece of an affidavit which is not sworn to by anybody -- attempting to read it into the record. We don't know who wrote it.

PROSECUTION: I withdraw it; I will not read it.

PRESIDENT: What?

PROSECUTION: I will withdraw my reading of that particular matter.

The testimony of S/Sgt John Harold Zimmer was then received in evidence, was read and marked Prosecution's Exhibit 3.

PROSECUTION: This affidavit is offered as to Specifications 1, 2 and 10.

Prosecution offers in evidence as Prosecution's Exhibit 4, the original affidavit of Staff Sergeant Tasker Homer Bliss.

DEFENSE: I object, sir, to the last question and answer on the first page.

The question: "Did you witness any improper medical care of prisoners while interned?"

On the ground that it's a leading question and the answer, of course, giving a response to a leading question should be stricken.

PRESIDENT: The objection is overruled.

DEFENSE: I object, sir, to specifically the second line from the bottom, "Boatswain Mate 1/C Robert W. Hess died of beriberi after Konda refused to treat him" on the grounds that it is a conclusion; the cause of a man's death is very technical to which only a medical man is entitled to testify.

This man is not qualified as an expert witness and we should not receive his opinion as to what the cause of death was.

On that ground, I ask that that portion of the answer be stricken.

PRESIDENT: Overruled.

DEFENSE: Top of the following page, second line, "even though they had beriberi, dysentery, or pneumonia, without treatment of any kind."

I ask that that portion be stricken on the same ground -- that it is a conclusion by a person not qualified as an expert witness to testify before this Commission as to what people were suffering from.

PRESIDENT: Overruled. The court -- the Commission will consider it for what it is worth.

The testimony of S/Sgt. Tasker Homer Bliss was then received in evidence, was read and marked Prosecution's Exhibit 4.

PRESIDENT: What specification is that?

PROSECUTION: Sir, the affidavit in question is offered as to Specifications 1, 2 and 10.

Prosecution offers in evidence as Prosecution's Exhibit No. 5, original affidavit of Harold Eugene Thomas, BM, 2/C.

DEFENSE: Sir, I object. The specific objection is to the first answer that appears on the second page, on the ground that it's a conclusion by a person not qualified as an expert witness to testify before this Commission as to what may have caused the death of any person at any given time or any given place.

PRESIDENT: The objection is overruled.

DEFENSE: The second line of the next answer, "taken ill," down through the word "sail", on the grounds that it's a conclusion, as to why this man couldn't attend sick call.

PRESIDENT: Objection overruled.

DEFENSE: The second line or third line from the bottom of the same answer, "understood that it was a regular happening." on the ground that it was hearsay. This man didn't see it.

PRESIDENT: The objection is overruled.

DEFENSE: The answer, the last sentence, the fourth answer on that page, commencing "However" and ending with the word "conclusion" -- on the ground that it is a conclusion; the witness is not competent to so testify. Somebody told him something and he basis his conclusion on what somebody told him. It's hearsay.

In the first instance, in the last sentence, it's purely the conclusion on the part of the affiant and he does not state facts sufficient to warrant the drawing of the conclusion.

PRESIDENT: The objection is overruled. The Commission will consider it for what it is worth.

PROSECUTION: Prosecution's Exhibit No. 5, which I shall now read is offered as to Specification 2.

The testimony of Harold Eugene Thomas, BM, 2/C, was then received in evidence, was read and marked Prosecution's Exhibit 5.

PROSECUTION: Prosecution offers in evidence as Prosecution's Exhibit No. 6, original affidavit of Alvin Eugene Delong.

DEFENSE: Object to the second question from the bottom of the page: "Of your own knowledge, just how did Kondo contribute to the causes of the death of Hess?"

The objection to the answer is the same; it is in response to a leading question, and ask that it be stricken from the affidavit and not received into evidence.

PRESIDENT: Objection overruled.

DEFENSE: The third question on the second page, is it:

Q. Do you consider Kondo responsible for the death of Hess?

On the ground that it is a conclusion, calling for a conclusion of the witness not only as to fact but as to a legal conclusion. The responsibility is a question of law and that's what this Commission sits at this time to determine, whether or not this accused was responsible for the deaths of these men or not, the acts he is alleged to have committed contributed to their death and this Commission should not receive before it the conclusions or the opinions

of unqualified witnesses as to matters to which an expert witness should take the stand and testify.

PRESIDENT: Objection to the question is overruled and the Commission will consider the question and answer for what it is worth.

DEFENSE: Allright, sir, I object to the last answer on the ground that we are not charged with the death of Knutson -- whoever Knutson is.

PROSECUTION: It's crossed out.

DEFENSE: It is not crossed out on my copy.

I will withdraw it, sir; it wasn't marked down on my copy. Evidently, it is marked out on the other copies.

PROSECUTION: Prosecution's Exhibit No. 6 is offered as to Specification No. 2.

The testimony of Alvin Eugene Delong was then received in evidence, was read and marked Prosecution's Exhibit 6.

PROSECUTION: Prosecution offers in evidence as Prosecution's Exhibit No. 7, the original affidavit of Dr. David Hoehmann.

DEFENSE: No objection to any portion of that affidavit, sir.

PROSECUTION: The affidavit is being offered as to Specification No. 3.

The testimony of Dr. David Hoehmann was then received in evidence, was read and marked Prosecution's Exhibit No. 7.

PROSECUTION: At this time, Mr. Black will continue the reading of the affidavits. I would like to state to the court no documentary evidence will be offered as to Specifications 4, 5, 6, 7 and 8, that that will all be by oral testimony of live witnesses. In addition, there will be oral testimony by live witnesses as to Specifications 1, 2 and 3.

PRESIDENT: The court will now take a ten minute recess.

The Commission then took a recess until 0950 hours, at which hour the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PROSECUTION: With the permission of the Commission, the prosecution will continue.

PROSECUTION: The prosecution will offer in evidence what purports to be an official document issued out of the Commander Third Fleet Liberation Form Able, made by one Knudsen Aage Harreby. His last name is Knudsen.

DEFENSE: If the Commission please, I am going to object to the introduction of this statement in evidence on the grounds that it is not signed. We don't know by whom it was written. I realise it was written on a Liberation Form Able, but there is no way of knowing who wrote it.

Under the rules of admission of evidence before this Commission, affidavits, depositions or other signed statements, any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge are admissible.

Now, this is an unsigned statement and nowhere in the rules under which this commission operates does it appear that an unsigned statement can be received in evidence.

PROSECUTION: If the Commission please, this appears to be an official document, issued out of the Commander, Third Fleet, and apparently in the regular course of events.

DEFENSE: Sir, this is not a document issued by the Commander, Third Fleet Liberation Form Able; this is a statement written by someone -- person unknown -- on a form supplied by the Commander, Third Fleet and there are some initials on it, but not the initials of the person supposed to make the statement. We don't know who wrote it. Certainly, this Commission can't allow itself to speculate on who wrote it and assume that it was written by whom it was purported to be written by.

PROSECUTION: If it please the Commission, reading paragraph (a) on page 5 of Regulations Governing the Trials of Accused War Criminals:

"Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document" may be admitted into evidence.

DEFENSE: Sir, this is not a document that is issued by the Third Fleet. This is merely a statement by someone written on a form furnished by Third Fleet. It's not an official document. It certainly doesn't come under the subdivision (d), "Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge" as a diary or a letter or other document has to be identified as to who wrote it. There is no identification here.

If this can come in evidence before this Commission, I submit that I can walk along the street and pick up anything that may have been written on a form, Eighth Army,

and submit it as evidence before this Commission on this or any other charge brought before the Commission.

PROSECUTION: May I add before this Commission -- this may be anticipatory -- but there will be testimony by live witnesses regarding this matter contained in this instrument.

DEFENSE: That doesn't affect the instrument at all one way or another. If he has live witnesses, let the live witnesses testify. That will be the best evidence of what he saw happen, but here, you have a statement by a person unknown and it should not be received in evidence.

PRESIDENT: The objection is overruled and the Commission will consider this document for what it is worth.

PROSECUTION: That is Prosecution's Exhibit No. 8, offered in support of Specification 9.

The statement of Knudsen Aage Havreby was then received in evidence, was read and marked Prosecution's Exhibit 8.

DEFENSE: I ask the prosecution at this time as to whether or not they offer this statement as the unsigned statement of Knudsen Aage Havreby?

PROSECUTION: This statement is offered as a report prepared by someone under the Commander Third Fleet from the statement made to them or to the person --

PRESIDENT: This is the same one that we have just ruled on?

DEFENSE: I am just asking whether they offer this as a statement of Knudsen.

PRESIDENT: It has been admitted.

DEFENSE: I understand that it is in evidence, sir. I am not objecting to it, sir, but I am asking them to state for the record --

PRESIDENT: Have you the original copy of this?

(Prosecution hands paper to the Commission)

PRESIDENT: The Commission would like to inquire of the prosecution as to what connection there is between "C-o-n-d-o-r" and the accused, "K-o-n-d-o".

PROSECUTION: This is apparently a misspelling, or at best, an attempt to write the name phonetically. The accused's name is Kondo.

PRESIDENT: Is prosecution going to submit evidence to prepare for this misnomer?

PROSECUTION: The prosecution will not submit any evidence to explain the difference in the spelling, but the prosecution will be ready to show that the only man this refers to is the accused.

PRESIDENT: Proceed.

PROSECUTION: The prosecution offers in evidence a certified copy of an affidavit by David Hoehmann; the original of this affidavit was in the possession of the prosecution but has been misplaced or has become lost. I believe the defense is aware of the situation.

DEFENSE: This is certified as being the true copy by Alfred B. Edgar, Jr., Second Lieutenant, Investigating Officer, War Crimes Investigating Detachment, and we have no objection to the introduction of this certified copy.

PRESIDENT: To what specification?

PROSECUTION: Specification 10, Prosecution's Exhibit 9.

DEFENSE: I have this one objection to this affidavit - a portion of it. On the second page, the second answer from the bottom, the second paragraph:

"The Japanese will deny these facts and produce books and records to show what patients were treated and medicine was given, but I saw them make many entries that were false statements and are far from showing a true record."

I object to it on the grounds that it is hearsay. This man is attempting to testify in rebuttal as to what we may or may not offer in defense of this accused. It's highly prejudicial to the accused; this man has no knowledge of what we might attempt to offer in defense and here he attempts in anticipation thereof to tell us that any records we might offer are falsified. It is hearsay. He has no knowledge of the Japanese language and he hasn't indicated that he has knowledge of such and he attempts to tell us in this affidavit that they will make false entries in Japanese.

I ask that the court strike the affidavit and disregard it on these grounds.

PROSECUTION: Sir, the affiant is an American medical officer, was at this camp and was in an excellent position to know and to express an opinion.

DEFENSE: Sir, he is expressing an opinion as to what may have been done with certain books. We don't know what books he is talking about and the Commission doesn't. Would the Commission like to assume that any document we might bring in here is falsified because this man says that they made false entries? He doesn't speak of this accused. We don't know of whom he is talking. He doesn't have the right

to testify to that extent. If we offered something, he could come forth in rebuttal and say, "I saw entries being made and those aren't the entries. That's a different proposition." But he doesn't know what we might bring before this court and yet, he attempts to tell us and tell this Commission that they will deny these facts and they will produce books and records to show that all these entries are false.

PRESIDENT: The objection is based on the grounds --

DEFENSE: On the grounds, sir, that it's a conclusion in the first place -- no showing by the witness that he understands Japanese or that he would know what records were made.

PRESIDENT: Strike out that paragraph.

DEFENSE: Of that answer starting with "The Japanese will deny these facts" and ending with the word "record".

PRESIDENT: The objection is sustained.

PROSECUTION: If it please the Commission, there is evidence in that very statement which says, "but I saw them make many entries that were false statements."

PRESIDENT: The objection is sustained.

PROSECUTION: The prosecution will offer in evidence affidavit by Frank R. Allen, in support of Specification 10, Prosecution's Exhibit 10.

DEFENSE: Sir, I object to the second answer from the bottom.

PROSECUTION: It's stricken.

The defense has asked the prosecution to read the portion stricken and the prosecution will read that into the record.

PRESIDENT: No objections.

The statement of Frank Niles Allen, Private First Class, US Marine Corps, was then received in evidence, was read and marked Prosecution's Exhibit 10.

PROSECUTION: With the permission of the Commission, Mr. Hand of the prosecution had the original affidavit, which was lost or misplaced and a mimeographed copy which

is certified is offered in evidence in the place of the original.

DEFENSE: If the Commission please, I have no objection.

PRESIDENT: To what specification does this refer to?

PROSECUTION: That's Specification 10, sir.

Prosecution offers in evidence as its Exhibit No. 12, affidavit of John Harold Zimmer.

PRESIDENT: To what specification is that?

PROSECUTION: Specification 10, sir.

DEFENSE: I object to the answer in response to the last question on the first page on the grounds that the question is leading.

The question is:

"Q. State what you know of your own knowledge concerning the beating of George Langer, while he was in the hospital suffering from diarrhea, by Kenichi Kondo, Japanese Medical Orderly, at Camp No. 1, Omiya, Japan."

It is a leading question assuming facts and an answer in response to a leading question is not competent and should not be received into evidence.

PROSECUTION: Prosecution has no comment to make, sir, except that the Commission may admit it and evaluate it for whatever it may deem fit.

PRESIDENT: The objection is overruled, and the Commission will consider it for what it is worth.

DEFENSE: Sir, I object to the answer to the second question on that page -- first question on page 2: "Who was responsible for this incident?" as calling for a legal conclusion on the part of the affiant, usurping the province of this Commission which sits now to determine who was responsible for these incidents.

This man is qualified to tell you -- to testify what the accused said and as to what he saw and nothing further than that.

I submit to you that this rule as to the admission of hearsay evidence is merely the admission of affidavits. They in themselves are hearsay. And on top of that, there is hearsay in the affidavit -- conclusions and everything else to which the witness is not competent to testify, and it denies this accused every right. The mere fact that he has counsel, he has interpreters doesn't mean a thing.

The witness can testify as to what he thinks, what the other thought, what somebody five miles away thought -- it is all incompetent evidence before the Commission and the Commission weighs it.

I submit there is no weight attached to it, and it should not be received because it's prejudicial; merely the presence of it in the record is prejudicial.

PRESIDENT: The objection is not sustained.

The affidavit of John Harold Zimmer was then received in evidence, was read and marked Prosecution's Exhibit 12.

PROSECUTION: Prosecution offers in evidence as its Exhibit No. 13 affidavit of John Harold Zimmer, in support of Specification 10.

DEFENSE: I am going to object to the entire affidavit on the ground the whole thing is hearsay. He goes ahead and describes an incident alleged to have occurred sometime in January, 1945; he describes everything that happened and then admits that the victims themselves told "me about the incidents mentioned above. I saw them sitting cross-legged in the guardhouse, and was told by them later, that they had been in this position for about fourteen or fifteen hours."

Now the man has no personal knowledge of what went on. He claims to have heard this from the victims, but I object to it on the grounds that it was hearsay.

PROSECUTION: Hearsay is admissible before this Commission.

PRESIDENT: The objection is overruled.

The affidavit of John Harold Zimmer was then received in evidence, was read and marked Prosecution's Exhibit No. 13.

PROSECUTION: Prosecution offers in evidence as its Exhibit 14, affidavit of Lonnie C. Merritt, W/O, in support of Specification 10.

DEFENSE: I have no objection to any portion of this affidavit; I do want certain portions already stricken to be marked out-read in evidence.

The affidavit of Lonnie C. Merritt, W/O, was then received in evidence, was read and marked Prosecution's Exhibit No. 14.

PROSECUTION: Prosecution offers in evidence as its Exhibit 15, affidavit of La Moyne C. Bleich, Major, in support of Specification 11.

DEFENSE: No objection to any portion of this affidavit, sir.

The affidavit of La Moyne C. Bleich, Major, was then received in evidence, was read and marked Prosecution's Exhibit 15.

PROSECUTION: And this, if it please the Commission, concludes the reading of affidavits and statements for the prosecution in support of the specifications.

Prosecution calls as its first witness, Chief Boatswain Mate Phillip E. Sanders.

CHIEF BOATSWAIN MATE PHILLIP E. SANDERS, U. S. Navy, attached to the IPS Section, Tokyo, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q State your name, grade, organization and station.
A Phillip Earl Sanders, Chief Boatswain Mate, U. S. Navy, now attached to the IPS Section, Tokyo.

Q Were you ever stationed in the Osaka Main Camp?
A I was.

Q During what period of time?
A From October 20, 1942 until June 1st, 1945.

Q What was your status at that camp?
A Prisoner and Camp Commander.

Q Were you a prisoner of war?
A I was.

Q For what period of time were you Camp Commander at the Headquarters Main Camp?

DEFENSE: Excuse me, may I have the official court interpreter interpret for the accused?

PROSECUTION: No objection by the prosecution.

Q For how long a period of time were you the Camp Commander at the Headquarters, Prisoner of War Camp in Osaka?
A From the time it opened, October 20, until we were bombed out, June 1st, 1945.

Q Do you know the accused, Kaniehi Kondo?
A I do.

Q Is he present in the court?
A Yes, here (indicating).

PROSECUTION: May the record show that he pointed to the accused.

Q For how long a period of time were you familiar with the activities of Kanichi Konde at the Headquarters Camp?
A From the early part of 1943 until June, 1945.

Q What were Kanichi Konde's duties at that camp?
A He was a medical orderly in charge of the sick bay. His duties were to examine the sick bay patients in the morning, to keep the sick book, admit patients to the dispensary -- a little hospital that we had -- send seriously ill patients to Ikebiejo Hospital.

Q What were your specific duties as Camp Commander at the Headquarters Camp?
A I was responsible for the morale of the camp, the upkeep, the sanitation, charge of all outside working parties and general overall charge of the camp.

Q Will you explain to the Commission the medical set-up at the Headquarters Camp insofar as American medical personnel were concerned?
A We had an Army captain by the name of Paul Roland who was a surgeon, and his duties were to take care of any outside accidents and any emergency cases in the area. We had an Army first lieutenant by the name of David Hochmann who was in charge of the medications, bed patients and dispensary, to see that the proper medicines were issued out. We had a Chief Pharmacist Mate by the name of Merritt who was his assistant and a British naval medical steward by the name of Hodson who was assistant to Dr. Hochmann.

Q Was there also a medical steward named "Ginger"?
A Ginger Hodson.

DEFENSE: What's that please?

A His name was Ginger Hodson.

DEFENSE: "Ginger" and "Hodson" are the same person?

A The same person.

Q "Ginger" was his nick-name?
A That's correct.

Q What American doctor was in charge of the dispensary for sick POW's?
A Dr. David Hochmann, First Lieutenant, US Army.

Q Now, will you explain to this Commission the Japanese medical set-up at the Osaka Main Camp?
A There was a Japanese Army officer by the name of Lt. Nosu who was the senior medical officer and he had the over-all duty of all the camps in the area. He was assisted

by Lt. Higashino, Lt. Haruo, an officer cadet, Komata and the man he had in charge of the dispensary for the treatment of the prisoners was Kanda.

Q How often did Dr. Koma attend sick call for POW's?
A In the beginning, he used to come over once every three weeks for a period of about six months, and he stopped coming over except in the case of emergency.

Q How often did the other Japanese doctors come to sick call for American POW's?
A About once every three weeks or more.

Q Who had the actual operation of the dispensary, so far as Japanese medical personnel was concerned?
A Kanda, Superior Private.

Q Was he in complete authority of that dispensary, so far as you know?

DEFENSE: I object to this question and answer on the ground that it calls for a conclusion on the part of the witness. The witness is not competent to testify to conclusions.

PROSECUTION: He is not testifying to a conclusion. May I reframe that question. The defense cannot object because he has not testified. I asked him if he knew who was in complete authority of the dispensary. We don't know what his answer is so we don't see how you have any objections.

DEFENSE: If the answer to this question is "yes" or "no", I have no objection to it, but I can see what is coming next and that's why I am objecting to it now.

It is calling for a conclusion on the part of this witness as to who is in authority of the dispensary -- something he is not competent to testify to.

PROSECUTION: There is no question that he is competent to testify. Here is the Camp Commander of the camp. Who is better to testify than he?

PRESIDENT: Objection is not sustained.

Q Will you answer that question, please?
A I do.

Q Who was that?
A Kanda.

Q What time was sick call each morning?
A Sick call was supposed to be between 6:30 and 7:00 o'clock in the morning.

Q Will you explain to this Commission briefly how sick call operated at the Headquarters Camp.

A All the prisoners had to line up outside of the dispensary and there was a little stoop inside of the dispensary. On this stoop would stand Dr. Hochmann, Chief Pharmacist Hayashi and Singer and Kondo. Sometimes, there would be another soldier there who would be awaiting instructions from other camps to determine how sick call would be held. The patient would come up, state his illness; Dr. Hochmann would examine him and give his diagnosis of the case and Kondo would examine him and he would determine whether he was ill enough to stay in camp or go to work. And if there is any medication to be given, Kondo would authorize it to be given to him.

Q Have you attended sick call at the Headquarters Camp very often?

A A number of times.

Q Approximately how many times would you say you had attended sick call at this camp?

A Oh, between seventy-five and one-hundred different times.

Q Would that be during the entire time that you were stationed at that camp as Camp Commander?

A It was.

Q Have you ever seen Kondo overrule any of Dr. Hochmann's decisions?

A Yes, I have.

Q Under what general circumstances would that be?

A Well, if there was no visible signs of illness on the man, why, Kondo would overrule them diagnoses and send him to work.

Q Of your own knowledge, did everydecision that Dr. Hochmann would make have to be approved by Kondo?

A It did.

Q Do you know how much medical instruction Kondo has?

A Well, from general information of the camp, we understood he had about two months' experience in a Japanese military hospital.

Q Have you ever seen him overrule any of Dr. Hochmann's diagnoses of sick POW's?

A Yes, I have.

Q Will you tell this Commission instances that you personally know of concerning lack of Kondo's knowledge of medical information?

DEFENSE: I object to this question on the grounds it's leading.

PROSECUTION: Nothing leading about it. I haven't told him what to say.

DEFENSE: You told him what you expected. You told him

about what to testify, in respect to what to testify to.

PROSECUTION: I haven't told him what the specific acts are. If he knows or if he doesn't know, he can so state.

DEFENSE: This is the only time that we can protect the rights of the accused and I call upon the Commission to direct this examination along legal lines -- the way it should be directed. Let the witness testify to what he saw, what he heard the accused say.

I think it's highly prejudicial to allow the witness to be led, to drag this stuff out. If he knows a certain instance, he should say what those instances are.

PRESIDENT: Will you repeat the question.

(The reporter then repeated the question)

PRESIDENT: The objection is overruled.

A Well, one case in particular, we had a British Master of an oil tanker who was a prisoner in our camp, who had been very ill for a long time and our doctor diagnosed his case as ulcers of the stomach. The man was unable to eat and week by week, he was gradually getting worse. He was losing weight, losing his strength. So, when he went to sick call, our doctor diagnosed his case as ulcers of the stomach because there was no visible signs of any illness. Kondo overruled his objections and sent the man out to work. Later on, as time went by, he became worse where he was unable to move about the camp. So, he was sent to Ichiaka and several months later, he died with ulcers of the stomach. A man would come up -- he would have a fever from malaria, or illness -- a slight cold, and because of the fact that Kondo would put his hand on the forehead like that (indicating) and if his forehead wasn't hot enough to determine he had a fever, he would say, "Out to work". A number of times, this would happen: If there was no visible means of illness, say a man had a bad case of diarrhea and was suffering on the borderline of diarrhea and dysentery, to find out whether or not he had one or the other, Kondo would request --

DEFENSE: If the court please, if the witness is assuming facts, I object to his testimony. If he is talking of specific instances, I have no objections. He was asked to relate specific instances.

PROSECUTION: He is so relating. I don't see any reason for counsel jumping up in the middle of his testimony. He is telling things of his own knowledge.

DEFENSE: Will you read back a portion of the answer, please?

(The reporter then read back the answer)

PROSECUTION: Counsel will have an opportunity to cross-examine this witness.

DEFENSE: That's no answer to my objection, Mr. Rand. This is a court of law.

PRESIDENT: The witness will proceed and will confine his answers to what he knows of his own knowledge.

A This story that I tell you I had specific knowledge, because I was at the camp. I was the Camp Commander and I knew what was going on in this camp. When a man came up and complained about having diarrhea or dysentery, if he had no blood in his stool, they couldn't diagnose the case as diarrhea or dysentery, the man went to work.

Q Could a prisoner of war who came to the dispensary claiming he was sick, could that prisoner of war stay in camp if he had no visible sign of illness?

DEFENSE: I object to the question on the grounds it's

leading.

The proper question is: What happened when a man came to sick call. That's all. What did he see.

PROSECUTION: I again remind the Commission that this is the Camp Commander who was the one who is in a position to know what went on and can answer from his own knowledge as to the facts. He has testified he has attended sick call about seventy-five times. He should be in a position to know.

DEFENSE: I still insist. I don't care if he was a Camp Commander or what he was. He is a witness in a court of law and he testifies as to what he saw and as to what the accused said, and he can testify as to nothing else. The mere fact that he is a prisoner of war Camp Commander doesn't change the status.

PRESIDENT: Repeat the question.

(The reporter then repeated the question)

A A number of times he has allowed them to remain.

PRESIDENT: I think the prosecution should reword that question to bring a specific case within his knowledge.

Q Have you ever seen Kenpo at the POW dispensary refuse to allow a prisoner of war who claimed he was sick stay in camp because he had no visible signs of illness?

DEFENSE: I object to the question, on the same grounds; it's still a leading question.

PRESIDENT: The objection is overruled.

Q Will you answer that question?
A Sometimes, when the sick list was very low, when there wouldn't be a number of men on the sick list, he would listen to Dr. Hochmuth's diagnosis and permit a man to stay in camp, but those occasions were very rarely.

Q At sick call each morning, what were the usual complaints?
A Diarrhea, heavy chest colds, malnutrition, borderlines of pellagra and beriberi and general weakness.

Q Who decided each case himself?
A Kondo was the final decision.

Q Have you ever seen Kenichi Kondo strike any American prisoner of war at sick call?
A I have.

Q On what occasions?
A We had a man in our camp by the name of Dougherty. He was the First --

Q Just tell me general specific instances.
A I saw him strike a First Engineer by the name of Dougherty.

PROSECUTION: This is off the record --

DEFENSE: Nothing is off the record, as far as I am concerned, with respect to this man's testimony. Now asked the man a question and he attempted to answer it.

PROSECUTION: Just a minute, Mr. Weil. I am trying to make this specification coherent.

PRESIDENT: Let the witness answer the question in his own words.

A I saw him strike a number of prisoners in our camp at sick call. He struck a First Engineer on an American oil tanker because he was late coming to sick call. Some men he would consider they were faking; he would strike them. He beat a young British prisoner of war in our camp because he stayed in camp with permission of the duty officer, because he didn't come to sick call. He struck a Chief Officer in an American oil tanker who was injured because he wouldn't stand up at attention to him. He struck him and beat him about the face. I have seen a number of these personally; saw them with my own eyes and I know them to be true, outside of the numerous other complaints I received from the medical officer who was in charge of the sick call.

Q Did you ever have any conversations with Kenichi Kondo about his treatment of prisoners of war?
A I did.

Q What were these conversations?
A About him striking the prisoners of war at sick call in the morning, his harsh treatment and failing to comply with the wishes and failing to assist our doctors and medical staff we had in camp.

Q What did you say to him specifically?
A I told him he was violating all the treaties of International Law; his treatment of the prisoners was brutal and unealled for and he did not have sufficient knowledge to be a medical orderly and he should pay more attention to our medical staff we had who were competent to handle the sick people in our camp.

Q And what was his answer to that?
A One time, we had an official conference with an interpreter -- the medical officer of the camp and myself in my office. We finished over the general question and he promised me that in the future, he would work with us; he would not beat any more prisoners.

DEFENSE: Just a moment, please. I object to this answer. It's not in response to the question. He testified that he made a certain statement to Kondo and you asked for Kondo's answer. This is something entirely different.

PROSECUTION: This is not something entirely different. This is a meeting at which Kondo was present and Kondo was speaking to him.

DEFENSE: I want to know if that at that meeting, he told Kondo what he testified to a few moments ago, about violating treaties. I have no objection.

PRESIDENT: Confine yourself to the question, continue.

Q Who was present at this meeting that you speak of?
A Mr. Iisha, Camp Interpreter, Dr. Hochuen, myself and Kondo.

Q And where did that meeting take place?
A In my office.

Q Approximately when?
A This was about in August, 1944.

Q What initiated that meeting?
A After a particularly vicious incident of a beating of a young British prisoner of war, an accumulation of other events that happened.

Q And what was discussed at that meeting?
A His treatment of the prisoners of war at sick call, his brutality, forcing the men to go to work and our

doctor was not in a position at that time -- his word wasn't accepted as to whether a man was sick or not and it reached such a stage, we had to do something about it. We had to call a conference to see if we could iron out the difficulties and I got the staff together and we had this conference to see if we couldn't do something about it, before we carried the matter to the colonel, who was a very difficult person to see.

Q At that time, did Dr. Hochman at the meeting make any statement to you about Kondo, or to Kondo directly?

A He made the statements in my presence that he felt as though he should not ever come to sick call any more because his decisions were overruled.

DEFENSE: I object to his statements as hearsay -- as to what somebody else said.

PROSECUTION: I am going to request this Commission to permit all hearsay evidence that this witness may offer on the following grounds: That as this Commission permits hearsay evidence in affidavits, sometimes more than once removed, it should also permit hearsay evidence where it has to be presented by this witness. The prosecution realizes the danger of hearsay evidence and will attempt as much as possible to prevent such testimony.

However, the Commission must realize that as Camp Commander, Chief Boatsman Mate Sanders could not be physically present all over camp and perhaps himself witness all of the incidents that took place. However, he was in a position as Camp Commander to get official knowledge of everything that took place within that camp and he was a person who was in the best position to know what was going on.

Therefore, if in fact a doctor complained to him about Kondo's treatment, I think he should be permitted to testify because he was the Camp Commander. He would be the one to whom all complaints of any nature whatsoever would be brought and I believe the Commission should make the ruling at this time because there will be additional information which will be solicited from this witness which will be based on hearsay -- incidents told to him by victims which we will present to this court.

PRESIDENT: The objection is not sustained.

DEFENSE: Is that the ruling of this Commission, that this man can testify as to anything beyond his personal knowledge?

PRESIDENT: The objection is not sustained. The Commission will not explain its decision.

DEFENSE: The prosecution has asked for a ruling.

PRESIDENT: Confine your questions to bring in evidence so far as possible to exactly what he knows of his own knowledge.

PROSECUTION: Yes, sir, but I will have to rely on hearsay information where he did not see a beating but it was told to him by a victim.

The prosecution contends that that should be admissible because as Camp Commander, he would be in a position to know all official complaints or anything that took place within the camp.

But I will try to avoid as far as possible, any hearsay information.

PRESIDENT: The prosecution will proceed.

A He did.

Q What were those statements?
A Those statements were to the effect that he felt as though he had become useless in the camp; that he did not see why he should attend sick call any more because his decisions and the diagnoses were completely overruled and he saw no reason why he should go down there and be humiliated and pushed around because he had no business being there any more, because his decisions were overruled, and he accused Kondo of considering him incompetent.

Q After you and Dr. Hochman stated your complaints, what did Kondo say at that meeting?
A He said in the future that he would agree to work with us and pay more attention to the doctor and that he would not strike any more prisoners of war.

Q Had you stated to Kondo anything about striking of sick prisoners of war?
A I did. I told him that he was wrong in doing that.

Q Did Kondo state anything to you with respect to that?
A He said he knew he had done wrong and he said in the future, he wouldn't strike any more prisoners.

Q Did he state he would abide by Dr. Hochman's decisions?
A He did.

Q Did he state anything else that you remember?
A No.

Q Did he in fact abide by the statements he made at that meeting, subsequently?
A No, he did not.

Q How?
A About two weeks later, why, he caught a man sleeping outside of the room and he kicked him about the shins and beat him about the head and the body because he was sleeping outside without a blanket on his stomach.

Q Did he continue to overrule, of your own knowledge, Dr. Hochman's diagnoses and recommendations with respect to sick prisoners of war?

A Within a month or so after that, he was back doing the same thing that he had done before the conference we had.

Q Did he still continue to hit prisoners of war?
A Yes.

Q Did he still continue to order sick prisoners of war to go to work?
A He did.

Q Did you, as Camp Commander, ever make any official report on Kendo's treatment of sick prisoners of war to higher authorities?
A I did on a number of occasions.

Q When was the first occasion?
A Well, during the course of a day's work, I made a number of verbal complaints to Lt. Matsumura who was Camp Commander.

Q When?
A Oh, at least about once a month during the period from 1944.

Q And what did you say to him specifically?
A I told him that Kendo was causing a lot of trouble in camp by beating the prisoners and due to the fact that our camp was in good health, we could afford to leave them stay in and rest up while they were ill, and all over the camp he was causing a lot of trouble by his attitude at sick call.

Q Did you ever make any official writings out to any of the camp authorities regarding Kendo's treatment of sick POW's?
A I did.

Q Did you make more than one report?
A I did. I made a number of written reports.

Q When was the first written report that you made?
A I don't exactly remember the first one, but I know I made an official letter of protest to Lt. Nosu who was the senior medical officer about his treatment of British prisoner of war by the name of Hoarsley.

Q Did anything ever come of that complaint?
A Nothing.

Q Did you ever make any other official complaint?
A I made a written protest about his treatment of Dougherty, an American civilian prisoner of war.

Q To whom did you make that?
A To Lt. Nosu.

Q When?
A It was shortly after hereceived a severe beating at sick call.

Q Did anything ever come of that?
A Nothing.

Q Did you ever make any written reports to Lt. Matsumura, the Camp Commander?
A I sent several written reports to him, but mostly, my reports and complaints were verbal.

Q And what specifically were those complaints?
A About his treatment of the prisoners of war at sick call.

Q Which was what?
A Forcing some of the sick men to go out to work when they should have remained in camp on rest days.

Q Did anything ever come of your complaints to Lt. Matsumura, the Camp Commander?
A Nothing.

Q Did you ever have conversations with Kenichi Kondo other than at that meeting you have mentioned, in which you spoke to him about his treatment of sick POW's?
A I did.

Q About how many times would you say?
A Oh, at least a dozen times.

Q What was his answer to you when you made your complaints?
A Sometimes, he wouldn't even answer me. He would [illegible] off and leave me standing there. At other times, he would listen to my complaints and he would mutter something in his own language and leave me there. I never would get any satisfaction out of him.

Q After your complaints on these occasions, when you spoke to Kondo, did he ever reform in his treatment of POW's?
A Well, he did for a bout two weeks after the incident we had on July 4, when he beat a number of men in one room for calling him "beka".

Q Now, referring to Specification 1 in which Kenichi Kondo is charged with contributing to the death of Petty Officer First Class David W. Smith, did you know such a prisoner of war?
A I did.

Q And he been sick?
A He had been sick.

Q Of what?
A He had been sick of malnutrition for a long time and he contracted a bad cold which developed into pneumonia.

Q About when was this?
A This was in the spring of 19 -- I mean in the winter of about 1943 -- it was '44.

Q Had Smith been going to sick call?
A He had been to sick call a number of times.

Q For approximately how long before he died?
A At least a month before he died.

Q Had he been given medication, do you know?
A At that time, we had very little medications in the camp to be given. What they had they wouldn't give it to the prisoners. We were treating them with our own medicines.

Q What was Smith being treated for?
A For influenza and a heavy cold.

Q Do you know whether Smith was ever denied any medical attention by Kondo?
A Except on Dr. Hochmann's report to me.

Q What was his report to you?
A He said that Kondo had sent him out to work when he was ill.

Q What else did he say?
A He said that he was given no medications.

Q And when was this?
A This is shortly before he was admitted to the camp hospital.

Q Did you ever have any conversations with Kaniehi Kondo about David W. Smith?
A I did not.

Q Do you know anything else about the death of David W. Smith, other than what you have told us?
A Nothing.

Q With respect to Specification No. 2, in which the prosecution alleges that Kondo contributed to the death of Petty Officer First Class Robert W. Hess, did you know a prisoner of war named Hess?
A I did.

Q Had Hess been sick while you were at the camp?
A Yes, he was a very sick man, at the time he came to our camp.

Q Are you very familiar with the circumstances concerning Hess' sickness?
A I am.

Q Will you tell the Commission just what was the matter with Hess?
A Hess came to our camp suffering from malnutrition and dysentery. While he was in our camp, he steadily became worse and he developed yellow jaundice, and he had [illegible] all over his body and he was a very sick man. So, he was sent to the Itchioka Hospital where

he stayed for several months. He was returned to our camp in very poor condition. He was a very weak man, but he was sent out to work and he worked for a number of months, but his condition steadily became worse and he had been going to sick call but all he would receive would be a few powders of crushed charcoal and B-1 powders. The man was very ill from malnutrition and dysentery. It became so bad that he was finally admitted to the sick bay and he was very yellow from jaundice and about on a Friday, he started to turn blue, and all day Saturday, he steadily became worse. So, Sunday morning, we notified Kondo that the man was about to die. So, he give him orders to prepare a litter party to carry him to the hospital. We prepared a litter party and put a man on the litter. Outside the camp, the man died -- about 100 yards outside of the camp.

Q How long had Hess been coming to the dispensary for medication?
A Off and on about nine months.

Q When did he start getting really bad prior to his death?
A I would say about a month before his death.

Q During that month, had he been coming to the sick call?
A Yes, he did. He came to sick call practically every morning.

Q Who was treating him there?
A Kondo was and Dr. Hochman.

Q Were they giving him any medication?
A Nothing outside what we received from the Japanese - this crushed charcoal which they used for diarrhea and dysentery and some B-1 powders.

Q Did Dr. Hochman make any recommendations regarding treatment of Hess?
A He did.

Q And what did he say?
A That he was overruled.

Q What did Dr. Hochman recommend?
A Dr. Hochman recommended that that man stay in camp because he was badly in need of a long period of rest.

Q To whom did he make that recommendation?
A He told Kondo that.

Q And what did Kondo say?
A Kondo told him to go to work on the sick-man work detail.

Q Was Hess ever allowed to stay in camp when Dr. Hochman recommended it?
A Sometimes, Dr. Hochman was able to convince him that he be allowed to remain in camp and he would stay in camp two or three days and he would be forced out to work again.

Q Did he work a majority of the times when Dr. Hoshman recommended to Kondo that he not work?
A He did.

Q Did Mr. Ass ever tell you that Kondo had made him work?
A Yes, he did.

DEFENSE: Just a minute. I object to this question on the grounds it's leading.

Mr. Kind might as well take the stand and testify as to that question.

PROSECUTION: I don't get the analogy myself.

PRESIDENT: You object to that on what grounds?

DEFENSE: It's leading, improper question.

PRESIDENT: Record the question.

Q During the month immediately preceding Ass' death, did you ever have any conversations with Him about his attendance at sick call?
A I did.

Q And what were these conversations about?
A Well, he told me that he had been going over to sick call and he said the shovel wasn't doing him any good and you couldn't convince that stupid Jap over there that he was sick and he was sent out to work and he said, "There is no use going to sick call any more. You don't get any attention. You are only forced out to work." He was a man that never complained very much.

PRESIDENT: The Commission will take a ten-minute recess.

The court then took a recess until 1045 hours, at which hour the personnel of the Commission, prosecutiment and defense, and the accused, interpreters and the reporter resumed their seats.

PROSECUTION: I wish to remind the witness that he is still under oath.

Q Did you have more than one conversation with Mr. Ass regarding his treatment by Kondo?
A Only several times.

Q And were they all to the same effect, as you have just testified?
A All to the same effect.

Q Did you ever have any conversations with Dr. Hoshmann about Kondo's treatment of Mr. Ass?
A I did.

Q At what times?
A It was after his death, Dr. Koehnen was ever my office and we were talking about the general health of the camp and he said it was a damn shame that Hess had to die, because if he had remained in camp several months resting, we would have been able to give some medicine to him; he would be still alive.

Q Did he say that to you?
A He did.

Q How soon after Hess' death did he say that?
A That was about ten days after his death.

Q Did he tell you at any time that Kenichi Kondo had made Hess go to work while he was sick?

DEFENSE: I object to this on the grounds that it's leading.

PROSECUTION: I will reframe the question.

Q Did Dr. Koehnen ever tell you any specific instances of any mistreatment of Hess by Kondo.

DEFENSE: Same objection, sir.

PROSECUTION: I don't see anything leading about that, sir. I haven't mentioned any instances.

PRESIDENT: Objection overruled.

Q Will you answer the question, please?
A Yes. He never mentioned to me any specific instance, except every morning at 9:00 o'clock, the doctor made a report to me about the health of the camp and the men who went to work and the men who should have stayed in the camp. One morning, he told me that Hess had been sent out to work and he was out in the line-up. We had to line all the men up out in front of the camp in the road and he told me that Hess had been sent out to work. I pulled him out of the line and put him in a party where he could go out and lie down during the day and be what you call a "suiji toban" -- that was a man who made tea for the people who were working out at the factories and he would be able to lie down all day while he was there.

Q Did Dr. Koehnen ever tell you what Hess died of?
A He said he died from malnutrition and complications from beriberi.

Q Did Dr. Koehnen ever tell you whether anyone was responsible for his death?
A He said he was --

DEFENSE: Objection, please, a leading question. I object to it on the grounds also that what Dr. Koehnen told him is hearsay. Dr. Koehnen's affidavits are before this Commission.

PRESIDENT: The question will be answered.

A He did.

Q Who did he say that was?
A He said, "Well, there is another good man that died all on account of Kondo forcing him out to work."

Q Did he elaborate any further on that answer?
A He said the man would have been alive if he had been allowed to remain in camp for a longer period of rest.

Q Were there any further discussions about this particular case of Hess, and if so, what in detail were they?
A There was no other discussion at that time that I can remember of.

Q Did you know an Italian named Serafin?
A Anthony Serafin, I did.

Q Will you tell this Commission something of his background?
A He was an Italian National, serving in the British Merchant Marine Service and while England was at war with Italy, he was interned for a short period in England; because of his long and faithful service with the Cunard Line, he was given a civilian Merchant Marine license ticket by the British Admiralty and allowed to go to sea at his own request on British merchant ships. He was captured in the South Atlantic by a German raider after his ship was sunk and brought here to Japan and made a prisoner of war.

DEFENSE: Object to that on the grounds it's a conclusion on the part of the witness. It's a legal conclusion as to who is a prisoner of war -- a matter of law. This witness is not qualified to testify as to who was a prisoner of war.

PROSECUTION: Who is better qualified to testify than a Camp Commander as to what the status of an individual was, by overt acts.

DEFENSE: It doesn't alter the fact, also, that the definition of a prisoner of war is a thing that is outlined in the Technical Manual.

PRESIDENT: You say he was treated as a prisoner of war?

A He was designated as a prisoner of war by the Imperial Japanese Army.

PRESIDENT: Proceed.

Q When did Serafin first come to the Headquarters Camp?
A In November, 1942.

Q And will you tell the Commission what you knew about his physical make-up?

A He was a very small man. He was about 5'4", weighed about 130 pounds. He had been a waiter and had been engaged in hotel work, working in the mess hall and taking care of rooms in the capacity of a steward on board passenger liners. He wasn't very strong. He was an elderly man about 54-55 years old.

Q When Serafin first came to the camp, what did he do? What job did he do?

A Because of his age and size, he was made an officers' orderly, amongst the Allied officers we had in the camp.

Q What was his status in the camp at that time?

A What do you mean by that, sir? He was listed as the officers' orderly.

Q Was he a prisoner of war?

A He was a prisoner of war.

DEFENSE: Same objection is made. I will take the same ruling.

Q Did his status change from a prisoner of war at any time -- from that time until his death?

A No.

Q Was he always treated as a prisoner of war?

A He was treated as a prisoner of war.

Q And for how long a period of time did he act as officers' orderly?

A For about a little over a year and then I transferred a number of our officers to Zentsuji. We had two other elderly men acting as officers' orderlies and he was to be sent out to work. So, I took him in my room to act as my orderly.

Q And how long did he act as your orderly?

A About nine months.

Q At the end of that nine months, what did he do?

A The camp staff was being cut. You mean what he did during that time?

Q At the end of the nine months, what was his next job?

A The camp staff was cut down and the camp commander said we had too many men working in the camp and the men were not to go to work in camp. So, he agreed to go out to work, provided he could go to this sick-man detail that we had. That was a detail where we sent men who were crippled, one-legged men and men who were in random condition, and he worked at this place for about two months and finally, his

job folded up and then he was in the general pool working outside.

Q Approximately when was this?
A This was toward the end of 1944.

Q Around that time, had Serafin been complaining of any illness, if you know?
A Towards the end of 1944, he began to suffer from beriberi.

Q What treatment did he receive?
A Very little, if any.

Q Did he report to the sick bay for treatment?
A He did, several times.

Q Do you know whether Dr. Hochman made any recommendations to Kondo about the treatment of Serafin?
A He did.

Q What were those recommendations?
A He said that Serafin was too old and too weak a condition to be sent out to work.

Q Do you know what Kondo's reply to that was?
A At that time, we were having a little bit of trouble in our camp. We had the men who were missing limbs, had several old men who could not hear -- they were doing work in the camp called "paper work", making notebooks and envelopes and making those boxes that you put medicine in, that was being sent out to civilian firms and because there was no visible means of illness about Tony, he was in the group that were sent out to work, and Dr. Hochman tried several times to keep him in camp so that he could work on paper work because he wasn't very strong -- not strong enough to do the heavy stevedoring work that he had to do outside.

Q Who made him go out to work?
A That decision was made by Kondo.

Q Do you know that of your own knowledge?
A I do.

Q Towards the end, what kind of work was Serafin doing?
A While he was in the general pool, there were so many men taken from the line up, some would go to the steel mill; some would go out in the bay, unloading ships and other men would go to the docks and he was more or less taking his chances. Sometimes, I used to pull him out of the line and send him to an easy detail that I knew was an easy detail for that day, but as a rule, he was in the stevedoring gang.

Q And what kind of work were they doing in the stevedoring gang?
A They were unloading ships, unloading freight cars, moving commodities about in large store rooms, warehouses.

Q Was that considered heavy work?
A It is.

Q Do you know whether Dr. Hoehman on more than one occasion recommended to Kendo that Serafin be kept in camp because of his age and not be permitted to go to work?

DEFENSE: I object to it on the ground that it's leading.

PRESIDENT: You objected to it for what reason?

DEFENSE: The question is a leading question.

PRESIDENT: Will the prosecution rephrase the question?

PROSECUTION: I am asking if there was more than one occasion. If there isn't, he will say "no".

DEFENSE: If he says "no", it implies that there was more than one occasion.

PROSECUTION: If the defense contends that he is lying, he can question him on it more on cross-examination.

DEFENSE: He can answer "no"; that means that there was none. It's a leading question.

PROSECUTION: If there is more than one occasion, I will find out what those occasions were.

DEFENSE: Was there more than one occasion?

PRESIDENT: What did you ask -- if there was more than one occasion?

PROSECUTION: I have forgotten the question.

DEFENSE: I believe the law member sees what I am driving at. No matter how the answer is given, "yes" or "no", evidence will be before the court that on at least one occasion something was done.

PROSECUTION: He has already testified that there has been one occasion.

PRESIDENT: He testified to that.

PROSECUTION: He has already testified that there has been more than one occasion.

PRESIDENT: The question is whether there has been more than one occasion?

PROSECUTION: That's what I asked.

PRESIDENT: Will the witness answer the question?

A There was, sir.

Q And when was that other occasion or occasions giving us time and place and what the conversations were.
A The last three months of 1944, the men who were old and in a run-down condition worked in our camp as I told you, on paper work. About every ten days or so, they would hold a sick call on paper workers and they would go through them; it was more or less a farce. They picked out the men who were obviously not able to work outside and sent the rest out to work. And he was on this paper work detail. At various times, he worked probably two or three weeks at one time and then he comes in and is allowed to work on the paper detail for about a week and then he would be taken off and sent to work.

Q Who would take him off the paper work detail?
A Kondo.

Q Do you know that of your own knowledge?
A Yes, I was there.

Q Did you ever have any conversations with Dr. Hoehman about Kondo's treatment of Serafin?
A No, not particularly.

Q Did you have any conversations with Dr. Hoehman about Kondo's treatment of Serafin after Serafin died?
A Yes, I did and I wrote an official letter of protest to the colonel.

Q And what was contained in that letter of protest?

DEFENSE: If the court please, I am going to object, as to testimony of what may have been contained in the letter on the ground it's not the best evidence. The letter was written, and the letter should be produced in court as the best evidence of what it contained.

PROSECUTION: Here's the best evidence -- the man who wrote the letter.

DEFENSE: Mr. Rand, you know better than that. The best evidence rule applies when someone is offering a proof of a writing; the writing must be produced.

PRESIDENT: The witness will answer the question.

Q What was contained in that letter of protest that you wrote?
A I informed the colonel of the conditions at sick call, about Kondo's treatment of the prisoners, and because of the fact that this man had not been permitted to remain in the camp when he was obviously very ill, that it was a violation of International Law and the Geneva Convention and that there was nobody in the world responsible for this man's death except Kondo by forcing this man to go to work and

absolutely refusing to allow him to remain in the camp.

Q Do you remember approximately when you wrote that?
A I did, immediately after his death, the following day.

Q Do you know whether any action was taken on that letter that you wrote?
A No action was taken whatsoever.

Q Did you ever hear anything further about it?
A I heard from various underground sources that I was writing too many letters of protest and I was about to be severely punished for doing it.

Q Did you ever have any conversations with the accused Kondo about Serafin?
A I did after his death.

Q When?
A Immediately after his death, the following day. I accused him of being responsible for Serafin's death, that he killed him, his death was just as though he killed him with his own hands.

Q And where did you tell him that?
A I told him that right over at sick call, at the dispensary.

Q Was that in the morning?
A That was in the morning and I told him that I would make a report of it to the colonel.

Q And what did he say?
A He said nothing; he acted as though he was very scared. He was very much in fear of what I was going to say to the colonel.

DEFENSE: I ask that that be stricken on the grounds that it's a conclusion -- that portion of his answer.

PROSECUTION: I will agree to have that portion stricken.

Q Were you able at that time to speak any Japanese?
A Just enough to carry out my work in the camp.

Q After Serafin's death, did you ever have conversations with Dr. Hochman about the death of Serafin?
A I did.

Q When did you have a conversation with him?
A Immediately after Serafin's death.

Q Where?
A In my office.

Q And what induced that conversation, if anything?

A We were trying to figure out some way that we could get rid of Kondo and get him out of camp.

Q And what specifically was said about Serafin's death by Dr. Hashimoto?

A Dr. Hashimoto agreed with me, said that there was nobody else responsible for Tony's death except Kondo.

Q Did he say anything else?

A He said it was a dirty shame that we had to put up with a man like that and we were trying to get some -- figure some scheme out where we could get Dr. Hara and have him transferred out of camp.

Q Did you write your letter to Colonel Marvin before or after your meeting with Dr. Hashimoto?

A Well, that same day; I wrote the letter after I had talked to Dr. Hashimoto.

Q You testified, I believe, that Dr. Hashimoto stated that he wanted to leave his job as doctor in charge of POW's, is that correct?

A That's correct.

Q When did he make such a statement to you?

A That was a long about the time of Serafin's death -- the early part of '45. He had complained to me a number of times -- he wanted to leave his job, but I would talk to him and convince him that it was his duty to remain on the job and still keep fighting and do what he possibly could with the prisoners.

Q When was the meeting that you have previously testified to with Hayashi, Kondo, Dr. Hashimoto and yourself?

A That was along about the latter part of 1944, if I remember correctly.

Q And will you tell this Commission in detail just what Dr. Hashimoto said to you with regard to his giving up his job as POW -- as medical officer in charge of POW's?

DEFENSE: I object to this on the ground that it was hearsay and there was no showing that the accused was present at the time the statement was made.

PRESIDENT: The question will be answered.

A When we had our conference and previous to that, he came to me and he says, "Chief, I don't see no reason why I should be going to sick call in the morning to be humiliated." He said, "I am a man of the medical profession," He said, "I have graduated from the finest medical school in the world," and he said, "I practiced medicine, and to stand down there and have a young man who doesn't know an aspirin tablet from a dose of castor oil to tell me I don't know what is

wrong with a man when he is sick. I only stand there. I am in danger of being beaten up as he beats the other prisoners of war. He humiliates me. He makes fun of my decisions. He says, "I can't take it any longer. He said, "I am going to blow up and strike him and then I will be executed for it." And we had a long talk on that line. I told him I would try to get there more than I possibly could and I would have the other group leaders present when I was present so they could intervene when anything started. I told him he was our only man we could turn to, to help us when we were sick and he had to stick on the job, and he agreed to stay there.

Q Did Mr. Eschmann at that time give you any specific instances other than what you have already previously related?

A Oh, there was so many instances he complained about it's pretty hard to remember. It was just a general over-all rotten condition of the camp.

Q Did you know an American prisoner of war named Robert M. Barber? Spell that. Did you know a prisoner of war Robert M. Barber?

A Yes, he was a captain of a British oil tanker.

Q Was he at the Headquarters POW Camp?

A He was.

Q Do you remember an incident involving Captain Barber and Konde?

A Well, one morning at sick call, when Captain Barber went over to see if he could get some kind of stomach powder, he was suffering from ulcers of the stomach, he was told there was no powder there and he was a trained Britisher; why, he didn't know enough to keep talking. He kept insisting, insisting, and he was pretty angry because he was receiving no attention, and he did talk in a loud voice and he told, he said, "The Japanese sick-boy around here is all bawled up and Konde slapped him in the face.

Q When did this incident take place?

A This took place shortly before he was sent to the Fukuoka Hospital.

Q When?

A That was in the fall of 1944.

Q How many times did he hit him?

A He slapped him three or four times about the face.

Q Strike him very hard?

A Yes, he was hit pretty hard.

Q Do you remember the "baka" incident?

A Yes, I do very well.

Q When did that take place?
A That was on July 4, 1944.

Q Will you tell this Commission exactly what you know about that incident?
A Well, it was a ruling of the Japanese Army to cure diarrhea and stomach ailments, you had to sleep at night with a blanket around your stomach and during the hot months, our barracks in this camp were very crowded; each man was allowed about 28 inches of space and the camp was full of lice and bed bugs and vermin and it was almost impossible for a man to sleep with any covering on him. During the night, Kondo made an inspection of the camp. Of course, he found a number of the men who were asleep who did not have blankets on their stomachs. He had a flashlight with him and he woke up practically everybody in the room and the men were pretty angry about being awakened and they told him to get the hell out of there and they called him "baka". That's the Japanese word for "crazy". The man hollered "baka" at him. Several of them, in fact, were down on the lower bay. He couldn't determine who the man was who hollered "baka" at him, and he brought the men out in one section and stood them up at attention. He had the Corporal of the Guard with them. He started kicking them and slapping them and beating them about the face and body and tried to make the men admit who called him "baka". The fire watchmen came in my room and woke me up and I got over there on the end of where I saw this one man group, where he had just been knocked down by Kondo. I interfered and talked to Kondo and quieted the room down, and got Kondo outside of the room and the Corporal of the Guard and I told him he had no business going in there striking the men and creating a disturbance because they had to work hard and what sleep they could get, they needed it badly and he was doing wrong by coming in there and bothering the men and waking them up. He agreed he wasn't going to do that any more; he agreed that the men needed their sleep and he went out and went over to the office. This happened around midnight.

Q Do you know what POW's, if any, were struck by Kondo at that time?
A Yes, sir, there was a Chief Petty Officer by the name of Vance, a Marine Sergeant, a man by the name of Venton, a Marine Sergeant, a Marine Private by the name of Cordoyne, and a Marine Private by the name of J. M. Smith.

Q Did any of these men make any complaint to you about this incident? Did any of these POW's make any complaint to you about this incident?
A Yes, a whole room complained to me.

Q Did any of these five men that you have mentioned specifically make any complaint to you about this incident?

A Yes, they did. They said there was no man in that group that was guilty, that hollered at him, and they said that he came in there and just acted like a wild man, just acted as though he was insane. He blew himself up in a fit of temper that nobody could talk to him or do anything with him.

Q Did any of these five POW's state that they had been struck by Kendo?
A Yes, they all did.

Q Did they state what weapons, if any, he used?
A The Corporal of the Guard had one of these heavy sticks, and Kendo used a stick, a bamboo stick and kicked them with his hob-nailed shoes.

Q Did he use his fist at all, do you know?
A Yes.

Q Did Kendo after this incident make any promises to you?
A Yes, he agreed that he wouldn't wake the men up any more and he said that he would hold me responsible for all the men to be sleeping with blankets around them.

Q Did he keep his promise?
A No.

Q About a week later, did anything happen at this camp?
A Well --

DEFENSE: I object to the question on the grounds that it is leading. Let's examine him as though he were an eye witness.

PROSECUTION: I haven't suggested what happened. I am asking him what, if anything, happened. I don't see anything leading about that whatsoever -- not the slightest.

PRESIDENT: Make your question more specific about what kind of incident it was.

PROSECUTION: He is objecting because it's leading now. I will reword it, sir.

Q Do you know an American POW at that camp -- or did you know -- named Kettles?
A I do.

Q Do you know of any incident involving him and Kendo?
A About seven or eight days later when Kendo was going about the camp again and we had been warned by the fire watchman, most of the men were woke up so they could get their blankets on them, but this man Kettles was sleeping outside of the window, outside the room on a plank because the heat of the room was terrific.

It was almost impossible to sleep in there and he was found outside sleeping on this plank without any clothing on him. He had a small fundoshi issued to him, like a loin cloth. Because he was sleeping out there without any protection, Kondo blew into a fit of temper and kicked him and beat him about the face and body with his fist.

Q Did you have any conversation with Kondo after this incident about his treatment of Nettles?
A No, I didn't.

Q Did you know a POW at Headquarters Camp named Doherty?
A I do.

Q Do you know of any incident involving him and Kondo?
A I do.

Q When did that take place and what was the incident?
A Well, it took place about the middle of 1944. This man Doherty was an elderly man about 54 years old. He was a First Engineer on an American oil tanker and he had an ear injury during a battle with a German raider, with this oil tanker; there was a heavy explosion on board the ship and he was almost practically deaf and he had been suffering from a bad cold. He, Merritt, the Chief Pharmacist Mate told him to stay in and report to sick call the following morning. When the word was passed about the camp for sick call, Doherty did not hear the word passed.

DEFENSE: If the court please, I am going to ask that all of this testimony be stricken because it's hearsay. He is testifying what somebody else told him. There is no way of this court determining the truth of what Merritt said. We can cross-examine this man for twelve days; we aren't going to find out what Merritt said to him. I don't question that Merritt said certain things to him, but there is no way of determining that Merritt is telling the truth.

I am not contesting the Chief's veracity. I am questioning what Merritt said. That's the reason for the rule against hearsay.

PRESIDENT: Reply to that question. The witness will proceed.

A He was told to report to sick call by Merritt, the Chief Pharmacist Mate, the following morning. When the word was passed in the camp for all men to report to sick call, Doherty did not hear the word passed because in order to talk to Doherty, you had to get alongside his ear and shout so he could hear you. Sick call was in progress and almost over

when one of the men who returned from sick call told to Doherty that sick call was now in progress and he better get over there and he got over there late, Kondo flew into a fit of rage. He made a kick at him and he wore these leather slippers. He pulled off his slipper and slapped him alongside the face with it several times and then sent him back to his room. The man was sick.

Q Did Doherty at any time tell you about this incident?
A Doherty, when he came back on sick call, came to my office and told me about it.

Q Did he tell you he had been struck by Kondo?
A Yes.

Q As a result of this incident, did you have any conversations with Kondo about it?
A I made an official protest, written letter to Mr. Nosu about it.

Q Was that the protest you had previously testified to?
A No, that's another protest.

Q And what protest was this?
A I said that it should be taken into consideration that this man was an elderly man and he couldn't hear and it was impossible for him to have heard the word for sick call as it was passed around the camp, and it was an act of Kondo's cruelty because he beat him. He did not take into consideration the fact that the man was sick and was deaf and he couldn't hear the word passed.

Q Did anything come of this report that you made to Mr. Nosu?
A Nothing.

Q Did you know a POW at the Headquarters Camp named Moraley?
A I did.

Q What was his nationality?
A He was a Britisher.

Q And do you know of any incident involving him and Kondo?
A I do.

Q When did this take place?
A This took place in 1944.

Q Do you remember about when?
A It was toward the latter part of 1944. I don't remember the exact date.

Q Will you tell this Commission what the incident was involving Kondo and Moraley?

A This young lad Horsley, when he came to our camp, he was about fifteen years old. He was acting as a cabin boy aboard a British freighter and at the time the incident happened, he was seventeen years old and he just returned to our camp from Ichiaka Hospital, having been sent there with a very bad case of dysentery. He was almost a skeleton. I think the lad weighed about ninety-five pounds, and because of his age, when the Japanese duty officers used to come around during muster, they used to comment with him; they asked him how old he was, if he was homesick and if the work was too hard for him, and such as that. This night, Lt. Kajiyama who was duty officer, when he came into the room and held muster, he stopped and looked at him a little while and asked him how he was feeling, and Horsley told him he was sick. He didn't feel very well. So, Lt. Kajiyama told him through the interpreter that he could stay in camp the following day and rest. So, the following morning, after all the men fell in outside, we had to make a detail to count and show where every man was at, and we showed up missing one man, who was Horsley, who remained in camp without going to sick call and through the regular procedure we had to comply with, with the Japanese. And because he did not come to sick call, and he was taking a day of rest, Kondo -- he just went insane. He had the man brought over to the sick bay; he started kicking him about the shin and beating him about the body and face and kicking him in the stomach and Dr. Hochman interfered and tried to stop him and I came around the corner of the building and I got in on the tail end of the beating and I interfered and had the beating stopped. We sent for the interpreter who was with the duty officer that night when he gave permission for Horsley to remain in camp and he said my statement was true, that the duty officer did order him to remain in camp, and Kondo stated it made no difference who it was; he was the only man who could give him permission to stay in camp and we finally got Horsley back out of there. The man's face was swollen up and he was bleeding from the mouth. We finally got him away from there and we returned him to his room.

Q Did you have any conversation with Kondo about his treatment of Horsley?
A I did.

Q What did you say to him?
A I told him he was a coward and he was only standing on his position of being a Japanese and we were prisoners of war, and if I had my way about it, I would kill him for it.

Q What did Kondo say to you?
A He said nothing about it, and I told him I was going to make an official written protest about it.

Q And did you?
A I did.

Q To whom?
A I made it to the senior medical officer, the Japanese medical officer.

Q Is that Dr. Kora?
A Dr. Kora.

Q And what did you say in that report?
A I told him just exactly of the conditions under which Kearsley remained in the camp and Kondo's treatment of him.

Q Did anything ever come of that protest?
A Nothing.

Q Did Kearsley also tell you about the beating he received from Kondo at that time?
A No, the kid, well, we talked about it, but it was just a general conversation. I was toward the end of the bed; I saw what happened.

Q Did you know a POW named Knudsen?
A Which Knudsen?

Q From New York?
A Yes, I do.

Q Do you know of any incident involving him and Kondo?
A I do.

Q When did this take place?
A This took place about the middle of 1944.

Q And what was that incident?
A This man Knudsen was the Chief Officer on an American Oil tanker; he was a prisoner of war in our camp. He was working at the Sumitomo Warehousing Company and during the course of his work, a large stack of rice bags fell over and came down and struck him on the shoulder and the back and the hips, and the bags completely covered him and the prisoners who were working with him pulled the bags off of him and pulled him off to one side and we had several Pharmacists Mates or Navy Pharmacists Mates, who were working on that party and they examined him to the best of their ability and they determined there was no bones broken or anything like that, although the man was injured and he was unable to stand up. So, he was taken to the rest house that we had at the working party there and there he remained the rest of the day until late in the afternoon when the work was done for that day and he was returned to the camp. He was carried back to camp on a litter, and it was always a policy of the camp if a man was injured at work, he was allowed to remain in the camp for several days and Knudsen

had to walk bent over and he had to be assisted about the camp by several other members of the camp and he had been in about five days and during the bed patient check, when Kondo used to come around the camp and make his inspection of the people who were sick and ill in bed, who were physically unable to go to sick call, he came in the room, was holding sick call in the room and he was there; this man Knudsen was being returned from the toilet by two members of the camp staff and he came into the room and Kondo saw him up out of his bed where he had put him when he returned from work and said that he was faking, and you couldn't make him understand that the man had gone to the toilet. He had to go to the toilet. He told him to stand up and it was impossible for Knudsen to stand up because of his injury and because he didn't stand at attention, Kondo started to beat him about the face and the body and knocked him down. A member of the staff came into my room and I told him what had happened. I run into the room and Kondo was screaming and hollering like a madman. I interfered and got him out of the room. I told him I was going to make an official protest.

Q Did you make an official protest?
A I did.

Q To whom did you make it?
A I made it to the Camp Commander and Dr. Hosu.

Q And just what did you say in that protest?
A I told him the exact circumstances of his injury and Kondo's conduct.

Q Did you have any conversations with Kondo about his treatment of Knudsen?
A I did. I told him he was nothing but a coward.

Q During the time you were Camp Commander, at the Headquarters Camp, did Kondo ever change from his normal treatment of the POW's as you have testified?
A He did didn't, except for short periods of time after each time we would get together and we would have an argument together, why he would sort of work with Dr. Hoshman for a period of about ten days or two weeks, and he would be right back to his same practice again.

Q Other than the beatings you have testified to on my questioning, have you ever suffered -- received any other complaints about Kondo's treatment of POW's at sick call?
A I received so many of them that it's almost -- it's hardly impossible for me to remember them.

Q And from whom did you receive those complaints?
A From the various men who had been to sick call and from Dr. Hoshman and Merritt, the Chief Pharmacist Mate, Ginger Hodsen.

Q And over how long a period of time have you as Camp Commander been receiving these complaints?
A For a period of almost three years.

Q What, in general, again, were those complaints?
A About his treatment at sick call and not being able to remain in camp when he was sick.

Q When you say "his", do you refer to Konde?
A Konde.

Q Was there any Japanese personnel at your camp by the name of Gender? Was there any such Japanese person in your camp?
A Not to my knowledge.

Q To your knowledge, did Morafin receive any special treatment for his complaints at sick call?
A No, he did not.

Q To your knowledge, did Hess receive any special treatment at sick call for his complaint?
A He did not.

PROSECUTION: At this time, if the Commission please, the prosecution is through with the direct examination of this witness.

I believe the defense does not want to cross examine at this time today, because it's close to recess, is that correct?

DEFENSE: That's correct. So, I ask for an adjournment till tomorrow morning.

PROSECUTION: Do you offer any objection to the Commission interrogating before you do?

DEFENSE: I believe I would like to cross-examine before the Commission asks questions.

PROSECUTION: It's very close to recess time anyway.

PRESIDENT: Take a recess. The Commission will adjourn till 0900, tomorrow morning.

The court then at 1900 hours, on 5 August 1946, adjourned to meet at 0900 hours, on 6 August 1946.

Leonard M. Rand

LEONARD M. RAND,
Chief Prosecutor.

Yokohama District Courthouse
Yokohama, Japan

6 August 1946

The court met, pursuant to adjournment at 0800 hours, all the personnel of the court, prosecution and defense, the accused, interpreters and the reporter who were present at the close of the previous session in this case being present.

PRESIDENT: The Commission is in session.

PROSECUTION: May the records show that the witness Sanders is reminded that he is still under oath.

I still have one or two questions I would like to ask this witness.

PRESIDENT: Continuation of the direct examination?

PROSECUTION: Yes, sir.

DIRECT EXAMINATION (Continued)

Questions by prosecution:

Q During the time that you were camp commander at the Headquarters POW Camp, of your own knowledge approximately how many American prisoners died?
A In our camp alone, there was only eleven prisoners died altogether.

Q How many American prisoners did you have in the camp?
A That number varied from time to time. The camp was originally started off with eighty Americans and we averaged between one-hundred fifty to two-hundred fifty Americans in the camp.

Q About how many American prisoners of war died at Yokohama Hospital?

DEFENSE: If the court please, I am going to object to this line of testimony, to this question on the grounds that it is irrelevant, immaterial. We are not charged with any incident at Yokohama Hospital. It is improper.

PROSECUTION: I have a reason for this line of questioning.

PRESIDENT: Is it pertinent to any of these specifications?

PROSECUTION: Well, I withdrew the question. I am anticipating, perhaps, a portion of the defense and I can use this on rebuttal. I will withdraw the question.

Q Do you know a man named Hayashi?
A I do.

Q What was his status at Headquarters POW camp?
A When he first came to the camp, he was assigned as the camp interpreter and later, he became the area interpreter and he would be sent out to the various camps where there was trouble or misunderstandings; he would go there to straighten them out.

Q What was his nationality?
A Japanese.

Q Is this the same Hayashi that you refer to when you mention the meeting that took place between you, Kondo and Dr. Hoshman?
A It is.

PROSECUTION: No further questions.

CROSS EXAMINATION

Questions by defense:

Q Mr. Sanders, how many prisoners all told were there when the Osaka Main Camp opened up in '42?
A In '42, eighty.
Q Eighty American prisoners?
A Eighty American prisoners.
Q Any British or Dutch?
A Not until later on, in October and November when we started to receive the other nationalities, we had British and Dutch, Chinese, Indians, South Africans, one Cuban, two Argentinians -- several Greeks.
Q Now, at the end of 1943, how many prisoners of war were there in the main camp?
A Between the two camps, about 650 men.
Q You say two camps?
A Yes.
Q What was this second camp you speak of?
A The camp was divided into two sections; the other section was across the street originally.
Q Well, then, in the section in which you were, with the American prisoners of war and in which Kondo operated the dispensary, how many prisoners of war were there in '43?
A In '43, in our camp there were 327 men in our group and the group across the street, there was over 300.
Q They all used the same dispensary?
A No, at first, we had no dispensary.
Q Well, how long a period of time did you have a dispensary?
A From the early part of 1944.

Q Until the early part of 1944?
A At the beginning of the early part of 1944, we built the new camp next to our camp; we built an addition to that and then we merged the two camps together.

Q Now, before you merged the two camps together, when you first went into the Osaka Main Camp, there was a dispensary, isn't that correct?
A No, no dispensary.

Q In 1942, no dispensary?
A No.

Q What did Kondo operate in?
A He carried a little bag around with him and they had a store room in the British section and he would come into camp and use my office sometimes and I had another office in the other camp where the Sergeant Major of the Royal Scotch, he used that and most of the time, they used the room where the men lived in.

Q Did you make any complaint about that?
A Yes, but the colonel told us that they were building a new camp and very soon after we were there, we started to work on another camp.

Q You started to work on a new camp in '43, the latter part of '43?
A The latter part of '43 we started to work at it.

Q And you completed it at the beginning of '44?
A Beginning of '44.

Q Did both your group and the group across the street use the same facilities for sick call?
A Yes.

Q Well, Kondo administered or took part in the examination of the sick prisoners of war out of the group of over 600 men, is that correct?
A That's correct.

Q And he had no help at all?
A He had several times a one-star soldier with him and most of the sick call was held by our own men with Kondo in attendance.

Q By that you mean Dr. Hoehman did the examination?
A Yes.

Q And Merritt and Ginger?
A Yes.

Q Were present?
A That's right.

Q Now, can you recall, Mr. Sanders, approximately in the latter part of '43 how many men would go on sick call a day on an average?
A On an average, in a daily workday, about 25 to 30 men.

Q Out of the 400?
A Yes.
Q The figure ever materially increase over that?
A No, that was about the average.
Q Now, out of this group of 80 American prisoners of war that you first went to camp with, how many officers did you have?
A I had no officers in the original eighty group.
Q When did the officers come in, if they came in?
A In October, 1942, and November, 1942.
Q Were they American officers?
A They were American and British and Norwegian officers.
Q What was their rank, if you remember?
A Two British officers, one was a lieutenant in the Navy and the other was a first lieutenant in the Royal Scotch -- the five Norwegian officers; one was a lieutenant commander, two lieutenants and two ranks equivalent to lieutenant junior grade in the American Navy. We had a lieutenant commander in the American Navy; one Army captain, regular Army; one Army first lieutenant, and one Army second lieutenant.
Q Was that whole group in your section of the camp?
A Yes.
Q And what did these officers do? What duties did they all assume?
A They assumed no duties.
Q No commissioned officer was given any duties by Colonel Kurata, is that it?
A No.
Q No commissioned officer was designated as the senior officer of the prisoners of war?
A No.
Q You were designated as the senior officer?
A I was.
Q Was there any explanation for that?
A When Lieut. Tsutsumi, the Major General of the area there sent me to Osaka with 150 men. I was the senior NCO in the group. We was in Osaka up until October when we were taken over by the Central Army and Colonel Kurata was the officer in charge, and as I was the officer -- non-commissioned officer in charge of the original group, the first group of prisoners to come to Osaka, they kept me in charge all the way through.
Q And your responsibility was to get out labor parties; you were responsible for morale and you were responsible for sanitation. What else were you responsible for?

A The Japanese held me responsible for everything that happened in the camp pertaining to the operation of the camp.

Q Did you find it necessary to call any of these officers for any help?

A I used to go to the officers whenever any occasion would arise; I would go to them and talk it over with them, tell them my plans and ask their advice.

Q Did they cooperate with you?

A They did.

Q Do you recall the names of any of these officers?

A Yes, I do. Lt. Commander Callahan, Captain Strong, Lt. Thompson, Lt. Faliday.

Q Did you explain to any of these men about the various incidents you described yesterday?

A Yes, they were thoroughly familiar with the incidents that happened in our camp.

Q Did they ever witness any of these incidents?

A The doctor did. Lt. Commander McGinnis, who was a dentist in our camp witnessed these incidents.

Q Do you know where he is from?

A I think he is from Oklahoma.

Q Naval doctor?

A He is a Naval Commander at the Naval Medical Center, Bethesda, Md.

Q Now, you had described to us the Japanese set up as far as the medical department was concerned. You said that Dr. Nosu was in charge.

A Yes.

Q And he had three assistants, Miyabara, Murao and Ano. Now, Dr. Nosu was in the main camp most of the time?

A Most of the time he was.

Q Where was his office?

A In the far side of the main building.

Q Was it in close vicinity where sick calls were held?

A I would say 250 feet.

Q And how many times do you think, can you testify Dr. Nosu would come to sick call during the week?

A During the week?

Q Yes.

A Seldom.

Q Did he ever go?

A Yes, cause, when we first came in the camp and first opened it up, he came to the camp to hold sick call

-- about once a month, approximately every three weeks. After about six months, his duties became somewhat heavier; because they were establishing other camps in the area, he very, very seldom would ever come to sick call -- possibly once every six months.

Q And Dr. Maruo, Miyatake and Amo, they were out circulating around the branch camps?
A Branch camps and in our camps.

Q They hit your camp in a regular circuit, is that it?
A Dr. Maruo and Amo stayed in our camp practically all of the time and they would only leave the camp to go down to Moji to bring other prisoners in the camp.

Q What were their duties?
A I can't say; they were more or less administrative duties in the office. Dr. Maruo was originally charged with the health of our camp, but we very seldom saw him -- about once a month.

Q Did you ever see him at sick call?
A Very seldom. He held sick call when he first came to the camp once every other week or so.

Q And Dr. Amo, he was a probationary officer?
A That's right.

Q How often did he attend sick call?
A About once every ten days, or two weeks.

Q How did Dr. Hochman get along with him?
A Dr. Hochman got along with him very well.

Q And how well did Dr. Hochman get along with Maruo?
A Very well with him from the very beginning he was in our camp.

Q And the other doctor, Miyatake?
A Nobody ever got along with Miyatake.

Q Now, how many other Japanese enlisted personnel operated in that dispensary examination room or what was set up as an examination room?
A Kondo was there most of the time and at other times, at that period, the whole entire area was in progress of being organized; medical soldiers that were going out to the other camps were to attend sick call with Kondo to learn how they was to handle the prisoners in their new camps. Sometimes, we would have two or three men there, and sometimes, maybe five men would attend sick call at the same time. These men were more or less under instruction in preparation to going to new camps.

Q Do you recall a Corporal Hiraiwa?
A No, I don't.

Q You don't recall him at all?
A No.

Q How about a Corporal Nomura?
A No. What is his nick-name?

Q I wouldn't know.
A It is very difficult for a prisoner to find out a man's real name.

Q How about Sergeant Kobayashi?
A Kobayashi -- I know him.

Q Where did he work?
A Kobayashi had charge of the Red Cross Medicine Storeroom and worked in the office.

Q In the medical office, is that it?
A In the Central Medical Office.

Q And Sergeant Major Okuyama?
A He didn't come to our camp until 1945 and he was in charge of the office -- the Central Office.

Q Do you recall a Superior Private Yasufugu?
A No, I do not -- I do not recognize that name.

Q Superior Private Hirakawa?
A Hirakawa? That name is familiar. I believe he worked in the office with Dr. Maruo.

Q How about Superior Private Hayakawa?
A I don't recognize that name.

Q Superior Private Wakatsuji?
A No.

Q Let's see if I have the correct pronunciation.

INTERPRETER: Wakatsuji.

A There was only one Superior Private in our camp.

Q You mean Kondo?
A Kondo later was supposed to make Superior Private.

Q How about Kato? Superior Private.
A I don't recognize that name.

Q Kishimoto, also Superior Private.
A I don't recognize that name.

Q You don't recognize any of these names, except Kobayashi and Okuyama. So, every day, then, Kondo, the accused, would be in on the examination of the sick prisoners of war out of the group of over 600 men, is that correct?
A Yes.

Q But Nosu could give orders to Kondo, couldn't he?
A Any officer in the Japanese army could give orders to anybody, whether they are in the medical, infantry or where they are at.

Q Correct. Did you ever see Nosu in the company of Kondo? Did you ever see them together?
A About the camp, yes.

Q Did you ever hear any conversations between them when he had an interpreter? Did you understand what was going on?
A No, I did not.

Q You don't know what orders Kondo may have received from Nosu, do you?
A No, I don't.

Q You don't know what orders Kondo may have received from any medical officer, do you?
A I do not.

Q Are you familiar with any orders Kondo may have received from Colonel Murata?
A Colonel Murata I don't believe ever gave orders to a Private. That's not the policy of the Japanese army.

Q And your testimony is that the average number of men on sick call was twenty-five a day?
A Twenty to twenty-five a day.

Q You didn't have very many sick men at that camp, did you?
A No, we did not.

Q Now, who was Konde's immediate superior?
A Who was his immediate superior? That we never had been able to find out.

Q You think Dr. Nosu was his superior?
A Dr. Nosu was the doctor in charge of the entire area.

Q He would be his superior, wouldn't he?
A He would be, yes.

Q He was the medical officer in charge of the Osaka area? Was he not?
A Yes.

Q This was the Osaka Main Camp, was it not?
A That's right.

Q And Konde worked in the so-called dispensary?
A He worked in the dispensary.

Q So, Nosu would have control of Konde, would he not?
A Indirectly he would.

Q Through a chain of command?
A He may have.

Q You are not familiar with any orders Kondo may have received from the Camp Commander Matsumura?
A I am not.

Q Now, what time did you hold your work parade?
A At 7:00 o'clock.

Q That was right after sick call, is that it?
A Right after sick call.

Q Now, how did you determine who was going be sick call every given morning, Chief?
A These men would contact our doctor and our American doctor would tell them to fall in line to sick call.

Q Now at night or in the morning, were you given a list of those men who were going to appear on sick call?
A No.

Q Did you ever know before your work parade how many men were going on sick call?
A No, I would not know.

Q Now, in the morning, would you receive from Colonel Hirata or the Camp Commander, some other Japanese personnel, A request or an order for so many men to go to work?
A Yes.

Q And what would be the number of men on a normal day?
A On a normal day, between 500 and 550 men.

Q And what would the balance of the men do?
A Some of them would remain in camp, working on paper work. Some men were sick and then we had an unusually large camp staff in that camp because we had all the main store rooms of the area there.

Q You had how many men, would you say, on permanent detail in the camp between?
A Between sixty and seventy men.

Q Was that just work in the store rooms?
A Yes.

Q How about mess -- prisoner of war mess?
A We had seventeen men working in the galley.

Q What other details did you have?
A We had sanitation details.

Q How many men on that?
A Oh, that would vary from day to day because we would be able to -- some men would have been injured ob-

work, so that we could keep our rice ration up, we would put him on a camp detail that would go from five one day to maybe fifteen.

Q Any other details, Chief?
A We had a mail detail to handle the RedCross mail; that varied according to the mail that would come into the camp. Normally, we kept three men on that, but it would go up as high as fifteen men.

Q But that mail came in very seldom?
A On an average about once a month, in the latter part of 1944.

Q I am not interested in anything as infrequent as that. Any other details that were steady, day to day?
A Yes, we had a paper detail.

Q That's a detail you testified to yesterday?
A Yes.

Q That would vary according to the number of men you could get put on to the detail?
A That's right.

Q To do light work?
A That's right.

Q When your men fell out for work detail and lined up in the road, guards from the companies would come and pick them up, is that correct?
A That's correct.

Q And who would assign the various groups to go to the dockyards or to go some place else to work?
A Well, we had in each group a prisoner who would be the foreman of the work group. We would receive the work list most of the time the night before the day we was supposed to go to work. We notified each group leader how many men he would have and the policy of the camp, a man could go to work at any company he chose. We did not designate any man to go to a certain company. The men would go to the work leader of that group and request to go to work with him tomorrow morning.

Q What did you do? Post that on the bulletin board?
A We posted that on the bulletin board.

Q That was with the approval of the Japanese commander?
A Yes.

Q So that if a man didn't feel too well, he could go to the board and see where he could go to do the lightest work?
A That's right.

Q If he got there in time, he would go to that work?
A Yes. Most of the men who were found sick and weren't allowed to remain in camp, we would see that he would go to an easy detail.

Q Suppose I don't feel too well; I could go to the bulletin board of a certain afternoon -- or is it evening?
A In the evening.

Q And find posted there the work program for the following day?
A Yes.

Q And if I got to that work leader early enough, I could get on that detail, couldn't I?
A If I knew you was a good enough man to work on that detail, yes.

Q And someone who was really sick --
A That was my job and the other two group leaders' job to see that those men were placed on a working detail where they would have easy work.

PROSECUTION: If the Commission please, I don't want to interrupt defense counsel's examination, but I feel that he is testifying too much himself, and I feel that he should elicit all answers from the witness rather than a "yes" or "no" after he propounds all the facts within his own question.

DEFENSE: If the court please, this is cross-examination; I can lead this witness to the fullest extent. I am putting to him a question and asking him if I was a prisoner of war, what I could do and get away with, and he is testifying whether I could or not. It's perfectly legitimate cross-examination.

PRESIDENT: Proceed.

Q Well, Chief, if enough men did that, some men who weren't well would be cut off from an easy job, wouldn't they?
A Ask that again, please.

Q I say if enough men in a prisoner of war camp did what I just outlined to you --
A Yes.

Q Some men who really were sick would be deprived of an easy job, wouldn't they?
A You might have gotten away with it the first few months of the camp, but after we organized, we knew who was who in the camp. We knew the gold-brickers; we knew who the men were, who were trying to cooperate and were working with the camp.

Q You did have a few gold-brickers?
A Yes, a few.

Q How many did you have?
A Two or three men.

Q Two or three men out of six-hundred; are you sure that's all you had?

A To my knowledge, that's all we had.

Q To your knowledge; do you think there may have been more that you didn't know about?
A Maybe one or two more.

Q Most of them American soldiers, or were they British, Dutch and everything else?
A All nationalities.

Q All nationalities gold-bricked?
A The gold-bricksrs were mostly Americans.

Q You think, Chief, anybody feigned illness at any time to get an easy job?
A That could have been possible, yes.

Q You think that happened pretty often, do you?
A No, I don't.

Q Do you know of any specific instance?
A No, I don't recall any specific instance.

Q Now, most of your trouble at that camp arose from your sick call?
A What was that?

Q That was your chief worry at camp? Sick call?
A That was my chief worry, yes.

Q How many times did you testify you went to sick call?
A Oh, I would pass by the sick call every morning, but most of the time, I would stand there and attend sick call about seventy-five or one-hundred times.

Q Are you sure it was as much as that?
A Possibly more than that.

Q How much more?
A I don't know.

Q Well, give me an approximation, Chief. I don't want to tie you down.
A Maybe fifty times more. I was in that camp three and a half years.

Q I know you were, Chief. You think one-hundred fifty times at tops you went to sick call?
A It might have been the tops, yes.

Q Now, that camp was open from the twentieth of October, '42 to the first of June, correct?
A That's correct.

Q And you think the tops you went to sick call about one-hundred fifty times?
A Possibly that, yes.

Q And sick call was your chief worry in that camp, was it not?

A That was my chief worry.

Q And Kondo was the chief offender in that camp?
A That's correct.

Q You realize, Chief, that from 20 October 1942 to 1 June 1945, there are 984 days?
A So?

Q And you went to sick call about once every six days?
A Yes.

Q Don't you think you could have gone more often?
A No, not under the circumstances I had in that camp.

Q Why not, Chief?
A Because I had guards to argue with and men to line up and I had a big job to line up all those 700 men every morning.

Q There were about eight commissioned officers in that camp, weren't there, Chief?
A That's right.

Q Couldn't you have one of them to help you?
A It's against the International Law to have one of them help -- for one of the officers to work.

PRESIDENT: Just ask him what he did; don't ask him what he should or should not have done.

Q It's against International Law for an officer to check upon the well being of his men?
A If you would have been in that camp, you would understand what I am telling you now.

DEFENSE: I ask that that be stricken from the record.

PROSECUTION: Just a minute. The defense counsel has asked this man a question. I want this witness to give his answer before being checked off by defense counsel.

PRESIDENT: Let the witness answer the question.

PROSECUTION: I want the witness to answer the question.

DEFENSE: I asked him whether it was against International Law for an officer to check the well being of his men. That's the question. That's the question he should answer. I request that he be directed to answer that question alone.

PROSECUTION: The Commission has already ruled that the witness will answer the question.

Q Is it against International Law, Chief, for an officer to check as to the welfare of his men?
A That I don't know -- that part of the International Law.

Q Now, Chief, you know that that is not International Law. International Law is not concerned with the duties of an officer with respect to his own men.

PROSECUTION: Just a moment. I object to this line of questioning; it has nothing to do with the issues involved in this case, and counsel is arguing with the witness.

PRESIDENT: Objection sustained.

DEFENSE: I can't question the witness along these lines?

PRESIDENT: Don't argue with the witness.

DEFENSE: I am not arguing with the witness. I am asking whether he knows or not --

PRESIDENT: Just ask the witness; don't interrupt the witness.

Q Will you answer the question, please?
A I wouldn't like to answer that question in the court, sir, because I have been in the service a number of years and I don't wish to show a degredation to my officers.

Q I didn't hear that.
A I don't wish to show my officers up in poor light, sir.

DEFENSE: Is that in the record?

Q Now, when you would go to sick call, Chief, would you stay there for the whole time you were on?
A Sometimes, if my duties would permit me, yes.

Q You had a lot of things to do in the morning, did you not?
A I did.

Q How many assistants did you have with your labor detail?
A In what way do you mean that?

Q To help you. I don't mean the group leaders; to help you with what you had to do?
A I had one assistant.

Q Who was he, Chief?
A It was Chief Water Tender in the American Navy by the name of Scott.

Q And what did he do? Anything you told him to do?
A Sir?

Q He did anything you told him to do?
A He carried out my orders.

Q Now, on any given orders, Mr. Sanders, what would you have to do between breakfast time and the time your labor details went out of camp?
A I had to prepare the camp for morning muster; I had to see that the water was ready for the men to take their wash. I had to see that their messes were properly served. I had to take care of at least three or four hundred complaints in the morning about the food, how it was prepared, take care of complaints about what was going to be done that day and then men refusing to go to work here and there -- probably have to shift them around to various working parties and probably have to change the entire schedule of the working parties because the Japanese never came out and did what they were supposed to do.

Q You were a pretty busy man every morning?
A Every morning.

Q You only had one assistant?
A I had one assistant to help me with all the working parties and outside details.

Q Couldn't you get another one?
A They would not allow us to have any more.

Q Did you make a request for more?
A In the beginning I did, yes.

Q How did you make a request? To whom?
A To the Camp Commander.

Q Now, Dr. Hochman attended sick call every morning?
A Every morning except when he himself was sick.

Q Now about this other doctor, this surgeon you spoke of? Did he play any part in morning sick call?
A No.

Q Nothing but attend accidents and emergencies, is that correct?
A That's correct.

Q What did he do? Spend most of his time outside of the camp?
A He spent most of his time in his bunk.

Q Now, you testified yesterday that sometimes Kondo would listen to Hochmann, but that was rare?
A That's true.

Q Normally, when there was no visible means or no visible signs of sickness, Kondo would have sent a man to work?
A That's correct.

Q Did you see him send a man to work where there were visible signs of sickness?
A Yes, I have seen him send men where there was visible signs of sickness.

Q Is that Hoss?
A Hoss was one. They sent a whole group of thirty-five men out to work who had mumps. They put masks on their faces and sent them to a special working detail. Him and Dr. Ansaba were the cause of that.

Q Dr. Ansaba was there?
A And him with him.

Q He was there?
A On that occasion.

PROSECUTION: I object to counsel arguing with this witness. There is a proper method of examination.

PRESIDENT: I want the arguing with the witness to cease. Just ask him the questions. Let him reply before you start off with the next question.

Q What was that occasion, Chief? When was it?
A That was about in February, 1945.

Q What is Dr. Amo?
A Yes.

Q Dr. Hochmann was there that day?
A Yes, Dr. Hochmann was there.

Q Were you there all the time?
A Where?

Q Were you there at the timethe examination went on?
A That morning?

Q Yes.
A Yes, I was there.

Q You remember the names of the men who had these mumps?
A I can't recall their exact names.

Q Were they American prisoners of war?
A American and British.

Q Mixed group?
A Yes.

Q Did Dr. Amo examine these men?
A Dr. Ansaba didn't examine them.

Q Who examined them?
A Nobody examined them. He just said, "Go to work".

Q Dr. Hochmann examined them?
A Dr. Hochmann examined them.

Q Did he speak to Dr. Amo?
A Yes.

Q And then the men went to work?
A They went to work.

Q I see. How many times did the men report on sick call with the mumps?
A They came in one time, and most of the time, they were sent out to work; nobody bothered about coming. Dr. Hochman brought all these men before the doctor at sick call. He was a duty officer that morning and the doctor said, "Go to work".

Q The doctor said "Go to work"?
A Yes.

Q Now, when you had these conversations with Kondo as you testified to, who was your interpreter?
A Most of the time, Hayashi and we had several other interpreters in the camp.

Q Remember their names?
A Nishimoto was one; Kimura.

Q When did Hayashi come to the camp?
A When did he come to the camp?

Q Yes, please.
A I think he came to our camp in about January, '43, if I remember correctly.

Q He stayed there till the end of the war?
A Yes.

Q You testified yesterday that you had a conference with Kondo, Hayashi, Hochman and yourself; is that right?
A That's right.

Q That was in August, 1944?
A Yes, sir.

Q At that time, did Hochman talk to Kondo?
A Through the interpreter, yes.

Q What was Kondo's reply to Hochman?
A Well, he agreed that he would try to work with him more in the future -- pay attention to his diagnoses and promise us that he would not strike any more of the prisoners.

Q Did he say anything else to him at the time?
A Who?

Q Kondo say anything else to Hochman?
A No, Kondo just sat there and listened -- listened to our complaints.

Q He made no explanation of his action?
A He did not.

Q He just said, "Well, I will work with you in the future and I won't slap any more prisoners"?

A That's correct.

Q Did he ever complain to you about any prisoners of war?
A Who?

Q Kondo.
A No, he never complained to me about it.

Q Is that the time that Koshman was supposed to have said, "There is no use of my going to sick call"?
A Previous to that, he did tell me that.

Q Did he also at that time say -- oh, previous to that?
A Yes.

Q When did he tell you that he was afraid that he might strike Kondo and be executed?
A He told me that a number of times.

Q You weren't afraid to strike Kondo, were you?
A What?

Q You weren't afraid to strike Kondo, were you?
A No, I wasn't afraid to stryke him.

Q You did, in fact?
A Correct.

Q How many times?
A I hit him one time.

Q No question you being executed for that, was there?
A What's that?

Q You weren't afraid of being executed?
A That was over the Knudsen deal; he didn't want that to be told to the colonel.

Q The fact that you struck him?
A Yes.

Q Did he try to strike you back?
A No, he didn't strike me back. He knew better than that.

Q You testified yesterday that you made various reports and complaints to Hoga, Matsumura with respect to various incidents. When you received no action in compliance with your request, did you make any further complaints?
A That was as far as we were able to go.

Q Did you speak to your officers about it?
A They were thoroughly familiar with the situation.

Q Did they make any effort to do anything?
A They couldn't make no effort to do anything.

Q No chance to see Murata, was there?
A No.

Q Murata wouldn't speak to you?
A He wouldn't speak to nobody in the camp.

Q Did Matsumaro speak to you?
A Matsumaro, every day.

Q And did you make your complaints to him verbally every day?
A Yes.

Q Did he do anything to you?
A He did nothing.

Q You got no cooperation from anybody?
A I got no cooperation from nobody.

Q You didn't get any cooperation from your own officers?
A I did get cooperation from my own officers, but not from the Japanese.

Q And the American surgeon spent most of his time in his bunk?
A That's right.

PROSECUTION: There is no testimony before this court that he spent any time in his bunk.

DEFENSE: The witness has already testified to it.

PROSECUTION: That the American surgeon spent most of his time in his bunk?

DEFENSE: Yes, sir.

PRESIDENT: The American?

DEFENSE: Yes, sir.

PROSECUTION: That I would like to clear up from the record. I didn't hear anything in the testimony that the American surgeon spent most of his time in the bunk.

PRESIDENT: What?

PROSECUTION: The counsel has stated that the American surgeon spent most of his time in the bunk. I don't recall anything in the record.

DEFENSE: I questioned the witness about the American surgeon spending most of his time in the bunk, and the witness replied that the American surgeon spent most of his time in the bunk, is that correct?

WITNESS: Right.

Q What kind of a man was Nosu, if you know, Chief?

A Just an average typical "ornery" and cruel, ruthless Japanese.

Q He acted peculiarly?
A Not any much different than the rest of them did.

Q Very excitable man, wasn't he?
A He was excitable.

Q He talked in a very loud voice?
A Yes.

Q And he ranted, raved?
A Yes.

Q Did you ever see Matsumuro strike Kondo?
A I never did.

Q You know that several prisoners of war have testified in their affidavits that they saw it?
A Yes, they did see it.

Q You never saw that?
A I never saw that.

Q Did they ever tell you about it?
A Who was that?

Q Any of these men ever tell you that they saw Kondo get beaten by his officers?
A They saw one morning after the morning "tenko". that they saw the Camp Commander strike Kondo.

PRESIDENT: One morning after what?

A After "tenko" -- that's the morning muster, sir.

Q Do you recall a Staff Sergeant John Harold Zimmer?
A Zimmer, sir? Yes.

Q What did he do at the camp?
A He was on the outside, working detail.

Q Zimmer says in his affidavit -- several affidavits he made: "I have seen Matsumura beat Kondo when there were too many men who stayed away from work because they were sick." Now, I ask you this, Chief: Did any man just stay away from work detail because he didn't feel like going to work?
A Could any man?

Q Did any man?
A There may have been a few of them who stayed away from work.

Q Few men didn't go to sick call, didn't go to work call; just stayed in their bunks, is that it?
A No, they never stayed in their bunk.

Q What would they do?

A They would go over and talk and try to get on the sick list.

Q A few of these men were gold-bricksers, were they not?
A A few of them were gold-bricksers.

Q You testified with respect to Smith. Dr. Hochmann was thoroughly familiar with Smith's case, was he not?
A He would be, yes.

Q He had closer contact to him than you did?
A He did.

Q Have you read Dr. Hochmann's affidavit?
A I did not, no.

Q Have you read any of the affidavits in this case?
A No, only one man -- Atwood's.

Q Who?
A Atwood.

Q None of the others?
A No.

Q Dr. Hochmann says in February or March Smith came to him on regular sick call, complaining of illness. "In my examination it developed that Smith was undernourished and poorly developed." Was he a small man?
A Yes, he was.

Q "There were no positive signs -- symptoms of pneumonia present at this examination. I did, however, recommend to the Japanese medical orderly, Kunishi Kondo, that Smith be kept in camp for a few days in order to enable him to rest up." Dr. Hochmann goes further, "Kondo, I believe, acting upon general instructions that no prisoner, unless definitely sick (high temperature, broken bones) would be permitted to rest, refused to allow Smith to remain."

Now, do you know anything of these general instructions that Kondo received?
A That's true, the only way that you could be put on the sick list was when you had a high fever and evidence of an injury or some illness.

Q Where did those orders come from?
A That I don't know.

Q But there were orders to that effect?
A That was the general opinion of the camp.

Q I see, and those are the orders that Kondo operated under?
A Possibly so.

Q Now, what was the medical supply in late '43 and early '44, if you know?
A That I don't know for sure. I do know that there was a lot of Japanese medicine in the store room but we did not have access to that.

Q How long was Smith ill, if you recall?
A Smith was a pretty sick man when he came to our camp from the Philippine Islands.

Q He was?
A Yes.

Q What was he suffering from?
A Malnutrition.

Q Have beriberi or pellagra or anything like that?
A They all had that.

Q And he had that too, is that it?
A I believe he was on the borderline of pellagra and beriberi, as all the prisoners were.

Q And that was the result of malnutrition?
A Malnutrition.

Q In the Philippines?
A In the Philippines.

Q When you first came to this camp, were you allowed any rest?
A When we first opened up the camp, we were allowed to rest four days a month. That was on orders from Tokyo.

Q I mean when you first came to the camp, was there one substantial rest period before you started to work?
A Yes.

Q How long was that?
A About ten days.

Q What sort of work was Smith doing, do you recall, prior to February or March of 1944?
A He worked in the steel mills and general stevedoring.

Q He hadn't complained of illness prior to this incident in February, had he?
A Not to me he had not.

Q You don't know whether he went on sick call prior to that time or not?
A I don't know.

Q Now, Hess was a friend of yours, was he not?
A I knew Hess for several years in the Navy.

Q In the Navy?
A Yes.

Q And were you taken prisoner together?
A No, he was taken prisoner off the USS Quail in the Philippines.

Q You were taken in Guam?
A I was taken in Guam.

Q When did Hess first come into the camp, do you recall?
A I think there was two groups came; I believe he came in November, '42.

Q Was he a well man at the time?
A No, he was not a well man at the time.

Q What was he suffering from, if you know?
A Malnutrition.

Q Any evidence of beriberi or pellagra at that time?
A No, not at that time.

Q That was in November '42; now, a short while after that, he broke out about the middle of '43, did he not?
A There was a whole group started going down pretty bad about the middle of '43, especially the men who came from the Philippines. Most of these men had malaria, had dysentery and diarrhea.

Q A combination of tropical diseases?
A Yes, sir.

Q And Hess broke out with sores, is that correct?
A Ulcers.

Q Ulcers. What are the nature of these ulcers?
A We in the Service call them "Guam Blisters".

Q And as a result of that, he was sent to Itchiska Hospital?
A No, he had yellow jaundice when he went to Itchiska Hospital.

Q He didn't go to Itchiska because of sores?
A That was part of the reason, yes.

Q And how long did he stay at Itchiska?
A I think he stayed there about four months.

Q Did you ever see him over there?
A Whenever we took patients to Itchiska.

Q How did they treat him over there?
A They were treated terribly.

Q What sort of condition was he in when he came back?
A In a very weak condition.

Q And he rested for a month after he came back, didn't he?
A Yes.

Q Did Kondo allow him to rest for a month after he came back?
A No, we put him on paper work.

Q Did he stay in his barracks for a month?
A He stayed in his room because we worked it so -- we had our own prisoner foreman in charge of the work detail, of the paper work.

Q Kondo made no attempt to send him out to work?
A What's that?

Q Kondo made no attempt to send him -- take him off paper work and send him out, did he?
A Not at that time he didn't.

Q So, one month later, was he getting better?
A No, he was just about the average; he was gaining a little bit of weight.

Q He gained some weight; how about the sores on his body?
A His sores were gone.

Q He was running a fever?
A No, I don't know whether he was running a fever or not.

Q He was just thin and undernourished?
A That's right, just like all of us.

Q All of you were, weren't you? After he worked on the paper detail for a month, he went out to work, is that it?
A He did.

Q How long did he work before he complained and went to sick call?
A He worked for several months.

Q He never went to sick call during that time?
A No.

Q At the end of that time, his condition was pretty bad, is that it, Chief?
A It began to get worse.

Q It began to get worse. Sores break out again?
A No, the sores did not break out on him again.

Q Was he running a fever?
A No.

Q Did he have any broken bones?
A No.

Q He went to sick call?
A He did.

Q And he was sent to work?
A That's correct.

Q Now, at that time that was called, was that around April or May '44?
A What's that?

Q Was that around April or May of '44?
A When he started to get worse?

Q Yes.
A Yes.

Q That's the time when you would put him out on an easy detail, give him a chance to rest?
A Yes.

Q Now, you testified in direct that on a certain Friday, Kondo was in his bunk, and you say he started turning blue.
A That's true.

Q And you said on Sunday, you notified Kondo, is that correct?
A Sunday morning we notified him when we saw that he was about to die.

Q What did you do between Friday and Sunday?
A All we could do -- just let the man lay in his bunk.

Q Did you call Dr. Nosu?
A It was no use to try to call Dr. Nosu. He had many times previous to that refused to do anything it.

Q How about Dr. Harris?
A He wouldn't come over.

Q Did you ask him to come?
A No, he didn't ask him.

Q Did he know that Kondo was ill?
A They knew that the man was ill; we had nine men at that time seriously ill.

Q But you didn't notify Kondo till Sunday?
A Kondo saw him Friday and saw him Saturday.

Q Do you know what Kondo could have done with respect to getting a doctor for him?
A Evidently, he didn't do nothing.

Q Do you know what he did?
A What's that?

Q Do you know what he did?
A I don't know whether he saw any doctor or not, but I do know that there was no doctor come to see him.

Q I understand that. Do you think he was qualified to treat him?
A Who?

Q Konde.
A Konde was never qualified at any time to treat anybody.

Q But that was his job, wasn't it?
A That was his job.

Q You testified that Dr. Hoehman was rather upset after Hess died, didn't you?
A Yes, I did.

Q Dr. Hoehman knew Hess pretty well, didn't he?
A Hess was in the group that came with Dr. Hoehman.

Q Is that right?

PROSECUTION: Just a minute. I object to such remarks by counsel. I don't think they are necessary, and I ask that it be stricken from the record.

DEFENSE: I consent that it be stricken.

Q Dr. Hoehman came to the prison camp on the same ship?
A On the same prison ship.

Q And you testified yesterday that about ten days after Hess died, Dr. Hoehman was very upset about it, wasn't he?
A Yes.

Q And he told you that if it hadn't been for Konde, Hess would have lived?
A He said that little son-of-a-bitch kept him in the camp; he would have still been alive today --

Q You read Dr. Hoehman's affidavit?
A No, I have not read his affidavit.

Q Dr. Hoehman has an affidavit now in evidence before this Commission, to which he was questioned as to the circumstances surrounding the death of a Petty Officer Robert W. Hess. Is that the Hess you are speaking of?
A That's the Hess.

Q And Dr. Hoehman's answer is, "No, I cannot recall the circumstances, but I do recall the name." You think it's a little queer?

PROSECUTION: Just a minute. I object to that form of question. Counsel wants to interrogate him on it;

let him ask him about it, not "Do you think it's queer?"

DEFENSE: I submit to the court this is cross-examination.

PROSECUTION: It's not a proper question.

DEFENSE: It is a proper question. I want to know what he thinks. He has testified that Hoehmann was very much upset over Hess. Ten days later, he accused Kondo of causing his death. In the affidavit of Dr. Hoehmann, he doesn't even recall it.

PRESIDENT: What is the question?

PROSECUTION: I think the question can be reframed.

DEFENSE: "Do you think it is a little strange that Dr. Hoehmann doesn't recall Hess, or the circumstances of his death"?

PROSECUTION: The question was, "Do you think it's queer?"

DEFENSE: I am sorry. I will strike the "queer" and change it to "strange".

PRESIDENT: You changed the question from "queer" to what?

DEFENSE: "Strange".

PRESIDENT: The witness will answer that.

A He should recall that incident.

Q But hedoesn't, does he?
A Not according to what you have said.

Q There are three affidavits here from Dr. Hoehmann. Now, you testified yesterday with respect to Serafin. You testified that he [redacted] officers' orderly for one year.
A Yes.

Q And that he was your orderly for nine months and at that time, you said that the camp staff was too big?
A That's correct.

Q And Serafin had to go to work.
A That's true.

Q Well, how much had the camp staff grown at that time?
A Well, I think from the beginning of about 25 men to over 100 men.

Q And that was cutting in on the work parade?
A That's true.

Q Do you know where those orders came that Serafin go to work?
A No, I don't. He was among a large number of men who were forced out to work at that time.

Q Who did you receive your request or demands for work parties from?
A From the Camp Commander.

Q It's possible, then, that he was the one that ordered Serafin out?
A At the time that those men were ordered out to work, they did not receive any paper to carry out the paper work and we were using them in the camp as sanitation squadron.

Q You testified at the end of 1944, two months after he went out to work doing heavy work --
A Yes.

Q He began to show symptoms for beriberi.
A That's true.

Q That's the first time he had beriberi, to your own knowledge?
A- Yes, to my knowledge, yes.

Q What did he have -- wet beriberi or dry beriberi, do you recall?
A He started out with oedema and then it went to wet beriberi; that was the common beriberi that was there.

Q How long did he suffer from that ailment before he went on sick call?
A That I don't know.

Q He possibly may have suffered from it for some time before he went to sick call?
A He possibly had, yes.

Q When he went to sick call, you testified that he was sent to paper work, is that correct?
A He was sent back to the paper work detail.

Q Who sent him to that detail?
A Kondo.

Q Kondo would say "paper work"?
A That's correct.

Q If Kondo didn't think he was ill, he would say "work"?
A Outside work.

Q How long did Serafin work on paper work?
A Intermittently for several months.

Q During the latter part of '44?
A Yes.

Q Now, prior to his death, do you know how many times Serafin attended sick call?
A No, I don't.

Q You testified yesterday that when he was on paper work, he went on sick call trying to get off the paper work, is that correct?
A No, anybody who was sick that we felt was sick in the camp, we tried to get him on the paper work detail because that was considered a light job.

Q Anybody who was on paper work detail try to get off that?
A No, they tried to get on the paper work detail to keep from going outside to work.

Q I know. If they were very sick, Chief, would they try to get off paper work to go to bed?
A We would arrange that ourselves.

Q How did you do that?
A We just let the man go to his room and turn in on the top shelves and whenever the Japanese "hancho" would come up, we would say he is in the "benjo" -- in the toilet.

Q You were in a position to take care of these men?
A Yes.

Q You testified that he was taken off paper work and sent on manual labor, is that correct?
A Yes.

Q Did you see him the day he went to sick call?
A No, the way that circumstance happened, we run out of paper and the men were laying -- remained in the camp, waiting for the paper to come. They would say it would come tomorrow; it wouldn't come tomorrow. It would be here the next day. We had to keep them in there to unload the trucks. The Japanese people found out there wasn't going to be any paper for a whole month; they sent the whole gang out to work with the exception of the cripples.

Q Who sent out the whole gang to work?
A The medical people did.

Q Did these men go down on sick call first?
A Yes, they held the sick call first; Kondo held that.

Q Do you know where the orders came out from?
A No, that came from the Camp Commander.

Q Now, have you read Dr. Hochman's affidavit in connection with Serafin?
A No, I have not.

Q Dr. Hochman testified to an affidavit in respect to Serafin. "Despite his age, he was assigned to do manual labor. Exactly what he did I don't know. On the evening of 16 January 1945, he returned from work completely tired and exhausted and with a head cold. He told me he felt he could not continue to work any longer because of his physical condition. With the

permission of Kenichi Kondo, the Japanese medical orderly, Serafin was sent to his bunk and told to stay there. I wanted to hospitalize Serafin, but this was not permitted by Kondo. Serafin remained in his bunk all the following day. On the evening of 18 January 1945, between 2000 and 2100 hours, Serafin died."

A I think that that is incorrect -- the dates.

Q Do you question Dr. Hochmann's --
A The date.

Q How about the circumstances?
A The circumstances are quite correct. When he was returned to the camp, he was carried into the camp because he had fainted from work. He was carried into the camp and permission was given that night by Kondo for the man to be away from evening muster in order that he lie down. During that night, sometime between 1:00 o'clock in the morning and 5:00 o'clock in the morning, when we had to get up, Serafin died. He was brought into the camp in the afternoon and the following morning, he died.

Q I see. You don't think he died between 2000 and 2100 hours on the 18th?
A No.

Q Dr. Hochmann so states; perhaps it is just a lapse of memory, you think, isn't that it, Chief?
A What's that?

Q You think Dr. Hochmann is just mistaken as to the time?
A Nobody knew exactly when he died, but it was some time in the morning. We had an evening muster -- a late muster between 11:00 and 1:00 o'clock. That was every night. There was a complete bunk check.

Q I see. So, his bunk was checked and he was alive?
A He was alive at that time. So, he must have died between 1:00 and 5:00 o'clock in the morning as far as we could determine.

Q The next day, you accused Kondo of causing his death, didn't you?
A Yes.

Q Was any attempt ever made to get old men off the labor details?
A Yes.

Q When was the first attempt made?
A When we started -- when they first came to the camp in 1942. We organized and pleaded for a long time for a job to be created in the camp and they finally did start the paper work.

Q What do you mean by "we"?
A I and my other "hanchos" that I had in the camp -- Scott and Sergeant Major Matheson.

Q How about Dr. Hochmann? Did he join in that?
A Sometimes he did.

Q Dr. Hochmann in his affidavit says, "Before the death of Serafin, I had been thinking about writing a request to the Japanese to excuse old men over the age of forty from manual labor. After the death of Serafin, I did this."
A I think he did that at least about twelve times during the period he was in the camp.

Q He doesn't remember, is that his testimony?
A I do; I remember.

PROSECUTION: Just a moment. I didn't get that question.

DEFENSE: I said, "And he doesn't remember".

PROSECUTION: You are asking this witness if he doesn't remember?

DEFENSE: I said, "Then, he doesn't remember?"

PROSECUTION: Is that a question or a statement by counsel? I don't understand.

PRESIDENT: The objection is sustained. That question will not be answered.

PROSECUTION: It's not a question, sir.

DEFENSE: Then, is it your opinion that Dr. Hochmann doesn't remember these requests?

PROSECUTION: I object, calling for a conclusion on the part of this witness.

PRESIDENT: That question will not be answered. This witness knows nothing about Dr. Hochmann. You are bound by what Dr. Hochmann states in his affidavit.

DEFENSE: I want the record to show that the counsel for the defense is limited in his cross-examination when great liberality has been shown to the prosecution in his direct examination.

PROSECUTION: I ask that the statement be deleted from the record by this Commission as there is no basis for it.

DEFENSE: I move for a mistrial, if the court please. I move that a mistrial be declared on the grounds that the accused is not being given a fair trial guaranteed to him by SCAP directive.

PROSECUTION: May I answer that?

PRESIDENT: Yes.

PROSECUTION: I think that every liberality has been given to the defense counsel in his cross-examination of this witness, and I feel that the rights of the accused have been protected and will be protected by this Commission and I think it's unfair that defense counsel make such a statement to this Commission, to American officers.

PRESIDENT: The statement will not be deleted; the motion for a mistrial is not granted.

DEFENSE: Is the witness directed to answer my last question or is that last question to be withdrawn?

My question was: "Then, Dr. Hoehmen does not remember, does he?"

Now, this witness has testified to various things said by Dr. Hoehmen and various things done by Dr. Hoehmen doesn't mention them.

Now, there is a question as to whether Hoehmen doesn't remember them, or is it a question that those things didn't happen? It's a question of fact.

PROSECUTION: Just a moment, if the Commission please. Regardless of what those facts are, how can this witness state whether Dr. Hoehmen remembers or not. He can state what the facts are in his opinion. If they do not agree with the affidavit, that's something for the counsel to argue before this Commission. But, he obviously can't state if Dr. Hoehmen remembers or not. How can he look into somebody's else mind?

DEFENSE: I ask the Commission to recall when this witness was allowed to testify as to what persons thought; these affidavits are filled and the evidence is replete as to why things were done by other people and why motions for striking them from affidavits have been denied, I have the right to ask from a live witness the same question.

PRESIDENT: Does the prosecution object to the witness answering his question?

PROSECUTION: I have no objection.

PRESIDENT: Very well; the question will be asked.

Q Then, Chief, you believe that Dr. Hoehmen doesn't recall making those requests?
A I believe he doesn't recall or else, refuses to make statements.

Q You know of any reason why he should refuse to make a statement?
A The same reason a lot of prisoners of war who are back in the States refuse to come back out here again.

Q I don't mean come back; I mean to make a statement.
A We have found in our section, the International Prosecution

Section, the men have made their complaints in affidavits because they do not want to be returned to Japan as a witness.

Q How about those men who made very strong affidavits?
A Those are the few men who are willing to come back out here and testify.

Q You know how many men came back out here to testify?

PROSECUTION: Just a moment. I object to this line of cross-examination. It was not brought out in direct examination; it has nothing to do with the issues in this case.

DEFENSE: It was brought out in direct examination that he is now at the International Prosecution Section, brought over here to testify in these cases. I think it's perfectly proper to inquire, since he has made this voluntary statement, as to how many men are out here.

PROSECUTION: Sir, I again strenuously object; it has nothing to do with the issues in this case. If counsel wishes to attack this witness' credibility, let him do so. But his line of cross-examination has nothing to do with any of the issues in this case. He is merely wasting the time of this court.

DEFENSE: I don't see where it prejudices the prosecution's case in any way.

PROSECUTION: It has no prejudice, but it has nothing to do with the case; it should not be in the record. It's cluttering up the record.

DEFENSE: I asked him how many other men came out here to testify, if he knows.

PRESIDENT: You can answer that question.

A To my knowledge, about ten men have come here so far, sir.

Q Anybody else from this camp?
A From this camp, no.

Q Now, with respect to Robert M. Barber, you say he was a British Sea Captain?
A That's correct.

Q Merchant Seaman?
A Merchant Marine.

Q Suffering from stomach ulcers?
A Stomach ulcers.

Q And when did he first come to the camp, Chief?
A In November, 1942.

Q Second group that come in, is that it?
A No, he was, I think, in the fourth group.

Q Did he work in work parties?
A He worked for about several months.

Q Weren't these Merchant Seamen officers, ships officers, treated the same as the Army and Navy officers?
A No.

Q They worked, is that it?
A They were considered as privates, equivalent of privates in the Japanese army.

Q What kind of work did he do?
A Stevedoring work.

Q About how old a man was he?
A He was about, I think, somewhere in the neighborhood of about 40 years old.

Q Big?
A No.

Q Were you present on this occasion on sick call; you testified Kondo slapped him.
A Yes.

Q When did it take place?
A It was at morning sick call, between 6:30 and 7:00 o'clock in the morning.

Q Around when -- the time of the year?
A What time of the year?

Q Yes.
A That was in the early part of -- the latter part of '45.

Q November, December?
A Along about November and December.

Q Who else was on sick call that day?
A There was a number of prisoners on sick call that day.

Q I mean Japanese?
A Japanese -- Kondo was the only man present.

Q And is that the time he was told there was no powders?
A Yes.

Q Do you know of your own knowledge whether there was powder?
A There was no powder in the box.

Q There was no powder in the box?
A No.

Q And he insisted that he have powder, is that right?
A Yes.

Q What else did he say to Kondo?
A Well, he cursed him pretty bad.

Q He cursed him?
A In a loud tone voice, yes.

Q In English, is that it?
A Yes.

Q Do you think Kondo could understand what he was saying?

PROSECUTION: I object, calling for what somebody else might have thought; how can this witness know?

DEFENSE: I will agree that it be withdrawn.

Q His tone of voice was loud?
A That's right.

Q Nasty? He was angry, wasn't he, Chief?
A Yes, he was angry.

Q And you agree with me, Chief, regardless of language, you get sore at somebody and make faces and talk loudly, they understand?
A Yes.

Q How long did he bawl Kondo out?
A He spoke to him for about a minute

Q All the while bawling him out?
A Well, he wasn't exactly bawling him out; he told Kondo it was his job to get the medicine there, that it was in the store room; it was his job to have the medicine there on sick call in the morning so that he could treat the patients. The man was right.

Q There was no powder there, was there?
A No, there was no powder there because Kondo was too lazy to get it and bring it over.

DEFENSE: I ask that it be stricken as a conclusion.

A That was practically every day the same thing.

DEFENSE: Just a minute, I ask that that be stricken on the grounds that it is a conclusion.

PROSECUTION: I ask that it stay in the record on the grounds that it's responsive to the question.

DEFENSE (To Reporter): Will you read the answer and question, please?

(The question and answer were read by the reporter)

DEFENSE: I didn't ask him why there was no powder there. I ask that it be stricken as a conclusion.

PRESIDENT: The answer to that question will be stricken from the record.

DEFENSE: How about the portion that there was none there? That stands, does it not, sir?

PRESIDENT: Yes.

Q He struck him three or four times on that occasion?
A Yes.

Q Did he knock him down -- hurt him?
A No, just slapped him hard.

Q No permanent injury, was there?
A No.

Q He walked away?
A Yes, he did.

Q Now, we come to this 4th of July incident that you termed the "baka" incident. When did that regulation concerning sleeping with blankets across your stomach first go into effect?
A In the first summer that we were in the camp.

Q That was in '42?
A '43.

Q Everybody knew, did they not, Chief, that you are supposed to sleep according to Japanese regulations with a blanket across the stomach?
A Yes.

Q And you, knowing that Kondo would be around to see whether you were obeying regulations or not, had your fire watch posted, did you not?
A We did.

Q So that he could warn you?
A Yes.

Q And this night, somebody slipped up, is that it?
A Possibly the fire watch was down at the other end of the camp.

Q Was this a normal tour of duty on Kondo's part?
A It was the normal tour of duty as the men in the duty section; there was supposed to be a duty medical man with each section watch.

Q When he came, you weren't there?
A No, I was not there.

Q And you don't know when he came in or anything?

PROSECUTION: Are you asking that or making a statement?

DEFENSE: I am asking that.

PROSECUTION: Then, direct it in the form of a question; it sounds like a statement to me.

DEFENSE: The witness understands.

PROSECUTION: Just a moment. I don't understand whether that is a statement or a question. Counsel drops his voice at the end and it stands on the record as a statement.

DEFENSE: Read it back, please.

PRESIDENT: We are trying to impress on the defense counsel: Frame your questions in the form of a question, not just saying something, or making a statement after the witness has finished replying to your question. You are making lots of statements of your own.

Q Then, you don't know, do you?

PRESIDENT: The question will be answered.

A I don't know what time he came into camp.

Q Now, from whom did you get the story about this?
A The fire watch woke me up when the commotion started.

Q Who was on fire watch that night, do you recall?
A One of the British boys.

Q How far away from this barracks did you have your quarters?
A My room, about the length of this room.

Q How long after it started did you get in there?
A Within about a minute or two.

Q You stopped it immediately?
A Yes.

Q So this went on for a minute or two?
A Yes.

Q "And in that minute or two, the man beat me, struck Sergeant Runak, Sergeant Vontom, Private Ordoyne, Private Smith, and one other man". Who was the other man? Vance?
A Vahoe.

Q Was he an Army soldier or was he Navy?
A He was a Chief Radioman in the Navy.

Q Do you know what his first name was?
A No, I do not.

PROSECUTION: If the Commission please, counsel has just made a statement that in that minute or two, all these men were struck, and then he proceeded to ask this man about Vance. He has made a statement and a question. I suggest that if he wants to interrogate this witness, that he phrase everything in the form of questions. The record is replete with statements made by counsel. If you read that back, you will understand what I mean.

DEFENSE: All right, we will read it back, please.

(The reporter then read the desired portion)

PROSECUTION: Does the Commission see what I mean.

PRESIDENT: Those were questions?

PROSECUTION: Yes, but the statement he made previously -- he made a voluntary statement that these men were beaten within a space of one minute and then he proceeds to ask some questions. He doesn't ask questions about the beating within a space of a minute; it's merely a voluntary statement by counsel which is not proper and he knows that.

DEFENSE: Sir, the witness has already testified in direct examination as to this incident. Well, I can make a voluntary statement as to anything he testified to and put it right back to him.

PROSECUTION: If counsel wishes to make statements, let him take the stand. It's not the proper way to interrogate this witness and he knows it.

PRESIDENT: Proceed. Try to frame your statements in the form of questions.

Q Vance, then, Mr. Sanders, is a Navy man?
A Yes.

Q I see. Now, did you see Kondo strike any of these men?
A No, I saw him strike none of the men, but I saw a man that had been knocked down when I came into the door; it happened right inside of the door.

Q You don't know who struck him, do you? You didn't see anybody strike him, did you?
A No.

Q Then, you don't know who struck him, do you?
A Oh, yes, I know who struck him because I knew who was there doing the striking. There is only two men that could have done the striking.

Q But you didn't see who did it?
A I didn't see who did it, but I know who did it.

Q It may have been the Corporal of the Guard.
A He struck him, too.

Q He had the bamboo stick, didn't he?
A So did he.

Q You testified on direct that there was one bamboo stick.
A He had a stick there; he had hold of a broom in his hands.

Q You didn't see him strike anybody with a stick, did you?
A No.

Q Did you see him grab it?
A What?

Q The broom?
A No.

Q But you saw the Corporal with the bamboo stick?
A Yes.

Q Did you see anybody get kicked?
A No.

Q How many Japanese people were there in that room at that time?
A There was a soldier of the guard, a corporal of the guard and Konde.

Q There were three people, weren't there?
A Yes.

Q You don't know which one of the three struck anybody, do you?
A What?

Q You didn't see any of the three strike anybody?
A I know that him and the corporal of the guard did the hitting.

Q You didn't see it, did you, Sanders?
A No.

PROSECUTION: Just a minute; he testified to this question at least six times. I see no further purpose in pursuing it.

DEFENSE: He is saying that he knows but he didn't see. Every time he says, "I know", I will ask him did he see it.

PROSECUTION: Ask him how he know sit. I object to the repeating of this question -- it's repetition.

PRESIDENT: Don't repeat the question. He said he didn't see it.

DEFENSE: If the court please, can we take a recess?

PRESIDENT: The court will take a ten minute recess.

The court then took a recess until 1000 hours, at which hour the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PROSECUTION: The witness is reminded that he is still under oath.

Questions by defense (continued):

Q On direct examination, Chief, you testified, did you not, that on that night when you came into the room, you quickly quieted Kondo down, is that correct?
A Yes.

Q You never had any trouble, did you, quieting down a situation like that?
A No, I wouldn't consider it trouble.

Q Did anybody else quiet him down?
A No.

Q You were the only one in camp whom he had any respect for in regards to that?
A Yes.

Q How about this corporal and this soldier, Chief, did you have trouble with them?
A No, I very seldom had any trouble with the guards.

Q On that night?
A On that night, no.

Q Now, at that time, you testified that Kondo told you that he held you responsible to see that these men slept with their stomachs covered.
A Yes.

Q And you understood, did you not, that he was seeking to enforce a Japanese regulation known to the men at that time?
A Yes.

Q Is that correct?
A Yes.

Q Now, with respect to Nettles, you testified that Nettles was found sleeping outside of the barracks, is that correct?
A Outside of his room.

Q Outside of his room?
A Yes.

Q Was he out in the open?
A Yes.

Q Was there a regulation against that?
A Yes.

Q Was that known to Nettles and the rest of the men?
A That was known to the camp.

Q Was he covered out there?
A No, he was not covered.

Q You know the reason for the regulation?
A The reason for the regulation was that they wanted everybody to be in the room.

Q Security precautions, you believe it was, Chief?
A No, just to see that they wouldn't have any difficulty in holding their bunk check.

Q Normal regulation, don't you believe?
A Normal regulations? Yes.

Q And Nettles that night disregarded that regulation, did he not?
A Yes.

Q You know if any other man had been disregarding that regulation?
A Yes, quite a few of them had been.

Q Any of them caught doing that?
A No.

Q That's the only instance where a man was caught?
A That was the only instance where he was caught.

Q Was there ever an instance on bed check when the Japanese personnel couldn't find certain men?
A Yes, there was a number of instances.

Q Where were those men at that time, if you know?
A They would probably be in the toilet.

Q Not violating any regulations?
A No.

Q The first instance of a violation of that regulation, is that correct?
A Yes.

Q Was it ever violated after that?
A A number of times.

Q Anybody ever caught?
A No.

Q Kondo at that time was on duty, is that it?
A He was in the duty section.

Q Was he making his tour of barracks at that time?
A Yes.

Q Did you see him strike Nettles?
A No, I did not.

Q How many guards did the Japanese have controlling that camp at night?
A At night? One guard.

Q Would he be in a position to see Nettles?
A Sure, he saw him.

Q Is it possible that the Japanese guard is the one that struck Nettles?
A No.

Q You didn't see it?
A No, I know who struck him, though.

Q You don't know of your own knowledge, do you, Chief?
A I do know what the man told me.

Q You don't know of your own knowledge, do you?
A No.

Q How soon after this incident did you get there?
A Within a couple of minutes.

Q Was this in the same barracks, the same group of men that the "baka" incident occurred?
A No.

Q Different group of men?
A Different group.

Q You speak to Nettles after this incident?
A Yes.

Q Was he injured?
A His shins were injured -- where he was kicked on the shins.

Q Was he able to go to work the next morning?
A Yes.

Q No permanent injury?
A No.

Q Did you make a protest after the Nettles incident?
A Not an official protest.

Q What sort of a protest did you make, Chief?
A I told Matsumuro, the Camp Commander, what had happened because I knew there would be a report made by the Japanese Staff.

Q What did Matsumoto say?
A He said nothing about it.

Q Did you talk to him through an interpreter?
A No.

Q Did he understand you, Chief?
A A little English -- between English and Japanese, he understood.

Q Did you find that you had quite a bit of language difficulty -- that the barrier prevented you from fully explaining your position?
A Yes.

Q And do you feel that there were times for misunderstanding because of language?
A There may have been, but when I felt that there would be a misunderstanding, I always obtained an interpreter.

Q Normally, when the Japanese Company Commander would come out, would he bring an interpreter with him?
A There was an interpreter in every duty section.

Q How many duty sections were there?
A Sometimes there would be three and sometimes seven or eight sections.

Q There would be seven or eight interpreters?
A Yes.

Q All Japanese?
A All Japanese.

Q The only interpreters you could remember are Hayashi, Nishimoto -- is that his name?
A Nishimoto.

Q And Kimura?
A And Kimura.

Q Did you ever use Kimura to interpret for you?
A Yes.

Q And the other man you mentioned, did you use him also?
A Yes.

Q Were they pretty proficient in interpreting?
A Yes, they were.

Q Now, with respect to John Doherty, Jr., where did this incident take place which you testified to on direct examination?
A Where did it take place?

Q Yes.
A At sick bay.

Q You recall about when it was?
A Not exactly -- the exact date.

Q Was it in 1944, Chief?
A 1944.

Q You say Doherty was a little deaf?
A Doherty was deaf.

Q Was he totally deaf?
A Not totally deaf, no.

Q How long had you known that he was deaf?
A Since he came to the camp.

Q As Camp Commander, did you make any arrangements so that he could be fully aware of what he was expected to do and what he was expected not to do?
A Yes.

Q What were those arrangements?
A We made out written instructions and they were read to each group as they came into the camp -- what the regulations were -- to the camp.

Q Now, were you present at sick call that day?
A At sick call that day?

Q Yes.
A No, I was not present at sick call that day.

Q Then, you didn't see this incident either, did you?
A I was at the gate after the men had departed for work and they were still continuing sick call.

Q How far from sick call was that?
A What's that?

Q How far away from sick call was that?
A That was the sick call that started in the morning; most of the time, the way we tried to work it, the real sick men who were bed patients and the men who were sick in the camp were on the end of the line; the men who were expected to go to work or who were trying to stay in would be in the front of the line.

Q So, then, it's true, is it not, Chief, that on an ordinary sick call, there were men that were expected to have to go to work, was it not?
A Yes.

Q And normally, how many would you say that was out of a group of twenty-five?
A That were expected to go to work, we would expect that at least fifty percent would be sent to work.

Q These men received a little medication and then sent out, is that the way it was?
A Yes.

Q What were these men known to be suffering from, Chief?
A Colds and diarrhea, malnutrition.

Q You testified on direct examination, did you not, that Doherty was late for sick call?
A He was.

Q How late was he?
A I would say he arrived over there shortly after 7:00 o'clock.

Q He knew he had to go on sick call, did he not?
A He did.

Q There was no question of the fact that he was deaf and that --
A The excuse was that he didn't hear the word passed.

Q He knew when sick call was held, did he not?
A Yes.

Q Was there anybody present, rather?
A Dr. Hochheim, Merritt, and Ginger were there.

Q Was Doherty knocked down?
A No, he was not.

Q Was he cut or bruised?
A No.

Q What happened to him after the incident occurred?
A He went to work.

Q He went to work?
A Yes.

Q He was able to work, was he not?
A Yes, he was able to work.

Q He was just generally run down, the way anybody else was, isn't that correct?
A Yes.

Q There was no question of a sick prisoner being sent to work, is there, Chief?
A No.

Q Do you know why he was reporting to sick call?
A Because he had a bad cold.

Q Did he receive medication that day?
A What's that?

Q Did he receive any medication?
A He had been receiving medication.

Q On that day?
A On that day, he received no medication.

Q Because he was late?
A Yes.

Q Were regulations posted at that time, Chief, that sick call be held between 6:30 and 7:00 o'clock?
A Yes.

Q Chief, had you ever gone to a medical Naval sick bay a little late for sick call?
A Yes.

Q Have you ever been denied any medication?
A No, I have never been denied any medication.

PROSECUTION: Just a moment. I object to the question. It has nothing to do with this case.

PRESIDENT: Repeat the question.

(The reporter then read back the question)

PROSECUTION: I am objecting to that question on the grounds it has nothing to do with the issues in this case.

PRESIDENT: You are not talking about this —

PROSECUTION: He is talking about an Allied or an American Naval sick bay; he is not talking about the Japanese dispensary at the Headquarters POW camp. It has nothing to do with this case.

DEFENSE: If the court please, we are charged with the violation of the laws or customs of war. We are charged here with striking sick prisoners of war. We are charged with refusing to give medication. I think it perfectly competent to show that such incidents might take place in our own establishments. Certainly, it wouldn't constitute a violation of laws or customs of warfare.

PROSECUTION: If the Court please, counsel is interrogating this accused about the American prisoner of war named John Doherty, Jr., Specification 7. There is no allegation in that specification that this man was refused medication. The only allegation is that he was hit by Kenichi Konde.

DEFENSE: That's true, sir. I am questioning with respect to that specification now, but if the court will glance at Specification No. 10, we are charged between the 31st of January, 1945 and the 8th of May, 1945 among other things with wilfully and unlawfully failing, neglecting and refusing to provide them necessary medicine and medical attention..." I think it's perfectly proper. I am not confining my questions to one specific specification entirely.

PRESIDENT: The objection is overruled. The witness may answer that question.

Q Your answer, Chief, is that you were never denied medical attention in the Naval dispensary, is that correct?
A No, I never was.

Q You say that there was some marks on Doherty's shins?
A No, I did not.

Q Would you say, Chief, that the effects of the mistreatment could be seen on the following day?
A No.

Q Now, with respect to Horsley, when did he come to the camp?
A In November, in '42.

Q And your testimony is that at the time, was it not, that he was fifteen years of age?
A Fifteen years of age.

Q What kind of work was he doing?
A In the camp?

Q Yes.
A Outside work, stevedoring and in the steel mills.

Q Was he physically fit to do it?
A When he came to our camp, he was.

Q Was he suffering from any disease at that particular time?
A Not at that time, no.

Q You testified that he went to Itchioka Hospital?
A Yes, he did.

Q What was he suffering from, Chief?
A Dysentery.

Q And how long did he stay at Itchioka?
A About three months.

Q And he came back here?
A Yes.

Q Cured?
A Yes.

Q What was his state of health after he came back?
A He was in a very weakened condition.

Q Do you recall when he went to Itchioka?
A No, I don't recall when he went to Itchioka.

Q Well, can you tell me approximately what year it was in, Chief?

A It was in 1944 when he went to Itchioka.

Q About when did he come back?
A Several months later; I don't remember the exact date.

Q How long before he returned from Itchioka -- strike that -- how long was he back in the camp before this incident occurred that you testified to?
A He had been back to camp about six weeks.

Q Had he been resting?
A We fixed him up with a job outside as a checker.

Q Was he reporting on sick call during that time?
A No.

Q No attempt was made, was there, to take him off that job and put him at heavier manual labor?
A No.

Q What was wrong with him this particular day that you testified to?
A Well, he was just a young lad in the camp and there was nothing wrong with him except that he was -- the kid had been very ill and he was very weak and run down.

Q And what was the name of the Japanese officer that gave him permission to stay in?
A Kajiyama.

Q What was his duty at camp?
A He was a supply officer.

Q And at that time, was he duty officer?
A Duty officer.

Q Do you know whether or not this information was conveyed to Kondo before sick call?
A No.

Q Was there a check made at sick call or before sick call to determine just how many men were available for work, how many men were on sick call and how many men would stay in camp on permanent detail so that the Japanese would know just where everybody was?
A No.

Q You testified, correct me if I am wrong because I may have the wrong impression, that Kondo found out one man was missing; was that your testimony?
A That's correct.

Q How did he find that out, Chief?
A Well, when we lined the men up outside in the road, we knew exactly how many men was out to work; we knew the exact number of men who were in camp. That's the permanent camp detail. We got the list from the

doctor how many men was working on the paper work and how many men was on the sick list and then that report had to be turned in immediately. After the men had shoved off, that work had to be done at the gate.

Q And to whom was that report turned in?
A That was turned in to the Camp Commander.

Q And do you know if he in turn would show it to Kondo?
A Yes.

Q So that he could check your figures; were those your figures?
A Yes, those were my figures.

Q Did he check your figures against the number of men he had on sick call?
A Yes.

Q And that is the way that he had found out one man was missing?
A That's correct.

Q Well, Chief, if your report was made up to show that so many men were staying in camp and so many men were going to work and so many men were going to sick call, in order for Kondo to realize that one man was missing, then Horsley's name was on that sick list, wasn't it?
A No, my report was correct, but Kondo's report could not be correct because he was short one man.

Q Well, if your report would show, for instance, fifteen men were going to sick call, you didn't include Horsley in that count, did you?
A No.

Q Horsley didn't go to sick call, did he?
A No.

Q Kondo would have fifteen men before him, wouldn't he?
A That's correct.

Q How would he be missing a man?
A He would be missing a man because I would turn in 660 men out for work and the number of men in the camp and I had him listed in the camp on a "general" -- that's rest, remaining in camp. My figures were correct.

Q Well, did you have them down by name?
A No, just by numbers.

Q Well, Kondo wasn't interested in how many men were actually going on work details, was he?
A Yes, his report had to jibe.

Q He just had to report, did he not, how many men were on sick call?
A That's correct.

Q And then Lt. Kajiyama would take sick call, subtract it from the number of men going to work, or add it to the number of men going to work and the number of men staying in camp and he had a total of everybody.

PROSECUTION: Are you asking a question?

DEFENSE: Yes.

A That was correct.

Q Your record would show, taking these numbers, for example, would it not, 200 men going to work?
A Yes.

Q Two-hundred men stay in camp?
A Yes.

Q Now, was Horsley one of these 200 men?
A Yes.

Q Say, 25 men to sick call.
A Yes.

Q Now, Kondo would get that report, is that correct?
A Yes.

Q And the only man he would see would be the 25 men on sick call?
A Yes.

Q And he would count them and see 25 men?
A Yes.

Q Now would he know if you could tell us, Chief, that somebody was missing?
A When I put on the report, I list opposite so many men here and so many -- this place and that place and then I had on this report one man is resting.

Q That was an addition?
A That brings the total up to the camp. We had to account for every man, where he was at. Like, for instance, we put down on Osaka Ko working party, 40 men, Sumitomo working party, 100 men; one man in camp; so many men on paper work; so many men working in the galley and I had down this one man -- rest.

Q You didn't have his name down?
A No, just the number.

Q Do you recall how many men were resting that day?
A No, I don't recall.

Q Was it more than one?
A I think he was the only one that day that was remaining in camp -- that is actually resting in camp.

PROSECUTION: If the Commission please, I don't like to interrupt. Counsel is interrogating this witness on Horsley. The specification is that Horsley was beaten by Kenichi Kondo. The specification is very clear. I don't see any necessity in going to all of these extraneous matters which have nothing to do with the specification; it is irrelevant and is cluttering up the record. It has no bearing on it whatsoever.

DEFENSE: If the court please, there is nothing irrelevant or immaterial in seeking to inquire into the circumstances of an incident.

PRESIDENT: What?

DEFENSE: Inquiring into the circumstances of this incident. I am not confined to just asking this man whether so and so was beaten on such a day. I have the right to inquire what the circumstances were to show whether the beating was justified, whether it was purely arbitrary -- what happened.

PRESIDENT: The witness will answer that question.

A Sir, --

PRESIDENT: Answer the question; the objection is overruled.

A Will you ask the question again?

Q I asked you whether there was more than one person marked "rest" on that particular day.
A We had several men in camp -- men who did not have -- who were minus their legs and several permanently crippled men. They were allowed to remain in camp as "rest".

Q At the time this Japanese officer told Horsley to stay in camp, did he tell him to report on sick call?
A No.

Q Were you present?
A Yes.

Q He didn't tell him that at all?
A No.

Q Did you testify yesterday that Kondo sent for Horsley?
A That's correct.

Q By name?
A No.

Q What did he do?
A He asked the doctor -- told him that that man was resting in camp and he says, "Bring this man here." So, Merritt went over and brought the man over to the sick bay.

Q Which doctor do you mean?
A Dr. Hoshman.

Q Then, as far as you know, Kondo never received any official notification that Horsley was allowed to rest?
A No.

Q Was Dr. Hosa in camp on that day?
A I don't think so.

Q You made an official protest, did you not, with respect to the Horsley incident?
A Yes.

Q Now, what effects were there? You testified that Horsley was bleeding from the mouth as a result of that beating.
A Yes.

Q Did you see the beating?
A I saw the end of the actual beating.

Q And you saw blows struck?
A Yes.

Q And he was bleeding from the mouth?
A Yes.

Q Anything else?
A His face was swollen up.

Q How long did his face remain swollen up?
A For several days.

Q Did his bleeding of the mouth stop?
A After we got him back to the room.

Q Any teeth knocked out?
A No.

Q Any permanent injury?
A No.

Q After that, after that incident, what happened to Horsley?
A Horsley worked the following morning.

Q Did he work that day?
A That day, no, he remained in camp the rest of that day.

Q And he worked the following morning, you say, and he continued to work after that?
A Yes.

Q Now, with respect to Aage Horreby Knudsen, you testified, did you not, that he had an accident?

A He did.

Q Did you see it, Chief?
A The accident? No, I did not.

Q What's the basis of your knowledge with respect to it?
A Well, whenever a man was injured at work, we received a written report of all the information to the accident from the work leader so that the man could be placed on the sick list as having been in an accident.

Q Who was the work leader, do you know, of that group?
A Goodrich.

Q Goodrich and did you receive the official written report?
A Yes.

Q And then Goodrich in his report stated that certain bags of rice -- is that it?
A Yes.

Q Had fallen on Knudsen?
A Yes.

Q And injured his back. Did you ever ask Knudsen what happened?
A In telling the story of what happened, I would be questioning anybody who was in an accident. I tried to get all of the information I could because any man who was injured at work still continued to draw his pay when he remained in the camp and we were allowed to put him on a full rations.

Q What did Knudsen tell you about that incident?
A He was working around the base of the a back of rice; they had a plank where they used to run up the plank and pile it up higher, and one end of the pile of rice gave way and the top bags came down, striking him on the shoulders and back.

Q Do you recall when that happened?
A Not exactly; I don't remember that date.

Q Have you read the statement about Bowlby made by Mr. Knudsen?
A No, I did not.

Q I will read it to you.

DEFENSE: This statement is offered by the prosecution as the statement made by Mr. Knudsen. He says:

"Cooker 2 also Fujioka in Cooks Camp No. 1, knocked me over when I was unable to walk due to pain in my back occured while carrying a large plank that ordinarily took 4 men to carry.

Now, you have testified, have you not, that Knudsen told you that he was in an accident and those bags fell on his back?

A Yes.

Q Is it your opinion that he no longer recalls what happened to him?

PROSECUTION: I object to that. I object to the form of that question.

DEFENSE: Well, sir, here's my situation. I have two inconsistent statements, one allegedly made by Knudsen to Chief, and one allegedly made by Knudsen to somebody in the Commander Third Fleet, Liberation Force Able. I am trying to find out where the truth lies. I am bound by this paper.

PROSECUTION: You can only ask this witness what he knows, and whatever he states, that's what this witness knows.

DEFENSE: He knows now.

PRESIDENT: Ask him what he knows about that.

DEFENSE: Is it the Commission's ruling that I can only ask this witness what he knows of his own knowledge?

PRESIDENT: You can ask the witness what the man told him.

DEFENSE: I cannot inquire into it any further?

PRESIDENT: What?

DEFENSE: I cannot inquire into it any further, trying to explain the discrepancy and the two inconsistent statements of one man?

PRESIDENT: You can proceed.

Q Can you make any explanation, Chief, as to why Knudsen would tell you one thing and make a statement --
A What's that?

Q Can you give us any explanation as to why Mr. Knudsen would make one statement to you and then later, make a different statement?
A Did he say there that he was carrying a plank?

Q "Plank".
A It's a large plank; it's about this wide (indicating) and about twenty feet wide that the men would shift around and they would set it up on this pile of rice; they would stack up different stacks of different heights and they would put this heavy plank up on this stack so that the man could get a start to run when they are carrying this heavy bag on their shoulders; they would run up this plank and drop this bag that they were carrying on their shoulder, on top of this

stack. Evidently, when this plank was put up, when they were carrying this plank to get it in position, when he was trying to put it in position, that's when the stack fell over on him.

Q I think your explanation helps us to some degree, but he still says he suffered this injury carrying a large plank that ordinarily took four men to carry. Are you sure, Chief, that this injury didn't occur because he attempted to pick up excessive weight?
A I don't think so from the way I could remember it.

Q Did you see the Knudsen beating?
A I didn't see the actual blows struck, no.

Q Where did it occur?
A In Room 9.

Q What is that -- a particular part of the sick bay?
A That was his own room; he was, because of his accident, confined to his bed.

Q And what time of the day did this occur?
A About 7:30 in the morning.

Q And you testified, did you not, that Kondo was making his rounds of the bed patients?
A That's correct.

Q Was anybody else with him?
A Horwitz was with him.

Q Horwitz?
A Yes.

Q Any other Japanese personnel?
A No.

Q How many bed patients did you have at that time?
A I don't remember; we used to have on an average maybe six or seven -- maybe ten.

Q This would be immediately after sick call?
A Immediately after sick call.

Q What injury was sustained from this beating?
A No permanent injury.

Q How long after this incident did he recover fully so that he could walk normally?
A About four or five days later.

Q Was he on the road to recovery when this thing happened?
A Yes.

Q How long after the accident did the beating occur?
A I think about five or six days after.

Q You testified that two men were helping him walk?
A Yes.

Q When you came in, you testified that Kanda was in a rage.
A Yes, he was.

Q You quieted him down all right?
A I quieted him down, yes. I struck him.

Q Strike him with the fist?
A Yes.

Q Closed fist?
A Yes.

Q Did you knock him down?
A Yes.

Q How many times did you strike him?
A Just one time.

Q One good blow, is that it?
A That's all.

Q Did he say anything to you?
A No, he said nothing.

Q Did he make any complaint?
A No, he did not.

Q What did he do?
A What's that?

Q What did he do?
A He left the room then.

Q What did you do with Knudsen at that time?
A We put him in his bunk.

Q Who else was present outside of Merritt?
A That was all.

Q Now, you testified, Chief, I believe, that certain men were on full rations and other men were on half rations?
A That's correct.

Q Was there a regulation as to that?
A Yes.

Q What was that regulation?
A That regulation came from Tokyo, supposedly from Tokyo, that the men who worked every day were to receive 700 grams of rice. The men who were sick were only supposed to receive 500 grams. Officers were supposed to receive between 350 and 375; men who were injured at work received 700 grams per day.

Q So that when Marvitt says in his affidavit, Chief, that Kondo had the authority or took it upon himself to cut rations of sick men in half, he is not speaking with any knowledge, is he?
A No, I wouldn't say he is.

Q That is a regulation, to your knowledge, that applied to all camps in Japan?
A Yes.

Q Now, are you familiar with the supply of medicines in the camp all during your stay there?
A Yes.

Q At any time was there a severe lack of medicine?
A From what I found out later, there should never have been a pinch for medicine.

Q Well, at the Osaka Camp, it is true, is it not, that they had received supplies from all camps at the Osaka District?
A Yes.

Q And they distributed it from there?
A That's correct.

Q If you saw certain medicines there, you would know, would you not, if that was medicine intended for the Osaka Main Camp?
A The medicines that were in our dispensary, he would have to draw the medicine from Kobayashi who was in charge of the store room for the sick call.

Q Now, isn't it true, Chief, that Dr. Nasu was the one who gave this medicine supply?
A No, I don't think Dr. Nasu authorized the withdrawal from the store room. I think that came from Marvo or Dr. Asaba. I don't know which of the two, but it was directly under Nasu.

Q You recall Titus, Ozendine, Lewis?
A I know them, yes.

Q Do you recall an incident in which they were beaten?
A Them boys was beaten quite often.

Q What were they? They didn't hesitate to break regulations?
A No.

Q Pretty rough boys?
A They were.

Q There is some testimony here that on one occasion, they stole some soap, do you remember that?
A Which time?

Q Well, they received a severe beating for it, supposedly administered by ten guards and supposedly also participated in by the Camp Commander and the accused Kondo.

A I remember that incident, yes.

Q Where did that take place?
A That took place in Room 11.

Q What were the circumstances behind it?
A This group broke into the store room and stole about 500 packages of cigarettes and I think about 100 bars of soap, and this happened a few days before the "Chubu Gun" inspection. And the American who was in charge of that store room discovered the theft the following morning and he made an immediate report to the Japanese authorities, and the Japanese duty officer and the supply officer came over and they started to investigate.

Q Did they pick out Oxendine, Lewis and Titus?
A No, they took the whole room at first, and everybody knew who done it in the camp. The prisons know, but the Japanese didn't know. So, the Camp Commander threatened -- he made the statement that he would take all of our clothing away from us, and see that we did not receive any more Red Cross clothing, foods and medicines and take away all the privileges of the camp, and he withdrew the evening meal from the men.

Q Was that unless --
A Unless the guilty people admitted that they were the ones who went into the store room.

Q What did Oxendine, Lewis and Titus do?
A They admitted they were the men who went into the store room.

Q Were they beaten before they admitted?
A Not before they admitted it, no.

Q They weren't beaten to force a confession, were they?
A No. Just a minute; the whole room was struck; the whole room was lined up outside and they had the Japanese guards and the camp staff there and they [illegible] all the men go back into the room. As they passed the staff, each one of the staff slapped the man about the face, struck him with his fist and then they put them in the room and lined them up and said the guilty men had to confess who were the ones who went into the store room and stole the soap and cigarettes.

Q Those three stepped forward, is that it?
A No, in that group there was nine men.

Q They all stepped forward?
A Yes.

Q Did you see what happened after that?
A I saw most of it, but they took the men over to the guardhouse and we weren't permitted to get near them.

Q Kondo go over to the guardhouse?

A All the staff went over.

Q Was the Camp Commander there?
A Yes, he was there.

Q Did he issue any orders?
A That I don't know. Did he do what?

Q Did he issue orders that sent the whole staff over there?
A I don't know whether he sent them over there. He said all the men who were guilty had to go to the guardhouse. So, the whole staff went with them.

Q Did Colonel Murata go there?
A Not that night, no.

Q Was he there later?
A The following day he came to camp.

Q Did he see any of this incident occur?
A No.

Q Do you recall the "thug"?
A Yes.

Q Who was that?
A Fujimoto.

Q Did he play an important part in this beating?
A In that beating, yes.

Q Did you actually see Kondo participate in it?
A Yes, I saw the whole group there.

Q What did you see him do?
A Out in the passage way, he was among the group that slapped and struck the men as they were lined up to go in their room.

Q You didn't see him take part in any torture?
A I could not see what happened at the guard house because it was a policy of the Japanese authorities whenever they were going to punish a man or a group of men, they would immediately station two guards with fixed bayonets so nobody could approach the scene and see what happened. They were afraid that we would take a hand in it and there would be a mutiny started.

Q Do you recall whether or not these men were tried and sent to prison?
A They were.

Q You know what sentence they received?
A They received seven days and eleven days, and three men, I think, received sixteen days, if I remember right.

Q For the theft of how many cigarettes?
A Five hundred packs of cigarettes.

Q And how many bars of soap?
A About 100.

Q You testified, did you not, that Kobayashi -- Sergeant Kobayashi was in charge of the medical supply.
A Yes, that's what we understood from the set up.

Q And Kondo didn't have direct access to those supplies, did he?
A All he had to do was to get the key.

Q He had to go to somebody to get the key?
A Yes.

Q He didn't have the key himself?
A No.

Q Did you ever see how Kondo got his supplies in the morning?
A No, I didn't.

Q You don't know what went on -- whether Kobayashi gave him certain medicines?
A No, I don't know.

Q You testified, Chief, that you had this meeting in August of 1944 and Kondo promised that he wouldn't mistreat anybody after that and you testified that for a short while, he maintained that promise.
A About two weeks he did.

Q You also testified, did you not, that he cooperated with Dr. Hochman?
A He did, yes.

Q Now, while Kondo was cooperating with Dr. Hochman, isn't it true that the number of men that went on sick call and stayed in the camp began to increase?
A It would go up and down periodically.

Q When he was cooperating, it would go up?
A Yes.

Q And then you testified he changed?
A Yes.

Q Do you know whether or not Kondo might have received orders from Colonel Murata or the Camp Commandant with respect to the number of men?
A No, I wouldn't know that.

Q It is highly possible, is it not?
A Yes, it is possible.

Q Or he might have received orders from Dr. Nosu?
A He may have.

Q Did Dr. Hochman ever talk to you about Dr. Nosu?
A Yes, a number of times.

Q Did he ever express an opinion to you that he thought Dr. Nosu was crazy?
A We considered the whole group of them crazy.

Q But in particular, wasn't Dr. Nosu erratic?
A Well, I wouldn't say he was more so than the rest of them. They were all more or less erratic. You never knew from one day to the next what they were going to do or how they were going to act.

Q And did they know themselves how their superior might act?
A Who is that?

Q For instance, Kondo, would he know from one day to the next how Nosu might act?
A He should; he lived here all of his life.

Q You wouldn't say, then, that Nosu was particularly erratic?
A I wouldn't say he was too erratic.

Q Now, with respect to providing medical attention and medicine, have you ever seen Kondo refuse to give medicine to a man who was visibly ill?
A Not visibly ill, no.

Q Never saw him refuse to treat a man whom he can look at and see he was ill?
A No.

DEFENSE: The defense is finished with its cross-examination. You may inquire.

REDIRECT EXAMINATION

Questions by prosecution:

Q Chief Sanders, in Specification 4, it is alleged that Kenichi Kondo did mistreat Barber, a British prisoner of war by striking him about the face. You have testified about that, is that correct?
A That's correct.

Q How do you know about that?
A Because I was at the gate when this happened.

Q Did you see this?
A I saw the end of it, yes.

Q And you know that that actually took place?
A I knew that that actually took place.

Q In Specification 5, it is alleged that on 4 July 1944 Kenichi Kondo, the accused, did mistreat and abuse wrongfully Sergeant Vontom, Private Ordoyne and Vance and Smith by striking them about the body with fists and bamboo stick and by kicking them. You testified about that in court, is that correct?
A That's correct.

Q How do you know about that?

DEFENSE: If the court please, I am going to object to this on the grounds that any answer would be hearsay -- not made of the witness' own knowledge.

PROSECUTION: The court has already admitted statements by the witness based on hearsay, on his direct examination.

PRESIDENT: What was the question?

PROSECUTION: How does he know about that.

PRESIDENT: The question will be answered.

A Because I came into the room just at the end of this incident, and I could see what had happened.

DEFENSE: I ask, if the court please, that that be stricken.

PRESIDENT: You could see what?

A I could see what had taken place during the incident, how the men had been lined up and stood at attention and between Kondo and this Corporal of the Guard, they struck these men.

Q Now, were you told by the victims that they had been struck by Kondo?
A Yes, and everybody else that was in the room.

Q No question that Kenichi Kondo was the perpetrator?
A He was one of them that participated in it.

Q Now, there seems to be some question about how long the incident took place. You were awakened by whom?
A By the fire watch.

Q And when you got there, what was the status of the fight? Had it terminated?
A It had terminated.

Q Did you find out how long the fight had been going on?
A It had been going on for some time before I was awakened. The fire watch was standing outside; when he saw the men had been struck, he come immediately and woke me up.

Q About how long would you say that it had been going on?
A At least about ten or fifteen minutes.

Q Were you told that?
A Yes.

Q Now, Specification 6, it is alleged that on the 11th of July, 1944, the accused Kondo mistreated and abused Private Nettles by kicking him and striking him about the body with fists. How do you know about that?
A Because I got there after it was over with and Nettles told me what all had happened.

Q Did he tell you right at that time?
A Right after that it happened.

Q In Specification 7, it is alleged that Kondo mistreated and abused Doherty who was sick by striking him about the head with a leather slipper. How do you know about that?
A I was there.

Q Did you see it?
A Yes.

Q Did Doherty also tell you about it?
A Yes.

Q In Specification 8, it is alleged that Kondo mistreated and abused Horsley, who was sick, by striking him about the body and head with his fist. How do you know about that?
A I was there.

Q Did you see it?
A Yes.

Q Did Horsley tell you about it?
A Yes.

Q In Specification 9, it is alleged that Kondo mistreated and abused Knudsen, who was sick, by striking him about the head and body with a leather slipper. How do you know about that?
A I came in the room after that had happened.

Q Were you told that by Knudsen?
A I was told that by Knudsen and Merritt, both.

Q Anybody else tell you about it?
A No.

Q Did Knudsen have any visible effects of that beating?
A No.

Q About how many men came on sick call each morning?
A On an average of about twenty-five men.

Q During the half hour period on sick call, did the doctor have ample time to examine each patient?
A No, I wouldn't say that he had ample time to examine them.

Q Did he have a chance to look at each patient?
A Yes, he did.

Q As Camp Commander, were you in a position to know everything that went on in the camp?
A I was in position to know everything that happened in the camp.

Q So far as you know, who was the Japanese in charge of the dispensary?
A Kondo was.

Q Is there any question in your mind about that?
A There is no question about that in my mind at all.

Q Were you ever told that anyone else had charge of the dispensary?
A No.

Q Were you ever led to believe that anyone else had charge of the dispensary?
A No.

Q Did Kondo ever tell you that he was in complete authority in the dispensary?
A Yes.

Q Were you ever led to believe that Kondo was acting under orders of someone else in the operation of the dispensary?
A No, I was never led to believe that he was.

Q Who was Kondo's superior?
A Well, I would say Dr. Nosu was his superior. But the chain of command in the medical outfit in the Japanese Army -- there is nobody who will ever be able to understand that set up, because everybody never knew who was the boss. You never could pin anybody down.

DEFENSE: If the court please, I am going to object to this line -- this answer, rather, on the ground that the accused is expressing an opinion.

PROSECUTION: You have asked him to express opinions on statements with regard to affidavits.

DEFENSE: Well, in that case he had spoken to American prisoners of war and American prisoners of war had made statements and they were inconsistent. I think I have a right to -- and here he is expressing an opinion as to the Japanese chain of command.

PRESIDENT: What is the question?

(The reporter read the question and answer)

DEFENSE: I ask that the answer be stricken on the grounds that it was not responsive. He was asked who was his superior and he went on to make this lengthy statement.

PROSECUTION: I think it's very responsive.

PRESIDENT: I think it's very responsive. The question will be answered.

PROSECUTION: It's already answered.

Q How many times did you hit Kondo?
A One time.

Q Was that over the Knudsen incident?
A Yes.

Q Why didn't Kondo report you for striking him?

DEFENSE: I object to this on the grounds that it's calling for a conclusion as to what took place in someone's else mind and this witness is not competent to testify as to why somebody didn't do something.

PROSECUTION: You have already asked that, counsel. You brought out that he struck Kondo.

DEFENSE: I didn't ask why Kondo didn't report him. Just because I didn't ask the question, that doesn't mean that it's proper on redirect examination. It still calls for a conclusion on the part of the witness. That's something which he is not competent to testify to.

PROSECUTION: Counsel has asked this witness lots of questions which have called for a conclusion on his part. Now, he suddenly objects to one.

DEFENSE: Yes, I have. I have asked him for conclusions as to what his state of mind was -- not as to somebody's else.

PRESIDENT: What was that question?

(The reporter read the question)

PRESIDENT: The question will be answered.

A I don't know why he never reported me, sir. My opinion is because he realized he was so much entirely in the wrong by striking this man who was sick.

DEFENSE: I ask that it be stricken, sir. It's a conclusion on the part of the witness and not responsive.

PROSECUTION: I asked him "why"; and he is stating the reason.

DEFENSE: He is not competent to testify as to why somebody else didn't do something.

PROSECUTION: The court has already ruled on its admission.

PRESIDENT: You stated you didn't know?

A I did not know.

PRESIDENT: You are expressing an opinion?

A Yes, sir.

DEFENSE: Is that portion already answered stricken from the record?

PRESIDENT: His answer terminates with the words "I did not know."

Q Defense counsel has read a portion of Merritt's affidavit which stated that he had the authority or took it upon himself to cut rations of sick men in half, to which you have testified. Also, in the affidavit, Merritt has stated Kondo prescribed medicine and examined the sick men, ordered sick men to work in all kinds of weather?
A That's correct.

Q Any doubt about that?
A No doubt about it.

Q Beat them, is that correct?
A That's correct.

Q Any doubt about that?
A No doubt about it.

Q Ordered sick men to work in all kinds of weather -- strike that -- disturbed them at night while they were trying to sleep, is that correct?
A That's correct.

Q Caused unnecessary trouble in the camp when it could have been avoided, is that correct?
A That's correct.

Q Is there any mistake about that?
A No mistake about it.

Q Dr. Hochman made an affidavit in this case in which he stated Kondo "made decisions that should have been made by a doctor and often overrode my decisions." Is that correct?
A That's correct.

Q He further states "he hit sick POW's over the head with books, slapped their faces, hit them with his fists and kicked them." Is that correct?
A That's correct.

Q Any doubt about that?
A No doubt about it.

Q You have testified previously that you have had conversations with Dr. Hochman about Serafin, is that correct?
A I did.

Q Will you state again to this Commission what Dr. Hochman told you concerning the responsibility for the death of Serafin?
A He said he considered Kondo responsible for that man's death because he was too old and in no condition to have ever been sent out to work.

Q Was there any equivocation in the statement when he made it to you?
A No.

Q Referring to specification 2 in which it is alleged that Kondo contributed to the death of Robert Hess, by forcing him to work when he was physically unable to do so and denying him the necessary medical treatment, you have previously testified to a conversation between yourself and Dr. Hochman as to the responsibility for Hess' death, is that right?
A That's correct.

Q Will you repeat to this Commission, again, what the conversation was?

DEFENSE: I am going to object to it on the grounds that it was hearsay and wasn't made in the presence of the accused.

PRESIDENT: Objection is not sustained.

A When we first found out about Hess, the condition of Hess, it was quite a bit of shock to the men in the camp, because he was a likeable man. He never did complain very much. Dr. Hochman made the statement that if that man had been allowed to remain in camp and received proper rest, that he could have recovered from his illness, and because Kondo was the man who sent him out to work, he considered that he was responsible for his death.

Q Did you ever personally talk to Kondo about his beating sick prisoners of war?
A I did.

Q On more than one occasion?
A On more than one occasion.

Q Did you ever talk to Kondo about his denying sick prisoners of war medical treatment?
A No, not denying them medical treatment; I did speak to him about striking prisoners of war and sending the sick men out to work.

Q Did you ever speak to Kondo about his overruling of Dr. Hochmann's decisions?
A Yes.

Q On more than one occasion?
A On more than one occasion.

Q And what was his answer to you on that?
A Most of the time he just wouldn't answer me about it.

Q And when he did answer it, what did he say?
A He said that he was running the sick bay; that he was the man in charge.

Q Did Kondo admit to you that he had ever struck any sick prisoners of war or any prisoners of war?
A Yes.

Q On more than one occasion?
A On more than one occasion.

Q Did he admit it in the meeting that was held where you were present, Dr. Hochmann, Kondo and Hayashi?
A Yes.

Q Did he admit that he overruled Dr. Hochmann's decisions?
A Yes.

DEFENSE: I object to this line of questioning on the grounds that it's leading. I ask the reporter to read back the entire line of questioning so that the court can see --

PROSECUTION: Counsel for the defense has been leading the witness.

DEFENSE: I can lead on cross-examination. It's a fundamental rule of law.

Sir, prosecution is putting words in the witness' mouth and the witness is answering "yes"; the questions are leading, and I ask that the entire testimony from that portion of the testimony just read be stricken and the record disregarded. Let the examination proceed as redirect-examination should proceed; Direct questions.

PROSECUTION: If the court please, the majority of the answers which the witness has given have already been brought out in direct and redirect-examination; there is nothing new that has been brought out now. It's merely a clarification. Counsel should not object because there is nothing new that has been brought out.

DEFENSE: This is the first time that the prosecution has attempted to put any evidence before the Commission to which the accused has already admitted. There is no testimony up to this point as to any admissions by the accused.

PRESIDENT: The foregoing testimony will not be stricken from the record. The prosecution will try to refrain from

leading questions so far as possible.

Q At the meeting that took place that you have just referred to, did Kondo make any admissions to you about mistreatment of prisoners of war?

DEFENSE: I object to that question on the grounds that it's leading. The proper question: At the meeting, what did Kondo say? That is a direct question.

PROSECUTION: There is nothing leading about it. If he says he knows, that's the end of it.

PRESIDENT: The objection is not sustained.

Q Will you answer the question?
A He did make admissions at that meeting.

Q Now, will you tell this Commission what admissions Kondo made about mistreatment of prisoners of war?
A He admitted that he had beat the prisoners of war at sick call; he admitted that he overruled Dr. Koshimura's suggestion and he admitted that he was wrong.

Q Wrong in what respect?
A In his treatment of the prisoners.

Q What else did he admit?
A Well, I don't exactly remember the other things that he admitted. That was the gist of the conversation.

Q Were those admissions made to complaints that were being registered at that time?
A Yes.

Q Were those complaints that you had been registering to him for a long period preceding that meeting?
A They were.

Q Did you ever see Kondo strike prisoners of war?
A I have.

Q Do you know whether Kondo ever received any orders to strike prisoners of war?
A No.

Q So far as you know, did he act under his own orders?
A I think he did.

Q Did you ever see Kondo refuse to hospitalize sick prisoners of war?
A No, I did not.

Q Did you ever see Kondo refuse to give medications to sick prisoners of war?
A Only if a man came late, he would send him out to work without any medicines.

Q Did you ever see Kondo disturb the prisoners at night?
A Yes.

Q Do you know whether he was under any orders to disturb the prisoners at night?
A No.

Q Did you ever see Kondo overrule any of Dr. Hochmann's decisions with regard to sick prisoners of war?
A At times, I have.

Q Do you know if he was under any orders to overrule Dr. Hochmann's decisions?
A No.

Q Did you ever see Kondo send any sick prisoners of war to work?
A I have.

Q Do you know whether he was ever under any orders to send sick prisoners of war to work?
A I don't know whether he was under orders to do that or not.

Q Were you ever led to believe at any time whatsoever, during the entire period of time that you were at the camp as Camp Commander, that anyone other than Kanichi Kondo, the accused in this case, was in charge of that POW dispensary?
A No.

PROSECUTION: Would the court care to take a recess at this time?

PRESIDENT: The court will take a ten minute recess.

The court then took a recess until 1100 hours, at which hour the personnel of the court, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PROSECUTION: Prosecution is finished with redirect examination. Does the defense wish to recross?

RECROSS EXAMINATION

Questions by defense:

Q You testified, I believe, as to how far away from the scene of that "being" incident your quarters were.
A Yes.

Q How far did you say that it was?
A Just about the length of this room.

Q Was it in the same building?
A In the same building -- the long building.

Q Separated by doors?
A By two thin partitions

Q And you also testified, did you not, that this beating went on for ten or fifteen minutes before you got there?
A The beating, I imagine, just started when the man came and called me.

Q So, it wasn't going on for ten or fifteen minutes?
A The arguing -- when they got the men ready to line up -- that went on for some time.

Q But the beating wasn't going on for ten or fifteen minutes, is that correct?
A No.

Q And the beating was going on for one or two minutes, is that correct?
A That's correct.

Q You also testified that you were in a position to know everything that went on in the camp, did you not?
A Yes.

Q Don't you mean by that, Chief, that you were in a position to hear from someone as to what might have happened?
A Yes.

Q You weren't in a position to see everything, were you?
A No, I was not.

Q And isn't it true that most of what you have testified to here today and yesterday is what you were told by other people?
A By reports and the people whom I had in charge of various groups.

Q You don't believe, do you, Chief, that Kanda is strictly on his own in the operation of his sick bay?
A I would say he was more or less on his own.

Q But there was a medical officer, his superior, there?
A Yes.

Q And a medical officer would check from time to time, would he not?
A Not with us they wouldn't.

Q I mean would check the sick at all?
A Yes.

Q Were you ever present? You have testified once that you were present with Dr. Ano, Dr. Hoshuan when some thirty-five men had the mumps, isn't that correct?
A Yes.

Q And Dr. Amo was the one who sent these men to work?
A Yes.

Q So, on that occasion, Chief, it was Dr. Amo who disagreed with Dr. Hechman?
A Yes.

Q Now, this meeting that you had in August of '44, Hechman, Kondo, the interpreter -- who else was present?
A And myself.

Q And yourself. That was right after the Knudsen incident, wasn't it?
A Yes.

Q Was that the next day?
A Yes, it was about the next day.

Q That's the day following the time that you knocked him down and struck him?
A Yes.

Q Kondo was a little afraid of you?
A What's that?

Q Was Kondo afraid of you?
A I don't know whether he was or not.

Q Did you threaten him at that meeting?
A No.

Q Did you make any attempt to hit him?
A No.

Q Was he given a full opportunity to explain his actions?
A He certainly was.

Q Do you recall a prisoner of war by the name of Yaeger?
A Who?

Q Yaeger.
A Yes.

Q Do you know whether or not he ever was in the hospital?
A Yes, he was in the hospital.

Q Do you recall when?
A It was in late '42 and early part of '43.

Q Do you know what he was suffering from?
A Malnutrition and beriberi, I believe.

Q Was there an incident involving Kondo and Yaeger?
A I had a report about it that he kicked him over there at sick call.

Q You don't know that of your own knowledge?
A No.

Q Do you know what brought about this incident?
A No, I don't.

Q Do you know whether or not Yaeger received any serious injuries as a result of it?
A No.

Q Did you see Yaeger after it happened?
A I saw him about three days after it happened.

Q What was his physical appearance?
A Well, the man was a very sick man when he was over there. That's where we had all the critically ill patients in the beginning.

Q Do you know what brought about that incident?
A No, I don't.

Q Merritt was prisoner of war medical orderly, was he not?
A He was.

Q Pretty familiar with what went on at sick call?
A He was.

Q He was in a better position to see than you were?
A He was.

Q Now, if Merritt says "a lieutenant and the senior medical officer", do you think he is referring to Nosu?
A No, we called our senior medical officer Dr. Hoshuma. How does he refer to that?

Q He is answering a question: "Who was this Japanese doctor at Osaka Camp No. 1? And he says, "he was a lieutenant and the senior medical officer".
A That was Lt. Nosu.

Q And he also says that he backed Kondo in everything he did.
A Yes, he would.

Q Did you on occasion see him there?
A Very seldom I ever saw Dr. Nosu. He used to come out of his office and come into the sick bay to the toilet which he would do quite frequently during the day.

Q Now, it was your opinion and it still is, is it not, that Kondo was not qualified to treat and prescribe sick men?
A Yes.

Q In your opinion, then, his knowledge was less than that of a Pharmacist Mate in the Navy, was it?
A Much less.

Q How about an aid-man? Did you have an aid-man?
A We don't have an aid-man in the Navy.

Q Are you familiar with the work done by aid men in the Army?

A No, we have Senior Petty Officers, Senior Line Officers in the Navy; also in the engineering force -- that was before the war -- they were all given instructions in first aid -- it lasted about a period of over three months.

Q Do you think that Kondo would have the training that a first aid man might have?

A No.

Q Probably not as good?

A Not as good.

Q Do you know of your own knowledge just how much training he had?

A No, only from what he told us.

Q What did he tell you?

A He said he was several months in the Japanese military hospital before he came to our camp.

Q Did he ever attempt to treat sick prisoners of war beyond his ability?

PROSECUTION: Just a moment. I object to the form of that question on the ground it calls for an answer that this witness couldn't possibly know. He doesn't know the extent of his ability.

DEFENSE: The witness has testified that he has less ability than a first aid man. I am seeking to determine whether or not Kondo took upon himself to treat sick men.

PROSECUTION: How does this witness know what the extent of his ability is?

DEFENSE: He testified that he has less ability than a first aid man.

Q Did he ever attempt to treat sick prisoners of war beyond his abilities as a first aid man?

A Not to my knowledge.

Q Was the treatment that he gave limited to applying salves or bandages, or something?

A Yes.

Q Anything of more serious nature than that?

A He never would do it; he would make our own men do it.

Q That, don't you believe, was to their advantage?

A To whose advantage?

Q To the sick men's advantage?

A Certainly, it was.

DEFENSE: No further questions.

EXAMINATION BY THE COMMISSION

Questions by members of the Commission:

Q With reference to Specification 4, the specification alleging that certain incidents in connection with Robert M. Barber, the British Prisoner of War, occurred between the 1st of January and the 16th of February, 1944 --

A Yes.

Q You stated that about November or December, 1944 the incident occurred. Will you clear up that point?

A That incident happened shortly before we merged the two camps and we merged the two camps in January of '44. I don't remember the exact dates on it.

Q To the best of your remembrance and knowledge, where would you say that incident occurred?

A Right around the holiday period, between December and January, sir.

Q December of '45 and January of '44?

A Yes, sir.

Q You testified that "We made numerous attempts to have the older and frail men excused from work." You later stated that the requests included Dr. Hochman's on several occasions, is that correct?

A Yes, sir.

Q What were the details or wordings of these requests -- or to put it in other words -- what concessions were you requesting?

A We had heard through the prisoner grape vine about the other camps in our area and through our conversation with the Camp Commander, that we were trying to get a detail brought into the camp -- that is, some outside company -- that would give us work of a light nature that these old men and cripples could work. Our idea was that we wanted as many men to get on the working list as possible so that we could get an increase in our rations.

Q Then prior to Serafin's death, you had never made a request to excuse older men from work entirely, had you?

A Before his --

Q Before Serafin's death?

A No, sir, not entirely; no, sir, not to be entirely excluded from work.

Q Then is or isn't Dr. Hochman correct when he states that he made a specific request that men over forty years of age be excused from work some time after Serafin's death? Could that statement be correct, to your knowledge?

A It could be correct, to my knowledge, but Dr. Hochman and I and Sergeant Major Mathesen and our officers had talked this over a number of times and we had talked it over with the Camp Commander and the interpreters to have some provision made for these elderly men to work at easy details. We have been trying that ever since the camp had been established at various times.

Q Then, as far as you know, Dr. Hochman's written request to excuse men over forty occurred but once?
A I think that he wrote that several times, sir, to my knowledge. I know he wrote letters several times about the old men.

Q Prior to Serafin's death?
A Yes, he did prior to his death. Dr. Hochman was continually writing letters to that effect and to the conditions of the camp.

PRESIDENT: No further questions by the Commission, the witness will be excused.

DEFENSE: Just a moment, please. I have just a few questions.

RECROSS EXAMINATION

Questions by defense:

Q These letters, whom were they addressed to?
A To the Camp Commander and the senior medical officer, the Japanese medical officer.

Q Chief, when you were liberated, what steps were taken to get statements from the prisoners of war?
A There was no steps taken.

PROSECUTION: I object to the question. I don't see that it has anything to do with the issues in this case. It's entirely irrelevant, immaterial.

PRESIDENT: What was the question?

DEFENSE: I asked what steps were taken to get statements from the prisoners of war after they were liberated.

PROSECUTION: It has nothing to do with the issues of this case. It's irrelevant and immaterial.

DEFENSE: Can I make an offer of proof, sir? We have various men alleged to have been beaten and we have no affidavit from any of them. None of the victims supplied us with affidavits except Knudsen and maybe one or two others.

PRESIDENT: What steps were made by who?

DEFENSE: By the persons who liberated them. I assume it was done at the Replacement Depot, the Third Fleet.

PRESIDENT: By the witnesses?

DEFENSE: No, sir, by the American authorities after these prisoners of war were liberated.

PROSECUTION: Prosecution would be glad to make a statement as to why they were not.

DEFENSE: I think the witness can testify.

PRESIDENT: The witness can answer the question. Answer the question.

A There was no attempt to question the majority of the prisoners when we were liberated. At my camp, we liberated our own selves. We took the surrender of the Japanese units that was in our area. We notified the railroad people that we demanded a train with two engines, and we came across Japan. We met our Naval Forces and Australian Forces at Hamamatsu. They took us to the rescue and gave us clothing and from there, we were transported by destroyers to Kisarazu and the Navy put us aboard planes and took us directly to the States. Most of the men there was quite a lapse of time before anybody contacted them for a statements.

Q That was Naval personnel, was it not?
A That's right.

Q Army personnel went to the 29th Replacement Depot at Lingen?
A I don't know where they went to.

Q Do you know under what circumstances a statement would be taken from Knudsen by the Third Fleet?
A No, I do not.

Q Were you ever contacted to make a statement?
A Yes.

Q Where was that? Back in the States?
A In Washington.

Q Then, no liberating team came to your camp in Osaka?
A No, I wasn't at the Osaka Main Camp when the war ended.

Q Where were you when the war ended?
A At Takaoka Camp No. 10.

PROSECUTION: What possible connection has all this questioning to do with the issues in this case? Counsel wishes to comment that we do not have the affidavits from the victims. That's proper in the final argument. What has it got to do with the interrogating of this witness or any of the issues in this case?

DEFENSE: Well, sir, I am just making the offer of proof. I am trying to find out why it was that certain statements may not have been taken. Maybe there is a reasonable explanation for it. I don't like to comment on something to which there is a reasonable explanation -- to paint a

dark picture when it may not be that way. I think it's perfectly fair and legitimate.

PROSECUTION: Counsel is permitted to paint any pictures he wishes in the case and he may draw inferences for the court's decision why there are not certain affidavits, which we can meet.

However, I think we are wasting the time of the court by pursuing this line of questioning. What difference does it make from this witness --

DEFENSE: I am through with him, anyhow.

PROSECUTION: Is the Commission through with this witness, sir?

PRESIDENT: Yes. The witness is excused.

(Witness excused)

PROSECUTION: May it please the Commission, would it be proper for Chief Sanders to remain in the court room while the next witness for the prosecution testifies?

DEFENSE: I have no objection.

PRESIDENT: Is it the intention of the prosecution to return him to the stand?

PROSECUTION: We might. I don't know, depending upon what the defense puts out.

DEFENSE: There will be no definite testimony today, anyhow. I have no objection.

PRESIDENT: All right, if there will be no objection.

PROSECUTION: Thank you, sir.

The prosecution will call for its next witness, Hisakichi Hayashi.

HISAKICHI HAYASHI, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q What is your name?
A Hisakichi Hayashi.

Q Mr. Hayashi, during the war, were you ever employed by the Japanese Army?
A Yes.

Q And in what capacity?
A I was acting as a Nisei interpreter at Osaka POW Camp, Main Camp.

Q What is that main camp also known as?
A Chikko.

Q Is Chikko the town where this camp is located?
A Yes.

Q And when did you start working as interpreter at this camp?
A 24 November, 1942.

Q And how long did you continue to so be employed?
A Till the end of September, 1945.

Q Do you remember a man by the name of Chief Sanders?
A Yes, I do.

Q Was he at that camp during the time that you were there?
A Yes.

Q Did you know him well?
A Yes, I did.

Q Do you see him in this court room?
A Yes, I do.

Q Will you point him out?
A (Indicating)

PROSECUTION: May the records show that the witness has identified and pointed out Chief Sanders.

Q What was Chief Sander's duty at that camp?
A He was taking charge of war prisoners in Osaka.

Q When you say he was "taking charge" of war prisoners, do you mean -- what do you mean?
A He was acting on part of war prisoners in having contact with the Japanese authorities.

Q Do you remember a Dr. Hoshman at that camp?
A Yes, I do.

Q What was his status at that camp?
A He was examining the patients, war prisoner patients.

Q At sick call?
A At sick call.

Q Do you remember a prisoner of war by the name of Merritt?
A Yes, I do.

Q And what did he do at that camp?
A He was assisting Dr. Hoshman at the dispensary.

Q Was there any other Allied prisoner of war in the dispensary?
A There was a British war prisoner whose nickname was "Ginger".

Q Do you know Kenichi Kondo?
A Yes, I do.

Q Do you see him in this court room?
A Yes.

Q Will you point him out?
A There he is (indicating).

PROSECUTION: May the record likewise show that the witness pointed out the accused, Kenichi Kondo.

Q Was Kenichi Kondo at Osaka Main Camp during the period you were there?
A Not all the time.

Q For how long a period was he there while you were there?
A I don't remember exactly -- the exact period, but at the end, he went to some camp -- Oeyama Camp, I think.

Q At the end, you mean -- when, in 1945?
A I believe it was 1945.

Q And when you came to that camp, was Kondo there?
A Yes, -- no, he wasn't there.

Q He came when? About?
A He came a little later -- probably in the early part of 1945.

Q What was Kondo's duty or job at the camp?
A He was taking charge of the dispensary for the Japanese Army.

Q Who was treated at that dispensary?
A War prisoners.

Q Who else was with Kondo in that dispensary?
A Dr. Hochman, Merritt, and Ginger.

Q Were there any other Japanese personnel regularly on duty at the dispensary with Kondo?
A No.

Q Was there any Japanese doctor on duty at the dispensary with Kondo?
A Once in a while, he came down.

Q When you say "he came down", who do you mean?
A Dr. Amao or Dr. Maruo or sometimes, Dr. Mori.

Q Will you tell the Commission about how frequently these three mentioned Japanese doctors would visit the dispensary?
A I don't know.

Q Have you any idea? Were they there every day?
A No.

Q Were they there once a week?
A I don't think so.

Q Were they there about once a month?
A Probably once or twice a month.

Q Some time in 1944, do you recall a meeting or a conference at which you, Chief Mate Sanders, Dr. Hoehman and Kondo were present?
A Yes.

Q Will you tell the Commission how this meeting came about?
A One day, Dr. Hoehman told me that he will quit working in the dispensary. I asked why. He says his decisions was not considered and he cannot work with Kondo any more. So, Dr. Hoehman, Sanders and myself made arrangements to meet Kondo in Chief Sander's room. And there, we had a conference. Dr. Hoehman told Kondo to consider his opinion in regard to treatment of war prisoners -- patients of war prisoners.

Q Excuse me, just a moment. I don't want to interrupt you, but when you say Dr. Hoehman told him to consider his opinion, you mean Dr. Hoehman's opinion?
A Yes, I did.

Q Please continue.
A And at the same time, Chief Sanders suggested that Kondo should not beat war prisoners. To this, Kondo agreed that in the future, he will treat war prisoners -- patients of war prisoners -- kindly, and will not beat any of them, and also, cooperate with Dr. Hoehman and consider his decisions -- his opinion.

Q Was the subject of sending sick prisoners to work discussed at that meeting?

DEFENSE: Object to it on the ground that it's a leading question.

PROSECUTION: If it please the Commission, in the first instance, the witness is a Japanese and in the second place, the rules of evidence have been considerably relaxed and liberalized and it is not my purpose to lead this witness, but rather to facilitate and expedite. I do not intend to put words into the mouth of the witness.

DEFENSE: I think the same expeditious procedure can be followed, if the witness is asked, "Was anything else discussed? What was discussed?"

PRESIDENT: Repeat the question.

(The reporter then read the question)

PRESIDENT: The objection is overruled. The question will be answered.

A Yes, I think it was talked about.

Q Who talked about it?
A Dr. Hochman.

Q And insofar as you are able to remember, tell the Commission in substance what he said.
A I don't recall the exact words.

Q You need not tell the Commission the exact words, but what the substance of it was. Do you understand? What did they talk about with reference to sending sick prisoners of war to work?
A That was in connection with considering Dr. Hochman's opinion; whenever he suggests that a patient should not go to work, Kondo should consider and take his ideas into his own consideration.

Q All this took place in the presence of Kondo?
A Yes.

Q And you were acting as the interpreter?
A Yes, I did.

Q Was the subject that the prisoners of war not be disturbed while asleep discussed?
A Yes, it was.

DEFENSE: Same objection on the grounds it's leading, sir.

PRESIDENT: Objection overruled.

A Yes, it was.

Q Will you tell the Commission about it.
A Dr. Hochman also suggested that the prisoners of war should not be disturbed during the nighttime and Chief Sanders also suggested that because Chief Sanders think that prisoners of war will need all slumbers. They should rest good during the nighttime for the next day's work, and it was ordered by Dr. Hosa to put all the prisoners should put blankets around their bodies during nighttime, and it was inspected during nighttime and they ever find any prisoner of war without blanket, they wake him up and tell him to put the blanket over them.

Q Did Dr. Hochman or Chief Sanders complain about Kondo doing that?
A Yes.

Q And what did they complain about?
A They complained that Kondo should not go around during the nighttimes and disturb prisoners of war.

Q Had Kondo done that before?
A I don't know.

Q Did they at this meeting say that he had done it?
A Yes.

Q Who said?
A Sanders.

Q What did Kondo say, if anything, at the conclusion or during this meeting?
A He agreed that he will not disturb in the future.

Q And what about sending sick prisoners to work?
A He just says that he will consider Dr. Hochman's opinion.

Q Did he say anything with regard to his overruling Dr. Hochman's opinion about sick prisoners?
A He said he will cooperate with Dr. Hochman.

Q What else did he say?
A He also says that he will not hit any war prisoners in the future.

Q You mentioned the blanket incident. Do you know anything about the "baka" incident?
A I think it was Chief Sanders who told me that Kondo hit several war prisoners because he was called "baka" during night inspection.

Q Do you remember a prisoner of war by the name of Hess?
A Yes, I do.

Q What about him do you remember or know?
A He was an American war prisoner and it was told by Chief Sanders and Merritt that after his death that he was going on to work while he was sick.

Q Do you remember a man by the name of Serafin?
A Yes, I do.

Q Will you tell the Commission what you know about him?
A He was an Italian, an old man who did not do hard work. He was working as officer orderly at first and then afterwards, as the orderly of Chief Sanders. Later, he started to go out to work, and one day, as I was told, he was carried back from work.

DEFENSE: I object to that on the grounds of hearsay.

PRESIDENT: Read the question.

(The question was then read by the reporter)

PRESIDENT: Objection overruled.

A And later, I was told he died.

Q Had he been sick?
A Yes, he was.

Q Was he sick when he went to work?
A Yes.

Q Going back to Hess for a moment, did Hess die?
A Yes, he died.

Q Was he sick?
A Yes, he was sick.

Q Did he go to work while he was sick?
A That I do not know.

Q Do you remember a man by the name -- a prisoner of war by the name of Doherty?
A Yes, I do.

Q Will you tell the Commission what you remember or know about him?
A Doherty was an old American war prisoner; his hearing was not good, and I was told by Sanders that he was hit by Kondo because he didn't -- he was late in reporting on sick call.

DEFENSE: If the Commission please, I am going to ask that this testimony be stricken on the ground that this witness has offered to corroborate Chief Sander's testimony and all of this testimony as to specific instances -- his corroboration consists entirely of testifying what Chief Sanders has told him at one time or another. On that grounds, I ask that it be stricken, as it cannot be corroborating testimony and hearsay at the same time.

PRESIDENT: Objection is overruled. The Commission will receive hearsay evidence for what it is worth.

Q Please continue.
A That's about all.

Q What was the physical condition insofar as you know of Doherty? Was he a big man -- a strong man?
A He was a big man, but he was an old man and rather weak.

Q What happened to Doherty?
A I was told that he was hit by Kondo for being late on sick call.

Q Then what happened to him?
A That's about all.

Q Do you remember a British prisoner by the name of Horsley?

A Yes, I do.

Q Will you tell the Commission what you know about him?
A This was also told to me by Sanders, that he was sick and was given permission to stay in by the duty officer on the previous night and next day, he was found sleeping in room, and he was hit by Kondo because he did not report to the sick call.

DEFENSE: If the Commission please, I am going to object to this line of testimony and ask that it be stricken on the grounds that it's offered in corroboration of the Chief's testimony and is merely hearsay as to what the Chief told him and it cannot be offered in corroboration, if it is hearsay. It can add no weight to the Chief's testimony.

PRESIDENT: It is overruled; the Commission will receive the evidence for what it is worth.

Q What happened to Horsley?

PROSECUTION: This may be repetitious, if it please the Commission, but I would like to have him repeat that.

A Horsley was given permission to stay in for a day by the duty officer on the previous night.

Q Do you remember the name of the duty officer -- the Japanese duty officer?
A Yes.

Q All right, continue.
A And next morning, he was found in his room without reporting to Kondo and he was slapped by Kondo.

Q Do you know or did you know an American prisoner of war by the name of Knudsen?
A Yes, I do.

Q Please tell the Commission what you know about this prisoner.
A This was also told to me by Chief Sanders, that he was hit by Kondo because he did not report to sick call when he was hurt on the back.

Q Do you know how Knudsen was hurt?
A No, I do not.

Q Do you know what part of his body was hurt?
A The back was hurt.

Q Do you remember the incident involving a prisoner of war who was found sleeping outside of the room on a bench?
A Yes.

Q Will you tell the Commission about that?

A I forget the name of the war prisoner, but he was found sleeping on the bench one hot night, and I believe he was hit by somebody and the next day, I got permission to let prisoners sleep on the benches and gave that permission to Chief Sanders.

Q Shortly after this meeting about which you have testified, did you see a report written by Chief Sanders?

DEFENSE: I object to this question on the grounds it's leading.

PROSECUTION: I will withdraw the question.

Q Did you have occasion to hear about complaints against Kondo prior to this meeting?
A Yes.

Q By whom were these complaints made?
A Dr. Beckman.

Q How about Chief Sanders?
A He also made complaints.

Q Did Merritt ever tell you about it?
A Yes.

DEFENSE: I object to these questions on the grounds that they are all leading. This witness is Japanese, I know, but he is testifying in English and the same procedure can be followed as is followed with an English speaking witness.

PROSECUTION: The fact that he is testifying in English is really for the convenience of all concerned.

DEFENSE: It certainly isn't too convenient for the accused.

PROSECUTION: I realize that.

PRESIDENT: Objection overruled.

Q Did Merritt ever complain to you about Kondo?
A Yes.

Q Did you ever see any written complaints about Kondo?
A No.

Q When you say "no", you never saw or you don't recall?
A I don't recall.

Q Will this refresh your recollection: Did you see a report by Sanders shortly after the beating in which he made certain complaints against Kondo?
A I do not remember whether it was afterwards or before the meeting, but I saw a copy of the complaint which Chief Sanders made.

Q And where did you see this report?
A In his room.

Q And to whom was it addressed?
A It was addressed --

Q If you know.
A I don't recall to whom it was addressed.

Q Was it addressed to Lt. Matsumuro?
A I can't recall that.

Q Or Dr. Hosa or Colonel Murata?
A I don't know which.

Q It was addressed to somebody?
A Yes, to one of the Japanese officers.

Q Did you read this complaint?
A Yes, I read it.

Q What did it contain?

DEFENSE: I object on the grounds that it's not the best evidence; the best evidence of what that letter contained is the letter itself; whatever this witness testifies, there maybe some fault in his memory, his ability to read English and he cannot give us the best evidence of a writing; the only evidence, the best evidence of a writing is the writing itself, unless you can prove the whereabouts of the writing itself.

PROSECUTION: If the Commission please, I would like to ask this witness two or three simple preliminary questions.

PRESIDENT: You withdraw that question?

PROSECUTION: Temporarily.

Q Mr. Hayashi, do you read English?
A Yes.

Q Did you read this report that you have just mentioned?
A Yes, I read it.

Q Did you understand it?
A Yes, I understood it.

Q Do you recall its contents? Do you remember what was in it?
A No.

Q What did the report say? I will withdraw that question. Do you have that report?
A No.

Q Do you know what became of that report?
A No.

Q What did Chief Sanders say in that report and about whom was he talking, if anyone?

DEFENSE: I object to that on the grounds that it's leading.

PROSECUTION: What's leading?

DEFENSE: It's leading.

PROSECUTION: I don't see anything leading.

DEFENSE: The question properly is -- if the court is going to receive his testimony -- What were the contents of the letter. Let's not try to narrow it down to one specific instance.

PROSECUTION: I am trying to refresh his recollection. I am trying to help him. I am not trying to testify for him.

DEFENSE: The witness has already testified that he doesn't remember, that he doesn't know.

Q If you don't understand me, or the question, tell me.
A Yes.

Q And I will say it again.

PRESIDENT: Do you understand that question?

A Yes.

PRESIDENT: All right, the question will be answered.

A I don't recall exactly what was the contents.

Q Well, what do you recall about it?
A I can't remember.

Q Did this report have anything to do with some of the things talked about at the meeting?

DEFENSE: I object to it on the grounds that it's leading, Sir. He has attempted in every way to find out what the report contained and the man says he doesn't know. He can't recall.

PROSECUTION: I am trying to help him refresh his recollection.

DEFENSE: You are not trying to refresh his recollection; you are trying to lead him into an answer.

PROSECUTION: I haven't the slightest idea what he would say was in it.

Q You stated before that prior or before the meeting, Hochmann, Sanders and Merritt complained about Kando?
A Yes.

Q What did they complain about?
A They complained that Kondo overruled Dr. Hochman's decisions.

Q What else?
A That he hit the war prisoners.

Q Anything else?
A That's all I can remember.

Q Were there any complaints made after the meeting?
A Yes, I think.

Q By whom?
A By Chief Sanders.

Q Anyone else?
A No.

Q When you say complaints were made, against whom were the complaints made?
A Against Kondo.

Q Mr. Hayashi, did Dr. Hochman ever say anything to you about the death of Serafin and Hess?

DEFENSE: I object to this question on the grounds that there is no showing that the accused was present, and it's hearsay.

PRESIDENT: What?

DEFENSE: There is no showing that it was in the presence of the accused. It was hearsay.

PRESIDENT: The question will be answered.

Q You may answer.
A Please repeat it.

Q Did Dr. Hochman tell you about the death of Hess and Serafin?
A No.

Q Who told you?
A Chief Sanders.

PROSECUTION: The defense may cross-examine, unless the Commission has any questions before the defense.

DEFENSE: May I hear the last question and answer, please?

(The reporter then read the last question and answer)

DEFENSE: If the Commission please, at this time, I move that all of the testimony of this witness be stricken from the record on the grounds that this witness was brought forward to corroborate the testimony of Chief Sanders with

respect to various specifications on which there is no other testimony.

Now, corroborating evidence must be direct evidence to sustain a conviction in this case. This witness has testified to every incident and his knowledge is based on what Chief Sanders told him. Therefore, there is no probative value that this court can attach to this man's testimony, because this court has the testimony of Chief Sanders before it already.

On that basis, I ask that it be stricken from the record.

PROSECUTION: Assuming that all the defense counsel has stated to be correct, there is ample corroboration by this witness regarding some of the testimony given by Chief Sanders, particularly with reference to the meeting.

PRESIDENT: The objection is overruled, and the Commission will accept this evidence for what it is worth.

DEFENSE: At this time, I ask the court for a recess as the commencement of the court's examination of this witness will avail us of nothing.

PRESIDENT: The court will now take a recess, at 1225 hours, to meet at such time as we will decide upon in a few minutes.

(After a short deliberation, the president announced:

The court will adjourn to meet at 8:00 AM., 7 August, 1946.

The court then, at 1225 hours, on 7 August 1946, adjourned to meet at 0800 hours, on 7 August 1946.

Leonard M. Rand

LEONARD M. RAND
Chief Prosecutor

DISTRICT COURTHOUSE
Yokohama, Japan

7 August 1946

The Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, the accused, interpreters and reporter who were present at the close of the previous session in this case being present.

PRESIDENT: The Commission is in session.

PROSECUTION: Mr. Hayashi, the witness, is reminded that he is still under oath. I believe the defense is ready to cross-examine at this time.

CROSS EXAMINATION (Continued)

Questions by defense:

Q Mr. Hayashi, are you now employed?
A Yes.

Q By whom are you employed?
A Kyoto Prefecture Government.

Q What is your job?
A Interpreter.

Q For whom?
A For the Police Department.

Q Do you work with the Allied Forces?
A Yes, cooperate with them.

Q How long have you been so employed?
A I was employed last November.

Q When you first arrived in camp in November of 1945, how many prisoners of war at Osaka Main Camp were there?
A I forget the exact number, but somewhere around 500.

Q Were they all in one camp?
A No, they were in two camps.

Q How many dispensaries or sick bays did they have at that time to treat any of those prisoners who might be ill?
A Two.

Q And who operated those dispensaries?
A What do you mean by who operated?

Q You testified yesterday that Kondo operated the dispensaries, did you not?
A Yes.

Q Well, I ask you now who operated the two dispensaries at that time.

A One of them is Kondo, I believe, and the other, I forgot the name.

Q Where was Kondo's dispensary located?
A Kondo's dispensary was located in one of the buildings -- one of the camp.

Q One of the two camps?
A Yes, one of the two camps.

Q And what prisoners of war were interned in that camp?
A I believe it was British.

Q British prisoners of war?
A Yes.

Q And how long did Kondo remain at that dispensary with those British prisoners of war?
A I don't remember how long, but he remained there until those two camps was put in one.

Q Was that about the beginning of 1945?
A Probably it was.

Q And from November, 1942, then, until the two camps were joined in one, the accused Kanichi Kondo was treating British prisoners of war, is that correct?
A Yes.

Q Were there any American prisoners of war in that camp that he was treating?
A Yes, few.

Q How many?
A I don't remember the number -- very few.

Q Who had charge of that section of the camp?

PROSECUTION: If it please the Commission, I would like counsel for the defense to confine himself to the dates so that we know what period he is talking about.

DEFENSE: I am talking about the same period -- from November, 1942 until the camps were joined into one.

Q Do you know that portion of the camp?
A You mean the prisoners' side, yes; Matheson was in charge.

Q And not Mr. Sanders, is that correct?
A Matheson was in charge of the British Camp and Chief Sanders was in the American camp.

Q How many men did Matheson have charge of?
A Approximately 200.

Q How many men did Chief Sanders have charge of?
A 300.

Q So, then Mr. Sanders was not Camp Commander of that entire camp, was he?

PROSECUTION: I object to the question, if the court please; it is asking for a conclusion of the witness. The witness has testified that Nathoons was in charge of the British section -- of the so many British prisoners of war, and that Sanders was in charge of so many American prisoners of war.

PRESIDENT: Of that entire camp?

DEFENSE: Yes, sir, at that time there were two separate units in the camp. That's what it amounted to. One was on the other side of the road. That's all.

PRESIDENT: The question will be answered.

A Not the entire camp.

Q Now, in '44 when the camps were joined -- these two units were joined together, who was in charge?
A Chief Kumata.

Q Was Nathoon a British prisoner of war?
A Yes.

Q Now, from November, 1942 until the camp was united in one, was there a dispensary at which sick call was held for the British prisoners of war?
A Yes.

Q Was there also a dispensary where sick call was held for the American prisoners of war?
A Yes.

Q Now, during that time, Mr. Sayashi, who was the Japanese medical orderly who was holding sick call for the American prisoners of war?
A I think Kondo, for both camps.

Q Kondo held sick call for both camps?
A Yes.

Q Then Kondo held sick call for over 500 prisoners? Is that correct?
A Yes.

Q Now, were there any British medical officers interned?
A No.

Q How many medical officers were there in the entire camp, in November '42 until 1944, the beginning of 1944?
A Two.

Q Do you recall who they were?
A Dr. Hoshman and Dr. McGinnis.

Q Was he an American prisoner of war?
A Yes.

Q Do you know what his rank was?
A Lieutenant.

Q Now, specifically what was your job from November '42 till the beginning of February, '44?
A I was taking charge of the cards of the war prisoners and sorting out of the mails with war prisoners.

Q I didn't understand the first part of your answer.
A The name cards.

Q During that time, you weren't acting as an interpreter, were you?
A I was at the same time.

Q How did you spend most of your time -- in the office taking care of cards or outside interpreting?
A In the office, taking care of the cards.

Q It's true, isn't it, Mr. Hayashi, that you were Colonel Murata's interpreter, is it not?
A Not necessary.

Q You interpreted for him, did you not?
A Yes.

Q Did you do most of his interpreting?
A Yes.

Q Did you ever interpret for Colonel Murata when he made speeches to prisoners of war?
A Yes.

Q Do you recall any of the things he said to them?
A Yes, some of the things.

Q Did you ever interpret the conversations had between Colonel Murata and Mr. Sanders?
A Yes.

Q How many conversations do you recall Mr. Sanders having with Colonel Murata?
A I don't know how many times.

Q Well, let's see, he spoke to him at least once, didn't he?
A Yes.

Q Did he speak to him twice?
A Yes, I believe.

Q Could it have been as many as five times?
A Possibly.

Q Could it have been as many as ten times?

PROSECUTION: If it please the Commission, I object to this line of questioning. I don't see that it makes any

difference whether he interpreted conversations between Colonel Murata or for Colonel Murata with Sanders.

DEFENSE: If it please the Commission, this man was put to the stand to corroborate the testimony of Chief Sanders; Chief Sanders has also testified that he never spoke to Colonel Murata.

PROSECUTION: I don't think that is an accurate statement by defense counsel. As a matter of fact, the record will show what the testimony is and I don't think counsel for the defense is stating the record as it is.

DEFENSE: As I recall the testimony, Mr. Sanders said it was very difficult to talk to Colonel Murata and this man has already testified that he spoke to him at least ten times.

PROSECUTION: I don't think the witness has so testified.

Q Mr. Hayashi --

PROSECUTION: Wait a minute; there is an objection.

PRESIDENT: If the prosecution wishes to go over the testimony to assure himself of that point, he may do so, but in the opinion of the Commission, Chief Sanders did state that no one could talk to Colonel Murata.

PROSECUTION: No, he didn't say that. If I recall it, sir, he said that it was "difficult".

PRESIDENT: If you decide to raise the point, you may go over the testimony. If it isn't in the direct testimony, the objection will be sustained, but if you find that that testimony is in there -- and I think it is -- the objection will not be sustained.

Do you care to go back over that testimony?

PROSECUTION: If the Commission please, the record states, I am fairly certain, that Chief Sanders said in response to some question that it was very difficult for anyone to talk to Colonel Murata, but he never stated that he didn't speak to Colonel Murata and this line of questioning is to whether Chief Sanders spoke to Colonel Murata. Obviously, as Camp Commander, he must have spoken to Colonel Murata. They were in close proximity. He was a Camp Commander. Chief Sander's statement was that other people had difficulty in talking to Colonel Murata and the record will show that.

I suggest that the record be checked; I am positive that that was the meaning -- it was very difficult for anyone to talk to Colonel Murata.

PRESIDENT: I suggest that we take a short recess while we check the evidence. The court will take a recess.

The Commission then took a recess until 0815 hours, at which hour the personnel of the Commission, prosecution and defense, and the accused, interpreters and reporter resumed their seats.

PRESIDENT: The Commission is in session.

PROSECUTION: The witness is reminded that he is still under oath.

DEFENSE: The reporter will read those two portions in the record in which questions were addressed to the witness Sanders relative to his conversations with Colonel Murata.

The reporter then read the desired portions of the testimony.

DEFENSE: Is that sufficient for the court?

PROSECUTION: In any event, there is evidence by witness Sanders that he had spoken to Colonel Murata. Furthermore, if the court pleases, we will recall, with the permission of the Commission, Chief Sanders, in rebuttal, to clarify the point, if there need be any further clarification.

DEFENSE: Now, if it please the Commission --

PRESIDENT: Are you still objecting to the witness answering the last question?

PROSECUTION: May we have the last question?

(The reporter read the last question)

PROSECUTION: The prosecution will withdraw the objection.

PRESIDENT: At this time, the Commission wishes to read from the SCAP directive, governing the admissibility of evidence in these cases.

"The Commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the Commission's opinion would have probative value in the mind of a reasonable man. The Commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure...."

That directive from SCAP will be adhered to. It is the desire of the Commission to expedite the case.

Q All right, Mr. Hayashi, could it have been that Chief Sanders talked to Colonel Murata as many as ten times?
A I don't think so.

Q I can't hear you.
A I don't think so.

Q Between five and ten times, is that your answer?
A Yes, between five.

Q And you interpreted for him on each of those occasions?
A Not all the time.

Q How many times did you interpret for him?
A I don't remember.

Q Did other people interpret for Mr. Sanders and Colonel Murata?
A Yes.

Q So, then, there were other times, were there not, that other interpreters were used by Mr. Sanders when he talked to Colonel Murata, is that correct?
A Yes.

Q So that when you say between five and ten times, you mean that's how many times you interpreted for him, don't you?
A No.

Q What do you mean by it?
A I heard it from other interpreters they had a conversation.

Q Tell us how many times you interpreted for him, in conversations between Colonel Murata and Mr. Sanders?
A I don't remember how many times.

Q More than once?
A Yes.

Q More than twice?
A Yes.

Q As many as five times?
A Yes.

Q You yourself interpreted as many as five times. Do you believe any other interpreter interpreted that many times?
A I don't think so.

Q How many interpreters were there in camp?
A There were three civilian interpreters and later on, about five soldier interpreters.

Q Besides yourself; at some time or another, there were eight other interpreters?
A Yes.

Q Now, in these conversations that Chief Sanders had with Colonel Murata, did he complain about general conditions?
A No.

Q Did he complain about the kind of work men were doing?
A Yes, sometimes.

Q And what would Colonel Murata do, do you know?
A He simply said he would take care.

PRESIDENT: A little louder.

A He said he will take care.

Q Now, how many other Japanese enlisted personnel were there working as medical orderlies at this camp between November and May, '45?
A I can't recall the exact number.

Q You take a guess.
A I should say eight -- about eight persons.

Q Did they work in conjunction with Kenichi Kondo?
A No.

Q Where did they work?
A They worked for the whole camp.

Q Did they take part in examining prisoners of war sick patients?
A No.

Q So, then, Kenichi Kondo was the only Japanese medical orderly that took part in sick call from November, 1942 to May, 1945, is that correct?
A Not only him.

Q Who else was there?
A There is some other soldiers, too.

Q Do you recall who they were?
A (No response)

Q Do you recall how many?
A There were two when the war ended -- two others.

Q When the war ended, Kondo wasn't at the Osaka Main Camp, was he?
A Yes.

Q When you say "yes", you mean he wasn't?
A He was.

Q He was at the Osaka Main Camp in August of 1945?
A No.

Q I ask you once again, while he was there, how many Japanese medical orderlies assisted him?
A Two.

Q What was Kondo's rank in November of '42?
A I believe he was just private.

Q Is that the lowest rank in the Japanese Army?
A Yes.

Q Was he the lowest ranking private in the Osaka Main Camp?
A I beg your pardon?

Q Was he the lowest ranking private in the Osaka Main Camp?
A Yes.

Q You have testified that Kondo was in charge of the dispensary. Now, I wish you would elaborate on that for the Commission. What do you mean "in charge of the dispensary"?
A He was taking care of the sick war prisoners.

Q He was receiving instructions from somebody, was he not?
A Yes.

Q And who would he receive his instructions from?
A Dr. Nosu.

Q Dr. Nosu. Anybody else?
A Sometimes from Dr. Amae.

Q Anybody else?
A Dr. Maruo.

Q So, when you say he was in charge of the dispensary, you mean that he worked in the dispensary and took care of the sick call, isn't that what you mean?
A Yes.

Q He wasn't free to do what he pleased in that dispensary, was he?

PROSECUTION: I object to that question, if the Commission pleases. How would that witness know? If he knows --

DEFENSE: All right, I withdraw it.

Q There were other Japanese medical personnel in Osaka Main Camp, were there not?
A Yes.

Q Japanese enlisted personnel who outranked Kondo, isn't that correct?
A Yes.

Q You recall Corporal Hiraiwa?
A Yes.

Q What was his job?
A He was taking charge of the dispensary when we again moved to Chikko.

Q When you moved to Chikko?
A Yes.

Q What do you mean by "moved to Chikko"?
A We were burned down once and went to other camp and back to Chikko again.

Q About when was that?
A You mean airraid?

Q When you moved to Chikko; was that in 1945?
A Yes, it was in 1945.

Q Do you recall when Corporal Hiraiwa came to camp?
A No.

Q While he was in the camp and before you moved to Chikko, he was in charge of the diagnosis room, was he not?
A Yes, I think I seen him.

Q He was Kondo's immediate superior, was he not?
A Yes.

Q Do you recall Corporal Nomura?
A Yes.

Q Where did he work?
A He also worked in Chikko Camp.

Q Did he work in the Osaka Main Camp?
A Yes.

Q What was his job, if you recall?
A He was working with Kondo, I believe. I don't know whether it was before Hiraiwa or after him.

Q At one time or another, between 1942 and May, 1945, Nomura worked with Kondo?
A Yes.

Q And was he corporal at that time?
A Yes, I believe.

Q He was then Kondo's superior while he was there, wasn't he?
A Yes.

Q Do you recall Sergeant Kobayashi?
A Yes.

Q Where did he work?
A He also worked with Kondo.

Q What was his job?
A I believe he was supplying medicines.

Q In charge of the medical supply room, was he not?
A Yes.

Q Also Kenichi Kondo's superior, wasn't he?
A Yes.

Q Do you recall Sergeant Major Okuyama?
A Yes.

Q Where did he work?
A He also worked in the main camp -- sometimes.

Q Did he work in the medical department?
A Yes.

Q What did he do? Take charge of records and things like that, do you know?
A I don't know.

Q While he was there, he was also Kondo's superior, was he not?
A Yes.

Q Do you recall superior private Yasufugu?
A No.

Q Superior Private Hirakawa?
A Yes.

Q When did he come to camp, do you recall?
A I beg your pardon?

Q Do you recall when he came to camp?
A No.

Q Do you recall what his job was while he was there?
A Yes, I recall now; he was taking care of the patients before Kondo in the main camp.

Q Before Kondo came there?
A Yes.

Q And when did Koniehi Kondo come to camp?
A I believe it was early part of 1945.

Q Now, do you recall Superior Private Nakatsuji?
A The name is familiar to me.

Q How about Superior Private Kato?
A I don't remember.

Q Nakatsuji, was he a medical orderly?
A I don't know.

Q How about SuperiorPrivate Hayakawa?
A Yes, I remember him.

Q Was he a medical orderly?
A Yes.

Q When was he in the camp? While Kondo was there?
A Yes.

Q What was his duties, do you know?
A No.

Q How about Superior Private Kishimura?
A I don't remember.

Q Did you ever see sick call conducted?
A Yes.

Q Did you ever see any other Japanese medical orderlies at sick call besides Kondo?
A Yes.

Q Do you recall when that was?
A It was in 1942 when Hirakawa was taking charge.

Q When did you say that was?
A 1942 -- end of 1942.

Q Kondo didn't come there till the beginning of '43, did he?
A No.

Q Then you could never have seen Kondo with somebody else in '42, could you?
A No.

Q At various times, however, there were other Japanese medical orderlies present at sick call, were there not?
A I believe.

Q Did you see them?
A No.

Q What makes you believe that there were?
A Because they told me they were in the dispensary.

Q Working in the dispensary?
A Yes.

Q But you don't know whether or not they worked on sick call, do you?
A No.

Q To the best of your knowledge and belief, then, Kondo was the only Japanese medical orderly that conducted sick call?
A That's what I saw.

Q Now, you said Dr. Nosu came down to sick call once in a while; how often do you think he would come down?
A Probably once a month.

Q Were you ever there when Dr. Nosu came to sick call?
A Yes, once or twice.

Q What took place, if you recall?
A He examined the sick patients.

Q Then what happened?
A And prescribed medicines.

Q Did the sick prisoners go to work?
A Yes.
Q Dr. Hochman there?
A Yes.
Q Did Dr. Hochman object to this prisoner of war going to work?
A Yes.
Q And Dr. Nosu sent him to work, anyhow?
A I beg your pardon?
Q Didn't Dr. Nosu send him to work over Dr. Hochman's objections?
A Yes.
Q How many occasions would you say that happened, of your own knowledge. You don't want you to testify to anything you heard.
A Two or three cases.
Q That you saw. Do you know who those prisoners were?
A Yes.
Q Do you recall their names?
A One Italian.
Q Italian?
A Yes.
Q The one who died?
A Yes.
Q You mean Serafin?
A Yes.
Q Do you recall when that was?
A
Q Could it have been in late 1944 or early 1945?
A Possibly.
Q Who else to your rellection was sent to work by Dr. Nosu?
A I can't remember the names. Hochman's objections?
Q American prisoners of war?
A Yes.
Q Could one of them have been a Navy man by the name of Hess?
A Yes.
Q Are you sure it was Hess?
A Yes.
Q Dr. Nosu sent Hess to work on sick call?
A No, I didn't see Dr. Nosu examine Hess.

Q Did you see Dr. Nosu examine a Navy man by the name of Smith?
A No.

Q Can you tell us approximately, Mr. Hayashi, how many times you saw Dr. Nosu examine prisoners of war and send them to work over Dr. Hochman's objections?
A I didn't see any.

Q Didn't you just testify that you saw him send Serafin out to work?
A I heard it.

Q From whom?
A From Sanders. I didn't see actually.

Q You heard that from Chief Sanders?
A Yes.

Q When did you hear that from Chief Sanders?
A You mean the time?

Q Yes.
A The time is not clear to me.

Q Was it back there in camp?
A Yes, back in the camp.

Q Was that right after Serafin died?
A Yes.

Q Anybody else present when Chief Sanders told you that?
A Scott was present.

Q Scott?
A Yes.

Q That's Chief Water Tender Scott?
A Yes.

Q Mr. Sanders' assistant?
A Yes.

Q Did Chief Sanders tell you that Dr. Nosu sent any other man to work over Dr. Hochman's objections?
A Yes.

Q Who else did he say Dr. Nosu sent to work over Dr. Hochman's objections?
A I don't remember the names, sir.

Q Do you recall about how many men it might have been?
A What I know is about three cases.

Q Any of these men die, do you know?
A Yes.

Q How long after they were sent to work did they die?
A I don't know.

Q Do you recall it being shortly thereafter?
A I don't remember.

Q And all this, Chief Sanders told you, is that correct?
A Yes.

Q Did you ever see Dr. Maruo at sick call?
A Yes.

Q Did you ever see him send men to work over Dr. Hochman's objections?
A No.

Q Did you ever see Dr. Amo?
A Yes.

Q Did you ever see him send men to work over Dr. Hochman's objections?
A No.

Q Do you recall an occasion when thirty-five men were suffering from mumps at the camp?
A Yes.

Q Do you know whether or not those men went on sick call with the mumps?
A I believe they did.

Q Do you know whether or not they were sent to work over Dr. Hochman's objections?
A They were sent to work.

Q How do you -- strike that -- do you know who was present when they were sent to work?
A No.

Q Who told you they were sent to work?
A Sanders.

Q Didn't Sanders also tell you that Dr. Amo was present on that occasion?
A No.

Q Did Dr. Hochman ever complain that he couldn't work with Dr. Nosu?
A Yes, he did.

Q Did he complain to you and ask you to convey his complaint to somebody?
A Yes.

Q Whom did he ask you to convey his complaint to?
A To Colonel Murata.

Q What did Dr. Hochman say about Dr. Nosu?
A Dr. Hochman says that he will not listen to his opinion about treating the patients and if that's the case, he is no use of working in the dispensary himself.

Q And that was his complaint about Dr. Nosu, isn't that correct?

A Yes.

Q Did he ever complain to you about Dr. Maruo?
A No.

Q About Dr. Amo?
A No.

Q What did Colonel Murata say when you told him of Dr. Hochman's complaints?
A He said he will take care.

Q What did he do, if you know?
A Nothing.

Q Did you ever hear him talk to Dr. Nosu about it?
A No.

Q Did you ever see Colonel Murata do anything about any of those complaints?
A Yes.

Q What complaint was that?
A That was about the distribution of Red Cross parcels.

Q You say a complaint was made with respect to the distribution of Red Cross parcels and action was taken on it?
A Yes.

Q Now, you have testified that various complaints were made with respect to the medical treatment received. Was anything ever done about that by Colonel Murata?
A I don't know.

Q To your knowledge, nothing?
A Yes.

Q You testified, did you not, that there was an order in camp that prisoners of war would sleep with blanks to over their stomach to protect them against diarrhea?
A Yes.

Q Is that a Japanese medical custom?
A I don't think so.

Q Was that order put out by Dr. Nosu?
A Yes.

Q Did you convey that order to the prisoners of war?
A No.

Q Do you know who did?
A Kimura.

Q Interpreter Kimura?
A Yes.

Q Did you hear him?
A Yes.

Q And what did he tell the prisoners of war?
A You mean did I hear that he conveyed that? No.

Q Did you hear him convey that?
A No.

Q How do you know that he conveyed it?
A Sanders told me that there was such an order.

Q Did Sanders tell you that that order came from Dr. Nosu also?
A Yes.

Q The Japanese soldiers sleep that way with a blanket across their stomach?
A I don't know.

Q Do you remember an incident where some soldiers disregarded that order and slept without blankets?
A Yes.

Q When did that take place, if you recall?
A I don't remember the time.

Q About the middle of 1944?
A Yes, I think -- somewhere in 1944.

Q Were you present on that occasion in the barracks?
A No.

Q Did you know what happened in the barracks of your own knowledge?
A No, not from my own knowledge.

Q Did you know who was present -- Japanese personnel present in the barracks?
A No.

Q You were told, were you not, by Chief Sanders that Kondo and two other men struck and beat some prisoners in the barracks?
A Yes.

Q Do you know who the other two men were?
A No.

Q Do you recall one of them being a corporal of the guard?
A Yes, I believe.

Q How was the corporal of the guard armed, if you know, at that camp?
A He just takes guns with him.

Q Had a rifle?
A Yes, rifle.

Q Was Kondo ever under arms at that camp?
A No.

Q You don't recall prisoner of war Hess, do you?
A Yes, I remember.

Q You do remember him?
A Yes.

Q How long was he ill?
A I don't know how long he was ill.

Q Do you recall him going to Itchioka Hospital some time in 1945?
A Yes.

Q Do you recall him coming back?
A No.

Q How long a time elapsed before he went to work after he returned from Itchioka?
A I do not recall.

Q What do you recall about Hess?
A I remember he died.

Q Is that the only thing you recall about him?
A Yes.

Q Everything you testified with respect to Hess yesterday was not of your own knowledge, was it?
A No.

Q It was told to you by Chief Sanders?
A Yes.

Q And the only thing you remember about Serafin of your own knowledge was the fact that Dr. Nosu sent him out to work, is that correct?
A Yes.

Q Was there any other circumstances surrounding his death?
A (No response)

Q With respect to Serafin, do you recall how long he died after Dr. Nosu sent him out to work?
A I haven't any idea.

Q Well, he died in January of 1945. Does that help you refresh your recollection?
A No.

Q Do you recall Serafin being on a paper detail?
A Yes.

Q Was it after he came off the paper detail that Nosu said to him, "Out to work"?
A Yes.

Q Did Dr. Nosu take him off that paper detail and sent him to work?
A That's what I believe.

Q But you were at sick call when Dr. Nosu sent him out, were you not?
A No.

Q You testified before that you were at sick call when Dr. Nosu was there and you saw him send several men to work, did you not?
A Yes.

Q And one of those men was Serafin, isn't that correct?

PROSECUTION: If the Commission please, I do not object to the question by the defense counsel, but I wish he would give the witness an opportunity to be able to make an answer. He is throwing three or four questions at him at a time before he can give him an answer; the witness is confused.

PRESIDENT: Give the witness plenty of time. He is trying to remember things happening.

DEFENSE: I give him time to think, but once he answers a question, I am free to ask him another one.

Q Didn't you testify to that?

PROSECUTION: If the Commission please, I don't think the witness knows what the question is.

(The reporter then read the question)

A No, I make a mistake on that question.

Q What is your answer now?
A No.

Q You never saw Dr. Nosu send Serafin to work?
A No.

Q You just testified that Dr. Nosu took Serafin off the paper detail, did you not?
A Yes.

Q Is that also a mistake?
A No, it was his order.

Q Did he order Serafin specifically taken off paper detail?
A I don't think so.

Q Or did he order everyone taken off paper detail?

PROSECUTION: If the Commission pleases, I don't think that is a question. I think he is arguing with the witness.

PRESIDENT: The witness is trying to remember things in the past and the line of questioning is more to help him in his memory.

DEFENSE: Thank you, sir.

PROSECUTION: Give the witness time to think and answer the question.

PROSECUTION: May I make a statement to the court, please? This witness is Japanese. He has some trouble in remembering the facts. I don't think that there is any question that this witness is telling the truth.

However, I feel that counsel in propounding this question to this witness is doing it by suggesting a set of facts and saying, "Is that correct?" and I feel that the witness is being swayed by the facts in answering that way.

Now, if counsel would propound his questions and ask him what happened on a certain day or what took place and let the witness testify, I think that the answer will be clearer.

This way, counsel is suggesting the answers to him. I don't suggest he is doing it purposely, but by his questions being framed that way, the witness is answering "yes", perhaps in some cases and later on, is contradicting himself because there is some question as to whether it's hearsay or whether he knows about it on this Dr. Nosu incident. I don't think he is purposely intending to change his testimony. I believe that on the previous question, counsel suggested the answer to him, and I ask this Commission to request defense counsel to so word his questions, let the witness give his answers instead of the facts being propounded in counsel's question, merely because this witness is Japanese and he is having a little trouble.

DEFENSE: I call the court's attention to the fact that the directives or instructions distributed to prosecution and defense counsel are that Japanese witnesses are not to be led. I also call your attention to the fact that when Chief Sanders testified, he was led all over this court room.

Any attempt by prosecution to deny the defense its right to lead a witness on cross-examination deprives this man of the right to a fair trial.

Just a minute, Mr. Rand. This man took the stand and he was asked leading questions on direct examination. Objections were made and they were not sustained. I don't think counsel has the right to stand on his feet in this court room and ask that I be denied the right to ask leading questions.

PROSECUTION: Just a minute, counsel. I am not denying you or the accused any right. You know better. I am addressing my remarks to the court, please. I am asking this court to try and help this witness in giving his answers. We have no objection to any truth coming out. We are merely trying to help this witness. He is giving contrary answers.

Now, I am sure this Commission doesn't feel that he is lying. He is just having trouble in answering questions that are propounded to him. We are not objecting that the counsel question him. We are asking him to so direct his questions that he can give answers of his own knowledge.

PRESIDENT: The Commission is competent to weigh the evidence as presented by the witness and the witness will proceed.

Q You don't know whether or not Dr. Mosu specifically removed Serafin from paper detail or whether or not he just discontinued paper detail entirely, do you?
A No.

Q But you do know that it was on his orders that Serafin and others, we will say, no longer were allowed to go to paper detail, is that correct?
A Yes.

Q And they were sent out to do work?
A Yes.

Q Do you recall a prisoner of war by the name of Barber, a British Sea Captain?
A I remember him.

Q Were you present at sick call when Barber applied for some medication?
A No.

Q You know nothing, then, about any incident involving Barber and Kondo, the accused, do you?
A I heard the incident from Sanders later on.

Q Later on?
A Yes.

Q Do you recall a prisoner of war by the name of Nettles?
A I believe that was the prisoner who was sleeping on the bench.

Q Now, there was a regulation, wasn't there, in camp against prisoners of war sleeping outside the barracks, isn't that correct?
A Yes.

Q So that when Nettles was sleeping on the bench outside of the barracks, he was violating the regulations?
A Yes.

Q Do you know of any other instances where other prisoners of war violated that regulation?
A No.

Q Do you remember a prisoner of war by the name of Doherty?
A Yes.

Q Was he a British seaman?
A No, he was American.

Q He was American?
A Yes.

Q Do you recall his appearance?
A Yes.

Q His physical appearance?
A Yes.

Q How old a man was he?
A I should say he's about fifty.

Q Was he large or small?
A Large.

Q How about Barber? Was he a large man?
A Yes, he was quite.

Q Now, when you say "large", approximately how tall do you think Barber was?
A He was taller than you.

Q You think he was as much as six feet?
A How tall are you?

Q I am 5'8" - 8½".
A Probably about six feet.

Q Close to six feet. About how heavy was he?
A About 140 or 150 pounds.

Q Rather thin, wasn't he?
A Yes.

Q And Doherty, the same way?
A Doherty was rather fat.

Q Was fat?
A Yes.

Q About how much do you think he weighed?
A I should think he was about 180.

Q Did you witness any incident in which Doherty and Kondo were involved?
A No.

Q But you heard about it from Chief Sanders, is that right?
A Yes.

Q Chief Sanders told you about everything, did he not?
A Yes.

Q Do you remember a young British prisoner of war by the name of Horsley?
A Yes.

Q How old do you think Horsley was in 1944, if you know?
A Somewhere around 18.

Q Was he a little fellow?
A Yes.

Q Were you present when Horsley received permission from the officer of the day to remain in camp?
A No.

Q Were you present at any time in connection with an incident involving Horsley and Kondo?
A No.

Q Now, Horsley was struck, was he not?
A Yes, that's what I heard.

Q Chief Sanders told you?
A Yes.

Q Did Chief Sanders tell you why he was struck?
A Yes.

Q What did he say?
A He says that he was hit because he did not report to sick call.

Q Because he did not report to sick call?
A Yes.

Q And when did the Chief tell you that?
A I believe a couple of days afterwards.

Q Are you sure of that?
A Yes.

Q There is no mistake about that, is there, Mr. Hayashi?

PROSECUTION: He has already answered thequestion twice.

Q Chief told you not --

PROSECUTION: Just a minute. I have an objection to the court.

DEFENSE: You haven't objected.

PROSECUTION: I object to the court; the question has already been answered twice.

PRESIDENT: That question has been answered. Proceed.

Q You remember Knudsen?
A Yes.

Q He was a seaman, was he not?
A Yes.

Q- He suffered some injury?
A Yes.

Q Do you recall the circumstances of it?
A I believe he was working as stevedore and something heavy dropped and he was hurt.

Q Did you see it?
A No.

Q Chief Sanders told you,didn't he?
A Yes.

Q How long have you been up here in Tokyo, Mr. Hayashi?
A This time?

Q Yes, with respect to this case.
A I came up last Friday.

Q Did you see Chief Sanders up in Tokyo?
A Yes.

Q Did you talk to him about this case?
A No, I saw him yesterday.

Q Did you see him before yesterday?
A No.

Q You didn't see him in Tokyo at all, did you?
A I saw him before.

Q Where?
A In Tokyo.

Q When?
A Last month.

Q How long were you in Tokyo last month?
A Couple of days.

Q How often did you see Chief Sanders?
A Just once.

Q Where did you see him?
A At Meiji Building.

Q Did you and the Chief discuss this case?
A No.

Q Never mentioned it?
A We talked about it -- never discussed it.

Q I see. What did you talk about with respect to this case?
A He told me the incident and asked me if I remembered.

Q If you remember what -- the incident?
A Yes.

Q Did he describe all of these incidents to you?
A No.

Q Which ones did he describe to you?
A I described to him --

Q What did you describe to him?
A Those incidents to him that he told me.

Q And did you go over once again and he tell you the same thing once again up in Tokyo last month?
A Yes.

Q Everything you know about this case you heard from Chief Sanders, isn't that right?
A Yes.

Q At one time or another.
A Yes.

Q Isn't that correct?
A Yes.

Q Did you hear anything new last month in Tokyo that you hadn't heard before?
A No.

Q Everything you testified to you heard from Chief back in camp?
A Yes.

Q That's your testimony?
A Yes.

Q Did you remember everything that Chief told you back in camp?

PROSECUTION: I object to the form of that question, if the Commission pleases.

PRESIDENT: Read the question.

(The reporter then read the question)

PROSECUTION: "Did you remember when" and everything else; I don't think the witness can answer a question like that.

PRESIDENT: The question was, Do you remember everything the Chief told you back in camp. He may answer that.

A No.

Q It was necessary, for the Chief, was it not --

PROSECUTION: Just a moment. I object to the form of these questions. I suggest that he ask, "Was it necessary?" He is framing these questions in the form of statements and asking, "Is that correct". This witness is a Japanese and he is not given a fair chance to answer, because he doesn't understand. Ask him, "Was it necessary?" and let him answer "yes" or "no", instead of going through and stating a whole statement of facts and saying, "Is that correct?" all the time. We have seen instances where there has been a mistake in his interpretation of it.

DEFENSE: There is no interpretation before this court.

PROSECUTION: I have made an objection to the court.

PRESIDENT: Read the question.

DEFENSE: It was necessary for the Chief, was it not, to tell you these instances again so that you would remember -- to refresh your recollection by telling you these incidents again?

PRESIDENT: The witness will answer that question.

Q. Was it necessary for Chief Sanders to tell you about these incidents once more in Tokyo, last month, so that you would remember them, isn't that correct?
A Not every incident.

Q But those incidents that you didn't remember?
A Incidents I remembered but I did not remember the names.

Q You remember all of the incidents but not the names?
A Yes.

Q And it was necessary, then, for the Chief to supply the names to you, is that your testimony?
A Yes.

DEFENSE: At this time, I ask for a ten minute recess.

PRESIDENT: The court will take a recess.

The commission then took a recess until 0940 hours, at which hour the personnel of the commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PRESIDENT: The Commission is in session.

PROSECUTION: Mr. Hayashi, the witness, is again reminded that he is still under oath.

Q Mr. Hayashi, how much time did you spend with Chief Sanders in Tokyo last month?
A What do you mean?

Q How long a period of time were you and Chief Sanders together, conversing?
A About half an hour.

Q How long did you remain in Tokyo?
A A couple of days.

Q And how long did you -- how often did you go to the Meiji Building?
A Twice.

Q To see Chief Sanders on both occasions?
A Yes.

Q On both those occasions, only one half hour -- thirty minutes -- did you and he converse, is that correct?
A Yes.

Q About fifteen minutes on each occasion?
A I beg your pardon?

Q Was it about fifteen minutes on each occasion?
A No, Just half an hour on one occasion only.

Q And the second occasion, you didn't speak to Chief Sanders?
A I spoke to him but we did not speak about this incident.

Q You didn't speak about this case at all?
A No.

Q How long did you remain in the presence of Chief Sanders?
A You mean the second time?

Q Yes.
A I stayed about ten or fifteen minutes.

Q What was the reason for your visit to Meiji Building the second time?

PROSECUTION: If the court pleases, if the witness knows; how would the witness know what the reason for his visit was.

DEFENSE: If the court please, he went there. He must have gone there for a purpose, unless he left his hat.

PRESIDENT: Will you repeat that question?

(The reporter then read the question)

PRESIDENT: The reason for his visit?

DEFENSE: Yes, sir.

PROSECUTION: I don't object to the question, if it pleases the Commission, but I object to the form of the question.

DEFENSE: I will put it another way.

Q Were you summoned to the Meiji Building by the prosecution the second time?
A No.

Q Did you go of your own volition, of your own free will?
A Yes.

Q All right, why did you go?
A To get my ticket fixed.

Q To get your ticket fixed?
A Yes.

Q To return --
A To Osaka.

Q I see. Who was present there at the Meiji Building when Sanders was there on the second visit? Who else was present?
A Mr. Rand.

Q Who else?
A And I don't know the names.

Q The other gentleman seated there at the table (indicating)?
A No.

Q How long did you remain there that day?
A About an hour.

Q Who got your ticket for you?
A American soldiers.

Q What was going on during that hour you were there with Mr. Rand and Chief Sanders?
A I was not in Mr. Rand's room all the time.

Q How long were you in the presence of Chief Sanders on that occasion?
A Ten or fifteen minutes.

Q What were you talking about, if you were talking?
A I asked him whether he has any chance of coming down to Osaka.

Q So, then, your testimony is that the total length of time you spent discussing that case with Chief Sanders was one half hour, is that correct?
A Yes.

Q Now, on the occasion of your first visit, how long did you stay there with Mr. Sanders?
A About half an hour.

Q Did you ever sit in a conference where Chief Sanders spoke to Mr. Rand about this case?
A No. I was further away from their desk --

Q You weren't sitting with them at their desk?
A No.

Q Did you by any chance read the affidavits submitted by prisoners of war in this case?
A Yes.

Q When did you read those?
A When I first visited Meiji Building.

Q Is that the first day?
A Yes.

Q Did you read them yourself?
A Yes.

Q All of them?
A No.

Q How many of them did you read?
A What do you mean "how many"?

Q How many of these affidavits which the prosecution has submitted in this case as affidavits of prisoners of war did you read?

PROSECUTION: Just a moment. This witness doesn't know how many affidavits are submitted in this case as admitted into evidence. He has not been in court. How wouldhe possibly know the answer to that question?

DEFENSE: I will rephrase it.

Q How many affidavits did you read?
A I don't know whether I read it or not.

Q You just testified, did you not, Mr. Hayashi, that you read affidavits, didn't you?
A Yes.

Q Did you read an affidavit or didn't you?
A Well, I don't know whether it's an affidavit or not.

Q What was it?
A (No response)

Q Was it something like this (indicating)? Something the width of the affidavit of Alvin Eugene De Long, Prosecution's Exhibit 6?
A No.

Q Was it typewritten?
A- Yes.

Q On paper that size, or approximately that size?
A Yes.

Q What did it contain?
A Contained the charges against Kondo.

Q Is this what you read (handing the witness the Charge and Specifications)?
A Yes.

Q Did you read anything else?
A No.

Q Was anything read to you at that time?
A No.

Q How long did it take you to read that paper?
A I haven't any idea.

Q You tell us how well you can read English. You know, rather, how well you can read English. How long would it take you to read these papers?
A Maybe ten minutes.

Q Was that part of the thirty minutes you spent in the office?
A No.

Q That was in addition to it?
A Yes.

Q Anybody explain those charges to you?
A No.

Q Did you understand them?
A Yes.

Q Did you recognize the names on those charges and specifications?
A Which names do you mean?

Q The names of the prisoners of war which this man is accused of beating or mistreating?
A Not all of them.

Q And those that you didn't recognize, Chief Sanders filled out for you, isn't that correct?
A No.

A No.

Q You testified a few minutes ago that Chief Sanders refreshed your recollection as to the names of men involved in a certain instance.
A Yes.

Q Did he do it at the time you read the charge and specifications?
A No.

Q Did that later, is that it?
A Yes.

Q Were you at any time present while Chief Sanders talked about this case with Mr. Rand?
A No.

Q Now, you testified with respect to a conference, in your direct examination, held in Mr. Sanders' office at which time you were present, Dr. Hochman, Chief Sanders and Kondo.
A Yes.

Q Do you recall when that was?
A The time, you mean?

Q Yes.
A It was winter.

Q You are sure it was in the winter?
A Yes.

Q What makes you think it was in the winter?
A There was a fire in the room.

Q You had heavy over-clothes on?
A No.

Q At that time, were you wearing an overcoat when you went out?
A Yes.

Q There would be no mistake about it, then, Mr. Hayashi, that it was wintertime, was it?
A It was absolutely wintertime.

Q About what month of the year do you think?
A That, I cannot remember.

Q That the conference at which Dr. Hochman complained about Kenichi Kondo's actions on sick call?
A Yes.

Q Is that the conference at which Dr. Hochman complained that there was no sense of going any longer to sick call?
A Yes.

Q Did you interpret Dr. Hochman's statements to the accused Kondo?
A Yes.

Q And you testified that he agreed to abide by Dr. Hochman's decisions and he would refrain from beating prisoners of war thereafter?
A Yes.

Q Do you know of your own knowledge whether or not he did refrain from beating prisoners thereafter?
A I believe he refrained.

Q Do you know of any incident which occurred after that conference at which time Kondo may have beaten a prisoner of war?
A No.

Q Chief Sanders ever tell you after that conference that Kondo had beaten another prisoner of war?
A Yes, I believe.

Q He did or he didn't?
A He did.

Q He did beat a prisoner of war after that conference, is that your answer?
A That was told by Sanders to me.

Q After the conference?
A Yes.

Q Do you recall whether that was in the winter of '43, '44 or '44 - '45?
A '44 - '45.

Q That conference took place in the Chief's room, did it not?
A Yes.

Q Did you know at that time that Chief Sanders had struck Kondo?
A No.

Q Do you know now that Chief Sanders had struck Kondo?
A No.

Q Did Chief Sanders ever tell you that he struck Kondo?
A No.

Q Now, who in that camp worked with the doctors -- the Allied prisoner of war Dr. Hochman in connection with making up of death certificates?
A Making up what?

Q Death certificates.
A Dr. Nosu.

Q Who interpreted at those conferences?
A There wasn't any interpreters.

Q Dr. Nosu speaks English, does he not?
A- Yes.

Q Now, you have testified that you interpreted certain speeches made by Colonel Murata, is that correct?
A Yes.

Q When Colonel Murata made those speeches, did he make them to the entire prisoner of war camp or just to a select group?
A Sometimes to the entire camp and sometimes to different groups.

Q Do you recall the contents of any of those speeches?
A Yes.

Q Tell the court the content of any one of them.

PROSECUTION: If the Commission please, I object to any speeches that Colonel Murata made at this camp unless the defense is prepared to show that a particular speech has something to do with the charge and specifications in this case. We are not concerned with speeches made by Japanese personnel at Headquarters prisoner of war camp unless they concern the guilt or innocence of this accused.

I object to the question.

DEFENSE: If the court please, this man is charged for the course of his conduct from the first day he got in the camp to the day he left. I submit to the Commission that he was a soldier in the Japanese Army. He took orders from his Commanding Officer and what his Commanding Officer thought and orders with respect to the treatment of prisoners

of war were is relevant and pertinent to the issues involved in this case.

Reference to the SCAP Directive will show while the fact that the man may have been operating under orders may not be a complete defense, it is mitigation.

On that ground, I think it's proper examination of this witness because he is the man who interpreted for the Colonel and he is the one who would know what was said.

PROSECUTION: That may be true, sir, but these questions have to be pinned down to a course of conduct which Kenichi Kondo had followed -- not speeches in general by Colonel Murata.

DEFENSE: Let's find out what he said.

PROSECUTION: I object to counsel going out on a fishing expedition on this witness. Let him direct his questions specifically to matters which may be in mitigation of Kenichi Kondo's conduct.

PRESIDENT: The speeches made by the Camp Commander may have a bearing on this case and the witness will answer the question.

A No.

Q What do you mean by "no"? Don't you remember the contents of any of those speeches?
A Yes, I remember.

Q Tell us what the colonel said.
A He says that within the camp is the only safety place for the war prisoners; they should obey the orders of army and take care of their health.

Q This was on one occasion?
A Yes.

Q Do you recall any other speeches he may have made?
A Yes.

Q What was the contents of that?
A That was a speech made when prisoners first arrived to the camp.

Q What did he say to the prisoners when they first arrived to the camp?
A He says that the prisoners arrived are under his control, and they should obey his orders.

Q Any other speeches made by the colonel?
A I don't recall any special instance.

Q Do you recall the colonel ever telling the prisoners of war what might happen to them if they disobeyed Japanese army regulations or his instructions?
A Yes.

Q What did he say?
A He says they will be severely punished.

Q Did he say by whom?
A By court-martial.

Q When those speeches were made, were the Japanese personnel present?
A Yes.

Q Have you ever been present at any conversation had between Dr. Nosu and the accused Kaniehi Kondo?
A No.

Q Did you ever hear Dr. Nosu give any orders to his medical subordinates?
A No.

Q Where was your office?
A My office was upstairs.

Q In what building?
A Chikko Main Camp.

Q Was that in the same building that the dispensary was in?
A Yes.

Q How far away from you was Dr. Nosu's office?
A His office was on the first floor.

Q Did you see Dr. Nosu around there most of the time?
A I don't know about that.

Q Isn't it true that if you couldn't see Dr. Nosu, you might hear him because of the way he spoke?
A Yes, I could tell him.

Q He was pretty loud and rough, wasn't he?
A Yes.

Q Did you ever hear him reprimanding any of his subordinates?
A No.

Q Outside of the one conference you had in the winter of '44-'45, at any other time did you interpret for Chief Sanders and Kondo with respect to any complaints which the Chief had?
A I don't recall.

Q As far as you are concerned, that's the only time that you were ever used to interpret at any conferences between those two men, isn't that correct?
A Yes.

Q What was Kondo's attitude at that conference? How did he act?
A He acted in the general way.

Q Was he calm?
A Yes, he was.

Q He didn't fly off the handle? Did he get excited?
A I don't think so.

Q Did he argue with Chief Sanders?
A Yes, a bit.

Q What did they argue about?
A I don't remember.

Q You want me to refresh your collection. He argued with Chief Sanders, did he not?
A Yes.

Q To the effect that he was following instructions, did he not?
A Yes.

Q That's what he told Chief Sanders?
A Yes.

Q The Chief accused him of beating prisoners of war. What did he tell to the Chief? What did he say to the Chief?
A Who? Kondo?

Q Kondo.
A He says he is the man taking charge of the dispensary.

Q What else did he say?
A That's all I remember.

Q You remember him saying that he also takes orders from Dr. Mosu and every other officer in camp?
A Yes.

Q And non-commissioned superior officers in camp?
A Yes.

Q You remember him saying that?
A Yes.

Q What did the Chief say to that?
A I forgot.

Q Did the Chief pay any attention to that explanation?
A I don't remember.

Q That whole incident is rather vague in your mind, isn't it?
A Yes.

Q Chief Sanders tell you about it up there in Tokyo when you spoke to him?
A No.

Q You didn't have to ask him any questions as to refresh your recollection with respect to that conference?
A No, I didn't have to ask him.

Q Did you speak about that conference with Chief Sanders up in Tokyo last month?
A Yes.

Q Did you tell Chief Sanders what had happened or did Chief Sanders tell you what had happened?
A I told him what happened.

Q Did you tell him when it happened?
A Yes.

Q What did the Chief say?
A I told him that I remember the charcoal fire in the room and he says that's right.

Q That's right? Anything else?
A No.

Q Now, do you know what the general condition of the prisoners were when they first came to that camp? In November, 1942.
A Yes.

Q They were rather run-down, undernourished, were they not?
A Yes.

Q Do you know whether or not their health improved through the following three years?
A I believe their health improved.

Q Do you know whether or not speeches made by Hideki Tojo were ever read to the prisoners of war?

PROSECUTION: I object to any speeches made by Mr. Tojo. I certainly don't see any possible connection with the accused Kaniehi Kondo. If you want to talk about speeches of Mr. Tojo, you can take every Japanese army general who made a speech and go right through headquarters camp and take every person who made a speech other than Colonel Murata.

DEFENSE: If the Commission please, this man is a Japanese soldier. Tojo was the Premier of Japan and head of the War Ministry.

A I wasn't a Japanese soldier.

DEFENSE: Just a moment. I am not talking about you. Anything that came from that high and worked its way down to this camp is pertinent to the trial of this accused because at this same instant, Tojo is being tried in Tokyo for the acts of his subordinates, right down to the last man -- to the last soldier. He is charged with certain deaths, actions committed by his soldiers in the Philippines and elsewhere, and if he can be charged with their acts, there certainly must be a responsibility that is attributed to him by reason of it.

Therefore, anything he had to say in connection with the conduct of prisoner of war camps is pertinent in this man's defense and he certainly has a right to have it brought before this Commission.

PROSECUTION: Sir, there is nothing before this Commission as to what Mr. Tojo is charged with; nothing at all before the court. The charge and specifications are very simple: Did the accused, or did he not, commit these acts and atrocities which we claim are contrary to laws and customs of war. If he didn't, he is innocent. If he did, he is guilty. The facts are very simple. What Mr. Tojo has said doesn't have any bearing on it.

Q Do you know whether or not speeches made by Hideki Tojo were ever read and translated to the prisoners of war?

PRESIDENT: The objection is not sustained. The witness will answer the question.

A No.

Q You don't know whether they were?
A No.

Q Do you know whether or not Colonel Murata -- strike that -- do you know when Colonel Murata was appointed chief of the Osaka Prisoner of War camps?
A Repeat the question, please?

Q Do you know when Colonel Murata was appointed chief of the Osaka Prisoner of War camps?
A I don't know the exact dates.

Q Was it some time in 1942?
A Yes.

Q Was it prior to the opening of the camp -- of the arrival of the first group of prisoners at the Osaka Main Camp?
A Yes, I think so.

Q Do you believe it might have been around June of 1942?
A I don't know about that.

Q Was there anybody who was chief of the Osaka Prisoner of War Camps before Colonel Murata?
A No.

Q He was Chief, then, from the time the camp was constituted until the end of the war?
A Yes.

Q Is that correct?
A Yes.

Q Did Dr. Hoehman ever complain to you directly in relation to Kaniehi Kondo?
A Yes.

Q On what occasion was that?
A When he met me in the camp.

Q Was that at the time of this conference or on another occasion?
A Just prior to that conference.

DEFENSE: No further questions at this time.

PROSECUTION: In view of the fact that there is apparently some slight intimation that prosecution has perhaps colored this witness' testimony, we would like to straighten it out for the record.

PRESIDENT: Proceed.

REDIRECT EXAMINATION

Questions by prosecution:

Q Mr. Hayashi, do you know me?
A Yes.

Q Just prior to the recess, you were being cross-examined by counsel as to conversations of Mr. Sanders about this case, is that right?
A Yes.

Q During the recess, did you talk to me?
A No.

Q Not at all?
A No.

Q Now, the first time that you came up to Tokyo was about when?
A The beginning of last month.

Q And where did you go?
A I went to the Meiji Building.

Q And whom did you see?
A I saw you.

Q At the time you saw me, was I alone or was I with someone, the first time?
A You were alone, I think.

Q Did you talk to me alone?
A I beg your pardon?

Q Did you talk to me alone?
A Yes.

Q Did we discuss the case against Kenichi Kondo?
A No.

Q We didn't discuss the case against Kenichi Kondo? I will reframe the question. Did I ask you questions about Kenichi Kondo?
A Yes.

Q And did I ask you questions about Kenichi Kondo with respect to the charge and specifications in this case?
A Yes.

Q And did we talk about them?
A Yes.

Q And at that time, did you remember about the meeting?
A Yes.

Q And at that time, did you remember about incidents which Chief Sanders had told you?
A Which incidents?

Q Did you remember generally about the incidents which you had said that Chief Sanders had told you?
A Yes.

Q Now, did you remember about those incidents because they were told to you at the time they took place at the camp?
A (No response)

Q Do you understand my question?
A No.

DEFENSE: I object to the question on the grounds it's leading.

PROSECUTION: Well, I don't think defense counsel should object about leading questions.

DEFENSE: There is a great deal of difference between cross-examination and direct examination of which I am sure the court is aware. This is this man's witness. He is offering to corroborate the testimony of Chief Sanders and it's highly prejudicial to the rights of the accused to allow the prosecution to lead the witness.

PROSECUTION: Just a moment. I am not going into any of the matters which Chief Sanders has testified to. Mr. Black will straighten that out. What I am trying to straighten out is the intimation that the defense counsel has left with this court: that I as prosecution have attempted to color this witness' testimony, and I am attempting to clear it up.

DEFENSE: I make no intimation.

PRESIDENT: Word the question so he can understand. I see he has some difficulty understanding.

PROSECUTION: Every question defense counsel has propounded to him was a statement of fact which the witness answered "yes". It came out later on that there was a discrepancy in his testimony because apparently there he was expected to answer "yes" and he so answered.

I feel this witness has difficulty along that line.

DEFENSE: Let us then examine this witness in Japanese.

PROSECUTION: I object to any examination in Japanese. The defense counsel has cross examined in English.

PRESIDENT: We will proceed with this witness in English and you continue with your question and so word them that the witness can reply from his own knowledge.

Q Now, at the time you and I talked about the case, you have just testified you remembered of your own knowledge about the meeting, is that correct?
A Yes.

Q And did you remember who was present at the meeting?
A Yes.

Q Now, did you also tell me about things that Chief Sanders had told you while you were at camp?

DEFENSE: I object to that question, on the grounds it's a leading question.

PROSECUTION: The answer is "yes" or "no".

DEFENSE: This is redirect examination and there is a great deal of difference between cross-examination and direct examination. It's fundamental in the trial of law suits that you cannot lead your own witness.

PROSECUTION: Sir, may I refer the present of the commission to the SCAP rules which he has read at the start of the reconvening of court. We are trying to find out whether this witness was coached by the prosecution. This witness is a Japanese witness and apparently has had trouble answering questions. What objection is there?

PRESIDENT: The witness will answer the question.

A Yes.

Q Do you remember how long we talked about the case?
A I cannot estimate the time.

Q Did I ask you any questions about Kenichi Kondo to which you did not know the answers?
A No.

Q Now, did we have a further meeting at which Chief Sanders was present at which you, Chief Sanders and I were present?
A Yes, I did.

Q And we talked about Kenichi Kondo at that time?
A Yes.

Q But the first time you spoke to me, the first time you spoke about Kenichi Kondo was to me, is that right?
A Yes.

Q Mr. Hayashi, during the two occasions when you were up to Mr. Rand's office, did Mr. Rand or anyone else tell you what to say with regard to this case?

DEFENSE: I object to that question on the grounds it's leading. I refer to the court the rules as laid down by SCAP, and I believe that the rules say that great liberality should be allowed, but that is purely to protect the rights of the accused. It's not to invade upon his rights.

This man is a very important witness in this case. They seek to hinge all of Chief Sanders' testimony upon his corroborating testimony.

Now, he has been severely shaken on cross-examination, and now, in an attempt to reestablish him before this Commission, they are asking him leading questions and all he has to do is answer "yes" to every single question. That's all he has to do.

PROSECUTION: If it pleases the Commission, it's hardly an objection by the defense that an effort will be made by the prosecution to clarify the cross-examination.

DEFENSE: I don't object to their effort being made, but I certainly object to the way they are doing it. It's not proper redirect examination.

PRESIDENT: Read the question.

(The reporter read the question)

PRESIDENT: The question will be answered.

A No.

Q You have testified that you knew a prisoner of war by the name of Serafin?
A Yes.

Q That he was sick?
A Yes.

Q That he was sent to work?
A Yes.

Q And that he died?
A Yes.

Q Was he treated as a prisoner of war?
A Yes, he was.

Q Was he treated any differently from any other prisoner of war?
A No.

Q During the time you and Kondo were at that camp, and also during the incidents with regard to Serafin, Hess, Doherty, Knudsen and Horsley, who was in charge of the dispensary?
A Kondo.

Q You have testified on cross-examination that Kondo had two subordinates in the dispensary with him, is that correct?

A Yes, later part.

Q The latter part of when?
A The latter part when he -- the latter part of the time he was in the Chikko Main Camp.

Q In 1945?
A Yes, I believe it was in 1945.

Q Were these two other Japanese in the dispensary with Kondo? Withdrawn. Did these two Japanese in the dispensary have a higher rank than Kondo?
A No.

Q Was Kondo promoted during the time he was in that camp?
A Yes.

Q Who was the medical person, the Japanese medical person in charge of sick call during the entire time you and Kondo were at that camp?
A Kondo.

Q Was there anybody else in charge of sick call?
A No, I don't believe so.

Q There is no doubt in your mind about that, is there?
A No.

Q That you know of your own knowledge?
A Yes.

Q To be a fact?
A Yes.

Q You have testified about a meeting or conference at which you, Mr. Sanders, Dr. Hochman and Kondo were present, is that right?
A Yes.

Q Against whom did Hochman and Sanders complain?
A Against Kondo.

Q Did they complain about anyone else at the dispensary?
A No.

Q At other times, other than the meeting, did Dr. Hochman complain to you about Kondo?
A Yes.

Q Did Mr. Sanders complain to you about Kondo?
A Yes.

Q Did Merritt complain to you about Kondo?
A Yes.

Q Did any of these prisoners complain to you about any other Japanese at the dispensary?
A No.

Q That you know of your own knowledge, is that right?
A Yes.

Q What did Merritt, Hochman, Sanders complain to you about?
A They all complained that Kondo will not cooperate with Dr. Hochman.

Q Anything else?
A That he hits the war prisoners.

Q At this meeting when Sanders and Hochman made these complaints about Kondo, in Kondo's presence, did Kondo say to them that he would cooperate with Dr. Hochman in the future?
A Yes, he did.

Q That he would not beat sick prisoners?
A Yes.

Q That he would not overrule Dr. Hochman?
A Yes.

Q That he would not disturb sick prisoners at night?
A Yes.

Q Did Kondo at that time say that Dr. Nosu ordered him to beat sick prisoners?
A No.

Q Did he at that time say that Dr. Nosu told him to send sick prisoners to work?
A Yes, sir.

Q Did he at that time say that Dr. Nosu told him to disturb sick prisoners at night?
A (No response)

Q Do you understand that question?
A That question is hard to answer by "yes" or "no".

Q I will withdraw the question.

DEFENSE: If the court please, I object to the question. There is no evidence before this Commission at all that any sick prisoners were ever disturbed at night. The only evidence is the "baka" episode.

PROSECUTION: I have withdrawn the question.

Q Did Kondo ever disturb sick prisoners at night while they were asleep?
A Yes.

Q Did Kondo at that meeting say that Dr. Nosu or anyone else told him to do that?
A Yes.

Q What did he say?
A He says that Dr. Nosu ordered him to see that his orders are carried out.

Q Did he say anything else?
A No.

Q Was that with regard to the blanket incident?
A Yes.

Q Dr. Nosu told him to see that the men had blankets about them, is that right?
A Yes.

Q He didn't see him --

DEFENSE: I object to this question on the grounds that it is leading.

PROSECUTION: You don't know what it is.

DEFENSE: I know what it is.

PRESIDENT: Wait until he asks the question.

Q Did Kondo say at that meeting that Dr. Nosu told him to beat the prisoners when making a blanket inspection?
A No.

Q You testified on cross examination with regard to speeches made by Colonel Murata, is that correct?
A Yes.

Q Did Colonel Murata in any of these speeches say that the Japanese personnel would beat prisoners?
A No.

Q Did he ever say that the Japanese would beat sick prisoners?
A No.

Q Did he ever say that the Japanese would send sick prisoners of war to work?
A No.

Q Who was the American or British prisoner of war who complained to you or to others about Kondo?

DEFENSE: I didn't hear the question, please.

(The reporter then read the question)

DEFENSE: Object on the ground it's leading. There is testimony that Hochman and Sanders complained to him. He is trying to lead this witness into enlarging upon that list. I think the proper question would be: Who complained?

PROSECUTION: Strike out the word "others". May I rephrase the question?

PRESIDENT: Strike out the "others".

Q Who complained to you about Kondo?
A Dr. Hochman, Sanders, Merritt.

Q Did Ginger complain to you about Kondo?
A No.

Q On how many different occasions did these prisoners complain about Kondo?
A I don't remember how many times.

Q Were there more than one occasion?
A Yes.

Q Were these occasions before the meeting?
A Yes.

Q Were they after the meeting?
A No.

DEFENSE: If the court please, will we determine what beating he is being questioned about?

PROSECUTION: There is no question about any beating.

DEFENSE: Did you say before the meeting?

PROSECUTION: I said "the meeting", I am sorry.

Q Will you tell this Commission as well as you can the period of time during which these complaints were made against Kondo?
A (No response)

Q Do you understand the question?
A Yes, I don't remember the time.

Q Were these complaints made in 1943?
A I don't think so.

Q Were they made in '44?
A Yes.

Q Were they made in '45?
A No.

PROSECUTION: Would the Commission like to take a short recess?

PRESIDENT: Are you through?

PROSECUTION: Yes, sir.

PRESIDENT: You are through with the redirect?

PROSECUTION: Yes, sir.

PRESIDENT: Are you prepared for recross? Do you mind a ten minute intermission?

DEFENSE: No objection at all.

PRESIDENT: There will be a ten minute intermission.

The court then took a recess until 1045 hours, at which hour the personnel of the court, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PRESIDENT: The Commission is in session.

PROSECUTION: The witness is reminded that he is still under oath.

REDIRECT EXAMINATION

Questions by defense:

Q Mr. Hayashi, you understood the questions I put to you this morning, did you not?
A Yes, sir.

PRESIDENT: At this time, the Commission pleases to notify the defense counsel that the witness was a witness for the prosecution and they had the right to examine him in English. You pressed a desire to examine him in Japanese. On your recross, you have that privilege, if you wish.

DEFENSE: I didn't express the desire to examine him in Japanese. I thought the prosecution felt that he didn't understand the question.

PRESIDENT: If you feel that you want to examine him in Japanese, you may do so.

DEFENSE: He has just admitted that he understands my questions. That's good enough for me.

PRESIDENT: Proceed.

Q You remember testifying this morning about your two visits to the Meiji Building?
A Yes.

Q You remember testifying that on your second visit, you went there to get your railroad ticket?
A Yes, sir.

Q You also testified, did you not, that you had no conversations with Mr. Rand or Chief Sanders with respect to this case on that occasion?
A On the second visit?

Q Yes.
A Yes.

Q Did you have conversations relative to this case on the second visit?
A No.

Q Do you recall just testifying in redirect examination when Mr. Rand put certain questions to you?
A Which do you mean?

Q Mr. Rand a few moments ago asked certain questions, did he not?
A Yes.

Q Did you recall him asking you if after the first meeting you had a further meeting?

PROSECUTION: Just a moment, I don't want this witness to be confused. I did not say that that meeting was on another day in my direct. I ask counsel for the defense to ask his questions so that there is no confusion about what the answer might be.

DEFENSE: I will get to it.

PROSECUTION: I know you will get to it, but I don't want this witness to be confused by your questions.

DEFENSE: This witness is testifying under cross-examination -- recross-examination; he has stated in open court that he understands my questions. It's just a question of his answering them.

PRESIDENT: Are you objecting to that question?

PROSECUTION: Yes, sir, because it's not definite enough.

PRESIDENT: Repeat the question.

(The reporter then read the question)

PRESIDENT: The question will be answered.

A I don't remember.

Q You don't remember the question being put to you this morning in court about twenty minutes ago --

PROSECUTION: If the Commission please, in order to help this witness, I suggest that the reporter look in the record and find the exact question I put to the witness and his answer and have that propounded to him.

DEFENSE: I have no objection.

PROSECUTION: Counsel has propounded a question to this witness. I have said that I want that question propounded from the record so that there will be no question as to what it was.

PRESIDENT: What is the question before the Commission.

DEFENSE: Sir, I asked the witness a question. There was an objection on the grounds that the witness might be confused and the prosecution wants the question read from the record.

PRESIDENT: Which of you is going to select that question?

DEFENSE: The prosecution is going to select that question. He is the one objecting to my question.

PRESIDENT: What is your question?

DEFENSE: My question was whether he remembers testifying on redirect examination as to a further meeting at the Meiji

Building.

PRESIDENT: What does the prosecution object to that question?

PROSECUTION: I don't know whether the question now was exactly the way it was worded when I objected to it, sir.

PRESIDENT: You have no objection to that question?

PROSECUTION: I have no objection to this question, no.

PRESIDENT: All right, the witness will proceed to answer that question.

Q I ask you again, do you recall testifying a little while ago in response to Mr. Hand's questions as to a further meeting at the Meiji Building?
A Yes.

Q Now, you went to the Meiji Building, did you not, on one occasion, on one day, is that correct?
A Yes.

Q Now, was this further meeting the same day or the following day?
A The same day.

Q At what time did you go to the Meiji Building on the first occasion?
A About 9:00 o'clock.

Q How long did you remain there?
A Just before noon.

Q And that time you spent with Mr. Hand, is that correct?
A Not all the time.

Q Part of the time?
A Yes.

Q And what time did you return from the Meiji Building?
A In the afternoon.

Q Was it in the afternoon that you returned?
A No.

Q When did you next come back to the Meiji Building?
A It was on a Monday.

Q Monday was the second occasion?
A Yes.

Q What date was the first occasion?
A Saturday.

Q So you did go on two separate days, isn't that correct?
A Yes.

Q And on the second occasion, did you have a further meeting with Mr. Rand and Mr. Sanders?
A No.

Q At any time did you speak to Mr. Sanders up at the Meiji Building?
A Did I what?

Q At any time did you speak to Mr. Sanders in the Meiji Building?

PROSECUTION: When?

DEFENSE: I am asking him.

PROSECUTION: He has already testified that he has spoken to him. You are asking a question. I want this Commission to have these questions propounded so that the witness can intelligently answer them.

DEFENSE: I will strike it.

Q On what day of the week did you speak to Mr. Sanders at the Meiji Building?
A On a Saturday and a Monday.

Q You spoke to him on two occasions?
A Yes.

Q On the first occasion, on Saturday, Mr. Rand was present and Mr. Sanders, is that correct?
A Yes.

Q And on Monday, Mr. Rand was present again and Mr. Sanders?
A No, I met Chief in the corridor -- not in the room.

Q Didn't the Chief come into the room at all?
A He came in, but he didn't speak to me.

Q What day was that -- Saturday or Monday?
A Monday.

Q But the Chief was speaking to you on Saturday with Mr. Rand?
A Yes.

PROSECUTION: Sir, we have gone over this seven times that I know of at the first meeting that accused spoke to Sanders the first time. How many times does the court have to know that? I don't see any point in this.

DEFENSE: Sir, he has been objecting that the witness is confused. I am trying to be definite as to what happened.

PROSECUTION: Sir, there is no new matter being brought out; this has been covered on the previous cross-examination. Unless it is the defense's intention -- and if it is, I would like him to so state -- that they are accusing the prosecution of coaching this witness as to what to say --

DEFENSE: I make no accusations, sir. I am really attempting to show to this court that on these occasions that the witness Sanders and this witness conversed about the case.

PRESIDENT: We are cognizant of that. That had been admitted.

PROSECUTION: Sir, in all of these conversations that counsel is interrogating --

DEFENSE: Just a minute, please.

PROSECUTION: I am talking to the court. On all of these occasions that counsel is interrogating the accused, I, Mr. Rand, was present at the meetings. Now, I am asking the defense counsel to state to this Commission whether they are accusing the prosecution of coaching these witnesses. I was present at all of these meetings. It has been brought out by defense counsel --

DEFENSE: I make no accusation that he was coached, sir. I, however, wish to bring this before the court. It's my opinion and I am attempting to show it -- this is my offer of proof -- that at the time that this witness was examined by Mr. Rand, Mr. Sanders was present and when this witness didn't remember things, he was told these things by Mr. Sanders in the Meiji Building in Tokyo last month. That's my offer of proof.

PROSECUTION: Sir, we have gone into the matter at considerable length. I think this Commission is able to form its opinion as to whether this witness was told anything by myself or Mr. Sanders. Unless the defense is going to contend that he was coached by the prosecution, there is nothing further to be gained out of cross-examination on this point, and I object to it.

If the court please, I would like to have the defense state whether they are accusing the prosecution of tampering with this witness. I would like them to state it for the record.

DEFENSE: Once again, I repeat I do not accuse them of tampering with the witness. However, I offer to prove that Sanders was examined -- or this man was examined; they were free to tell each other as to what happened in that camp and now this witness is brought in to corroborate Chief Sanders' testimony -- a very important fact in the defense of this accused.

I believe that the court has ruled that I am entitled to so show, if I can. This is merely an offer of proof that I am stating now.

PRESIDENT: What are you trying to bring out with this line of questioning?

DEFENSE: I am trying to show, sir, that when this man didn't recall instances, his memory was refreshed by Chief Sanders.

PROSECUTION: Sir, he has so testified.

PRESIDENT: He has testified. He can be refreshed by documents or by evidence that he can read. He can always refresh a witness' memory. We are cognizant of that, if that is your only point.

DEFENSE: Sir, a witness' memory can be refreshed on the witness stand through a writing which he himself wrote or an official document, but when a witness' memory is refreshed by another witness, it goes far beyond refreshing the recollection of the witness according to the rules of evidence.

Now, he has testified that he didn't recall certain names. I wish to go into that further and find out how much he was told about these incidents because it is apparent that he knows nothing of his own knowledge and everything was told to him by Chief Sanders. It is very important whether or not everything was told to him at the camp what happened or it was told to him in Tokyo last month.

PROSECUTION: Sir, may I make a statement. Counsel's last statement is not accurate. Everything that this witness has testified is not what Chief Sanders has told him because he was physically present at that meeting where Kenichi Kondo was there and where Sanders was there and where Hochman was there, and that's of his own memory and not what someone else told him and I object to counsel's statement in that regard.

PRESIDENT: For the information of the defense, the witness has already so testified right here that all the matters to which he has testified were told to him in camp. His memory may have been refreshed subsequently.

DEFENSE: I am not bound by his answer, sir. I wish to apologize to the Commission and to the prosecution in that I did state that he has no knowledge of anything. He does have knowledge of the conference held some time in the middle of the winter of '44 - '45.

PROSECUTION: He has further testified that he has had conferences with other people -- other than at this meeting with Hochman, Merritt and Sanders. He has admitted to this court that other things were told to him by Sanders at camp and that his memory was further refreshed at the office. The Commission is aware of that.

Now, what need further do we have to go into that? The Commission may draw its own conclusion as to the value

of his evidence along that line.

I, therefore, object to continuing this line of examination. He has admitted that his memory was refreshed. He has admitted that these things were told to him.

PRESIDENT: The defense will be permitted to proceed with its recross-examination.

Q Now, you testified on cross-examination that you did not remember the various names of the various prisoners of war, isn't that correct?
A Yes, some of them.

Q Will you tell me how your memory was refreshed as to the Barber incident?
A My memory was refreshed by Sanders stating that he was a friend of a civilian war prisoner Brown, whom I know very well.

Q And what else did Sanders state about it?
A That's all.

Q Did Sanders say Barber is the man who went on sick call who had stomach ulcers and wanted powder and didn't receive it?
A No.

Q He didn't tell you that?
A No.

Q How about Nettles? Did you remember him?
A When he says that he is a young English prisoner.

Q Who was the young English prisoner? Nettles?
A No. Horsley.

Q Now, I am talking about Nettles, Mr. Hayashi.
A Nettles -- when he told me the incident that a war prisoner was struck because he slept on the bench and I remember that incident because the next day, I got permission so that the prisoners can sleep on the bench.

Q From whom did you get the permission?
A I got it from Matsumura.

Q He is the Camp Commandant?
A Yes.

Q And how about prisoner of war Doherty? Did you recall him by name?
A Yes.

Q And you say you recalled Horsley by name?
A Yes.

Q So the only person -- and how about Knudsen?
A Knudsen, I know him.

Q The only person your memory had to be refreshed about was Barber, was that correct?
A Yes.

Q Now, are you sure, Mr. Hayashi, when you spoke to Sanders and you said, "I don't remember Barber", are you sure that Mr. Sanders didn't say to you, "He is the Naval captain or merchant captain who was beaten by Kondo at Siakeall"?
A No.

Q Now, you testified in redirect examination that Kenichi Kondo was in charge of the dispensary, is that right?
A Yes.

Q Now, what do you consider the dispensary to consist of?

PROSECUTION: If the Commission please, I object to the form of the question. Let the defense ask him, "What did the dispensary consist of?" -- not "What do you consider.."

DEFENSE: If the court please, he expresses an opinion as to who was in charge of the dispensary. Now, I think I am entitled to inquire what he means by "dispensary".

PRESIDENT: Repeat the question.

(The reporter then read the question)

PRESIDENT: The question will be answered.

A The dispensary is the place where medicine is kept and some persons in charge to dress or take care of the sick persons.

Q Now, you remember testifying that Corporal Hiraiwa was there at the dispensary?
A Yes.

Q What did he have charge of?
A I believe he was in charge of the dispensary.

Q Hiraiwa was in charge of the dispensary, was he not?
A Yes.

Q Kondo wasn't in charge of the dispensary, was he?
A When Hiraiwa was there?

Q When he wasn't there.
A When he was there?

PRESIDENT: Will the counsel specify the time he was there?

DEFENSE: I am getting to it now, sir.

Q When Hiraiwa was there.
A When Hiraiwa was there, he wasn't in charge.

Q When he wasn't there?
A He took charge of it.

Q Kondo took charge, is that what you mean?
A Yes.

Q How, how often was Hiraiwa away from camp?
A I don't know.

Q You testified that when he wasn't there, Kondo was in charge. How many times was he away?
A I don't know.

Q How about Sergeant Kobayashi? What was he in charge of?

PROSECUTION: I object to these questions on the ground that the matter that has been brought out on redirect examination of this witness has been gone into before by defense counsel on the medical personnel at the camp. It's merely repetitious.

DEFENSE: If the court please, the man has testified on redirect examination that the accused was in charge of the dispensary. I am now attempting to show that the accused was not in charge of the dispensary.

PROSECUTION: All this testimony has been brought out on the cross-examination of this witness before. It's merely repetitious.

DEFENSE: It hasn't been brought out with respect as to who was in charge of the dispensary.

PRESIDENT: Objection is not sustained.

Q Sergeant Kobayashi was in charge of the medical supplies, was he not?
A Yes.

Q Those medical supplies were part of the dispensary, weren't they?
A Yes.

Q Sergeant Major Okuyama was also in the medical department, was he not?
A Yes.

Q What were his duties?
A I don't know.

Q He was the ranking non-com in the dispensary, was he not?
A Yes.

Q Were all these other men in the dispensary his subordinates?
A No.

Q Were any of them his subordinates?
A No.

Q Now, when you testified on redirect examination that Kenichi Kondo was in charge of the dispensary, you meant, did you not, that he conducted sick call?
A Yes.

Q That's as far as his responsibility went, to your knowledge, is that correct?
A Yes.

Q Now, you testified in redirect examination in connection with Kenichi Kondo's disturbing prisoners at night; do you know of any instance in which Kondo disturbed prisoners at night?
A I didn't see any.

Q Do you know of any?
A Yes.

Q What is that instance?
A When he was called "baka".

Q Was this in connection with the fact that the men had removed the blankets they were supposed to wear?
A I believe so.

Q Do you know of any other instance?
A No.

Q Now, these complaints that you received from Dr. Hechman and Mr. Sanders and Merritt, to whom did they ask you to convey those complaints?
A They never asked me to convey.

Q Was it then just the fact that you could understand English and they would come to you and tell you certain things were wrong, is that it?
A Yes.

Q And they never asked you to go to Colonel Murata or Captain Matsumura?
A There was other channels to reach him.

Q What were those channels?
A Interpreter Kimura was attached to that camp as the interpreter.

Q Do you recall Ginger?
A Yes.

Q He was a British prisoner of war, was he not?
A Yes.

Q He could speak a little Japanese, couldn't he?
A Yes.

Q Could he understand Japanese?
A I don't know.

Q Did you ever converse in Japanese with him?
A No.

Q Did he ever complain to you about Kondo?
A No.

Q Do you know whether or not he ever complained to anybody else?
A No.

Q Now, all these complaints that you received were in 1944, is that correct?
A That is correct.

Q No complaints were ever made to you in 1945, and none were made to you in 1945, is that your testimony?
A Yes.

Q Do you know whether or not Dr. Hochman ever went directly to Lieutenant Nosu with respect to certain sick prisoners of war?
A I don't know the subject but I know that Dr. Hochman went directly to Dr. Nosu.

Q How often do you think he went? How often do you say that he went?
A I have no idea.

Q You believe it was quite frequently?
A No, I don't think so.

Q Did you see him go to Nosu's office?
A No.

Q How do you know that he did go to Dr. Nosu?
A Dr. Hochman told me.

Q And what did he tell you he went about?
A I forgot the subject.

Q Was it in connection with a sick prisoner of war?
A Yes.

Q Does Kenichi Kondo speak English?
A I don't think so.

Q Does he understand English to your knowledge?
A No.

Q Does Dr. Hochman have the ability to express himself in Japanese?
A No.

Q What was the greatest number of prisoners of war at the Osaka Main Camp between '42 and '45?

PROSECUTION: Just a moment; I object to this question and this whole general line of questioning, if the court please. What value is the Commission getting out of the fact that Kenichi Konde did or did not commit these war crimes, or is there any mitigation in this last previous line of questioning? What value is there? You are wasting the time of the court. I feel obliged to object because there is nothing being gotten out, and I object to the question and the whole previous line of questioning.

DEFENSE: Sir, I think it's pertinent to the issues to show just how many people there were and this is my offer of proof -- just how many men were confined in this camp, because --

PRESIDENT: That has all been covered before, several times.

DEFENSE: Now, I am asking what the greatest number of men was because I think it has been conclusively proved here that this man was the only Japanese medical orderly that treated prisoners on sick call. I want to show this court how many prisoners of war there were at that camp. I think this is very important.

PROSECUTION: Sir, that was testified to by Mr. Sanders on the stand.

PRESIDENT: That has all been offered in previous testimony and the time of the Commission should not be taken up by matters that have been definitely covered.

DEFENSE: Mr. Sanders' testimony was as to the number of men present in the camp at the beginning.

I have no further questions at this time.

PRESIDENT: Any questions by the Commission?

EXAMINATION BY THE COMMISSION

Questions by members of the Commission:

Q You have shown some difficulty in answering a question which involved the word "discuss". Do you know what the word "discuss" means?
A Yes.

Q What does it mean?
A In talking over some subject.

Q On several occasions, you said you did not discuss a certain matter, and then when they rephrased the question and asked you did you talk about it or answer questions,

you would say "yes" and the Commission is interested to see why you would make that difference between "discuss" and "answer questions".

A I think I was confused.

Q You were confused. You do know what "discuss" means?

A Yes.

Q If you talked about a matter and answered questions about the matter, you were discussing?

A Yes.

PROSECUTION: Does the Commission desire to inquire further of this witness? Any questions?

PRESIDENT: No further questions by the Commission.

PROSECUTION: May I ask the President of the Commission whether he desires this witness to remain where he might be available some time during the rest of the trial? He lives in Kyoto and unless the Commission desires him or the defense, why, he will probably go back.

PRESIDENT: The Commission has no desire for him to remain.

PROSECUTION: Does the defense desire him?

DEFENSE: How far does he go?

PROSECUTION: Kyoto.

DEFENSE: How long does it take him to get back from Kyoto?

PROSECUTION: Overnight train.

DEFENSE: He can go. You have his address so we can reach him if we want him?

PROSECUTION: The record has it.

PRESIDENT: It's an overnight ride.

PROSECUTION: All right, Mr. Hayashi.

(The witness was excused)

PROSECUTION: At this time, prosecution offers in evidence as Prosecution's Exhibit No. 16, certified copy of death certificate of David W. Smith from the Prisoner of War Information Bureau.

(Prosecution handing paper to defense)

DEFENSE: No objection.

PROSECUTION: Will it be admitted in evidence?

PRESIDENT: It will be admitted in evidence.

(The death certificate of David W. Smith was then received in evidence and marked Prosecution's Exhibit No. 16)

PROSECUTION: The prosecution now offers in evidence as Prosecution's Exhibit No. 17, certified copy of death certificate of Robert W. Hess, from the Prisoner of War Information Bureau.

(Prosecution handing paper to defense)

DEFENSE: No objection.

PRESIDENT: It will be admitted in evidence.

(The death certificate of Robert W. Hess was then received in evidence and marked Prosecution's Exhibit No. 17)

PROSECUTION: At this time, the prosecution offers in evidence, Prosecution's Exhibit No. 18, certified copy of death certificate of G. B. Serafin from the prisoner of war Information Bureau.

DEFENSE: No objection to the introduction of that exhibit.

PRESIDENT: It will beaccepted in evidence.

(The death certificate of G. B. Serafin was then received in evidence and marked Prosecution's Exhibit No. 18)

PROSECUTION: At this time, the prosecution rests.

PRESIDENT: The defense will make its opening statement.

DEFENSE: If the court please, the defense will make a motion for a finding of not guilty on the various specifications.

If the Commission please, at this time, the defense moves for a finding of not guilty as to specifications 1, 2, 3, 5, 10 and 11.

With respect to specification 1, this accused is charged with willfully and unlawfully mistreating and contributing to the death of Petty Officer First Class David W. Smith, by beating him, by forcing him to work when he

was physically unable to do so and by denying him necessary medical treatment.

If the court please, that, in effect, is a charge of murder because murder in Anglo-Saxon jurisprudence is there any charge under which a person can be indicted for contributing to the death of a human being. In effect, it's a charge of murder.

It is our contention that in the proof of the prosecution at this stage of the proceedings, you must make out a prima facie case as to each and every allegation of the specification.

When we say a "prima facie" case according to the court-martial, there must be some evidence of a competent nature upon which this person can be found guilty as charged. Now, we have before the Commission many affidavits -- fifteen in number. Some of them make reference to the death of Smith and Igoe and Griffin. As far as these affidavits made out by prisoners of war not trained in medicine, I think I need make no comment because they are not qualified to testify and, therefore, their testimony is not competent and should not be considered by this Commission in connection with the charges of death.

However, with respect to the affidavits, testimony of Merrick and Dr. Hoehnen, they are the only two medical men who have testified in this case through affidavit.

Now, with respect to Smith, Dr. Hoehnen in his affidavit states that "Smith came to me on regular sick call complaining of illness. In my examination, it developed that Smith was undernourished and poorly developed. There were no positive symptoms of pneumonia present at this examination. I did, however, recommend to the Japanese medical orderly, Kenichi Kondo, that Smith be kept in camp for a few days in order to enable him to rest up. Kondo, I believe, acting on general instructions that no prisoner unless definitely sick, high temperature, broken bones, would be permitted to rest, refused to allow Smith to remain. He was sent to work and a few days later, developed pneumonia."

The evidence before this court is from Dr. Hoehnen's testimony that at the time of that examination Smith was undernourished and poorly developed and I submit from the testimony of Chief Sanders, every prisoner of war in that camp was undernourished.

His further testimony is that there was no high fever because he says if there was, Kondo would have allowed the man to remain. He further says that a few days later, he developed pneumonia and as a result of that pneumonia, because of his extreme weakness, malnutrition and lack of resistance, he died within a short time and on that testimony, this man is brought before this Commission and charged with contributing to the death of Petty Officer First Class Smith.

I submit that no prima facie case against this accused has been made out.

To the contrary, the evidence of the prosecution has shown that if Kenichi Konde did send that man to work on that day, he did so because the man had no signs of illness. He was running no temperature. He complained to the doctor that he felt ill; that's as far as it went. There were no outward signs of illness. And on that basis, this man whom we have learned through the prosecution's testimony had two or three months experience as a medical orderly sent the man out, acting on general instructions received from his commanding officer, Dr. Hosa and the other officers in that camp.

This testimony, gentlemen, is the basis of what amounts to a murder charge against the accused. That is as far as we go with respect to Smith in medical testimony. Anything else, it appears in these affidavits, is purely the imagination of other prisoners of war who after being prisoners of war for three or three and a half years, and listening to everything they heard in these barracks and out on their work details, sat down and wrote out affidavits as to what they saw and what they heard. These statements are greatly exaggerated; it has been proved here by these eye witnesses.

On the basis that no medical testimony has been introduced before this court upon which this court [illegible] prisoner of war guilty of contributing to the death of [illegible] Smith, I ask a finding of not guilty as to specification 1, and I call your attention that Dr. Hochman was asked, in regard to anything further that you care to state about the matter in question? and he said, "No".

Dr. Hochman in his affidavit doesn't blame Kenichi Konde for the death of Smith. Dr. Hochman makes an attempt to make a reasonable explanation as to why Konde did not send that man to bed, or why he didn't let him remain in camp and it is a reasonable explanation.

There has been testimony from Chief Sanders that orders were out, unless a man was visibly sick, he goes to work. This man, a soldier in the Japanese army, was carrying out his instructions.

With respect to specification 2, we are charged with the death of Hess, and the only testimony we have with respect to the death of Hess are mere conclusions by non-expert witnesses that Kenichi Konde caused the death of Hess.

Dr. Hochman, however, does not recall the circumstances of Hess' death, and we have been told by Chief Sanders that right after Hess died, Dr. Hochman was so upset, he said to Sanders, "Kenichi Konde, that dirty little Jap, caused the death of Hess" and yet, when he sits down to write out his affidavit, his testimony to be offered in evidence on the trial of Kenichi Konde whom he has said caused the death

of Hess, he doesn't remember the circumstances. I submit to this court that Dr. Hoehmen never made that statement because Dr. Hoehmen as a medical officer in the United States Army, if he felt that this man was responsible for the death of any of his men whom he tried so hard to take care of for three and a half years, his statements and his feelings would be down in black and white so that this court would have before it the true picture of what went on at the Osaka Main Camp while Hoehmen was attempting to treat, to take care of his men. To the contrary, he said that Hess died and "I don't recall the circumstances."

I submit to you, gentlemen, that it puts to lie Chief Sanders -- that Hoehmen never made that statement to him.

So far as Serafin is concerned, I submit that is murder -- Specification No. 5.

Dr. Hoehmen makes out a separate affidavit, gentlemen, in which he was questioned about each of these instances.

"Do you recall the circumstances surrounding the death of a man named Serafin?"

And he answers that he was, despite his age, assigned to manual labor.

Well, this man didn't assign people to manual labor.

When a person came to sick call and the accused didn't think he was a fever, he sent him to work. What kind of didn't did was not within his jurisdiction to determine. They had officers in charge of work details. They had Chief Sanders out there with 400 some men. "On the evening of the 16th of June, he returned from work, completely tired and exhausted, and with a head cold. He told me that he felt he could not continue to work any longer because of his physical condition. With the permission of Kenichi Kondo, the Japanese medical orderly, Serafin was sent to his bunk and told to stay there. I wanted to hospitalize Serafin, but this was not permitted by Kondo."

Now, there was no denial to Hoehmen the right to treat Serafin. He could send him to the hospital; why he didn't send him to the hospital, we don't know.

If this man Kondo were a man who sent men out to work and took delight in seeing them die, this was an excellent opportunity. When Hoehmen went to him and asked for permission to put him to bed, he said, "Put him in the bunk."

That, gentlemen, shows that the man could not have contributed to the death of Serafin. Further than that, prosecution's own witness, has stated that Dr. Nosu is the man who took Serafin off the paper work. Dr. Nosu is this man's superior. Dr. Nosu took this man off paper work

and sent him out. He became ill and when he came back, Kenichi Kondo said, "Send him to bed". That's the proof of prosecution witnesses and I submit to you, gentlemen, that a prima facie case has not been made out upon which you can find this man guilty of specification 3.

With respect to specification 2, if I may go back, there is some testimony that Hess was put in bed for a month, after he complained of his illness by Kondo. He rested in bed for a month and then came out again to go to work.

Now, Hess suffered from 1943 till the time of his death sometime in '44 some disease. He was an ill man and he was sent to Ichiaka Hospital and he was cleared up, and he came back again, and he went to work. He wanted to go to work, so Chief Sanders testified, and then he became very ill. He was placed in his bunk on a Friday and Chief Sanders said, "He noticed he was blue on Friday, and on Sunday, we notified Kenichi Kondo. They tried to get him to a hospital, and he died."

Now, gentlemen, is it reasonable to charge this man with the death of Hess when he lay in his bed, deathly ill, Friday, Saturday and part of Sunday? Dr. Hochman was there; Japanese doctors were in the camp. Do you expect this man to have treated Hess? This man is not a medical officer. He has no knowledge of medicine beyond first aid, and probably it doesn't go that far, and he was the lowest ranking medical man in that camp and he was the man whose duty it was to administer to the sick men who came out of over 600 prisoners of war, between November '42 and May of 1945 -- almost three years.

For almost three years, he is the only man that took care of the sick call for the Japanese medical detachment, and the prosecution seeks to put the burden of every incident square on the shoulders of a private in the Japanese army and charge him with contributing to the death of three prisoners of war when their own testimony is to the effect that he had certain orders, that if a man wasn't visibly ill, he would go to work. There is some testimony with respect to Serafin that he was taken off his paper detail and sent to work. There is no testimony at all -- no testimony at all -- that this man ever sent Serafin to work. Chief Petty Officer Sanders never testified that this man sent Serafin to work. The Chief Petty Officer testified that Serafin was taken off paper work and he assumes that this is the man that did it.

Hayashi, prosecution's witness, testified that Dr. Hara took Serafin off the paper work.

Gentlemen, there was no prima facie case with respect to specification 3. On the basis of that alone, without going into the cause of death or what contributes to a man's death, with respect to specification 1 and 2, may I repeat, there is some evidence that these men were sent out to work

but there is no evidence that at the time they went out to work, they were sick to the extent that this man was allowed to have them remain in camp.

Now, I realize there is a lot of testimony before this Commission that Dr. Hoffman complained that Kenichi Kondo wasn't cooperating with him, and I ask the Court to take notice of the fact that this is a Japanese prisoner of war camp; there are American prisoners of war. Chief Sanders testified there were some gold-bricks among the American prisoners of war and among the British.

There may have been quite a few occasions, gentlemen, when a man wasn't sick and he sought to get off of work and this man had to send them to work. The same thing happens in our own dispensary, day after day. This certainly is not the basis for a war criminal upon which a man can forfeit his life, certainly, not upon this testimony.

I have the affidavit of Lonnie C. Harvick. Lonnie C. Harvick was a prisoner of war, medical orderly and he, I understand from Chief Sanders' testimony and Hayashi's testimony, was present at sick call day by day, and here's what Lonnie has to say:

(Lonnie C. Harvick, speaking of the Japanese doctor in Camp No. 1:

"I do not know his name, but he was a lieutenant and the senior medical officer. He turned practically everything over to a guard named Ozeki and backed Ozeki in everything he did. This medical officer had no interest in the sick men and he never examined them or prescribed medicine for them. Ozeki prescribed medicine and examined the sick and ordered sick men to work in all kinds of weather; beat them; disturbed them at night while they were trying to sleep; caused unnecessary trouble in the camp when it could have been avoided and had the authority or took it upon himself to cut rations of the sick men in half."

We know that is not true. There is a man that was there every day. There is a man who should know the circumstances of which he is speaking. He doesn't condemn the actions of Kondo with respect to the three men who died.

I realize, gentlemen, that he does say he sent sick men to work in all kinds of weather, but, gentlemen, he sent men who came on sick call to work -- whether or not they were sick, we don't know whether or not his men knew they were sick, we don't know. He had his orders as it is testified to by prosecution witnesses: when a man is not visibly sick, he goes to work.

With respect to specification 5, as aptly known as the "beam" incident, we are charged with beating 1, 2, 3, 4, 5 men, and gentlemen, there is no testimony before this Court that anybody saw those men beaten. There is no affidavit that five men were beaten. There is purely the testimony of Chief Sanders and he testified when he came into the room,

it appears as though someone had been beaten, but there were three Japanese in the room and the corporal of the guard is the one who had the stick, not Kenichi Kondo; and because Kenichi Kondo was a person who operated sick call at this camp every day and because Kenichi Kondo had the onerous task of sending men to work who might be sick without his knowledge, everything is piled high on Kenichi Kondo. But there is not one iota of credible evidence upon which this court can convict of this accused of that beating because nobody saw it.

There is Kunak's affidavit, Yonton's affidavit, Ordoyno's affidavit, Smith's affidavit, Vasco's affidavit. Did the men get beaten and have it roll off their back like water off a duck's back? Did they forget about it? These men, when they were freed from the prisoner of war camp, were questioned as to what atrocities were committed. Where are these affidavits, gentlemen? Did it actually ever happen? Is this somebody's imagination? Who actually participated in the beating? There is no affidavit at all that Kenichi Kondo beat these men. There is some evidence that Kenichi Kondo was in the room. That's as far as the evidence goes. Nobody saw a blow struck. Nobody can come before this court and say, "I was struck." Nobody has come before this court and testified that he was struck, either through affidavit or as an eye witness.

On that basis, I say to this court that there is no prima facie case made out by the prosecution as to the specification No. 5 and on that basis, I ask for a finding of not guilty.

With respect to specification 10, we are charged that between 31 January, 1945 and 8 May 1945, Kenichi Kondo as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreat and abuse numerous Allied Prisoners of War by failing, neglecting and refusing to provide them necessary medicine and medical attention, and by striking, kicking and beating them and forcing them to work when they were physically unfit to do so.

To the contrary, gentlemen, so far as this portion of the specification is concerned, Chief Sanders said Kondo never refused to give necessary medicine and medical attention except when a prisoner of war was late at sick call. It's certainly not a war crime, and there is certainly no showing that that prisoner suffered at all because he doesn't the medicine when he showed up late for sick call.

I think on that basis, alone, that portion should be stricken from the specification, but above and beyond that, the evidence with respect to the mistreatment of prisoners of war between 31 January, 1945 and 8 May 1945 comes from affidavits in the first instance which say Kondo beat numerous prisoners of war. They don't tell us when; they don't tell us when. They don't tell us why.

Now, with respect to beatings specifically alleged, these men might have well been talking about these beatings. How do we know what they are talking about there. Is this man being tried twice for the same offense? These specifications are drawn once specifically and then in a general

catch-all specification; it might very well be, if the court is convinced of the proof and they feel that Kenichi Kondo did beat all the men with which he is specifically charged with the beating -- it might very well be that those are the same men -- the men that these men meant when they say, "I saw him beat numerous men." There is no way of telling what they are talking about, and because of that fact, because of the fact that the court might allow itself to convict a man of two specifications alleging the same offense, I ask that that be stricken and a finding of not guilty be returned upon it.

With respect to specification 11, the only evidence offered on the part of the prosecution to substantiate that specification is the affidavit of Major Bleich, and here in his affidavit he says as follows:

"Because of the inadequacy of medicines, our best treatment was to prescribe rest. The Japanese medical man, Jap Star Private KONDO, however, was extremely arbitrary in refusing to allow men to stay in from the work details. He would require diarrhea cases, for example, to show him their stools --

PRESIDENT: Pardon me. Are you reading from Bleich?

DEFENSE: Yes, sir.

PRESIDENT: And are you reading the copy where the paragraph is stricken?

DEFENSE: It's the only paragraph with reference to Bleich. I am reading from the third page of the affidavit. Bleich was the medical officer at the Oryoma Camp.

-- so that he could determine whether the case was serious enough. Many times I had to shake thermometers up to get him to allow our men to stay in, as a temperature decline in fever would always be an excuse for KONDO to send such cases back to work."

If there is no visible signs of illness; if there is no sign of temperature, these men must go to work, and the mere fact that he required diarrhea cases to bring their stools to him for examination, certainly does not show that he is arbitrary. To the contrary; he is seeking to determine what was wrong with these men. That is not arbitrary. There is an honest and sincere effort on the part of the man to find out who was sick and who wasn't sick, who had diarrhea and who didn't have diarrhea, so that he could perform his job as he was required to by his superior officers. The mere fact that he required stools to be brought before him, I think, is in his favor because that's the only way you can determine whether it was diarrhea or amoebic dysentery or bacillary dysentery from which these men were suffering. It is certainly the most important factor to be considered in determining whether or not a man should go to work or not. That's the only evidence we have with respect to specification

No. 11. And there, we are charged with willfully and unlawfully mistreating certain American Prisoners of War by forcing them to work while physically unable to do so, and there is nothing, gentlemen -- no specific instance at all as to what happened -- no way to determine whether or not the man was sick, who was he talking about, when did he send to work.

With respect to these other specifications, I feel that there is a prima facie case in the record at this time upon which we shall be called to answer, because Chief Sanders has testified to some extent as to coming in on the tail end of a beating. I believe his testimony was he came in on the tale end of the beating of Moraley, the beating of Doherty, and the beating of Krumbach, and that to my mind is a prima facie case which we should be called upon to answer before this court, but with respect to these other specifications, no such case has been made out. Seeds of suspicion may have been planted, but there is no competent evidence upon which a prima facie case can be based to show that this man was responsible and did contribute to the death of three prisoners of war; also, that he beat five prisoners of war on one occasion; that he mistreated numerous others, sent them to work at Osuka Camp or that he did the same thing at the Oeyama Camp.

I call upon the Commission with respect to specification 1, 2, 3, 5, 10 and 11 for a finding of not guilty.

PROSECUTION: If it please the Commission, it appears according to defense counsel's motion that K.niehi Konde, the accused in this case, was not such a bad fellow after all.

PRESIDENT: Before you proceed now, is he going to call any witnesses?

PROSECUTION: Sir?

PRESIDENT: Is the defense going to call any witnesses?

PROSECUTION: Sir, this is a motion to strike certain specifications to which I am now replying and depending upon whatever ruling the Commission makes, the defense will have to proceed.

PRESIDENT: He has moved for a finding of not guilty?

DEFENSE: Sir, this is a motion for a finding of not guilty.

PRESIDENT: At this time?

DEFENSE: Yes, the court hears the argument of the defense and the prosecution and retires to deliberate, to determine whether a prima facie case has been made out.

PROSECUTION: I repeat, that it appears that the defendant is quite innocent in all of these matters, and that

perhaps the prosecution has planted the "seeds of suspicion", to quote defense counsel, in the Commission's mind as to certain of the specifications.

I propose at this time to look and see just what evidence the prosecution has brought forth to this court, to see whether or not Kenichi Kondo is as good as the defense would have us believe.

I will go in reverse and take Specification 11, which the defense has requested that the Commission strike. Now, if the Commission will note, this affidavit of Colonel Fleish is made in a different camp -- Oeyama Camp, but the matters now on the record are the same which took place in the Headquarters Camp, namely, the sending of sick prisoners to work.

Now, defense counsel will have you believe that because Colonel Fleish says that Kondo had sick prisoners showing their stools to determine whether or not he had diarrhea is a point in his favor. May I remind the Commission of Chief Sanders' testimony when he stated that Kondo -- to show his ignorance of medical matters -- insisted that a man had to show him his stool to see if there is blood in it before he would diagnose a case of dysentery or diarrhea, no matter what Dr. Beahman said. And this affidavit is stronger against this accused because it happened at a different camp and showed his whole method of how he treated prisoners of war, that it wasn't different at one other camp than it was at another.

On that basis alone, it is prima facie evidence as to that specification.

Now, as to Specification 10, prosecution is a little puzzled as to defense's motion to strike because we feel it's our strongest specification.

Now, I would like to read excerpts of the affidavit in evidence about this accused, Kenichi Kondo and I will quote:

From the affidavit of John Harold Zimmer, Staff Sergeant:

"...Kondo beat so many men unmercifully, with clubs as well as fists, that it is impossible for me to recall the specific individuals who were beaten by him".

From the affidavit of Tasker Homer Bliss, Staff Sergeant:

"When prisoners went to Condo at sick call in the morning, for medical treatment, Condo very seldom examined the men but would send them out to work, even though they had beriberi, dysentery, or pneumonia, without treatment of any kind."

From the affidavit of Dr. David Beahman:

"Kondo hit sick POW's over the head with books, slapped their faces, hit them with his fists and kicked them."

The affidavit of Frank E. Allen, with respect to the Grimsley incident, where Grimsley is beaten with shovels, pick handles, etc., in which he identifies Kenichi Kondo by

name as being a participant.

The affidavit of David Granger, Pfc:

"A private, Conde, a medical orderly, used to beat and hit men although they were sick."

The affidavit of Zimmer again, which is the beating of Yaeger who was in the hospital, where he beat him with his feet and knocked out several of his teeth; in evidence before this Commission.

The affidavit of Lennie C. Merritt, which defense has quoted for this Commission, in which Kondo ordered sick men to work in all kinds of weather and beat them and disturbed them at night.

And further, the testimony of Mr. Hayashi on the stand at the meeting where Kondo admitted that he hit prisoners -- sick prisoners, and further than that, the direct evidence of Chief Boatswain's Mate Sanders on the stand where he himself saw Kondo hit prisoners of war on innumerable occasions whose names he could not now remember. Our strongest specification -- I will make no further comment on that -- Specification 5, the "baka" incident.

Defense would have you believe prosecution has not made out a prima facie case. However, in the record stands testimony of Chief Sanders that he came there with a man lying down and with Kondo standing over him with visible effects of having been struck, and further, that he was told by each victim that Kondo beat them. By each victim -- he, Sanders, was told. He was in a position as Camp Commander to know what was going on. He would be the logical person for people to come and tell him if they were hit.

Now, if you feel that Chief Sanders is lying about everything, then you may very well find him not guilty of this specification, but if you do, you must hold all this testimony to be worthless, or otherwise, you would have to imagine that he dreamed up this incident and that these victims' names were things he dreamed up in his own mind.

Prosecution feels that there is ample evidence before this Commission that we have made out a prima facie case.

Now, with respect to Specifications 1, 2 and 3, it is prosecution's contention that no matter how sick a man is -- no matter, for example, a man named John Smith would under ordinary circumstances die on Friday, if by someone's act he is made to die on Wednesday, the person who makes him die on Wednesday is guilty of contributing to his death, and the law so holds.

It's prosecution's contention that these men were very sick and that he, Kenichi Kondo, the accused, contributed to their death and hastened their death, and perhaps caused their death by making them go out when they were sick by overruling Dr. Kuchmann's decisions, a competent medical man.

Now, the fact that Kenichi Kondo may have acted under orders, that's no excuse. That's something defense may bring out in their defense. We are merely arguing now, if the Commission please, as to whether we, the prosecution, have made out a prima facie case.

We must make out a prima facie case, and if we have, then the burden rests upon the defense to go ahead.

Now, the defense has made some to do about the fact that Kenichi Kondo acted under orders. I refer the Commission to the SCAP rules which state that the fact that a person acted under orders --is no excuse, but merely in mitigation, and if in fact, that is true, that is something the defense will have to bring out, and that will be only in mitigation of the accused's acts, not in exoneration.

Defense has, in its motion, cast reflection on the credibility of Chief Sanders, who is, of course, one of the bulwarks of the prosecution's case. Chief Sanders was on the stand here for a long time. Did the defense attempt to attack his credibility then? No. Why not?

Now, with respect to Smith, the first specification: In referring to Dr. Hochmann's affidavit, I would like to call the Commission's attention to the fact that he states Kondo refused to allow Smith to remain. He also states in there he thought that he might have been acting under someone's orders. I again point out to the Commission that that is no defense but merely mitigation. And we have only to make out a prima facie case.

With respect to Hess, Dr. Hochmann does not remember. However, if you will look at the death certificate, you will note that Dr. Hochmann's name does not appear on the death certificate and it is possible that he may not remember the circumstances. However, Sanders was very definitein his statements about the death of Hess because he knew Hess. He is very definite about his statements of Dr. Hochmann. If you refuse to believe Sanders, if you find a finding of not guilty on Specification 2, then you must find that Sanders' testimony is a lie, and if you do that, you must find all of his testimony a lie and I don't think you can do that.

With respect to Serafin, there is ample testimony before this court by Sanders as to Serafin's status, as to the fact that he was sent to work while he was old and aged and sick by Kondo.

Dr. Hochmann's own affidavit on Serafin states that Kondo refused to allow him to be hospitalized. It is so stated right in his own affidavit.

Defense has in its argument made mention of the fact that Kenichi Kondo had only two months medical training and offers that as an excuse. This Commission has testimony before it in affidavit evidence that there was a competent doctor at the dispensary, one David Hochmann, but that his decisions were constantly overlooked by this accused, Kenichi Kondo. If he were interested in the welfare of Allied

prisoners of war, would he not have taken the advice of a competent medical officer instead of acting on his own? The answer is obvious. The prosecution feels that we have certainly made out a prima facie case on all specifications and even go beyond that.

And the defense should be called upon to proceed with its case.

DEFENSE: Before the court retires, I would like to say a few words with respect to Specifications 1, 2, 3.

PROSECUTION: Sir, I object to it; the defense counsel has already made the motion.

DEFENSE: I have no objection to your answering my argument, if you care to let me make it.

PROSECUTION: I object that the defense counsel has had its opportunity. I don't think it should go on ad infinitum. The court is aware of the issues.

DEFENSE: May I have a ruling from the court?

PRESIDENT: In the mimeographed form, Headquarters, Eighth Army, Subject: Rules of Procedure -- Trials of Accused War Criminals, dated 8 February 1946, it does not provide for other than the defense making its opening statement. The defense has made its opening statement in which it has requested that certain specifications be stricken from the record --

PROSECUTION: If the Commission please, the defense has not made its opening statement yet. It has made a motion to strike certain specifications.

PRESIDENT: Preceding its opening statement?

PROSECUTION: Yes, sir.

PRESIDENT: He didn't include that in the opening statement.

PROSECUTION: That is not a statement. The prosecution has answered the argument of defense counsel and we feel that the matter should rest at this time and the Commission should make its decision. We don't feel that there should be any additional argument on it.

PRESIDENT: I understood that he was making an opening statement, including that motion in his opening statement, is that right?

DEFENSE: No, sir, that's not correct.

PRESIDENT: Your motion to strike precedes your opening statement?

DEFENSE: Motion for a finding of not guilty, sir, may be made at the conclusion of the prosecution's case on the grounds that they have failed to make out a prima facie case.

It is distinct and separate from my opening statement. That will come after a ruling is made by the court.

However, at this time, I have asked the permission of the court to say a few words in addition to what I have said before and the prosecution is objecting. I feel that it's discretionary with the court whether you will allow me an additional few minutes to make further comments.

PROSECUTION: I object because the defense counsel has spoken for approximately twenty minutes on his motion to strike the specifications. I have answered them. I feel the court can decide the matter now. The issues are very clear before the court and they have had testimony for three days and an affidavit evidence and I feel they can make up their minds so it is and I don't feel there should be any further argument at this time.

The counsel for defense has already made its argument and I have answered it and I feel the matter should rest.

DEFENSE: I didn't realize that the prosecution was so intrued with my request to make an additional few comments to the court. I will withdraw it.

PRESIDENT: The court will recess; the court will take a recess for five minutes.

The Commission then took a recess until 1215 hours, at which hour the personnel of the Commission, prosecution and defense, and the counsel, interpreters and the reporter resumed their seats.

PRESIDENT: The Commission is in session. The Commission will go into a closed session.

PROSECUTION: Sir, do you wish to state that you are adjourning until tomorrow morning?

PRESIDENT: No, we are going now into closed session.

The court was closed, and upon being reopened the president announced:

PRESIDENT: The motion by the defense for a finding of not guilty of specifications 1, 2, 3, 5, 10 and 11 at this time is denied. The defense will proceed.

The court will adjourn until 0800 hours, tomorrow morning, 8 August 1946.

The court then, at 1250 hours, on 7 August 1946, adjourned to meet at 0800 hours, on 8 August 1946.

Leonard McNaul

LEONARD M. RAND
Chief Prosecutor

DISTRICT COURT HOUSE
Yokohama, Japan

8 August 1946

The Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, the accused, interpreters and the reporter who were present at the close of the previous session in this case being present.

PRESIDENT: The Commission is in session.

PROSECUTION: At this time, if the Commission please, the prosecution would like to present to the Commission for its determination by the Commission of what it desires to do.

A telecon received yesterday from Washington directed to Colonel Carpenter with reference to a witness, Tech Sergeant Walter C. Ryan who is now flying over from the States to testify in War Crimes Trials, in which it is mentioned that he knows facts concerning Kenichi Kanda, and I wish to present to the Commission a copy of the telecon received yesterday of which the defense was apprised by phone yesterday, for determination by the Commission as to what it desires to do.

DEFENSE: I am going to object to this being shown to the Commission unless it is presented as an exhibit in this case, because it contains more than what prosecution has just stated. True, it's a cablegram from some place in the States with reference to Sergeant Ryan, but it goes further than saying that he knows something about Kenichi Kanda.

On that basis, unless it is offered as an exhibit, I object to the Commission seeing it.

PROSECUTION: If the Commission please, this telecon is an official document received at GHQ, SCAP, in the normal course of business, and, therefore, under the SCAP rules, is admissible -- the document that is being presented to the Commission for its determination as to what it desires to do with reference to the testimony of this witness who is now flying over here.

Therefore, I believe the document should be received by the Commission in order for it to make up its mind as to what it desires to do.

PRESIDENT: As I understand it, it's an official War Department communication?

PROSECUTION: This is a telecon received from Washington.

PRESIDENT: An official War Department communication, and it contains information as to the status of a witness?

PROSECUTION: Yes, sir.

PRESIDENT: And you desire to ascertain whether we think we need that witness?

PROSECUTION: Yes, sir.

PRESIDENT: A witness for the prosecution?

PROSECUTION: Yes, sir.

PRESIDENT: The Commission will receive that official message to decide whether it needs a continuance for an extra witness or not, to decide whether we consider to continue to wait for the arrival of the witness or not.

DEFENSE: Sir, I have no objections to that -- to the document as an official document.

Now, the prosecution stated that there is a witness flying over here. I think on the basis of that, the Commission can determine whether or not they wish to hear that witness. There is no need to see that statement. I know the contents of it and I say it has been misstated to the Commission.

PROSECUTION: I show the document to the President and Law Member:

(The prosecution hands paper to the President)

Has the Law Member ruled on its admissibility yet? The prosecution offers in evidence as Prosecution's Exhibit No. 19 telegram received from Washington, directed to Colonel Carpenter with reference to the status of a witness, Tech Sergeant Walter J. Ryan.

PRESIDENT: This teletype is in no ways to be considered as evidence. It is information as to the whereabouts of a witness, and we will determine at the conclusion of this case for the present witnesses whether we desire this witness. At this very moment, the Commission will not make a decision as to whether we need this witness.

All you have got to do is to reply by radio as soon as possible. This case will be closed in about two days. We haven't heard the defense yet.

PROSECUTION: A radiogram was dispatched yesterday, airing air priority for this witness and he is flying over as a witness under an AAF priority. The prosecution feels that the testimony of this witness should be in the case in order to aid the Commission in reaching a verdict, if they find that this man is guilty.

Prosecution does not know what this man will testify to or what his knowledge consists of, but on the basis of the radiogram, we feel that he has some knowledge of the activities of Kenichi Kondo at Headquarters Camp.

We, therefore, feel that is testimony that should be before this Commission. As to what juncture of the proceedings the testimony should be received, I leave it up to the Commission's discretion.

PRESIDENT: The Commission will take a few minutes recess; the defense counsel and the prosecution will accompany us.

The Commission then took a recess until 0900 hours, at which hour the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PRESIDENT: The Commission is in session.

PROSECUTION: At this time, prosecution desires to withdraw from evidence its offer of Prosecution's Exhibit No. 10.

At this time, prosecution wishes to make a statement and a motion for the record. Prosecution requests this Commission to grant a continuance of approximately one week until the arrival of Technical Sergeant Walter C. Ryan, an American, a former American prisoner of war who was stationed at Headquarters Camp in the Omine Area, Sergeant Ryan, and is now flying over under A-2 priority and it is anticipated that he will be here within approximately six days.

Prosecution makes this motion for the following reasons: All through the trials of these war crimes cases before these Commissions, it has been very evident that affidavit and paper evidence have been very unreliable and we have been seeking constantly to attempt to protect the rights of the accused and also to aid the prosecution in getting live witnesses over from the Japan so that these Commissions could hear direct evidence as to any war crimes atrocities committed by these accused and something upon which they could place greater value and greater credence.

We now have a witness who mentions in his radiogram that he knew the accused, Kenichi Kondo and that he was at his camp for a period of several years. It is, therefore, logical to assume that he knew about the accused and that he knew concerning his activities at this camp. The prosecution feels that he is, therefore, in a position to aid this Commission in determining whether or not Kenichi Kondo is innocent or guilty of the charge and specifications and we feel that if a witness is available and is coming over here and will be here in such a short time and may aid the Commission in determining whether or not this accused is guilty or innocent, that the Commission should receive that evidence and should, therefore, continue. We feel that even protecting the rights of the accused, he should be here to testify because he is a live witness and would have first hand knowledge of the accused and the prosecution, therefore, makes its motion for a continuance of approximately seven days.

DEFENSE: If the court please, the defense opposes the application for a continuance on the grounds that defense

counsel is now under emergency priority to return to the United States and will not be available at the end of six or seven days when this witness comes before the Commission. There is no other counsel in this trial.

I wish to state for the record that Major Martin does appear on the orders. Major Martin, however, only appears on the orders to certify to the record because it was known at the time this trial commenced that I would be not here to certify to the record.

On the basis of the fact that the present defense counsel will not be available when this case is continued, I respectfully request that the trial proceed.

PROSECUTION: May I answer that for the record? In answer to defense counsel's objections to the continuance on the ground that he will not be available, I wish to state that other counsel can be appointed in his place and stand to protect the rights of the accused and to continue with the trial, that there are many cases where defense counsel would have to withdraw from a trial by reason of sickness, redeployment, death or any other reason; that doesn't mean that a trial may not go on. The important consideration is whether the rights of the accused will be seriously jeopardized. I would like to state further for the record that the trial has been in progress three days. It has had the benefit of Lt. Weil's cross-examination of the prosecution's witnesses. Prosecution feels that he has done a good job for the accused and we feel that his work should not be lost.

Further, we wish to state that our principal witness, Chief Sanders, has testified here and is on orders to return to the United States on Monday.

DEFENSE: If the court please, I don't see what bearing that has on my request that the trial continue. Chief Sanders has already testified.

PRESIDENT: The Commission will grant a continuance for approximately one week to meet at the call of the president.

DEFENSE: If the Commission please, on the basis of the Commission's ruling granting a continuance, the defense now moves for a mistrial, on the grounds that the rights of the accused have been prejudiced.

If the Commission please, according to the SCAP regulations dated 8 December 1945, it is stated among the rights of the accused, that the accused is entitled to be represented by counsel prior to and during trial appointed by the convening authority. It is our contention that that means the same counsel throughout the trial and that any attempt to introduce new counsel in the middle of a case prejudices the rights of the accused.

Now, I appreciate the fact that new counsel can read

the record, if it is gotten up in time and he can also converse with old counsel. However, whether or not he agrees with the manner in which the trial has been conducted to that point is something we cannot determine. And if it is his opinion the trial has not been properly conducted and he cannot put in evidence of his defense in accordance with the procedure followed, or the evidence adduced prior to the time he took over, then, the rights of the accused have been prejudiced.

I have conducted the trial for the defendant along certain lines. If new counsel does not agree with me, he is bound by what is in the record and there is nothing he can do to add this evidence.

On that basis, the rights of the accused have been prejudiced. That is the only thing which is important to this court. This court sits now to determine the guilt or innocence of this man on certain charges, including three charges of murder.

Now, prosecution has made certain statements. What difference does it make? Counsel goes off, is changed; other counsel is available. I state now that in the defense section of the War Crimes Commission attached to the Judge Advocate Section, Eighth Army, we have five lawyers; two are actively engaged in the trial of a war crimes case in Court Room No. 1. One of them is in Manila. The fourth is awaiting to receive verdict in Court Room No. 3 this morning and has started the preparation of another case, and I am the fifth.

On that basis, we have nobody who can come in and try this case for this accused. We have received a new counsel assigned to War Crimes Defense. However, it is not fair to the new counsel nor to the accused to require him to walk into this court room and for the first time to appear before a military commission in the trial of a war criminal charged with three deaths when half of the case is in the record.

On that ground, the rights of the accused are certainly prejudiced. He is not getting the services of experienced counsel, and I don't care whether the man has tried court-martial or anything, because this certainly is not a court comparable to court-martial courts.

I call upon the Commission to take judicial notice of the fact that when the prosecution comes before these commissions, they come down with two or three prosecutors and no prosecutor has ever been required to go into a court room until he has had experience by sitting in and listening to the trial of a case and if this continuance is granted, we will be forced by necessity to send an inexperienced man, and I don't care whether he is a lawyer of four or five or ten years experience, we will be forced to send an inexperienced man in the court room to defend this accused on murder charges.

On that basis, I respectfully call upon the Commission to declare this trial a mistrial.

PRESIDENT: Will the defense counsel state the emergency requiring him to go to the United States?

DEFENSE: Personal emergency, sir.

PRESIDENT: The motion by the defense counsel for a mistrial is denied.

PROSECUTION: Sir, have you indicated up to what point you will adjourn?

PRESIDENT: You will get a continuance for approximately one week. The court had given but it and the Commission will meet at the call of the president.

The court then, at 0915 hours, 6 August 1946, adjourned to meet at the call of the president.

RICHARD H. RAND
Chief Prosecutor

DISTRICT COURT HOUSE
Yokohama, Japan

20 August 1946

The Commission met, pursuant to adjournment at 0900 hours, and the personnel of the Commission, prosecution and defense, the accused, interpreters and reporter who were present at the close of the previous session in this case being present, except: Mr. Black, Assistant Prosecutor, excused by the appointing authority, and Lt. Weil, defense counsel, has been redeployed to the States, and by order of the appointing authority, Major Phillips has been substituted in his stead, and he is present in court.

PROSECUTION: The prosecution wishes to state that the witness, Tech Sergeant Walter C. Ryan arrived last Friday, and the prosecution is ready to proceed.

DEFENSE: If the Commission please, the defense is not ready to proceed at this time.

At the present time, I am engaged in another trial. The record which has been made in this court heretofore is not completed. It will be necessary for me to go over this record very thoroughly before there is a chance for me to start in the defense of this case.

I have been advised by the court reporter, that the record will be ready on or about the 30th of this month. It's impossible for me to say now just exactly what will be necessary for me to do after reading the record and after talking to the defendant in this case and talking to Sergeant Ryan and the witnesses that will be necessary to be called and that emphasis should be placed upon the testimony.

The defense urgently requests that no date certain be set by the Commission at the time for recessing in this case, but rather have the Commission adjourn until recalled by the recorder. Colonel Reichmann will notify the president the very first moment that it will be possible for me to continue in the defense of this particular defendant.

PRESIDENT: The defense will keep Colonel Reichmann and the prosecution informed in ample time, and we will all be ready to proceed as soon as you are ready.

Any remarks?

PROSECUTION: I don't believe that the Commission should adjourn without a date to be fixed. While it is true that Major Phillips is now in the case, the investigation of the case by the defense has been worked on by Lt. Weil, and the bulk of the prosecution's case is in. There is merely two witnesses and perhaps one exhibit on records, and I feel that after the record is completed, which is stated by defense counsel will be about the 30th, it should not require

very much time after that to come into court to represent this accused and I, therefore, feel that some day should be fixed shortly after the 30th for the court to convene, if at that time defense counsel still feels he hasn't had sufficient time to protect the rights of the accused, the prosecution will agree by stipulation to a further reasonable continuance for him, but I do believe that the court should set some fixed time.

DEFENSE: If the court please, causing the court to come here and meet only to be recessed again for a different date, I believe, is a waste of the court's time and it certainly is a waste of the prosecution's time, and I know it's a waste of my time.

PROSECUTION: Sir, I didn't say that the Commission would come here to meet. I have stated that if defense counsel at the end of a certain time stated that he did not have sufficient time to protect the rights of the accused, the prosecution will agree by stipulation which will become part of the record to any further continuance, but I believe some definite date should be fixed.

DEFENSE: We can't agree by stipulation as to the date the court can sit. That can be done only by the president.

PRESIDENT: We set the date; the date is not arranged or changed outside of the court room.

PROSECUTION: Sir, I still urge that some definite date be fixed after the 30th of the month in order that this case may not be just hanging in the air.

As I have stated, I believe the bulk of the work on the defense has been done. Their witnesses have been probably alerted and questioned and they have had investigators on the case, and it's merely this one witness who was entered in the case after the bulk of the prosecution's case is in.

DEFENSE: For the purpose of informing counsel for the prosecution whose method of preparation is altogether different from that of the defense, when a defense lawyer goes into a case, sir, he is thoroughly capable on all the facts of the particular situation that is involved. We don't intend at any time to come into a case where the counsel is not thoroughly prepared. It would be a waste of the court's time and there would be too much of an opportunity for a slip up to occur whereby in the review by history of these particular cases, that we would be subject to severe criticism. I don't know how counsel for the prosecution prepares his cases, but I do know how we prepare them down in our office, and I know that only the most thorough preparation can be given these cases so that the court and the Eighth Army is not subject to criticism in the future. I can see counsel's point that by having a date set, that it will be necessary for me to come in and give my presentation on that particular date. I think that on a lot of occasions, on a lot of counsels, that would be desirable, but in trying these cases,

If the Commission please, I am not supposed to be trying them myself. I am supposed to be Chief of the Defense Section and supposed to be running the Defense Section, just as Colonel Blackstock's office is running the prosecution.

But in these cases of emergency, well, I'm to jump in and the emergency situation is such that I have got to get it over as quickly as possible so as to get the rest of the work finished without [illegible]

[illegible] the greatest diligence will be used on my part to get this case to trial and over with as quickly as possible.

PRESIDENT: The court will grant a continuance; the case is to be adjourned to meet at the call of the President.

The defense counsel will appear in person to the President of the Commission on August 21, the approximate date you will be ready to proceed.

[illegible], MAJ, JA, Assistant Judge Advocate
(Assigned by the Appointing Authority)

The Commission then, at 0830 hours, on 20 August, 1946, adjourned to meet at the call of the President.

[illegible] T. SMITH, JR., CAPTAIN, USA
(Assigned per Special Order 197, HQ USFET, 2 August 1946)
1LT H. [illegible], USAAF, USA
(Assigned per Special Order 197, HQ USFET, 2 August 1946)

Leonard M. Rand

LEONARD M. RAND
Chief Prosecutor

[illegible], Assistant Prosecutor
(Assigned by the Appointing Authority)

[illegible]

[illegible]

[illegible]

[redacted], at which time the per-
[redacted] the accused, the
[redacted] counsel.

[redacted]

The prosecution [redacted] the record of trial.

[redacted]

The Commission took a recess [redacted] 1536, at which time the members
[redacted] the accused, the re-
[redacted]
(The Major Martin, for Colonel Chase, left)
[redacted]
(The Lt. Col. Pyle, for Captain Cohen, left)
[redacted] record of trial.

The accused was also present.

The Commission then adjourned until 0930, 22 October 1946.

[redacted]

Mr. FRANKLIN E. HOUSTON, Assistant Prosecutor

PROSECUTION: At this time the prosecutor would like to swear in the new court reporter and an additional interpreter.

Mr. Homer J. Gidgen was sworn as reporter.

Mr. Shigenobu Ozki was sworn as assistant interpreter.

PROSECUTION: At this time, if the Commission please, prosecution is ready to proceed further with its case. This case was adjourned

on August 20th of this year to await the [redacted] case of [redacted], U. S. Army, a witness who was flown [redacted] essentially. By reason of circumstances beyond [redacted] was adjourned from August 20th to the present [redacted] the long period of time which has elapsed, the prosecution [redacted] agreeable to the defendant's [redacted] of the Specification, [redacted] such as by [redacted] of the Charge Sheet in this case, with [redacted] ing corrections and additions, being present

[redacted]: Motion is [redacted]

[redacted]: With the approval of the defense, the prosecution re[redacted] that the [redacted] be returned [redacted] immediately after the [redacted] of the [redacted] specifications and that the [redacted] ing the sworn [redacted]

[redacted]
(Detailed by the Appointing Authority)

[redacted]: May I ask [redacted] ting this, Sir?

[redacted]
(Detailed per Special Order 197, HQ [redacted], 2 August 1945)

[redacted]
(Detailed per Special Order 197, HQ [redacted], 2 August 1945)

[redacted] in the previous session, [redacted].

on August 20th of this year to await the arrival of Tech Sergeant W. C. Ryan, a witness who was flown from the States to testify. By reason of circumstances beyond our control, the case was adjourned from August 20th to the present day. In view of the long period of time which has elapsed, the prosecution recommends to the Commission that the record of the proceeding in this matter be read to the Commission before the interrogation of Sergeant Ryan, in order that all of the matters may be recalled to the Commission's attention.

LAW MEMBER: Motion is approved.

PROSECUTION: With the approval of the defense, the prosecution recommends that thereafter the record be immediately after the introduction of the charges and specifications and that the reading of the record include all matters thereon, that is argument and other things which came up during the course of the trial. Is that satisfactory to the Commission, Sir?

PRESIDENT: Yes, it is.

PROSECUTION: May I sit down while reading this, Sir?

PRESIDENT: Yes.

The prosecution then started reading to the Commission the record of trial for this case as prepared by the official court reporter in the previous session, Mr. Bernard E. Ryan.

The Commission took a recess until 1445, at which time the personnel of the Commission, prosecution and defense, the accused, the reporter and the interpreters resumed their seats.

The prosecution continued reading the record of trial.

The Commission took a recess until 1536, at which time the personnel of the Commission, prosecution and defense, the accused, the reporter and the interpreters resumed their seats.

The prosecution continued reading the record of trial.

PRESIDENT: The Commission will adjourn until 0900, 22 October 1946.

Chief Prosecutor

Leonard M. Rand

LEONARD M. RAND
Chief Prosecutor

Yokohama City Hall
Yokohama, Japan
22 October 1946

The Commission met pursuant to adjournment at 0900, all the personnel of the Commission, prosecution and defense, the accused, the reporter and the interpreters who were present at the close of the previous session on this case, being present with the exception of Major Burton R. Phillips, defense, excused for the day by the Appointing Authority.

The prosecutor continued where he left off at the close of the previous session in reading the record of trial.

The Commission took a recess until 1025, at which time the personnel of the Commission, prosecution and defense, the accused, the reporter and the interpreters resumed their seats.

The prosecutor continued reading the record of trial.

PRESIDENT: The Commission will adjourn to meet at 1330 this afternoon.

The Commission then recessed until 1330, at which time the personnel of the Commission, prosecution and defense, the accused, the reporter and the interpreters resumed their seats.

The prosecutor continued reading the record of trial.

The Commission took a recess until 1440 at which time the personnel of the Commission, prosecution and defense, the accused, the reporter and the interpreters resumed their seats.

The prosecutor continued reading the record of trial.

PRESIDENT: The Commission will adjourn to meet at 0900 tomorrow, 23 October 1946.

Leonard M. Rand

LEONARD M. RAND
Chief Prosecutor

Yokohama Courthouse
Yokohama, Japan
23 October 1946

The Commission reassembled pursuant to adjournment, at 0900, all the personnel of the Commission, prosecution and defense, the reporter and the interpreters who were present at the close of the previous session on this case being present. The accused was also present.

Major Burton K. Phillips, Chief Defense Counsel was also present.

PROSECUTION: At this time, if the Commission please, the prosecution calls as its witness, Tech Sergeant Walter C. Ryan, who was flown over here from the States to testify in this case, and for this reason the case was adjourned until this time.

Technical Sergeant Walter C. Ryan, US Army, a witness for the prosecution, was sworn and testified as follows:

DEFENSE: If the Commission please, up to this time the prosecution has not been granted permission to reopen their case. They had once closed it and now, by placing another witness on the stand, they must request and the Court must grant the right to reopen.

PROSECUTION: I make a motion for permission of the Court to reopen my case and present the testimony of Sergeant Ryan.

LAW MEMBER: And have you explained why the Sergeant was not present and available at the time you recessed?

PROSECUTION: I think the record shows that, sir. The record shows that the prosecution has rested and I now ask permission of the Court to reopen my case to introduce the testimony of Sergeant Ryan.

LAW MEMBER: Does the defense have any comments?

DEFENSE: The defense has no objections.

LAW MEMBER: Motion is granted.

DIRECT EXAMINATION

Questions by prosecution:

Q. State your name, grade, organization and station.
A. My name is Tech Sergeant Walter C. Ryan, Squadron B, Bowling Field, Washington, D. C.

Q. Were you a prisoner of war?
A. I was.

Q. Where were you captured?
A. I was captured on Corregidor.

Q. When?
A. May 6, 1942.

Q. How long did you stay on Corregidor?
A. Until May 23, 1942.

Q. And at that time where did you go?
A. To Cabcaben Camp, Camp No. 1 [illegible]
[illegible] there were [illegible] people [illegible] consist of a German
Q. Where is that? [illegible] to about 300 men and the other section was
A. That is on the Island of Luzon in the Philippines. prior [illegible] of
[illegible] Luzon and the Philippines, and several permanent camps
Q. And how long did you stay there? prior, and a few were British,
A. Until October [illegible] prisoners were sent to Japan and Chinese.

Q. And at that time there did you go [illegible] left camp
A. Aprilo from Manila to Osaka, Japan, arriving there November 11,
[illegible] 1942.

Q. And there did you go to in Japan? originally [illegible] of prisoners
A. To Headquarters Camp Number 4 in the Osaki area.
[illegible] because of [illegible] to the number of people that existed there during
Q. And what is that? area.
A. That is a prisoner of war camp.
[illegible] Now, you first got to the camp, how many [illegible] camps, if any, did
Q. And how long did you stay at the Headquarters prisoner of war
[illegible] camp in Osaka? [illegible] number 4 until such time [illegible] was
A. Until May 20, 1945 [illegible] October next to May 1st I was there was one
[illegible] exists to move about 50 or 60 men from both camps who were classified
Q. And at that time where did you go? there for [illegible] liberation.
A. Went to Kotogawa.
[illegible] Then was the first time that the American soldiers or a Protector
Q. And how long did you stay there?
A. Until the end of the war.

Q. Do you know the accused, Shigeki Kondo? [illegible]? Let me repeat
A. Yes I do [illegible]. He was the Japanese medical person in charge of
[illegible] the dispensary at that time?
Q. Is he present in court?
A. Yes he is.
[illegible] Was [illegible] Kondo [illegible] the [illegible] was sworn, as [illegible]
DEFENSE: We are going to have to have this translated by the court
A. interpreter from this point on. Now that we have gone over the
original beginning introduction of this witness we will have to
[illegible] have it from the time he identifies the accused on.
[illegible] I suppose the next will [illegible] which started at 9:00
LAW MEMBER: That procedure will be carried out.

PROSECUTION: You have your own interpreters, don't you [illegible] the
[illegible] court?
DEFENSE: I am asking for the court interpreter. That is the only
way that we can be certain that this man gets every word of the
testimony that is given by this witness who is appearing against
him. [illegible] better, would be [illegible] and [illegible]
would [illegible] unable to [illegible] Vietnam, explaining what was
PROSECUTION: He didn't use this procedure in Chief Sanders' testimony.
I have no objection to it but it is going to slow down the testi-
mony. [illegible] for the [illegible].

The following questions and answers were interpreted to the Commission by the court interpreters. [illegible].

Q. Will you point him out? [illegible]
[illegible] [illegible] [illegible] [illegible]?
PROSECUTION: May the record show that the witness had identified the accused.

Q. When you got to the Omuta main camp what prisoners of war were stationed there, that is nationalities?
A. There were two sections in the camp. One consisted of a British section which consisted to about 300 men and the other section was known as the "American Section" which consisted of prisoners of war taken at Guam and the Philippines, and several merchant marine men from the American Merchant Service, and a few from the British, and about 85 Indian merchant marine men and Chinese.

Q. Now when you first got to the Headquarters POW camp, how many American prisoners of war were there?
A. About 235.

Q. Did that number of Americans ever materially increased or decreased during the period you were at the camp?
A. Decreased due to the number of deaths that existed there during the period I was there.

Q. When you first got to the camp, how many dispensaries, if any, did they have for all of the prisoners of war, all nationalities?
A. They had in the American section a small room which they used as a dispensary. In the British section they had a bay which was set aside to hold about 30 to 40 men from both camps who were classified as unfit to go to work and remained there for hospitalization.

Q. When was the first time that the American section had a dispensary available to it?
A. About June, 1943.

Q. At that time who was in charge of that dispensary? Let me reword that question. Who was the Japanese medical person in charge of that dispensary at that time?
A. Kenichi Kondo.

Q. How long did Kenichi Kondo stay at the Omuta main camp, as far as you know?
A. About the end of April 1945.

Q. What were Kenichi Kondo's duties in the Omuta main camp?
A. He supervised the sick call each morning which started at 6:30 and remained open until 7:00.

Q. Maybe in detail, what did his duties consist in supervising the sick call?
A. The men would line up on the outside of the sick bay before 6:30 at which time Kondo would open the sick bay. The first in line would go up and give their number and Doctor Kodama, an American medical doctor, would be there at Kondo's side, and the men would give their symptoms to Doctor Kodama, explaining what was bothering them. He would in turn explain to Kondo what was wrong with them and he would either recommend medication or that they should remain in camp for the day.

Q. Who kept the sick book and the medical records for the POWs?
A. Kondo kept the records for the Japanese.

Q. At sick call in the morning, what Japanese medical personnel would place men who were ill on the sick list?

A. Kondo was a member of the medical personnel who placed the men's names on the sick list.

Q. At the dispensary, what Japanese medical personnel made admissions to the camp hospital?

DEFENSE: If the Commission please, that is objected to unless specified by the prosecutor as to an occasion that this man might not be. A general admission like that "who made admissions" within the knowledge of this particular witness is a matter which is subject to severe cross examination. A more general statement by this witness is nothing more than an inflammatory statement. It requires the witness to go into and dig out whereas if the witness will testify, or be asked to testify, as to his own knowledge of the occasions which he noticed this being carried out by the defendant, then there would be no objection by the defense.

PROSECUTION: I will withdraw the question and rephrase it.

Q. At the dispensary at the Headquarters Camp, do you know of your own knowledge, who would make admissions, what Japanese medical personnel would make admissions to the camp hospital?

A. The only information I can give in that question is that on occasions I have known Doctor Yoshura would have to get Lieutenant Kondo's permission for patients to be admitted into the sick ward.

Q. Who was Captain Baland?

A. Captain Baland was an American medical officer who was a surgeon and who participated in several operations while he was in the camp, but had no part in the normal sick call or dispensary functions there.

PRESIDENT: At this point the Commission will take a 10 minute recess.

The Commission took a recess until 1004 hours, at which time the personnel of the Commission, prosecution and defense, the reporter and the interpreters and the absent recess duty basis.

A. The Filipino was guard of honor who was still under guard and

Q. Did Doctor Baland attend the sick call for the American POWs at the main camp?

A. [illegible]

Q. [illegible]

A. Doctor Yoshura was an American doctor, a officer who worked at sick call each morning with Kondo.

Q. For how long a period of time did Doctor Yoshura work in the dispensary at sick call with Kondo?

A. He worked there all during the period in which Kondo was at No. 1 Camp at Cabanatuan.

Q. Was there any other doctor, American doctor, working at the dispensary with Doctor Yoshura at sick call?

A. There was one other American doctor by the name of Bumpus who was in the No. 1 Camp for tuberculosis and, during which time he was there, he assisted in dressings and small operations such as boils and abscess and anything in that line.

PRESIDENT: How do you spell this name?

A. I am not sure but I believe it is B-U-M-P-U-S-(-K-N-O).

Q. Do you remember what period of time Doctor Bumpus aided Doctor Yoshura at the dispensary?

A. I do not remember the dates but it was during 1944.

Q. Who was Leonie C. Merritt?
A. Leonie C. Merritt was a chief pharmacist mate in the United States Navy who worked in the sick bay helping Doctor Hoshuan dress injuries that were sustained while out working by various men.

Q. Was Merritt in attendance at sick call each morning, if you know?
A. Yes.

Q. Who was "Ginger"?
A. Ginger was an English pharmacist mate who, I believe, was a member of the British Navy. He performed the same duties as Merritt.

Q. If you know, did "Ginger" attend sick call every morning with Doctor Hoshuan?
A. Yes.

Q. Now, you have stated that the following American medical personnel were in attendance at sick call: Doctor Hoshuan, Merritt and Ginger. Were there any other medical personnel who were at attendance at sick call during from Doctor Yamaguchi, who you said was there just a short time?
A. That is all I remember of my own knowledge.

Q. Now at the Headquarters Main Camp, who was Doctor Nasu?
A. Doctor Nasu was a Japanese medical officer who was in charge of a medical section in the Omuta camp area.

Q. Did Nasu, if you know, ever attend sick call for the American POWs in the morning? If so, how frequently, to which men was ever
A. I have never seen Doctor Nasu in attendance at the morning sick call, however he did perform, maybe twice a month he would come around and check the sick men who were remaining in camp that day.

Q. Who was Lt. Higuchi?
A. Lt. Higuchi was another Japanese medical officer who, from what I had seen him in our camp, would just on occasions be the officer-of the Day, which amounted to once every 10 days.

Q. Was Lt. Higuchi, if you know, ever in attendance at the sick call for POWs?
A. Not to my knowledge.

Q. Who was Lt. Haran?
A. Lt. Haran was another Japanese medical officer who was in and out of our camp on various occasions and, from what I know, would visit several camps in our area on periodic visits.

Q. Did Lt. Haran, if you know, ever attended morning sick call for the American POWs?
A. He never attended the morning sick call but he, on several occasions, performs the same checkup as Doctor Nasu made on the bi-monthly check-up on the men remaining in camp who were unable to go to work.

Q. Who was Doctor Ano?
A. Doctor Ano was in our camp, just the first time I had seen him was a few minutes. I left with a 100 man group that was transferred to Kokura.

Q. Did Doctor Ano, if you know, ever attend morning sick call for American POWs?
A. I have never seen him on morning sick call.

Q. Now you have mentioned Doctor Noso, Lt. Miyahira, Doctor Maruo, Doctor Ano and Kondo--were there any other Japanese medical personnel, if you know, who had anything to do with the American POW dispensary at Headquarters Camp?
A. The names you just mentioned were the only ones who I know had anything to do with the functions of medication in our camp.

Q. While you were at the Headquarters Camp, do you know of any one who was beaten by Hanichi Kondo?
A. Yes.

Q. What were their names?
A. Myself.

Q. Were you beaten on one occasion or more than one occasion?
A. On two occasions.

Q. Now when was the first occasion that you were beaten by the accused, Hanichi Kondo?
A. The first occasion during April of 1943.

Q. Where precisely in the camp did the incident take place?
A. This took place in the English section of the sick bay which had been set aside for the 50 to 60 man groups, in which men who were unable to go out as daily workers were isolated in this particular section.

Q. Will you tell the Commission just how the incident arose and what took place.
A. This incident took place in the middle of April and at this time I had a foot condition known as beriberi and had been hospitalized for that reason, and the fact that I was just recovering from amebic dysentery and malaria recurrent attacks. At that time Kondo, who was a Second Class Private in the Medical Corps and who was in the sick bay on student status, had ordered myself and several other men to go out to work on this day. I went out to work and the only detail which was left open for me to work on this particular day, was known as the "Shunagan Detail."

PRESIDENT: What?

A. "Shunagan" I believe. I don't know how you spell it but it was the heavy carrying lumber detail. On this "Shunagan Detail" it was the general practice for men who were unable to comply with the required amount of work set aside by the Japanese "Honcho" to be beaten. Knowing this, I returned to the camp rather than go out on the detail in an attempt to work that day due to the fact of the beriberi condition existing in my feet. That evening at 6:00 Kondo came into the sick bay section and was checking the work list numbers that day. Upon checking he found out that I had not gone out to work on this particular day. Kondo called my number which was "Goju", which means 50 in the Japanese language, I went over to where he was standing. He asked me why I had not gone out to work that day when he had ordered me to. I showed him the condition of my feet

in which beriberi was evident and told him that was the reason why I had not gone out that day. He started shouting at me in Japanese which I did not understand and told me to "Kiotsuke", which in Japanese means "stand at attention". I came to attention and then he proceeded to hit me around the face with his closed fist.

Q. How long did that beating take place?
A. That beating took place about two minutes.

Q. Do you remember now, approximately how many times he hit you with his fist?
A. About 10 times.

Q. Were the blows weak or hard?
A. The blows were hard.

Q. How at the end of that beating, did you feel any physical effects of it?
A. Yes, I did.

Q. Tell the Commission what it was.
A. At the end of the beating, I discovered I had lost two teeth, the two upper left teeth, as a result of this beating.

Q. Will you show the Commission where those two teeth were.

PROSECUTION: Let the record show the witness indicated the left upper portion of his mouth which showed two teeth missing.

Q. Now, after the beating, did you have any conversation with Kondo?
A. We left the room immediately following the beating.

Q. What was the second beating you said you received from Kondo?
A. The second beating took place in August 1943.

Q. Will you tell the Commission the circumstances surrounding that beating.
A. At that time I had a recurrent attack of amebic dysentery and had been going to the sick bay for a period of 10 days previous to this incident. When I first went there I went there with the intention of receiving powders in an attempt to stop the heavy bowel movements that I was having at that time. I received the powders that I had asked for but they didn't seem to help the dysentery condition that was existing, my condition was still getting worse in so far as my strength holding out. Doctor Hashimoto, on the last three occasions in which I had gone to sick bay previous to the incident, had recommended that I stay in camp for a couple of days until I could stop this dysentery condition. On the day of the incident, which was the ninth day that Doctor Hashimoto had recommended for me to stay in camp, Kondo had ordered me out to work this morning. I did not go to work but went back to my bay and went to bed. Kondo came around about 10:00 o'clock this particular morning and asked me why I had not gone out to work. I got out of the bed in which I was lying and got on the floor and stood at attention. I explained that I had been going to the "benjo", which is known

on the latrine in Japanese, all night and that I was beneath such condition that I could not get out to work that day. He said that day is the first that I had left my address unreported during the last night; that was the reason I had this dysentery condition. He slapped me about four times in the face on this occasion after making a statement about my failing to keep the minimum address.

Q. How hard did he slapped you?
A. He hit me with full open-hand swing about four times.

Q. Now after this slapping, did you have any physical evidence of it?
A. None other than a flushed face.

Q. Did you ever see any one else beaten by the accused, Kenichi Kanda?
A. Yes I have on numerous occasions.

DEFENSE: If the Commission please, I object to the use of the words "numerous occasions." Let him say yes and let him explain. This man is not giving an affidavit.

PROSECUTION: I'll concede to the answer being "yes."

Q. Now, specifically, do you recall the name of any American prisoner of war who was beaten by Kenichi Kanda?
A. Yes, I do.

Q. What was his name?
A. Bob Kenerith.

Q. Do you know an American POW named George Yeager?
A. Yes, I do.

Q. Did you ever see an incident in which he was beaten by Kenichi Kanda?
A. Yes.

Q. When did that take place?
A. This incident took place over in the isolated sick bay section of the English camp which was in existence from March 1945 until May. It took us or about a month after my first incident pertaining to myself had.

Q. Where in the camp did this take place?
A. This took place in the sick bay.

Q. Were you physically present at that time?
A. Yes.

Q. What were you doing there?
A. I was a patient in the sick bay at that time.

Q. Will you tell the Commission, as far as you know, what took place when Kenichi Kanda beat Yeager?
A. At that particular time Yeager, who was a member of the United States Army, was over there in the sick bay suffering from beri beri which had spread all over to various sections of his body. At the time of this beating incident, I was about 20 feet from Yeager and Kanda.

Yeager was having some discussion with Kondo over obtaining some Japanese beriberi powder. I did not hear the full argument. The first thing I knew, Kondo had hit him. Yeager was standing up and Kondo had hit him and knocked him back into the sick bay and, from what I could understand from what little Japanese I know, he was saying that Yeager was a big man and should be going out to work instead of lying around in the sick bay. He proceeded to kick him about the face and spine, and different sections of the body for about five minutes. He would stop for about five minutes and then repeat what he said about Yeager being big and should be out working, and then continue kicking him again.

Q. On what part of Yeager's body did Kondo hit him with his hand?
A. He hit him just once with his hand in which he knocked Yeager back into the sick bay. During the rest of the incident, he just used his feet kicking him.

Q. Did he hit him with an open palm or closed fist?
A. I do not know whether he hit him with an open hand or a closed fist.

Q. What kind of shoes was Kondo wearing?
A. Heavy Japanese Army shoes.

Q. How long in all would you say that this beating took place?
A. This beating took place about five minutes.

Q. What was Yeager's condition at the end?
A. Yeager's condition at the end was, well he just lay in the bay for quite a while. Then some of the fellows helped him over to the sick room. Before this beating, Yeager's condition was --

DEFENSE: I object to " Yeager's condition before this beating." Let the man testify an answer to the question. This man is not a doctor.

PROSECUTION: Just tell what happened.

A. (Cont'd) The men helped Yeager into the washroom where he took a shower after this beating had happened.

Q. What physical evidence of the beating did Yeager have at the end of it?
A. I saw Yeager in the washroom the next day after the incident happened and there were red marks on his body where he had been kicked -- bruised appearance.

Q. Did you see him immediately after the beating?
A. I saw the men who were taking him to the bathhouse. At the time this incident happened, we were taking our baths in the bath shed which was about 50 feet from the sick bay room.

Q. What was Yeager confined in the sick bay for?
A. Yeager was in the sick bay suffering from beriberi of which he died a year later.

DEFENSE: I think any reference to the death of Yeager should be stricken from the record.

PROSECUTION: Prosecution consents.

LAW MEMBER: It will be stricken.

Q. Now, you mentioned a man named George Favorite who was beaten by Kenichi Kondo, is that right?
A. Yes.

Q. When did that take place?
A. On or about February 1945.

Q. Will you tell the Commission the circumstances surrounding that beating.
A. Favorite at that time had suffered from diarrhea and a stomach cramp condition which had been with him for about two weeks previous to the incident. He had been going to the sick bay for medication. His condition got worse, Doctor Hochman diagnosed his case to Kondo saying that he should be allowed to remain in camp for a few days. Kondo over-ruled Doctor Hochman and ordered Favorite to work. On the day of this incident Favorite had gone to the sick bay that morning. Doctor Hochman had tried to get him to stay in camp and Kondo had over-ruled him and ordered him to go to work, which he didn't do this particular morning, he went back to his room and was lying down when Kondo came in and found him there. When Kondo found Favorite in the room there, he called him down form sick bay and asked him why he had not gone to work that day. Kondo told him that he should have gone to work, stood him at attention, slapped his around the face, and then took him down to the guard shack where he had him stand at attention. He remained "at attention" for a couple of hours and then was sent back to his room by the Commander of the Guards.

Q. How much force did Kondo used in striking Favorite?
A. Just open-hand slaps.

Q. Did Favorite have any physical evidence of the slapping at the end of it?
A. Just the normal appearance any one had who was slapped in the face.

Q. Who ordered Favorite to stand "at attention?"
A. Kondo.

Q. In this beating which you have told the Commission you have made mention of the fact that you overheard conversation that Kondo had made. Do you speak Japanese?
A. Just a little knowledge that I picked up from my association with Japanese around the prisoner of war camp and while out at work.

Q. Were you able to understand what Kondo was saying in each of the incidents which you have mentioned?
A. Kondo himself had a slight knowledge of English which he picked up in the same way I picked up my Japanese.

PRESIDENT: He is not answering the question.

PROSECUTION: Yes, I know. Will you read the question?

The reporter read back the question.

A. Yes, I was.

Q. Sergeant, when you first came to the Osaka Main Camp, what was your physical condition?

DEFENSE: I object to that. The defendant is not charged with sending a man to work. The sergeant was in a fit physical condition.

PROSECUTION: The specification states that this accused sent sick prisoners of war to work. I want to find out whether this man was sick when he was sent to work.

LAW MEMBER: Objection is over-ruled.

DEFENSE: Kondo was not present at camp when this man arrived, is that not right?

PROSECUTION: I am not asking whether Kondo was present, I am just asking preliminary questions.

A. My physical condition upon arrival in Osaka on November 11, 1942, was, at that time myself and a good percentage of the 100 man group who arrived that day were suffering from dysentery and malaria attacks.

Q. Approximately how many times will you say, if you can now remember, did you go on sick call at the American POW dispensary at the Osaka Main Camp?

A. Between 70 to 80 times during the period I was there.

Q. Do you remember now for what ailments you went to be treated at the dispensary?

A. Yes, I do.

Q. What were they?

A. They were four different diseases, malaria, beriberi, pellagra, migraine headaches, and on couple occasions I had flue there during the winter.

Q. When was the first occasion on which you had contact with Kenichi Kondo?

A. The first contact I had with Kenichi Kondo was in the sick bay section of the American camp, of which I previously stated was the isolated section where they kept 50 to 60 Allied prisoners of war who were unable to go out to work as daily regular workers. Kondo, at that time, was a Second-Class Private during the period I was there and was on a student basis. Therefore, he didn't conduct the sick call there at that time during the period I was there. This period was from on or about March 25th until the first of June, 1943.

Q. When was the first time you had contact with Kenichi Kondo at the American POW dispensary?

A. The first time I had contact with Kenichi Kondo in the American dispensary was after this sick bay had been discontinued and all the American had moved back into the American section of the camp, at which time, on or about June or July 1943, we had our sick bay

in which Kondo was taking over the function known as "sick call." The first occasion I had to attend the sick call was about August 1943.

Q. Koniehi Kondo was at the dispensary from on or about June 1943, until what time?

A. He was up until his departure. I do not remember the exact day, but it was around April 1945.

Q. Did the 75 or 80 times that you had mentioned, in which you went into the dispensary, occur during the time that Kondo was there?

A. Yes.

Q. What other Japanese medical personnel were on duty with Koniehi Kondo at the dispensary?

A. On a few occasions I have seen two or three lowly ranking medical privates of the Japanese over at sick call. Apparently they were watching Kondo's method of work. They only remained there a couple of days. I found out later they went to other camps in the same capacity that he was in.

Q. Did these 75 or 80 times that you went to the POW dispensary occur during one specific year?

DEFENSE: Ask him when they occurred. I think that is the question.

Q. (Cont'd) Or, did they extend over the entire period when Kondo was at the dispensary?

A. They extended over the entire period Kondo was at the Omuta camp.

Q. Do you know how much medical training Koniehi Kondo had?

A. I do not know what his entire medical background is other than when I first saw him for the first two month period in the British sick bay, he was apparently on student status.

Q. Would you say Koniehi Kondo was qualified as a medical orderly?

DEFENSE: I object to that. This witness is incompetent to answer that question. He is not a medical man of any type.

PROSECUTION: He doesn't have to be. He can speak from general knowledge.

DEFENSE: It is not a question that can be answered from general knowledge and you know that.

LAW MEMBER: The question is not worded as to how the witness observed the performance.

PROSECUTION: We could hear that, sir.

LAW MEMBER: The question could be worded as to how he observed the performance of his duties as medical orderly and not, "does he know if he is qualified." To that extent the objection is sustained.

Q. If a man came to sick call with diarrhea what would be necessary in order to stay in from work, if you know?

A. In a few occasions I have known where men who had diarrhea attacks and this condition existed for a period anywhere from eight to ten days, who were receiving medication and tried to remain in camp, it was only upon the time where they presented a stool containing blood or mucus whose Kondo would allow them to remain in camp.

Q. Have you ever seen how Kondo at sick call would determine whether a POW had fever?

A. I have seen him used two different methods, on some occasions he would have either Doctor Moshman, or Chief Morris, or Singer use a regular thermometer. On other occasions I have just seen him reach out and touch the forehead of a man trying to determine a fever.

PROSECUTION: Sir, if the Commission please, if we are going to adjourn at 11:30 I would like to know because I am going to start on a new phase.

PRESIDENT: The Commission will adjourn to meet at 0900, the 24th of October 1946.

The Commission then, at 1128, adjourned to meet at 0900 the following day, 24 October 1946.

Leonard M Rand

LEONARD M RAND
Chief Prosecutor

Yokohama Courthouse
Yokohama, Japan
24 October 1946

The Commission met pursuant to adjournment, at 0900, all the personnel of the Commission, prosecution and defense, the reporter and the interpreters who were present at the close of the previous session on this case, being present.

The witness was reminded he was still under oath.

At the request of the prosecutor, the reporter read back the last two questions and answers from the notes of the previous session.

Q. Sergeant, do you recall the "mumps" incident?

DEFENSE: Mr. President, we object to this line of questioning at this time because there has been no testimony by this witness that there had been any mumps.

PROSECUTION: I am asking him, sir, if he recalls such an incident.

DEFENSE: Kondo is not charged with it.

PROSECUTION: He is charged under Specification 10 with mistreating prisoners of war.

LAW MEMBER: Just repeat the question.

The reporter read back the question.

LAW MEMBER: Objection sustained. Rephrase that question to bring out any allegation about mumps.

Q. On an average, sergeant, how many men were attending sick call each morning?
A. It fluctuated, between 20 to 30 for the American section of the camp.

Q. And what generally were the normal complaints that the prisoners of war had when they came on sick call?
A. The various complaints were as follows: dysentery, diarrhea, malaria recurrent attacks, injuries sustained while at work, skin diseases, such as boils and ulcers, and conditions of the skin which were attributed to malnutrition.

Q. You mentioned yesterday the fact that you were beaten by Kenichi Kondo, the man named Yagger, and the man named Feverite were beaten by him. Do you know of any other incident where an American POW was struck by Kenichi Kondo?
A. Yes, I do.

Q. When was this?
A. I do not remember the exact dates or parties involved but on several occasions where I had gone on sick call, I had seen men slapped in the face while arguing to stay in from work on that day after Doctor Hochmap had told them to stay in and Kondo had ordered them to go

out to work.

DEFENSE: Defense objects to that last answer by the witness in that he says he knows of incidents where men were slapped but is unable to give names and dates, on the ground that the defense is not able to defend against such accusations because they are not named. We move that the remarks be stricken from the record.

PROSECUTION: If the Commission please, these remarks are very relevant to the issue. Prosecution will attempt to find out why the witness does not remember names and dates, and the Commission can place such weight as they wish upon that evidence.

DEFENSE: If the Commission please, if we do not have dates and names it is impossible for us to go into the matter because of one thing, we are supposed to be advised of all specific evidence. That is required by SCAP rules that the defendant must know exactly what offenses he is charged with. An offense, if the Commission please, is a violation of the law toward a human being at a certain time and at a certain place. For those elements we should be thoroughly advised of or no offense is stated. We are asking the Court, at this time, that even though there is a liberality in the rules of evidence, that there is no liberality in the stating of the offense as we know it. A statement like this by the witness would be the type of statement that could be made by anyone against me, or anyone in this court room, and we must appreciate the fact that a man is innocent or is presumed to be innocent, yet he would have a hard time to defend himself against any like that, in fact it would be impossible for him to defend himself against it except by his own negative answer. It is asking too much to allow statements in which the evidence which alleges an offense without defining the offense. The offense is not merely slapping. The offense is not merely pulling a trigger and hitting a man. It has to be a certain man and has to occur within a certain period of time. Now these things are necessary and it is necessary for the prosecution to prove that. The prosecution has stated that they are unable to prove that.

PROSECUTION: If the Commission please, Specification 10 alleges among other things, that the accused Kenichi Kondo did strike, kick and beat prisoners of war. There is no reference made to any specific names. Now, in the affidavits before this Commission now in evidence there will be many statements that Kenichi Kondo hit and beat sick prisoners of war but the affiant cannot remember the names and dates, that is already in evidence by paper evidence. Now, here is a witness from the camp who personally saw, that is best evidence. Let us find out why he does not remember names and dates.

DEFENSE: Purely, simply, because the prosecution drew up loose specification, the Court cannot indulge a loose type of evidence to support it. We have the right and liberty to ask for a Bill of Particulars. The prosecution's reason for not giving the Bill of Particulars is that they say, "You have the affidavits", "You have the information", and "What else do you want?" But you see when they bring a witness here we do not have that stated, we do not have for the defense the charges and specifications which will advise the defendant of the offenses of which he is charged. Because of that fact they deny us the Bill of Particulars of the incident which might be in the witness' mind or head or in his knowledge.

PROSECUTION: I have just one thing to state again. I again state to the Commission that here is a man who was present in the camp. What better evidence is before the Commission.

DEFENSE: As I understand the general catch-all specification, the reason why it is written is that at the time the prosecution does not have the names of a lot of men who were probably struck at the time it writes it. So, in order to save them embarrassment, it writes that specification but in the event to get specific names it can put them under Specification 10. So that the defendant has no objection such as the present witness' name, and that is the purpose for the general specification but that is the only purpose it can serve, or otherwise the rights of the accused are put in jeopardy.

PROSECUTION: If the Commission please, may I point out that the affidavits that we are offering in evidence were admitted on Specification 10. No objection was made that witness was not available for cross examination. Here the witness is going to be on the stand and they can examine him to their heart's content.

DEFENSE: I think that a little unfair remark for the prosecutor to make. Counsel who started the case is not here now, I think, therefore, references to anything he did in reference to the affidavits is entirely out of order.

PROSECUTION: It is not out of order. I have made no statement by counsel against counsel.

LAW MEMBER: The objection is not sustained. The Commission desires to hear from this life witness everything that he saw and he did of his own knowledge. The remarks of the defense will be taken into consideration and the evidence will be evaluated for what it is worth.

A. He had recommended to Kondo they stay in from work, he had not told them directly.

Q. Now with respect to what you have just testified, do you now recall any of the names of the American POWs?

A. A couple of the names I do remember. One by the name of Hagee (phonetic), and another one by the name of Tusker (phonetic).

Q. Do you know why they were struck?

A. The reason I know they were struck, as far as I could see was their continuance arguing with Kondo trying to stay in camp that day.

Q. Did you ever hear from any American POW that he had been struck by Kondo?

A. Yes, I have.

DEFENSE: We are objecting to this question and answer on the ground that it is hearsay and the persons that said that they were struck are not here in Court and subject to cross examination. To state that they were struck as any reason that this man might attempt to give in explanation, is incompetent because he cannot read the mind of the accused.

DEFENSE: Absolutely.

PROSECUTION: I will rephrase the question.

Q. Did any of the prisoners of war you stated told you they had been struck by Kanda, did they state to you why they had been struck?

A. In the cases I remember such as Burns and Tucker, they had told me they had agreed to stay in from work that particular day.

Q. Did you ever have any conversation with Doctor Hochman about his running of the POW dispensary?

A. Yes, I did.

Q. What were those conversations?

DEFENSE: We object to this line of questioning on the basis that there are three affidavits before this Commission already in evidence. If you will note the dates on the affidavits he was interrogated on three different occasions in an attempt to get more information from him each time. Now, certainly Doctor Hochman has stated everything he is able to say about this matter. Anything brought out by this witness from conversation he had with him is strictly incompetent because the best evidence before the Commission as to what Hochman said is what he wrote himself.

LAW MEMBER: Objection overruled.

Q. Do you now remember any of the names of these American POWs who stated they had been struck by Hunter?
A. One I remember very well was Captain Barton.

Q. These conversations you are now speaking about, did any of the prisoners stated why they had been struck by Hunter?
A. The usual reason was their just arguing to stay in from work after they had been ordered out to work.

DEFENSE: At this time defense objects to the words "usual reason" as expressed by the witness in which it is definitely impossible for him to determine why anybody was struck. The only person who can give an explanation as to the reason is the man who, it is alleged, did the striking. It is impossible to read the mind of another and anything that might have motivated that man in use of words such as "usual" is definitely out of order.

PROSECUTION: Prosecution will agree to striking of the word "usual."

LAW MEMBER: The word will be stricken.

Q. Did you ever have any conversation on

LAW MEMBER: Before you go on, you have struck the word "usual", how will his answer read?

The reporter read back the answer leaving out the stricken word.

LAW MEMBER: If you strike the word "usual" it will not make any sense.

WITNESS: The reason.

PROSECUTION: Do you object to the word "reason"?

PROSECUTION: May I point out that Chief Sanders already testified and his conversations are on the record.

LAW MEMBER: The Commission is quite competent to judge the objection. The objection is not sustained. Any conversations this witness had with any one he is intitled to testify to. The affidavit by Doctor Hochman will be given due consideration. Any conversations by the witness will be given and taken into consideration. Objection is not sustained.

DEFENSE: If the Commission please, the law as we know it and included in the law of France, Italy, Britain, Canada and the United States is that if a person enters into conversation with someone else, a stranger to the defendant, when the defendant himself is not present at that conversation and when the defendant does not have the opportunity at the time of the conversation to deny it or to affirm it, if he is not present at that time, then the Courts without fail have said, 'The lips of the participants of the conversation are sealed by the law.' I don't believe we could go many jurisprudence, any system of law, whether it be protocol, civil or common law, where conversation between two persons, strangers to the defendant, may testify to in the Court wherein the defendant is being charged with incidents with which the testimony relates. That is the background, sir, of the objection that was made that the Court overruled.

LAW MEMBER: The Commission is entirely conversant with what you have just said about the law in civil court. However such law is not binding on a War Crimi Commission. Proceed.

A. On two or three occasions Doctor Hochman came into the barrack section in which I stayed in the Gusen Camp and with a small group of men we held conversation just pertaining to the general conditions in the camp.

Q. On any of those occasions did Doctor Hochman make any statements about Mauthausen?

A. That he was disgusted with the way things were going in the sick bay, that he was a qualified physician and he was giving his diagnosis to Mauthausen and Mauthausen was overruling them as much as to say that he did not have as much knowledge of the medical profession as he did.

DEFENSE: The defense asks for mistrial on the improper admission of this testimony. We do not believe that it is possible under any circumstances or any rules that the Court can admit such evidence. International law is nothing but the grouping of the laws of the various countries and if we can find no law in the various countries which would allow the admission of improper evidence, then it certainly can't be admitted in this Court. This Court is here to try the case and to try it fairly and impartially. I think the part of fairness and impartiality is to attempt to weed out these matters so that we can go directly down the line as to the facts. At this time I ask for mistrial on the basis that I have already stated.

PROSECUTION: Prosecution does not care to answer.

LAW MEMBER: Subject to objection by any member of the Court, motion for mistrial is not granted.

Q. Sergeant, do you know Chief Sanders?
A. Yes.
Q. What was his job in the camp?
A. Chief Sanders was a Camp Commander for the Allied personnel in the Pe Ton camp.
Q. Did you ever see Chief Sanders at sick call
A. I have seen Chief Sanders on many occasions standing outside the sick call watching the proceedings before the men fell out for work call, that would usually be between 6:30 and 7:00 o'clock in the morning.
Q. Now, if a beating took place in camp to an American POW, would he report that to anyone?
A. He has on several occasions reported the beatings to the Interpreter.
PROSECUTION: Do not misunderstand me.
DEFENSE: Let the witness answer the question. If it is an improper question and improper answer, then let us answer.
PROSECUTION: I object to counsel's remarks.
LAW MEMBER: That is a proper objection and proper remark.
DEFENSE: If the Commission please, counsel has no right to stop the witness. The only one who can stop the witness is the Commission.
PROSECUTION: Counsel is attempting to be very difficult in this case.
LAW MEMBER: Let the witness finish his answer before the prosecution interjects any comments whatsoever.
WITNESS: I misunderstood that question.
LAW MEMBER: Will the reporter read back the question and answer?
The question and answer were read back by the reporter.
A. On several occasions when prisoners have been beaten they reported to the Japanese Interpreter Sakata and Sakata requested me to investigate the matter, who was the Camp Commander, and Kondo's treatment of the prisoners while under arrest in the Guardhouse for a period of maybe a week or two weeks.
Q. You said yesterday that you had gone to sick call for diarrhea, Doctor Yoshida had recommended that you stay in, Kondo had overruled him and you were sent to work, is that correct?
A. Yes.
DEFENSE: For the sake of clarity, is that August 1943 you are talking about?
WITNESS: I think he only mentioned one.
WITNESS: Yes.

Q. Now, did anything like that ever happen to you again?
A. Another time, I don't remember the exact day, I sustained a foot injury while working out on a ship in the Kobehama harbor. On that day I had my foot caught in a slide of bags and sustained an injury. That night I went to Doctor Hoshuan who examined my foot and told me to go back to the barracks. The next morning I went back to camp by on a routine sick call and Doctor Hoshuan showed my foot to Kondo. He got some dark liquid and painted my foot and told me to go out to work that day morning, [illegible]

Q. At this time you were mentioned, had Doctor Hoshuan made any recommendations about you?
A. Yes he did. He recommended that I stay in camp this particular day. [illegible]

Q. Now these two incidents you have related about yourself, have you ever seen anything similar happen to any POW?
A. Yes I have.

Q. Do you now remember their names?
A. Well I do. [illegible]

Q. Will you please tell the Commission their names. [illegible]
A. John H. Zimmer and Barber.

Q. Were there anyone else? [illegible]
A. There were other fellows but I just don't remember their names at this time. [illegible]

DEFENSE: We ask that this be stricken, stating there are no names given or dates, on the ground before stated that it is impossible for us to defend against such statements because the accused cannot know when these incidents took place, or the time at which they took place. They can't be recalled to his mind unless you quote more specific details. [illegible]

LAW MEMBER: Objection is overruled. Statement will be taken for its worth. [illegible]

Q. Do you remember what the circumstances were in the "Zimmer Incident"
A. The "Zimmy Incident" was the same as mine and happened quite often in the camp, because the men in the camp were working on cargo ships out in the Yokohama Bay and it was almost a daily occurrence for someone to sustain an injury while on the cargo, stevedore work. [illegible]

Q. Had Doctor Hoshuan made any recommendations to Kondo about Zimmer?
A. Yes he did. [illegible]

Q. What was that?
A. His recommendation was that Zimmy remain in the camp. Kondo just painted the injured section of his foot with this dark solution and told him to go out to work. [illegible]

Q. Now, if a American prisoner of war came to sick call in the morning, who would have the final say as to whether or not he stayed in camp or went out to work? [illegible]

DEFENSE: I object on the ground that any answer to such a question would definitely be an opinion and conclusion on the part of this witness. He isn't competent to testify to that at all.

PROSECUTION: Sir, I would like to refrase the question.

LAW MEMBER: Refrase the question.

Q. If an American POW went to sick call in the morning, if you know, who in the dispensary had the final say as to whether or not that person went to work or not?

DEFENSE: Sir, the addition of the words 'if you know' does not change the question at all because this man is not in position to know. He was a worker at the POW camps. That is all he was.

PROSECUTION: Fair, but he aided in the dispensary since, Mr. Duffy.

LAW MEMBER: Read the question.

Question was read back by the court.

LAW MEMBER: Objection not sustained. The question will be answered.

DEFENSE: Sir, may I just say one more thing, since it involves the actual issue before this Commission which is who did have the final say and authority in the running of the dispensary and it is in your judicial capacity to decide this case, any answer to the question by this witness would usurp the prerogatives of the Commission for that is what the Commission has been appointed to determine.

LAW MEMBER: Answer the question.

A. Just from my own knowledge, on occasions that I myself went on sick call and on occasions where Doctor Hohman had recommended I should remain in camp, Yingle had over-ruled his diagnosis and I had been sent out to work.

Q. I don't believe you have at yet stated who had that authority. Would you please so state to the Commission.

DEFENSE: He has answered the question, obviously the prosecution is attempting to drag something from the witness when the witness has answered the best he knows.

LAW MEMBER: That question is ambiguous and the objection to that question is sustained.

Q. Mgt Sergeant, if a person wanted medication, what would the procedure be?

A. They would report to sick call and go through the normal functions of sick call, going up to Hondo and giving their number which he would write down, and they would in turn explain what was wrong to Doctor Hoshuan and he would recommend what medication should be given, such as quinine, or aspirin, or anything along that line.

Q. Have you ever gone to sick call for the sole purpose of getting medication?
A. Yes, I have.

Q. Did you get it?
A. On most occasions, yes, and on a few occasions I did not.

Q. Now on the few occasions you did not, what happened?
A. The occasions I did not receive medication was when I went down and tried to get aspirins for migraine headaches. As I did not have any fever when Kondo reached up and felt my forehead, he refused my request for these aspirins.

Q. Do you remember approximately when these dates were?
A. They were between the latter part of 1944 and the time I left the camp in May 1945. I do not remember the exact dates.

Q. Now on these occasions you have mentioned when you were unable to get medication, do you know, of your own knowledge, whether or not the medication you sought was then available in the dispensary?
A. On the occasions I remember they had these Japanese aspirins in a square box which was available at that time.

Q. Do you know of any American prisoner of war who went to sick call and was refused medication?

DEFENSE: If the Commission please, may I interpose in this line of questioning. The Sergeant here is giving his very honest and best in testifying to the questions that are asked by the prosecution but I ask this only in the matter of fairness. The same type of fairness that we might give to a dog. If we are going to allow the Sergeant here throughout the questions asked by the prosecution to testify that the man did not get medication, that medication was available, we are placing him in a very awkward position of a medical officer or someone who has a complete knowledge of medicine, or at least a study of medicine, to the extent that the medicines available were of the type needed to treat the malfunctions suffered by the prisoners of war. We are placing him in that position. I don't believe in fairness that we should have a Sergeant testify to things like that, particularly when we have so many affidavits by Doctor Hochheim. He is testifying to the best of his knowledge and he is testifying fairly and honestly as to his own idea of the thing. We will admit that he was present at the time and that he had a better idea than you or I would as to whether or not this medication might have been, might facilitate the recovery of a particular individual who went to sick call. But, at the same time Sergeant Ryan does not possess any particular medical knowledge. If it were possible for us get Doctor Hochheim here, Doctor Hochheim could testify. Doctor Hochheim testified to everything he knew or everything that happened in that camp in a medical way by three separate affidavits. To ask these questions of this man is unfair to him and certainly is unfair to the defendant.

Q. Now, if a sick prisoner of war, a Polish prisoner of war, came to the dispensary, what would be necessary for him to have for

PROSECUTION: Sir, we are only inquiring as to medication, as to receiving of medication. That is what this present line of questioning is. There is no question of treatment [illegible]

DEFENSE: You don't even know what the inference is! This man went up there for medication and he asked for medicine, and medicine was refused, and medicine was available. The inference is that he should have had medicine and that is an inference that we cannot take the witness [illegible].

PROSECUTION: Sir, that is just the inference the prosecution is trying to prove. In all these cases Doctor Suleman was present at sick call, a competent doctor [illegible] he is in a position to know what goes on at sick call. It has to be a position

LAW MEMBER: Read the question. [illegible]

The question was read back by the reporter.

LAW MEMBER: The objection is not sustained. The points raised by the defense can well be brought out on cross examination. The witness will answer the question. [illegible]

A. There was one other party and that fellow was by the name of Hanna (phonetic) who had the same thing I had, that is migraine headache, and his eyes were distending painfully at that time. [illegible] will give a reason.

Q. Were you present at the time he requested medication?

A. I wasn't present on the occasion but Hanna, who slept next to me, told me about the incident when he came back from sick call that [illegible]

Q. Did he tell you what medication he had asked for?

DEFENSE: I object to this line of questioning on the basis that the questions are asked for hearsay on the part of the witness.

LAW MEMBER: Objection over-ruled.

A. Hanna had requested aspirins to relieve his headache condition that he had at the time. That was the only medication he had asked for.

Q. Did he tell you what had happened in the dispensary?

DEFENSE: Same objection, asking for hearsay.

LAW MEMBER: Objection, over-ruled.

A. Hanna told me that he had gone down there to the sick bay to get the aspirins. Due to the fact that he had no temperature his request for aspirins was turned down.

Q. Now, do you know of your own knowledge, whether or not at that time there were aspirins available in the dispensary?

A. In Hanna's case I don't know if the aspirins were available or not.

Q. Now, if a sick prisoner of war, an American prisoner of war, came to the dispensary, what would be necessary for him to have for him to stay in from work?

DEFENSE: Sir, again we must object of necessity to this continuous line of questioning, which attempts to get Sergeant Ryan to testify to matters applying with in the realm of medical knowledge. Sergeant Ryan's testimony is applicable to to what he saw and his testimony is good as to the matters a layman can see, or feel, or hear. But to ask him questions continuously that is within the realm of medical knowledge, is strictly out of order.

PROSECUTION: May I point out to the Commission that Sergeant Ryan has testified from experience gained from visiting sick call between 75 and 80 times. Also he had taken ill at the camp two years. He definitely knows what goes on at sick call. If he is in a position to tell the Commission, fine. If he does not know, fine. Whatever evidence can be given should be received by the Commission. In fairness to the accused he should testify about everything, whether favorable or unfavorable. He is here on the stand, defense may cross examine him. If he does not know names that can be determined, but I feel he should be allowed to give any knowledge he has of the happenings at the camp and the Commission can give it any value they choose.

LAW MEMBER: That question is ambiguous, "what will he have to have." Will you re-word that question and after you have re-worded that question, we will have a recess.

PROSECUTION: Can we have a recess now?

LAW MEMBER: Do you withdraw the question now?

PROSECUTION: I withdraw the question.

The Commission then took a recess until 2020, at which time the personnel of the Commission, prosecution and defense, the reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

The witness was reminded he was still under oath.

Q. Sergeant Ryan, of your own knowledge, from the time you went on sick call, how seriously ill would an American prisoner of war have to be to stay in from work?

DEFENSE: If the Commission please, the same objection we have submitted before because the statement, "how seriously ill", though it changes the question, it does not qualify the witness to answer that question because he is still not a member of the medical profession.

LAW MEMBER: Objection over-ruled.

A. On the occasion I stayed in myself or went to sick call, you had to have a temperature of a certain degree. It was given in Japanese

and was 37.8C. I don't know how high that is but you had to have that before you could step into ~~it~~ if you had diarrhoea or dysentery, you had to show a stool that showed the condition I have stated before. In so far as injuries sustained at work, you had to almost be where you could hardly move around before you could stay from. I had sent him go to work that sustained foot injuries where they were limping plumby bad before they went out to work. In early 1945 we had an epidemic of mumps. At the outbreak of this epidemic there were only four or five cases. These men were quarantined. When the number increased to between 20 to 25%. When it reached that high, the men who had the mumps and everybody else start with to work cutting wheat over their heads, that is white socks. Of these men who went to work, several men had the mumps go down into their testicles and swell up, I think.

Q. Now, Sergeant, in this mumps incident, do you know of your own knowledge who sent these men to work?
A. Kondo put out an order to Doctor Hashimoto that all the mumps cases would go out to work and they would wear these white socks over their faces when they went out to work. [illegible] what was the name of the Japanese medical person who was in authority at
Q. How do you know that, Sergeant?
A. I worked on working parties where several of these men came out that day and they told me what had happened, that they had been ordered to go out to work and wear these socks to keep from spreading the disease to the people at work and the other men in the party.

Q. Do you know whether or not Doctor Hashimoto had made any recommendation with respect to these men?
A. Doctor Hashimoto had recommended that all men who had mumps should remain in camp and be isolated into a separate room.
[illegible] Sir, we object to what is on the paper that his attitude
Q. How do you know that, Sergeant? [illegible]
A. The reason I know this is that several of us prisoners in camp who did not have the mumps protested to Hashimoto about the men going out on the working parties with us, figuring that the disease might spread about the camp, and he said he had tried to make some arrangement with Kondo to have the men segregated in a separate room and that the men who had mumps to stay in camp until the epidemic had passed the ninth stage. [illegible] was able to go to work, he said, for the duration that we were
Q. Sergeant, where is Shinbiku Hospital?
A. Shinbiku Hospital was about a mile from the Headquarters Camp in Sunkiang. [illegible] not to work also due to the [illegible] not work at all.
Q. Now, on the first occasion you had to go to the dispensary, what was the name of the Japanese medical personnel, as far as you know, who was in authority there?

DEFENSE: If the Commission please, we object to the wording of this question as to who was in authority. I think the question should be, "Who were the Japanese personnel in attendance at the dispensary?", because otherwise it is calling for pure conclusion on the part of the witness.

LAW MEMBER: Have you anything to say to that?

PROSECUTION: May I stand on the question? I asked him when he went to the dispensary for the first time, at the dispensary what personnel were in authority.

LAW [illegible]: Objection to not continued [illegible] other
[illegible] thing, or some [illegible], because those [illegible] things

A. The first time I went to the American section of the sick bay do
sick call, Scottish Yards was the person in charge there [illegible]
what other people say.

Q. Now, do you recall approximately when the last time was that you
went on sick call? [illegible].

A. It was on or about March 15, 1945.

[illegible]: Sir, if the Commission please, [illegible] the previous ques-

Q. On that occasion so far as you know what departure medical pers
found at the dispensary was in charge there? [illegible] the Investigator
[illegible], sir, for your information I am going to question him about

DEFENSE: Same objection to the words "in charge" for the same reason.

LAW [illegible]: Objection not sustained. [illegible] Kaniehi Kanda
interpreter Ambrose, an American prisoner of war. Do you know a

A. Kaniehi Kanda was the medical attendant in charge at that time.

[illegible]: Yes, I do know Kanda. He was a [illegible] to the Graduate School

Q. Now so far as you know within your own knowledge, during the period
between the first time you went to sick call and the last time you
went to sick call, you have just testified, both dysentery, that was
the time of the dysentery epidemic period, was not the authority at
this dispensary?

DEFENSE: Same objection, a question about that.

[illegible]: This Investigator [illegible] during the months of 1944 and
LAW [illegible]: Not sustained. [illegible] of the storerooms outside, [illegible]
a person back [illegible] by moving some of the cargo so was working

A. Kaniehi Kanda was the medical attendant in charge during this period.
[illegible] of that book to the camp. The first knowledge I had of what
Q. Sergeant, what was your attitude toward attending sick call?
next morning I saw the [illegible] him to the

DEFENSE: Sir, we object to this question on the ground that the atti
has not nothing to do with this case but Kaniehi Kanda, the
question is entirely immaterial. Even in the American section of
the camp to check up on responsibility in these two days. In addi

LAW [illegible]: Objection not sustained. The Commission wishes to hear
[illegible] attitude to report sick calls stand up straight. [illegible]
pit fighters and treated him down. At that time relief [illegible] were

A. My attitude toward sick calls and the attitude of a large percent
[illegible] the camp were that we could go out to sick call, we
were able to go to sick call, due to the fact that [illegible]
some dysentery at work which we did not get in camp. A man, if he
was able, would not go to sick call because of the controversy that
went on at sick calls. I have known of occasions where sick men
ask to work sick due to the controversy that went on at sick call,
a man who had stomach cramps or diarrhea, as they knew if they
went to sick call they would get some punishment, but rather than go
through all that trouble they did not go out on sick calls.

[illegible]: Also, could the witness be cautioned to confine [illegible] certain

DEFENSE: The defense objects to the entire answer by the witness bec
cause it is clearly prejudicial to the defendant and this type of
evidence is highly [illegible] and should not be permitted because
the attitude is not the question in this case, as far as our sta-
[illegible] objection to [illegible] to the attitude of Sergeant [illegible]
Ryan. We were over-ruled but now in answer to a question Sergeant
Ryan commented on the attitude of other individuals. We state
that it is impossible for any individual to tell what any one el
attitude is because no one can look into another person's mind and
A. [illegible] I was [illegible] on work that day.

Q. Yes, Senator, how do you know about this incident?

A. I heard about this incident when it was happening.

one individual is incompetent to testify to what some other person thinks or says, or feel, because these senses are things that are done by these individuals themselves, and that therefore they can certainly not testify as to what other people think and what other people see.

[illegible] Objection over-ruled.

PROSECUTION: Sir, if the Commission please, all of the previous questions I have asked the prosecution witness have been along general lines on certain specific beatings not listed in the Specifications. Now, sir, for your information I am going to question him about these Specifications.

Q. Sergeant, it is alleged in Specification 9, that Kenichi Kondo [illegible] Do you know a man named Kondo?

A. Yes, I do know Kondom. He was a Chief Mate in the Merchant Marine Service.

Q. Do you know anything about that [illegible] Do you know anything about an incident involving him and Kenichi Kondo?

A. Yes, I do in that morning.

Q. From whom did you hear this [illegible] told him to [illegible] message
A. I [illegible] some of the camp detail who was in the room at the time this incident happened. It was my duty [illegible] which is broken out in [illegible]. Somebody got excited and
Q. Do you remember this [illegible] Interpreter. [illegible]
A. The [illegible] were and interested in the beating.

Q. Did he tell you he had seen it?
A. Yes he did.
Q. [illegible], stopped him.
Q. Now, did you have any occasion to see Knudson after the beating?
A. Just after them to go into the [illegible] the visit man who stayed in the [illegible] Knudson did [illegible] by the cook in the galley by the use of butter.
Q. Did you see him immediately after the beating?
A. No I did not, because I came in about five hours after the beating took place.
Q. Q. Then.
Q. When you came in at that time, if you remember, did you notice any physical evidence of this beating?
A. Aside other than the fact that Knudson was lying down on his bunk when I came in that evening.
Q. [illegible] ? Allegro that the accused, [illegible]
Q. [illegible] Did you know a British prisoner of war named Hambright.
A. Yes.
Q. At this time, if the Commission please, [illegible]
Q. Do you know about Incident occurring Monday and Tuesday [illegible]
A. Well, I [illegible] with the words which have to do with [illegible] 10 o'clock in the morning [illegible] what the record is that was going
Q. When did this take place?
A. [illegible] on camp [illegible] the ground in my head
Q. [illegible] during [illegible] that after [illegible] we [illegible] and we believe that in the first place it is necessary [illegible]
Q. [illegible] you please relate to the Commission just what this incident [illegible] be in the records. We do not believe that it [illegible]
A. [illegible] Hambright was brought [illegible] and taken prisoner by the [illegible] British ship by an A passenger ship which had been sunk and he had been taken prisoner by the Germans and turned over to the Japanese [illegible] shortly after his arrival at camp Hambright [illegible] and was sent to Sendai Hospital where he remained for a period of about eight months. Upon his return to the camp he worked on various working details. He did very [illegible] and most of the men on the details tried to [illegible] the [illegible] John. One night before this incident occurred the duty [illegible] Japanese Interpreter of the day, whose name I do not [illegible] of this time, came into Hambright's room and [illegible] Hambright. On account of his youth, I believe, some of the Japanese personnel in the camp seem to have a little more feeling for him [illegible] than they had for the other prisoners. This particular duty officer ordered Hambright how to [illegible] Hambright said he [illegible] and [illegible] that he just got out of Sendai Hospital and was very slow in getting his health back. Upon hearing this the duty officer told Hambright he could remain in camp the following morning and would not have to go out to work. On the following morning Hambright remained in camp and did not go out to work. Around 10:00 o'clock this particular day, Sendo saw him in camp and asked him why he

[illegible] did not [illegible] prohibited [illegible] the right [illegible] result of an order. Kondo [illegible] Doherty with his fists and he hit him to such an extent that he broke out in tears. Somebody got excited and [illegible] the two on interpreter. They came out to [illegible] Doherty then had intercourse in the bathing [illegible]

LAW [illegible] He did what?

A: Intercourse, Stopped him.

Q. How do you know about this incident?

A. This incident was told me upon my return to camp by the cook in the galley by the name of Kondo.

LAW [illegible] That was that name, I did not [illegible]

A. Kondo.

Q. Did he tell you he had been in?

A. I [illegible]

Q. Did [illegible] Kondo, did [illegible] Doherty [illegible] Do you know [illegible] Doherty?

A. Yes, I knew him.

DEFENSE: At this time, if the Commission please, I would like to have to have stricken the testimony of this witness in regard to Specification 2, starting with the reply which have to do with Kondo at about 12 o'clock in the morning "and the defendant what was wrong with him and why he resigned in camp" upon the ground he was told by Kofoe. We have no evidence that Kofoe actually saw this but we believe that in the first place it is hearsay and in the second place it might be [illegible] hearsay. We do not believe it should be in the [illegible]. We do not believe that it has probative value required by this court. The more reiteration over and over again does not make it [illegible]

A. [illegible]

PROSECUTION: [illegible] of the evidence offered by this witness the Defense is entirely [illegible] prosecution will [illegible] that they should receive all the evidence [illegible] can offer as that they can determine the [illegible] in these proceedings. The Commission realizes, of course, that the rules of [illegible] are relaxed as direct evidence and, therefore, [illegible] but the prosecution feels that any evidence [illegible] should be accepted by this Commission.

LAW [illegible] Commission feels that it [illegible] evidence but it will evaluate it for [illegible] is overruled. [illegible] remarked solely on the grounds of hearsay [illegible] The motion to strike is not [illegible]

Q. Do you know of any incident involving Kenichi Kondo and John Doherty Jr.?

A. No, I do not know of this incident.

Q. Specification 6 alleges Kenichi Kondo, the accused, did mistreat Private Russell Robbins, an American prisoner of war. Did you know an American prisoner of war by the name of Robbins?

A. No, I do not know the incident.

Q. Specification 5 alleges Kenichi Kondo, the accused, did mistreat Sergeant Vanlew, Private Ordayne, Private Vance and Private Smith, American prisoners of war. Did you know these American prisoners of war?

A. Are you referring to the "Palm Incident?"

LAW MEMBER: Have him answer your question.

PROSECUTION: I think the way it stands I have answered the question.

Q. Do you know of an incident involving these men, the incident being known as the "Palm Incident?"

A. Yes, I do.

Q. When did this palm ritual?

A. This incident happened during July 19th. At that time Kondo had put out an order that all men would keep their stomachs covered at night. It was during one particular night or before the night this incident happened, Kondo would come around between 12 and 1 o'clock at night and check to see whether the men were keeping their stomachs covered. He would turn on the lights and flash lights in their faces and disturb the men. At that time it was very hard to sleep because of the bed bugs, fleas, lice, and other things like that.

PROSECUTION: I commend that that be stricken.

DEFENSE: Just because Kondo in his capacity could not be charged with it.

PROSECUTION: Just relate the incident.

A. The night of this incident Kondo came into the Army group in that room in the American camp which consisted of Army and Marine personnel. It was about 1 o'clock at night. He turned on the lights and would shout to see if the men were covered and was making a loud amount of noise. As he was leaving the room, several of the men yelled "Baka", which means in Japanese "Idiot". Kondo went back in the room to see where that noise came from. He had several men come out of their beds and stand at attention. From where I was in the Army section, we could hear the noise. After it had died down, I went over to the interim where the Navy was and several men came out. I asked what had happened, this fellow named Matsunio told me what I previously said about men not holding their and Kondo getting those men out of their beds. He told me that Kondo had beaten them for two or three minutes and then Kondoro had come and the beating had stopped. The only men I remember through this incident were Sergeant Hunsh and Chief Vance. The other names I do not remember. I know several names were mentioned but I cannot remember them at this time.

PROSECUTION: If the Commission please, it is now ten after eleven, I realize the Commission goes at 11:30, however the prosecution would like to have some discussion with the defense which may shorten the examination on Specifications 1, 2, and 3. For that reason the prosecution, at this time, would like to ask for a continuance.

PRESIDENT: In order to converse with the defense?

PROSECUTION: Yes, on Specifications 1, 2, and 3.

DEFENSE: Defense has no objection.

PRESIDENT: At the request of the prosecution and no objection by the defense, the court will recess for the reason stated until 1330 this afternoon.

The Commission then recessed until 1330, at which time all the personnel of the Commission, prosecution and defense, the reporter and the interpreters resumed their seats.

PRESIDENT: The Commission is in session. The witness will remind him that he is still under oath.

Q. Sergeant Ryan, Specification 4 alleges that Kenichi Kondo, the accused, did maltreat Robert M. Barber, a British prisoner of war. Did you know a British prisoner of war named Barber?

A. Yes, I knew Barber.

Q. Do you know of any incident involving him and Kenichi Kondo?

A. Yes, I did.

Q. When did this take place?

A. This incident took place in the latter part of 1943.

Q. Will you relate to the Commission just what this incident was.

A. Captain Barber was a merchant marine captain on a British merchant vessel, he had been taken prisoner by the Japanese and later turned over to the Japanese. He was sent to the Headquarters Camp at Omuta all the time I knew Barber at the Omuta Camp previous to the incident, he had been suffering from stomach ulcers which he told me was the reason he was going to sick call almost every day during the time I was there. He was receiving some Japanese powders for this aforesaid condition. Barber's condition got steadily worse. I noticed him on the job trying to eat the rice we got for noon, usually an hour after he had eaten he would vomit the rice up. As I stated before, Barber went to sick call almost every day. On several occasions when I had been at sick call myself I had seen Snyder of the Doctor Kaiman had recommended to Kondo that he remain in camp and not sent out to work as he was unable to hold food down that he was eating and he should be allowed to stay in camp for a while. The day the incident happened I wasn't at sick call this particular day. Barber was sent out to work that day and he told me during the noon day meal that during that morning while he was at sick call he tried to get these powders. I don't know whether he had an argument or not but Kondo struck him across the face and sent him out to work. A short time following

this incident Barber was transferred from the camp to the Ichiota Hospital. That was the last I saw of Barber.

PROSECUTION: At this time, if the Commission please, before I interrogate Sergeant Ryan as to Specifications 1, 2, and 3, prosecution wishes to make an amendment to the Specifications and following its offer of the amendment, make an explanation to the Commission for the record.

As to Specification 1, prosecution at this time asks permission of the Commission to amend by eliminating the words "and contributed to the death of" of Specification 1. It will read as amended, "That on or about February 1945, at Headquarters Prisoner of War Camp, the accused Kenichi Kudo as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreated Petty Officer Third Class David W. Smith, an American prisoner of war, by beating him and by forcing him to work when he was physically unable to do so, and by denying him necessary medical treatment."

Prosecution also asks permission of the Commission to amend Specification 2 by deleting the words "and contributed to the death of" so that Specification 2 as amended will read, "That on or about May 1944, at Headquarters Prisoner of War Camp, the accused, Kenichi Kudo, as medical orderly of sick prisoners of war, did, willfully and unlawfully, mistreated Petty Officer First-Class Robert W. Hoke, an American prisoner of war, by forcing him to work when he was unable to do so, and by denying him necessary medical treatment."

Prosecution also asks leave to amend Specification 3 by deleting the words "and contributed to the death of" so that Specification 3 as amended will read, "That on or about January 1945, at Headquarters Prisoner of War Camp, the accused, Kenichi Kudo, as medical orderly in charge of sick prisoners of war, did, willfully and unlawfully, mistreated S. Sgt. Serafin, an Italian, by forcing him to work when he was physically unable to do so, and by denying him necessary medical treatment."

Prosecution wishes to state to the Commission its reasons for seeking to amend at this time. The prosecution in this case, as in all cases, is sent down to present the facts to the Commission for their determination; in which we are like the District Attorney in civilian life or Trial Judge Advocate in military courts, in the hope to present the facts impartially and protect the rights of the accused. The prosecution does not state whether or not it feels that the defendant is guilty or innocent of the first three specifications before they were amended. However, we do feel that the evidence presented by the prosecution and any additional evidence we will have to offer will not be sufficient for the Commission to bring in a verdict of guilty on this specification and, therefore, the prosecution does not feel that the burden should be placed on the Commission if the members do not feel that the evidence is sufficient on these "death specifications." However we would like to have it also understood that we do not feel any less strongly about any of the specifications for the first three specifications as amended. We subtly feel that the evidence as brought before this Commission up to this time and to be presented further would not warrant such facts so that you would find this man guilty of contributing to his death and, therefore, in

fairness to the accused, by an agreement with the defense counsel, we have consented to amend the specifications by eliminating only those six words.

PRESIDENT: The Commission will recess for two minutes without leaving the room. I want to ask both prosecution and defense for advice.

A conference was held by the Commission with the prosecution and the defense counsel.

PRESIDENT: The Commission is in session.

LAW MEMBER: The Commission accepts the amendments to Specifications 1, 2, and 3 as requested by the prosecution and the words "and by confinement to death of" in each of the respective specifications will be eliminated.

The witness was still under oath.

Q. Sergeant, Specification 1 alleges Kenichi Kondo mistreated Petty Officer First Class David W. Smith, an American prisoner of war. Did you know an American prisoner of war by the name of Smith?
A. Yes, I do.

Q. Did you ever see Smith on sick call?
A. Yes, I have.

Q. Do you know what he was being treated for?
A. During the time I was in camp, Smith had been treated at one time or another for dysentery, malaria recurrent attacks and a general weakened condition.

Q. Did you ever overhear any conversation between Smith, Kondo and Doctor Hoshuan?
A. On one occasion I remember very well, about January 1, 1944, it was on a Monday morning and I was going on sick call. Smith was behind me in line and while we were waiting to be processed through the sick call, Smith told me that the day before, Sunday, after he had eaten his supper that evening he felt feverish and went to bed. During the night he said he suffered cramps and that morning he threw up his supper right after he ate. I went in the sick call and while being processed in the normal manner of giving name and receiving medication, I heard Smith tell Doctor Hoshuan what happened to him the night before, and Hoshuan took his temperature. I don't know exactly what it was but he recommended to Kondo that Smith stay in. I went out to the work line and about five minutes later he came out and told me he had been refused permission to stay in. I went to work that day which happened to be the Takashima party. After we started to work this morning, which we usually started about 8 o'clock, about 9:30 Smith started vomiting again. The Japanese "hancho" on the work party noticed him and told him to go to the shack where we are to lie down and told him to remain there until we went back that night. Smith did this and we went back about 5 o'clock that evening. He went to bed and Doctor Hoshuan took his temperature. While he was in bed there it was 103, I remember at that time.

Q. Did Smith tell you who had ordered him out to work?

A. He told me out in the work line-up that morning that Kondo had ordered him out to work.

Q. Now, immediately prior to this, do you know whether or not Smith had been going to sick call?
A. Smith had been going pretty regularly all during the time I was in the prison camp there.

Q. Did you ever had conversation with Smith other than the one you have just mentioned about his attendance at sick call?

DEF. COUNSEL: At this time, Mr. President, though the Commission has ruled that they would permit hearsay in, we would like to object for the defendant to all hearsay evidence that may be brought out by this witness. We make this an oral objection at this time.

LAW MEMBER: Objection not sustained.

A. On another occasion, I don't remember the exact date, when Smith had diarrhea recurrent attacks he had tried to stay in at sick call but had been given these Japanese powders and sent out on a job.

Q. Did he, on these occasions, stated who had sent him out to work?
A. I just remember the one occasion where he had this diarrhea bothering him that he told me that Kondo had sent him out.

Q. Did he stated on that occasion, that you have just mentioned, whether or not Doctor Hochman had made any recommendations to Kondo about him?
A. All I know is this; that this day I noticed Smith going to the latrine five or six times at noon time on the job. I asked him why he didn't try to stay in that day. He said that Kondo wouldn't allow him to stay in that day but he didn't give me the details of what had happened at sick call. That is as far as I know.

Q. Now, Specification 2 alleges that the accused, Koniehi Kondo, did mistreated Petty Officer First-Class Robert H. Hess, an American prisoner of war. Did you know an American prisoner of war by the name of Hess?
A. Yes, I do.

Q. Did you ever see Hess on sick call?
A. Yes I have.

Q. Do you know what he was being treated for?
A. During the early time I was in camp, he was being treated for what is known as scabies, which is a skin disease attributed to malnutrition. The last time I saw him treated he was being treated for a beriberi condition.

Q. Did you ever had any conversations with Hess about his attendance at sick call?
A. No, I did not.

Q. Did you see Hess at sick call receiving treatment from Kondo and Doctor Hochman?
A. Yes, I have.

Q. On these occasions when you saw him, of your own knowledge, was he permitted to stay in camp?

DEFENSE: In such cases, sir, where he testifies to an incident at which the witness himself was present, the proper way to put the question, as a better procedure is to have him ask, just ask him what happened rather than to lead him.

PROSECUTION: All right, sir, I shall rephrase the question.

Q. On these occasions you have stated that you saw Ross at sick call, what happened there?

A. I saw him go for a three week period to sick call every day at the time he had a malaria recurrent attack. He was getting quinine during the first part of this three week period. He came just went up for Mentheri powders which he received. At a later date he complained of having difficulty in breathing around his chest and his body was getting a swollen appearance to it. On this one particular day Doctor Hoshuma informed Kondo that he was getting in a bad stage of beriberi and that he should not be sent out for awhile.

Q. What did Kondo say in response to that statement by Doctor Hoshuma?

A. He said that Ross was a good nice man, that is, Ross was big and strong enough to be able to go out to work. He sent him out to work that day. That is how I remember this one particular incident.

Q. Now, Specification 3 alleges that the accused, Kunichi Kondo, did mistreat G. B. Serafin, an Italian prisoner of war. Did you know an Italian named Serafin?

A. Yes, I did.

DEFENSE: At this time the defense desires to reiterate its objection to any testimony in this particular specification because this court is without jurisdiction to consider this matter. It is no use for me to rehash but it is on the basis of jurisdiction.

LAW MEMBER: These charges and specifications have been referred to this court by order of the Commanding General of the Army of Japan and the court and Commission consider that its jurisdiction and the motion is denied.

PROSECUTION: Just for the record, that was an objection.

LAW MEMBER: The objection is denied.

Q. Sergeant, will you tell us as far as you remember what the physical make up of Serafin was?

A. Serafin was a man between 58 and 60 years old. He had been a head steward in the English merchant service for a good many years and his home was in England.

Q. What was Serafin's status at the main camp?

A. Worker.

Q. Was he treated any different from any of the Americans who were stationed there?

A. No he was not.

Q. Now, did you ever see Serafin at sick call at all?
A. Yes, I have.

Q. For how long a period of time was that?
A. For the first year and half he was in camp he had rather light duties, he was working in the camp and I didn't see him at sick call then because he was a member of the camp staff and could have gotten medication without going on the regular sick call. The last year and a half he went out to work with us and he was on the same detail, which was the Takachima Detail. It was on or about January or February 1945, we were working out on this Takachima Detail, and Serafin, I believe, got some sort of chest cold. For a period of about three weeks he went on sick call and they let him stay in for a few days. Then they sent him out again. I was on sick call this particular morning and Serafin was getting some kind of cold medicine at the same time. Doctor Hochman had recommended to Kondo that, on account of his age, it would be jeopardizing his life to send him out to work at that time. Kondo sent him out to work. That is the only occasion I was on sick call at the same time Serafin was.

Q. Did you ever have any conversation with Serafin about his attendance at sick call?
A. The only conversation I had with Serafin was the fact that he said he was too old to be out working with us fellows out there, and he had tried to stay in camp instead of going out as a regular laborer and had been unsuccessful.

Q. Did he state why he had not been successful in staying in?
A. The only thing he said was that Doctor Hochman had recommended one day that he should be allowed to stay in and Kondo had overruled Doctor Hochman's statement.

Q. Do you know of any other beatings or strikings of American prisoners of war by the accused, Kenichi Kondo, other than what you have testified?
A. That is all I can testify to. There were other beatings in the camp but I do not know of the incident or just who they were brought to by camp conversation.

PROSECUTION: Prosecution is finished with the direct examination.

DEFENSE: In this last statement that the witness, Sergeant Ryan spoke of, was he referring to beatings by Kondo or by whom, and were they the same ones he testified to this morning to which we objected because there were no dates, names and places?

PROSECUTION: Let us find out.

Q. Sergeant, these beatings that you now allege you do not remember the names or dates but overheard them, did they involve the accused, Kenichi Kondo?
A. Yes, they did.

Q. Now, these beatings I am now talking about, are they the same beatings that you have spoken about on the stand or are they different beatings?

A. What I am implying is this: I have come back to camp on occasions or been out on the line in the morning and have heard remarks such as this, "Kondo was on the stampage this morning and he was doing a lot of stuffing." I do not know the specific names or the incidents they spoke about.

PROSECUTION: Nothing further, sir.

PRESIDENT: The Commission will take a ten minute recess.

The Commission then took a recess until 1130, at which time all personnel of the Commission, the prosecution and defense, the reporter and interpreters resumed their seats.

The witness was reminded he was still under oath.

CROSS EXAMINATION

Questions by the defense:

Q. Sergeant Ryan, is it correct that you arrived at this Ocean View Camp on 11 November 1942?
A. That's right.

Q. And from the time you arrived at the camp on 11 November 1942 until you left the camp sometime in May 1945, you were on sick call between 70 and 80 times. Is that correct?
A. That is correct.

Q. Now, approximately how many times did you go on sick call from November 11, 1942 until the end of the year 1942?
A. After I arrived in the camp on November 11, 1942, I was there about five days and I was transferred to the Ichiota Hospital where I remained until January 9, 1943, when I returned to the No. 1 Camp in Omuta.

Q. What was the first day you went on sick call after you returned from Ichiota Hospital?
A. At that time in the American camp, it was between the period of January 9, and March 25, 1943, there was a three-star Japanese medical private who was at the sick call there and I went in about two occasions for beriberi ???.

Q. Do you know what his name was; do you know who this orderly was?
A. I do not remember his name.

Q. And from August 1943 until the end of 1943, approximately how many times did you go on sick call?
A. I'd say between 20 and 25 times.

Q. Am I to understand that the first contact you had with Kenichi Kondo's dispensary was in August of 1943?
A. I believe in June 1943 I had gone down to the sick bay and received beriberi injections from Doctor Hashman, that is the first time I had seen him in the American section of the camp but previous to that I had seen him in the isolated section of the British camp where the 50 or 60 workers were hospitalized.

Q. Between March 25 and August of 1943, how many times did you go on sick call?
A. Between the periods of March 25, 1943 until May 25, 1943 I didn't have occasion to go on sick call because I was in this isolated section over in the British section of the camp. Then in June 1943, when I was back in the American section, I went in for a few days getting these beriberi injections, and the next occasion I had after that was around August 1943.

Q. And in the first six months of 1944, how many times did you go on sick call?
A. I say about 20 times.

Q. And the last six months of 1944?
A. About the same amount of time, 20.

Q. And about how many times did you go on sick call from the first of January, 1945 until you left the camp in May?
A. About 15 times.

Q. At the time you left the camp in May 1945, was there any improvement in your health from the time you arrived there on 11 November 1942?
A. My general condition was a little better but I was still getting these malaria recurrent attacks.

Q. Now on this occasion of your beating you described that you received in April of 1943, you testified that you were struck by the accused, Kenichi Kondo, is that correct?
A. That is correct.

Q. And on that occasion I believe you testified that it was because you have refused to go out to work, is that correct?
A. That is right.

Q. On that occasion also, were there any other men who had refused to go out to work?
A. On this particular occasion, no there wasn't this one day.

Q. To whom, if any one, did you registered complaint as to the treatment you received at the hands of Kondo?
A. I informed Doctor Hochuen about the incident the next morning when he came into the camp.

Q. Did you report this incident to any one else?
A. No, I didn't.

Q. Now, I believe, you have described a second incident that took place in August. Now on the second occasion which you have described that took place in August, 1943, you said that you were slapped by Kenichi Kondo, is that correct?
A. That is correct.

Q. And on that occasion your complaint was a diarrhea ailment, is that correct?
A. There was a recurrence of "amoeba" dysentery.

Q. And upon that occasion you requested powders of Kondo and received them, is that correct?
A. Doctor Hochman had requested the powders for me and had recommended that I stay in camp on this particular day, which Kondo had refused.

Q. But you did receive the powders, isn't that correct?
A. That is correct.

Q. And the reason you have given for being slapped by Kondo was that you had failed to go out to work that day, is that correct?
A. That is correct. The reason I failed to go out that day was that there was blood and mucus appearing in my stool and on the next morning following this occasion, Doctor Hochman presented a stool to Mr. Kondo and I remained in camp for a period of four day following this.

Q. On the day you were struck by Kondo, did you present a stool at all?
A. I hadn't presented a stool on that day.

Q. Were there any other occasions, Sergeant Ryan, in which you stayed in from work without permission after going on sick call?
A. No, there wasn't any other occasion.

Q. Now I direct your attention, Sergeant Ryan, to the incident you described involving George Yeager that took place sometime in April or May, between March and May of 1943, and in describing that incident, Sergeant, you stated that George Yeager was not over in the sick bay, I believe. Would you state to the Commission where he had been prior to that time, where he had been standing?
A. What I meant by the bay was, in the sick bay you had a raised platform like this (indicating the raised platform on which is placed the witness' chair) on which you slept on and about six feet away there was another bay about that high. Yeager was standing on the surface of the bay and when Kondo hit him he knocked him into the bay section.

PRESIDENT: Into the what section?

A. Into the bay where he slept.

Q. Then he was pushed or knocked over a raised platform, is that right?
A. He was knocked over.

Q. Now, approximately how many times was Yeager kicked?
A. I'd say he was kicked between, or roughly speaking about 20 times. Kondo would kick him three or four times, then yell at him, then proceed to kick him again. The whole beating took place over about five or ten minutes.

Q. Now about the Favorite incident that you described, Sergeant Ryan, in this instance this was a case where this man was slapped, is that correct?
A. That is correct.

Q. Now when Favorite was taken down to the guardhouse and stood at attention, was a Corporal of the Guards there at that time?
A. I do not know. The only thing I knew is that when Favorite came back into the room, the Corporal of the Guards had seen him standing there and had told him to go back into his bay, the room where he was staying at.

Q. But he could have been taken down to the Commander of the Guard by Kondo the original time when he was made to stand at attention, isn't that correct?

A. I don't know because the Corporal of the Guard wasn't always in the guard shack out there but would only come in there periodically.

Q. Now, when Kondo was working at the dispensary starting in June 1943, how many American prisoners of war were at the camp?

A. Did you mean by that question American the people classified as being members of the American section of the camp?

Q. Classified as being members of the American section of the camp.

A. I'd say about 250.

Q. Do you know whether or not there were any other prisoners of war that Kondo took care of during this period?

A. Up until the two camps merged into one, on the 8th of the 8th Battalion is, I think the best shape of the American section. Then when the two camps merged into one they had two separate sick calls at that time, at the same time, one sick call was pumped in, that would be the Americans, then the British would follow the Americans into the sick call.

Q. And what is your best recollection Sergeant, as to the date this merger took place?

A. I'd say about the first of 1944.

Q. Would you give me a month, January, February or March of 1944?

A. I'd say January of 1944.

Q. And on these occasions when they had two separate sick calls, one for what had been formerly just the American section formerly the British section, did Doctor Hachuda and Kondo attend both these sick calls?

A. No they attended both the sick calls.

Q. And what then was the combined total of prisoners of war both Americans and British that were being serviced in these sick calls by Doctor Hachuda and Kondo?

A. The total strength of both camps, those members of the camps, should be about 550.

Q. Now Sergeant, all the time you were at this Omuta Camp, how many times were you admitted to the camp hospital?

A. The only period I was admitted to the hospital was between March 25th and May 15, 1943, as far as being hospitalized as a hospital patient.

Q. And for what were you hospitalized on these occasions, Sergeant?

A. On this occasion I had just been released two months before my entry there from the Ichiura Hospital and I still had the effects of this malaria and dysentery and I had a beriberi condition which was setting into my feet.

Q. And how many times, Sergeant, were you permitted to rest in camp? How many days were you permitted to rest in camp?

PROSECUTION: If the Commission please, I request the defense counsel—

Q. [illegible]

DEFENSE: He'll withdraw the question.

Q. You have testified, Sergeant, that during the time you were at the camp you suffered from various ailments. You listed them as, the first one as dysentery. Now, how long were you confined in the hospital for any period while you suffered from dysentery?

A. At the time I had this dysentery it was classified as a recurrent attack of "acute" dysentery and this came about, this work incident and at that time I had—before I was allowed to stay in camp I was going out on the job for ten days and I was having movements between 20 and 25 times while on the job. Doctor Hoffman chatted up-stairs to Doctor Kondo and said if I continued going out on the job I would waste away to nothing and they would carry me back. At that time Mr. Sanders had some of the men go out and buy some sulfapyridine tablets. At this time I stayed in camp for about five days until my bowels stopped moving. This time such period. I was disciplined as a "sick-patient" part of the time with two exceptions.

Q. Who recommended this treatment of sulfapyridine for you, Sergeant?

A. Sulfaguanidine, a medical student here.

DEFENSE: I understood him to say sulfapyridine, that is why I put the question in terms of [illegible] period in October 1942.

PROSECUTION: That is all right but speak louder, when you suffered from the flu?

Q. What sulfa drug were you treated with at this time?

A. I believe it was sulfaguanidine.

Q. Now, Sergeant, when both sections of the camp, the American and

Q. And who recommended this treatment of sulfaguanidine? Known as

A. Doctor Hoffman recommended it. At that particular time they weren't able to get any through the Japanese Army and there were no Red Cross supplies available and they were buying it out on the job from the Japanese. [illegible] with a big building in the American side camp and the British owned it to it. [illegible]

Q. Did Doctor Hoffman tell you that you were suffering from amebic dysentery?

A. I knew I had been suffering from that because there was a report sent up from the Bahidin Hospital when I left there. I was just temporarily excused, account this sick call other than land, and particularly [illegible] that put marked him.

Q. Now, Sergeant, did any one say to you that you were suffering from amebic dysentery? In so far as saying any specific and numerous

A. They told me I had amebic dysentery on account of the stools that were taken from me at the Bahidin Station and this report had still followed me back from the camp.

Q. Is that "amebic" or "amebic"? [illegible]

A. I don't know the correct name for it.

Q. Is this the only occasion in which you were confined in camp with [illegible] amebic dysentery or diarrhea?

A. I have been staying in about two other occasions just for a day when [illegible] only reason [illegible]

Q. About when did this take place, Sergeant?

A. I don't remember the exact dates.

Q. How many times were you permitted to stay in camp with malaria?
A. About three or four times.

Q. Do you recall the dates?
A. No I don't.

Q. About how long were you permitted to stay in on these occasions?
A. It was about a day at a time, on these occasions I have had fever of about 104. I might have attacks during the night. Another time I went to sick call and there wouldn't be any fever showing, I would be given some quinine tablets and sent out on the job. After I had been out on the job for a couple of hours I would get another attack of the fever.

Q. How many times were you confined to camp with beriberi?
A. It was during this period between March 25, 1943 and May 25th when I was in most of the time during this three month period. I was classified as a "non-patient" most of the time with the exception of some of the time when Kohbo-shoo and tried to send me out to work when he was a medical student there.

Q. How many times were you confined in camp with pellagra?
A. I was in for about a 30-day period in December 1943.

Q. And how many times were you confined to camp when you suffered from the flu?
A. About three times for periods of about three days.

Q. Now, Sergeant, when both sections of the camp, the American and British, merged was that the first time the camp became known as Cabbie Camp?
A. No, as far as my knowledge, it was always known as Headquarters Camp No. 3, and was used on one side of the street and the others on the other side of it, and then they built a big building in the American side camp and the British moved into it. We had our mess hall and administration on the same side and through the same channels.

Q. Can you recall any occasion at sick call in the morning, the regular sick call from 0630 to 0700, in which anybody, any other Japanese personnel, attended this sick call other than Kondo, and particularly those people that can remind him?
A. As I said before there was three Japanese medical privates in the student status. But in so far as seeing any superiors and supervisors at sick call, I have seen them just walk into the office, just look around, but as far as staying in there for supervision at sick call, I have never seen them doing that.

Q. Do you know a Japanese medical orderly by the name of Corporal Hirahara?
A. I have seen various Japanese corporals and sergeants in and out of the camp there but as far as knowing them by name, I didn't know them well enough to call them by names.

Q. Now you say then that Kondo is the only person you can remember by name of the Japanese personnel that attended sick call, is that correct?
A. That's correct.

Q. And all the time that you were at this Osaka Camp, the Allied personnel that were at attendance at these sick calls were Doctor Hachman, Chief Pharmacist Mate Merritt and Ginger Hodson, is that correct?

A. There was another doctor by the name of Doctor Burroughes who was there a short period and only helped with dressings and opening bells and incidentals like that. He didn't have anything to do with sick call functions as far as giving any diagnoses or anything.

Q. Hachman, Merritt and Ginger Hodson were the ones who were there all of the time, is that correct?

A. That is correct.

Q. And it was Hachman who made recommendations to Kondo?

A. That is correct.

Q. And in their capacity as medical officers, don't you believe that they were the people who knew best of the health and welfare of the prisoners of war during that until you list?

A. Yes, they should have a good knowledge due to the fact that they were at sick call all during the day.

Q. When the Japanese medical officers came around and examined the personnel in the sick bay, was Kondo present at that time?

A. These doctors would come around and sometimes they would hold their examination in the sick bay, and at other times they would just point out a certain area in the camp area and would have all the men who remained in camp that day come for examination. On some occasions Kondo was there, and on other occasions just Hachman and the Japanese doctors were there.

Q. On any of these occasions did the Japanese doctors indicate any dissatisfaction with the number of men who were ill?

A. I have never seen this happen. From what I have seen, they and Dr. Hachman would just discuss the case and on some occasions the Japanese doctors would recommend that certain men should stay in for a week or so at a time and not even attend sick call.

Q. On any of these occasions when the Japanese medical doctors came around and examined the prisoners of war, did they recommend that certain people be sent out to work?

A. I have seen occasions when they would examine the man and say that he would go to work in three or four days.

Q. And on these occasions when the doctor recommended that certain people would go to work in three or four days, whose duty was it to see that this man was sent in three or four days?

A. Dr. Hachman would inform the man that they were supposed to go to work and the time limit was, and if they weren't well and able by then they were to report back to the sick call. There might be some occasions where the man sustained injuries on the job and the man would come and see the part of the body that was injured, and they would be lying in the bay and the doctor would recommend they go to work in four or five days, and by that time if the man was able to go to work in that time then Dr. Hachman would inform the man to come to the sick bay and go through the formality.

Q. Did you ever hear of Dr. Nosu's policy of sending prisoners of war to work?
A. No, I haven't.

Q. You read the record of trial in this case?
A. You mean talked it over with the prosecutor?

Q. Have you read the record of trial in this case as it has been compiled to date?
A. I have read certain parts of it.

Q. And what parts of that did you read?
A. I read part of Hardy's testimony.

Q. Can you state about what incidents or facts that contained?

PROSECUTION: Sir, I object to the question. I don't see that it makes any difference what incidents or facts he read. If Counsel chooses to interrogate him about a certain incident based on what he read in the record, that is fine; but I don't see any point in questioning him prior to that about what he read in the record.

DEFENSE: If the Commission please, we have a rule set up called "Separation of Witnesses" whereby no witness is allowed in the Court room to hear the testimony of any other witness before he is called. We are quite interested to find that has been violated by the prosecution in this case.

PROSECUTION: Prosecution will state for the record that we have discussed with the witness everything that Chief Counsel has said. There is certainly no objection to that. If that is what the defense counsel is seeking to find out, we state it for the record.

LAW MEMBER: Before rendering a decision I'll ask the defense a question: Who set that up?

DEFENSE: That has been set up between the prosecution and defense when these cases were first started.

LAW MEMBER: In agreement?

DEFENSE: It was not only in agreement, it was the order of the president.

LAW MEMBER: At that time. In any event, the objection by the prosecution is not sustained.

Q. Of what incidents, Sergeant, that you have testified to in this case, have you read in the record?
A. I read of the Knudson incident.

PRESIDENT: The what?
A. Knudson.

Q. Did you read of any other incident?
A. Yes, the Doherty incident.

PRESIDENT: Which one?

DEFENSE: Doherty, sir.

Q. Any other incidents?

A. There was a couple of incidents there which I did not have any knowledge about and which I didn't testify to. I tried to refresh my mind on them, but if I didn't have any knowledge of the incident I didn't testify on it.

Q. Did you remember, Sergeant, any of the general testimony in the record that coincided with anything you may have testified to prior to your developing the specifications on your own testimony?

PROSECUTION: I object to the question on the grounds it is too general. If Counsel wishes specifically to ask him something, I would have no objection, but a question like that embraces everything to which he had testified.

DEFENSE: All it involves is the general conditions he has testified to.

PRESIDENT: Why not ask if he read in the record about these general conditions. That is all.

LAW MEMBER: Objection is not sustained.

Q. Did you read anything else in the record in Chief Sander's testimony on any other point other than the two incidents you have stated here, namely the Doherty and the Sanborn incidents?

A. I read some of the other incidents, but the only thing I was looking for was these other two specifications which I had no knowledge of, and still have no knowledge of. In so far as scanning the other testimony, I did while I was up in the office, in looking for any other information which I might have on these other two enemy bombs. I did not find any.

Q. Then is it correct to state that you skimmed through the record of Chief Sander's testimony in a general manner and read the two incidents, Doherty and Sanborn?

A. Those were the two I was looking for. As far as going through the thing in detail, I did not at the time.

PROSECUTION: May I just remind Counsel, in case there is some confusion, that the witness has not testified about the Doherty incident at all.

DEFENSE: I am just making the question more specific to harmonize with the objection you had before.

Q. Did you read any of the affidavits in this case?

A. Yes, I have.

Q. Do you know which one they were?

PROSECUTION: Prosecution will state for the record that the witness has read all the affidavits presented on behalf of the prosecution.

Q: [redacted] Sergeant Hyde, in some of those conversations that you had with various prisoners of war about some of the incidents that took place [redacted] do they, don't you believe that many of those very conversations [redacted] Action. [redacted] I find that you said were all conversations

PROSECUTION: I object to the question, sir, on the ground that it is too general and that Counsel specifically referred to a particular [redacted] conversations were suggested, he will confine himself to those particular conversations, and that objection is sustained.

DEFENSE: Sir, don't it [redacted] to inquire into some of them in a reasonably brief, detailed manner, that's entirely very there, particularly [redacted] I have more than two hours' [redacted] time, I don't like to have my [redacted] after the decision is made.

LAW MEMBER: I don't see who complained a great deal of the time when they [redacted] to get in for the record this one offer of proof, [redacted] Then you did go out and work [redacted] with you did not [redacted]

LAW MEMBER: Isn't that before a decision is rendered? I thought you [redacted] all, sir.

DEFENSE: No, sir, [redacted] conversations and specifications were referred to the Commission by the Commanding General of the American [redacted] sir, we have been overruled in it and we would like for the [redacted] in Japan".

LAW MEMBER: [redacted] to any particular conversation.

[illegible] December, 25th of December, 1946.

DEFENSE: We don't know, sir, what they are. We are asking the Sergeant.

[illegible] 1946, adjourned to [redacted]

LAW MEMBER: [redacted]

DEFENSE: The first question, sir, has to be a general question. Then if the witness answered there were any such conversations, then they will be specified.

PROSECUTION: I have no objection to the question except that the Counsel has put in the words "if these conversations were suggested".

LAW MEMBER: Read the question.

[redacted]
Chief Prosecutor

The question was read back.

LAW MEMBER: It was "any" not "all".

DEFENSE: No, sir, I thought I said—

PROSECUTION: I still object on the ground that the witness is not apprised as to what conversations he means, what incidents are referred to, and also the word "suggested". The witness doesn't know what conversations are meant.

DEFENSE: I'm asking him if there were—

LAW MEMBER: The law member understood the question to any were all of these conversations suggested, and upon that basis rendered the decision. Upon re-reading I find that you said were any conversations suggested, and upon that basis the objection is not sustained.

A. No, I wouldn't say that any of them were suggested. Just in my own experience of what I have seen such as the night before and the incident that happened on guard and not being allowed to stay in camp, and so I said this three incident appeared as that any other incidents said by anybody could be taken to be the truth.

Q. Out of your group of about 500 men didn't you have any men in that group who complained continuously during their entire stay there, particularly I mean more than the normal person does, from your experience, while you were there, Sergeant?

A. There was some men who complained a great deal of the time when they were in camp, but they were not who were really sick. In so far as complaining about not being able to stay in camp, there wasn't any inducement for men to stay in camp. When you did go out and work you received a meal which you did not receive in camp.

DEFENSE: That is all, sir.

LAW MEMBER: At this point the Law member wishes to instruct certain words in the decision made during the objection of the defense with reference to Exhibit. I stated that although the specifications were referred to the Commission by the Commanding General of the American Forces in Japan. It should read "referred to the Commission by the Supreme Commander for the Allied Powers in Japan".

PRESIDENT: At this time the Commission will adjourn to reassemble at 0900 tomorrow, 25th of October, 1946.

The Commission then, at 1615 hours on 24 October, 1946, adjourned to meet at 0900 hours on 25 October, 1946.

[illegible] did the members of your group work on sick call because when you had sick call with the days you went to work?

PRESIDENT: The Commission has [illegible] this question in both cases. Perhaps the witness [illegible]

A. [illegible] stated the question.

RICHARD E. RAID
Chief Prosecutor

Q. [illegible] days that he had off, [illegible] sick call because with sick call because with the number of men on sick call on the days he went to work?

A. On the days that we had off, even on legal holidays, they usually held a sick call in the morning which we about five o'clock. At that time they would issue the necessary drugs and [illegible] of medicine such as quinine would be given.

Yokohama Courthouse
Yokohama, Japan
25 October, 1945

the Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, the accused, interpreters and reporter who were present at the close of the previous session in this case, being present.

the witness, Sergeant Ryan, who also present and who remained he was still under his former oath.

Questions by the defense (cont.):

Q. Sergeant, did you ever see Kanda eating food at any time while he was in the camp?

A. I just seen him wearing the bayonet scabbard which all Japanese soldiers used, only in 1943, we were issued new bayonets for [illegible]

QUESTION: Who had the scabbard?

A. With the bayonet in it.

Q. Did he wear this all the time or just when he was going home or to work?

A. I believe he wore it just going to and from camp. I am not sure.

Q. Did you ever see Kanda carrying a "shinai" or a bamboo stick?

A. No, I never [illegible]

Q. Sergeant, did you ever work at all on Sundays?

A. Yes, I did.

Q. About how many days off a month did you have?

A. Three to two days off a month. Sometimes more if there was a lot of [illegible]

Q. How did the number of men who went on sick call compare with the days you had off with the days you went to work?

OBJECTION: If the Commission please, I don't think that that question is quite clear. Perhaps the witness may have trouble understanding it.

LAW MEMBER: Repeat the question.

Q. On the days that he had off, how did the number of men who went on sick call compare with the number of men on sick call on the days he went to work?

A. On the days the men had off, such as legal holidays, they usually held a main sick call in the evening which would be about five o'clock. At that time they would just make the necessary dressings and issue of medicines such as quinine would be given.

Q. Did the number of men on sick call increase or decrease on those days you had off?
A. It would, I'd say, just be about the same. The men went on sick call in the morning for necessary dressings and they wouldn't go on the evening sick call. The men who had fever or any conditions that came on during the day would go on the evening sick call, the holiday sick call.

Q. At the times you attended the sick call, Sergeant, did you ever see the defendant go after any Japanese medical authority to assist in the determination of whether a man was fit or unfit to go to work on that day?
A. Not in any of my own cases have I known him to do that.

Q. Have you ever heard of it in any case while there, your own?
A. I believe I have heard of it on some occasions where that contained injuries of such such as foot injuries;

Q. Now Sergeant, when you were at the hospital within the camp on the British side early in 1943, just what casualty were Kondo's duties at that time?
A. There was Kondo and another two-star private, whose name I don't remember, over there as student visitors. During the two months I was there they were learning to give transfusions and injections and at that time they were under a three-star Japanese private in the Japanese National Corps whose name I do not remember. He was only around the camp at that period for around five months.

Q. For failing to go to work on the two occasions you have described to this Commission and for which you stated you were struck by Kondo for failing to go to work, at that time did you receive any other punishment?
A. Punishment by whom?

Q. Anybody else?
A. Not I know of.

Q. And by whom was that?
A. Are you referring to during the whole time I was a prisoner?

Q. No, just during those two occasions you described in which Kondo struck you for failure to go to work. Those are the only occasions.
A. No I didn't.

Q. Now, Sergeant, would you say that your health was average as far as prisoners who were at the Osaka Main Camp, at least to your knowledge?
A. The first year and half I was there it was below the average of the general health of the camp.

Q. The rest of the time you were there, would you say your health was average or above average?
A. It was about average the rest of the time.

Q. And would you be able to state, Sergeant, whether or not the rest of the prisoners spent the same amount of time away from work as you did while you were in prison at this Osaka Main Camp?

A. There was a group of men, prisoners, who were taken from Guam whose health held up far better than was the were taken from the Philippines. As a result, the occasions for them to go on sick call were less than men taken from the Philippines.

Q. Did Bunny and Tushar tell you that they were slapped by Kondo for arguing with him from staying in from work?

A. No.

Q. Now, Sergeant, I would like to read to you a brief portion of Prosecution Exhibit Two, an affidavit by Hashman, and ask you a few questions. In this affidavit he speaks of the Smith Case and he makes this following statement, he says that in his examination "It developed that Smith was undernourished and poorly developed. He was a good man and merely complained. There were no positive symptoms of pneumonia present at this examination. I did, however, recommend to the Japanese medical orderly Kaniehi Kondo, that Smith be kept in camp for a few days in order to enable for him to rest up. Kondo, I believe, acting upon general instructions that no prisoner, unless definitely sick (high temperature, broken bones) would be permitted to rest, refused to allow Smith to remain. He was sent to work and a few days later he developed pneumonia." Now Sergeant, in these two or three conversations that you say you had with Doctor Hashman when he came into the barracks to talk over the general conditions in the camp, did he ever indicate to you or to any other member there during these conversations whether or not he thought Kondo was acting under the orders of some superior or not, in regard to the sending of prisoners of war to work?

A. He didn't mention that in any conversation that we had.

Q. Now, wouldn't Doctor Hashman be in a better position than yourself to judge whether or not he thought Kondo was acting under the orders of some superior in regard to sending prisoners of war to work?

PROSECUTION: I object to the question on the grounds that calls for a conclusion on the part of this witness.

DEFENSE: Are we going to have an objection like that from the prosecution? I've assumed that the prosecution, asking for conclusions all the time from witnesses, would stand up and even make such an objection.

LAW MEMBER: Objection not sustained. The witness will answer the question.

A. He should know more about the function there in the sick bay than I do because I wasn't there every day.

Q. As to the procedure on sick call in the morning, am I correct Sergeant, in stating that the first thing that took place was that the prisoners of war wishing to attend sick call, lined up outside and filed in after Kondo opened the dispensary in the morning?

A. That is correct.

Q. And is it correct that the next step in the procedure was that the prisoners of war gave their numbers to Kondo as they filed by in the dispensary?

A. No, they gave their numbers to him as they came up to him and filed by.

Q. And then was the next step that Doctor Koehnen made his diagnosis as to the ailment the prisoner of war complained of and then made a recommendation to Kondo?
A. That's right.

Q. Sergeant, who administered the medicines and various treatments to the prisoners of war in these sick calls?
A. They were administered by Doctor Koehnen, Kenichi Kondo, and Chief Mate Ginger.

Q. Did Kondo ever prescribe medicines for prisoners of war?
A. Yes.

Q. Who was "the strafer", do you know?
A. We had two members of the camp that were called "the strafers."

Q. Now, do you know John M. Zimmer?
A. Yes.

Q. Do you know whether or not John Zimmer was in the hospital when the Yager Incident took place?
A. Yes he was.

Q. Do you know where he was situated in the room in relation to where this incident took place?
A. Zimmer slept right behind me in the sick bay.

Q. On the near side from where the incident took place or on the far side from where the incident took place?
A. On the right-hand side of me.

Q. And if Zimmer states in his affidavit, which is Prosecution Exhibit Twelve, when asked about the incident, "that Kondo had asked Yager if he had any medicine and Yager acknowledged that he had" and "accused Yager of stealing medicine", he beat Yager until Yager crawled under the bed to escape the beating, "Kondo then continued by kicking Yager for a time, after that one of Yager's teeth was knocked out either by Kondo's fists or by his feet." Now with these facts in mind, is it possible that Yager crawled under the bed to escape the beating rather than being knocked into the sick bay?
A. We weren't sleeping on beds at that time. We were sleeping on a raised bay which is similar to the stand which I am now on. From what I had seen he was knocked on the bay and then Kondo jumped on to the bay.

Q. Now when Zimmer again in Prosecution Exhibit Twelve says, "I have seen Nishimura beat Kondo when there were too many men who stayed away from work because they were sick", I now ask you have you seen Nishimura beat Kondo?
A. No, I have not.

Q. Have you ever heard of it?
A. No.

PROSECUTION: I object, you have[illegible]

PRESIDENT: What was the answer to that?

DEFENSE: He never heard of it.

Q. Do you know that John Zimmer made three affidavits that have been presented in evidence in this case, Prosecution Exhibits 3, 12 and 13?

A. Yes.

Q. Is that the same John Zimmer who you testified about yesterday who was thrown who injured his foot while at work and was sent back out to work again after his foot was bandaged?

A. Yes.

Q. And do you know that in reading these three affidavits which are prosecution exhibits in this case, that Zimmer does not mention the fact that he was sent out to work while he was physically unfit to perform labor?

A. Yes.

Q. In preparing these affidavits in this case, don't you think that Zimmer would have given his illustration of people who stayed in from work when they were physically unable to do so, his own case if he believed he was physically unfit to perform labor?

A. [illegible]

PROSECUTION: I object. How would this witness possibly know what Zimmer would do. The affidavits are in evidence; they speak for themselves.

LAW MEMBER: I didn't understand the question myself.

The reporter read back the question.

LAW MEMBER: Objection sustained.

Q. Now Sergeant, isn't it true that the reason many of the men want to work was so that they could steal food while at work?

LAW MEMBER: Ask that again.

Q. Isn't it true that the reason many of the men wished to go to work was because they could steal food from the Japanese while they were at work?

PRESIDENT: Steal food?

DEFENSE: Yes sir.

A. The reason that a good deal of the men were anxious to go to work was the fact that they received this noon meal which wasn't given to them in camp. Also on several of the farms where they worked rations of rice and beans--this farm allowed them to cook up this rice and bean up in addition to the dinner that was given to them.

Q. Isn't it true that men would steal food while at work?

PROSECUTION: I object to the question. What difference does it make; it is immaterial to the issue of this case; what difference does it make if men stole food at work? How does that connect up with the accused, Kenichi Kondo?

LAW MEMBER: The Commission wants to get the full picture of what occurred and the question will be answered. Objection is not sustained.

A. Yes, men would steal food while at work.

Q. Was that while serving as stevedores while unloading boats?
A. This was doing general stevedore work while on boats or unloading stuff over around the warehouses.

Q. Did you ever see Lt. Miyatake, the medical authority of the camp, strike prisoners of war at the hospital?

PROSECUTION: No objection to the question if counsel will identify the hospital.

DEFENSE: Camp Hospital.

PROSECUTION: You mean the dispensary?

DEFENSE: Camp Hospital, that is where Kondo worked until 1942.

A. Do you mean 1943, until June 1943?

DEFENSE: I just asked if you ever saw Lt. Miyatake strike any prisoners of war while in the hospital within the camp.

PRESIDENT: Give us the dates.

DEFENSE: I cannot give the dates; I can just give the general period he was there. Sir, I think that is the exact language the prosecution has been using in asking questions. Prosecution Exhibits have already been allowed.

PROSECUTION: I object on the grounds that whether he struck any American prisoner of war is irrelevant unless connected with the defendant, Kenichi Kondo.

LAW MEMBER: I ask the defense, what affidavit is it contained in?

DEFENSE: Prosecution Exhibit One, sir.

PROSECUTION: We are objecting to the question on the following grounds; firstly, it is not connected with the accused, Kenichi Kondo; it has nothing to do with the charges in this case. If the defense is permitted to ask thought questions as to certain officers striking prisoners of war, you can go down through the whole camp and ask if they, one in that camp struck American POWS. What difference does it make if they struck American prisoners. How does it connect with the accused, Kenichi Kondo, in this case? Kenichi Kondo is on trial. The question is no wise connected with the accused, we are straying too far afield, it is not connected with the issues.

PRESIDENT: I would like to ask the prosecution's question. In those affidavits where you have lined out part of the affidavit, is that for convenience or is it part of the affidavit?

PROSECUTION: The paragraphs lined out have no part in the issues of the case; they are extraneous matters.

PRESIDENT: They are part of the exhibits?

PROSECUTION: They are part of the original affidavits but when offered they are generally not considered by the Commission. In all cases where the defense feels that certain crossed out portions should be in that is usually determined before the trial.

LAW MEMBER: Inasmuch as that is part of the affidavits the objection is not sustained.

Q. Do you remember the question or do you want me to rephrase it, Sergeant?
A. Rephrase it.

Q. Now at the time while you were at the camp, did you ever see Dr. Yyetake, the medical officer in the camp, strike prisoners of war?
A. Yes I have.

Q. How often?
A. I have seen him on two or three occasions myself.

Q. What with?
A. The time I had seen him he hit [illegible] with his fists and open hand.

Q. Now Sergeant, at the time you went on sick call and complained of the migraine headache, who diagnosed this headache as being a migraine headache?
A. Doctor Hoshman.

Q. And was migraine headache the ailment you described to Kondo at the time you requested the aspirin?
A. I told him I had what is known as "itai" in my head; that means pain.

Q. You have said, I believe, that the Japanese aspirin came in square boxes, is that correct?
A. That is correct.

Q. Were any other items in the dispensary contained in square boxes?
A. Yes, there was these stomach powders they gave for dysentery, diarrhea or any stomach ailments and I don't know what the powders consisted of but they were just known as stomach powders.

Q. Now Sergeant, in the mumps epidemic that you spoke of that took place in early 1945, I believe you stated that the first four or five men who contracted the mumps were isolated, is that correct?
A. Yes, they were.

Q. And was this isolation of these four or five cases a result of Doctor Hoshman's recommendation to Kondo?
A. I didn't hear him give the recommendation but I imagine it was.

Q. And is it your testimony that these cases remained isolated until they grew to the number of between 20 and 25?
A. That's right.

Q. Approximately how long did these cases remained isolated from when the first case of mumps was set off to itself in this isolation ward?
A. You mean all the cases or just the first five?

Q. I want to know Sergeant, how long the men remained in isolation, that is from when the first man went into isolation until the 20 or 25 men were sent out to work?
A. Some of the men were left in the room and some remained in the sick bay. When the sick bay got filled up, those men who were in the sick bay were going out to work.

PRESIDENT: That doesn't answer the question you asked. How long a time?

A. I don't remember the length of time. That lasted over, I'd say, six weeks to two months.

Q. Is it correct that you stated that these men were finally sent out to work by Komichi Kondo?
A. That's right.

Q. Could it be possible Sergeant, that when Kondo ordered these men out to work that he had received orders from some of his superiors?
A. Yes.

Q. Now, how long did this epidemic lasted?

PRESIDENT: Are you through with the mumps' questions?

DEFENSE: Just a few more questions.

Q. Just how long did this mumps epidemic lasted?
A. About a two month period.

Q. And did it ended after the men went back to work?
A. The cases took their normal course. I do not know how long these cases lasted, I think in about two weeks some of the men would get over it and some others would get it, but the whole epidemic stopped in two months, somewhere around that time I am not sure.

DEFENSE: That's all.

PRESIDENT: At this point the Commission will take a ten minute recess.

The Court then took a recess until 1010 hours, at which time the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

The witness was reminded he was still under oath.

PRESIDENT: The Commission is in session.

DEFENSE: If the Commission please, during the course of an objection to Prosecution Exhibit One, I made the statement from which the Court might have gotten the wrong inference and I want to correct it. These affidavits come down to the defense stricken by the prosecution

as to what they think is relevant to the particular issues in the case. Some times the portions stricken are believed to be by the defense relevant or become relevant through testimony, therefore, the defense may question a witness about parts that are stricken but he cannot offer that portion in evidence until the defense's case goes on.

PRESIDENT: Until what?

DEFENSE: Until the defense starts; until the prosecution has rested. He cannot offer that in evidence, he can merely refer to it and indicate from what exhibit it comes. Some time the prosecution and defense do get together and agree on what portions should be stricken. I don't know whether that has been done in this case but still we are not bound by additional evidence brought in by witnesses when that is proven to be relevant.

LAW MEMBER: That is my understanding and I also am under the impression that in the final bound copy of the proceedings of the Commission in which all the affidavits are appended that there are no portions stricken.

DEFENSE: No sir, that is incorrect. The affidavits are stricken in the final bound copy so that the reviewing authority has already the same evidence that is given to the Commission and the reviewing authority pays no attention to the parts stricken.

LAW MEMBER: In my opinion the stricken portions were merely superfluous.

PROSECUTION: They are irrelevant and immaterial and have nothing to do with the case.

PRESIDENT: And I understand they are contained in that affidavit because the affidavit might be used in other cases.

PROSECUTION: Sir, most affidavits refer to the camp and therefore mention specific atrocities which may involve two or three defendants. Obviously it is improper to relate to acts committed by another defendant whose this man is on trial and, therefore, they are stricken.

DEFENSE: It may be prejudicial to his cause.

Q. Sergeant, on these days off that you remained in from work, did Kondo attended sick call?
A. The occasions I went in there on days I had off I attended the evening sick call when Kondo was not in attendance at that time.

Q. Do you know whether or not he attended the sick call held in the morning on your days off?
A. I don't know if he did or not because I don't remember having occasion to go in the morning.

Q. I believe you have testified that on occasions Kondo has prescribed medicines for prisoners of war, how often did this happen?
A. This happened probably every day such as somebody coming in from work at night having a foot injury. He would either paint the foot himself or have Merriton Ginger paint the foot with this dark solution.

I don't know what it consisted of.

Q. Did Merritt and Ginger Hodson do the same thing?
A. Yes, even in so far as painting is concerned?

Q. Painting and prescribing treatment for injuries?
A. I have seen Chief Merritt take a man's temperature and he would call out the degree of temperature to Kondo. Kondo would write it down and then Kondo would recommend aspirin for instance or either give it to him.

Q. Do you refer now, Sergeant, to when the men came back from work in the evening?
A. Yes.

Q. Did this same procedure take place at the morning sick call?
A. Most of the dressings and medication was given in the evening sick call. However certain cases such as malaria and diarrhea medicine would be given in the morning, and stomach cramps and incidents like that.

Q. Who recommended the medicines on these occasions?
A. Doctor Woolman, and Kondo would recommend them too on some occasions. To give an example, like you would go up there and be examined and if you had a fever one of them either Merritt or Ginger, or Doctor Woolman, who have taken the fever would give the degree of fever to Kondo and Kondo would either give aspirin or recommend giving the aspirin, in other cases it would be vice versa, Doctor Woolman would recommend.

Q. Was this procedure followed in accordance with the course of treatment administered to the men that came on sick call daily?
A. In some instances Doctor Woolman would be examining somebody and the next man would be called into line and Kondo would diagnose his case himself.

Q. How often did this take place?
A. This would take place only in the evening sick call and would be just in minor cases such as someone going in and telling Kondo they had a head cold, and if Dr. Woolman was on the side with someone else Kondo would give him cold tablets or just aspirin. That pertained only to minor ailments.

Q. Did you ever hear of a meeting between Woolman, Kondo, Miyashi, and Schlorer?
A. No, I haven't.

Q. Now, Sergeant, do you know what Honor was doing in camp the day that the Brudpon incident took place?
A. Honor was a member of the camp detail who worked around the camp. Some days he would repair windows or work in the cobbler's shop. Members of the camp staff never went out as workers, and the work was all within the limits of the camp.

Q. Do you recall where you were in the camp when Honor told you about this incident?
A. It was after I came in camp from work that evening. I believe it was in the camp compound.

Q. Did Reuter tell you what he was doing at all in Room 5 that morning at 1000 hours?

A. I think at this time Reuter was putting in windows that had been broken.

Q. Did Reuter tell you at all whether or not anybody else accompanied Kondo at the time he was making the sick call rounds?

A. I don't remember him saying anything pertaining to that.

Q. Now, directing your attention to the Horsley incident, is it correct that the night the duty officer came around he told Horsley that he could remain in camp the next day?

A. That's right.

Q. Were you present at this occasion when the duty officer told Horsley this fact?

A. I was in the camp at the time.

Q. Were you present at the time this duty officer told Horsley?

A. I was in the next room.

Q. Did you hear this duty officer tell Horsley that he could remain in the next day?

A. No, I didn't.

Q. How did you know that the duty officer told Horsley that he could stay in the next day?

A. I heard it from Hoffer, who was a witness at the time when Horsley got beaten; and the way he found out was when Kimura, the interpreter, informed Kondo, I believe, that Horsley had personal permission the previous evening from the duty officer to remain in camp.

Q. So it was Kimura who told Hoffer the next day that the duty officer had excused Horsley the previous evening, is that correct?

A. Hoffer just overheard the conversation between Kimura and Kondo and Horsley and Sanders who were there at the scene of the beating.

Q. Hoffer heard of this incident on the day of the incident rather than when the duty officer spoke these words to Horsley, isn't that correct?

A. I don't know. The only thing I know is that Hoffer witnessed the incident and just from what I have testified previously, he told me what had happened.

Q. Did Horsley go on sick call the morning following or did he stay in his bunk?

A. I don't remember what he did.

Q. Then it could have been possible that the duty officer told Horsley to go on sick call the next morning to be excused, is that correct?

A. I have heard from men who were in the room the conversation was as follows: He asked Horsley how he felt, the duty officer asked Horsley how he felt, and Horsley said he felt pretty weak and he said 'Tomorrow you yasume.'

Q. What does 'yasume' mean?

A. It means stay in for rest, you don't go to work.

Q. Do you know who these fellows were that told you?
A. I don't remember their names but they were English Merchant Marine men.

Q. First, where did this striking take place?
A. As far as I remember, I think it took place outside the sick bay.

Q. Did the cook, Hoffer, tell you what he was doing near the sick bay at approximately 1000 hours that morning?

PROSECUTION: I believe that question has already been asked. Counsel for the defense asked him whether Hoffer told him "Yes, he was in the sick bay at the time."

DEFENSE: I don't recall it. That was not the question. The question is, "Did he tell the witness why he was in the sick bay that morning at 1000 hours?"

LAW MEMBER: The witness will answer the question.

A. The galley was only about 20 feet from the sick bay.

Q. And Hoffer saw that from the galley, is that correct?
A. He probably was on the outside of the galley which most of the cooks just sit around in between meals and when they are cutting vegetables. During hot weather they go outside of the galley and chop vegetables, because there was no noon meal cooked and they didn't start cooking the evening meal until about two o'clock in the afternoon.

Q. Did Hoffer tell you whether he was inside or outside the galley?
A. I didn't state whether he was inside or outside.

Q. From your experience and knowledge of the Japanese language and your association with the Japanese, what was the most insulting Japanese word that you could use to the Japanese people?
A. Just tell them they are "jete mai".

Q. What does that mean?
A. It means they are no good.

Q. How about the word "baka"?
A. That is the same as telling them, saying in American you are nuts or crazy. That's what that means.

Q. Does this word "baka" have any vicious connotation to the Japanese people?

PROSECUTION: I object to the question. How can this witness, an American prisoner of war, know whether it had a vicious connotation to the Japanese people? How could he possibly know?

LAW MEMBER: I think the question can be worded as to define the word "baka" as to its reaction on the personnel in the camp.

DEFENSE: Strike the question.

Q. Has it been your observation that the Japanese believe that diarrhea is a result of eating cold in the stomach?
A. Either that or drinking cold water.

Q. And isn't it true that you were under orders to sleep during the summer time with blankets over your stomach?
A. That was the order put out by Kondo.

Q. These orders could have originated from above, isn't that correct?
A. We didn't receive any written orders on it. It was just a verbal order that was given to Sanders.

Q. Can you answer the question whether or not it could have been received from above?

PROSECUTION: Sir, I object to this question and all questions like it on the ground that the answer obviously would have to be "yes". This witness couldn't know. Could they have been; certainly; how does he know? Anything could have been received.

LAW MEMBER: The Commission is able to take judicial cognizance of that.

DEFENSE: Sir, it might be within the witness's cognizance that the order could not have come down from above. If that is true, then we want this witness to so testify, but if he knows of no reason why it could not have come down from above, then I don't think it can hurt us.

PROSECUTION: How can this witness possibly know what comes down from above, so it could have happened. That "could" is so indefinite hanging up in the air, but how can he tell us?

LAW MEMBER: The defense will be given the full latitude. The question will be answered. The objection is not sustained.

A. The orders could have come down, but as there were no written orders I do not know where the source came from.

Q. You have testified that Kondo made visits to the barracks to see if the men had the blankets over their stomachs in the evening between midnight and 0100 hours. Now how many times a week did Kondo make these visits?
A. They were irregular; sometimes maybe he would come three or four nights running then you wouldn't see him for six; then he might come one or the next night and make steady visits about two nights again.

Q. You say then it was about 50 per cent of the time he came, or just about what percentage?
A. I'd say about 50 per cent.

Q. Now when you went down to the latrine this evening after the "baka" incident took place, just how long did you talk to Mackenzie about the incident?
A. I'd say we talked about two minutes on the incident.

Q. Did he tell you that a corporal of the guard was also present at the time?
A. He just mentioned Kondo's name at the time.

Q. Did you ever talk to Sergeant Hooker Vance about this incident?

A. The only talk I had with [redacted] is when I was asking him about it on the job and he said he wasn't the one that yelled "balm", but it came from his general direction and as a result he was one of those that was called down.

Q. Did he tell you whether or not a corporal of the guard was present on this occasion?
A. He didn't go into details on it. The only thing he told me was that he was just protesting saying that he wasn't the one that had said "balm", but that he had been called down from the deck on it. I mean by being called down to the deck that he was sleeping on the second bay.

Q. Did anybody ever tell you whether or not a corporal of the guard was present on this occasion?
A. I have heard that in just general conversation out at work talking about it.

Q. In these conversations isn't it true that it was said that this corporal of the guard struck some of those men?
A. I don't remember clearly on that part. The only thing I know is that they said Kondo came into the room and I believe when Sanders—I don't know if the corporal of the guard was in the room when Kondo first came in, but when Sanders came in later the corporal of the guard was there. That's the only thing I know about it.

Q. Did Chief Sanders tell you that?
A. No.

Q. Did Sergeant [redacted] say he was struck?
A. I know [redacted] was struck because in the conversation we had he was saying he had been a victim of circumstances, that he had been pulled down from his bay, but that he hadn't been the one that hollered the word "balm".

Q. Did he state whether or not he had been struck?

PROSECUTION: May I have that identified as to whom he stated that?

Q. Did Sergeant [redacted] state that he was struck?

PROSECUTION: To whom?

DEFENSE: During this conversation, the witness is talking about this conversation.

A. He didn't state to me that he was struck, but he was in the group that was pulled down from their bays. If he was in that group, he was struck.

Q. But he didn't tell you he was, did he?
A. MacKenzie is the one that told me about [redacted] being struck.

Q. Did these men go to work the next day?
A. Yes.

Q. Now on this morning that Kondo—

PRESIDENT: I suppose the defense, if they will before leaving Specification 3, to clear up the title of Vance, because he is alleged to be a private and the witness has called him by other titles.

Q. What rank was Vance?
A. He had a Chief Petty Officer.

Q. Did you ever speak to Vance about this incident?
A. No, I didn't.

Q. Did you ever speak to any of the other men who are alleged in this Specification about this incident?
A. The only man I talked to personally was Rapk.

Q. Now on these evenings that Kondo came around and checked the prisoners of war to see that they were sleeping with their blankets over them, did Kondo attend sick call between 6:30 and 7:30 the next morning?
A. Yes.

Q. Now, Sergeant, wasn't it customary for the Japanese to rank both British and American merchant men, regardless of their rank in the merchant service, as privates?
A. In the Kobe Camp, yes.

Q. Now on this date that Luther went on sick call did you ask for powders, do you know whether or not these powders were available?
A. I don't know if they were available or not.

Q. Now in the evening were guards there walking around guarding the barracks at night?
A. Yes.

Q. And if the vicinity of the prisoner of war barracks, is that correct?
A. Yes, that's correct.

Q. Upon any occasions do you know whether or not the prisoners of war slept outside contrary to regulations?
A. During the summer and about the month of August and July when it was very hot inside the rooms due to the fact that we had these air raid curtains up and we couldn't get air into the room, several of the men would bring mattresses out and sleep outside.

Q. You stated that Smith went on sick call on a Monday, isn't that correct?
A. That's correct.

Q. Did he go on sick call on the previous day?
A. No, he got sick over late Sunday evening.

Q. His complaints at the time were cramps and that he had vomited, isn't that correct?
A. And he felt feverish and had cramps.

Q. Do you know whether or not Smith had a fever that morning when he was on sick call?
A. I don't know if he had a fever or not, but he looked sick and was doubling up while waiting for sick call and his face had a flushed appearance.

Q. Did Dr. Rothman recommend that he receive powders for his stomach while you were present in the dispensary?
A. Dr. Rothman, while I was in the dispensary, recommended that Smith stay in and Keefe overruled him and Dr. Rothman told Smith to wait a minute, and I went out and joined the work line up and Smith came out about five minutes later.

Q. Did Smith receive powders or medication for his stomach at that time?
A. I don't know if he received them or not.

Q. But he could have, isn't that correct?
A. That's correct.

Q. Now you said you thought that Smith had a 103 temperature when he came back in the evening. How do you know that?
A. There was a friend of mine in the same room that I stayed in, in the Army group, by the name of Bunny. He went down and visited him that evening in his room.

Q. Did Bunny tell you that his temperature had been?
A. Yes.

Q. What did he tell you it was?
A. He said his temperature was 103 and that is what Dr. Rothman recorded it as when he took it from Smith in his room there.

Q. Did you see Keefe strike Smith on this occasion?
A. I didn't see him strike him as I left the sick bay and I left the room there, and I think the purpose was that Dr. Rothman was going to arrange still further for him to stay in for the day.

Q. Now you testified that you remember one other occasion on which Smith went on sick call and that he received powders and was sent out to work, is that correct?
A. That's correct.

Q. Do you know whether or not on this occasion Smith tried to remain in from work or not?
A. Smith at this time was in pretty frail physical appearance, and the fact that he had this diarrhea again was wearing him down, so Dr. Rothman had recommended that he be allowed to stay in camp for a few days.

Q. Now on talking about the first occasion that you remembered that Smith went on sick call for recurrent diarrhea, is that the same one you speak of now?
A. Yes.

Q. Yesterday on direct examination you stated upon this occasion you don't know whether Smith tried to stay in or not?
A. Yes, sir, Dr. Rothman recommended for him to stay in.

Q. This is just for accuracy, Sergeant Ryan. Did you see him on both occasions or on one occasion, because you testified that on two occasions you remember Smith being on sick call?

A. Smith was on sick call quite often, and as far as remembering back there he was in one of the poor categories of health all the time. As far as remembering the exact incident, I do remember on one occasion I was there Dr. Wachman recommended that he stay in.

Q. Now was there an incident when Hess was suffering from beriberi and went on sick call to get any beriberi powders, that Dr. Wachman didn't request that Hess remain in from work?
A. I believe when these first started going on sick call was during this three week period that he just barely went there himself to receive powders for the beriberi complaint, because the job he had was out at the Japanese "gocio" and it was about the easiest job we had.

Q. Now on the times that you knew of that Hess went on sick call to get beriberi powders and complained of beriberi, do you know whether or not he always received them?
A. As far as I know he received them.

Q. Now while you were at the prisoner of war camp, did you ever learn where Serafin was born?
A. I never knew where he was born.

Q. He was an Italian steward aboard an ocean-going liner, is that correct?
A. Serafin lived in England a good many years and his family resided there, and I don't know what nationality he was classified on but he was on an English merchant vessel and he had been on this service a good many years.

PROSECUTION: Prosecution would like to state for the record at this time that its information from the State Department indicates that his status all this time and up to the time of his death was an Italian national.

Q. On what date did Serafin arrive in camp, do you know, Sergeant?
A. He arrived with the group that arrived before I did, and I believe their date of arrival is October 28, 1942.

Q. During this first year he worked as an officer's orderly, isn't that correct?
A. That is correct.

Q. Then for a period of nine months he was Chief Sanders' orderly, isn't that correct?
A. That is correct.

Q. And then he went to paper work for a couple of months, working with the Indians, is that correct?
A. That is correct.

Q. He stayed there until the paper job was finished because the Japanese were all out of paper, is that correct?
A. That is correct.

Q. Then this whole group was ordered out to work by Nasu, isn't that correct?

A. I don't know who ordered them out to work because I wasn't on the detail myself. The only thing I know is they started to go out to work on the various details.

Q. And then when Serafin did finally go out to work in the latter part of 1944, isn't it true that the work in which he was engaged at the steel mill did not demand much effort?

A. I never worked with Serafin while he was on the steel mill detail.

Q. Do you know what type of work he was engaged in?

A. In the steel mill, this particular steel mill where he worked at, most of the work was air hammers chipping out castings.

Q. Do you know what type of work Serafin did?

A. If he worked at the steel mill, he would work on an air hammer.

Q. When Serafin went on sick call complaining of these chest colds you speak of, did he receive medication for these chest colds?

A. Yes, he did.

Q. Now, when Dennis Merritt says, in answer to a question put to him in his affidavit which is Prosecution's Exhibit 14, "Who was this Japanese doctor at Omuta Camp No. 17?", and he replied, "I do not know his name, but he was a lieutenant and senior medical officer that handled everything over to a guard named Kondo and backed him in everything he did. He had an interest in the sick men and he never ordered them or prescribed medicine for them", is he referring to Dr. Nonu?

A. There was about three medical lieutenants around camp, so he could refer to any of the three of them.

Q. When he says he was the lieutenant and senior medical officer, is that Nonu?

A. That would be Nonu.

DEFENSE COUNSEL: The defense counsel asked me whether I had further questions of the Commission please, we believe that we are through with our cross-examination, but we do not want to close at this time. We may have a question to ask after the recess.

The Commission then recessed until 1330 hours, at which time the personnel of the Commission, prosecution and defense, the sworn interpreters, and the reporter resumed their seats.

The witness was reminded he was still under oath.

PRESIDENT: The Commission is in session.

Cross-examination by the defense (cont'd):

Q. Sergeant, do you ever recall Chief Sanders telling you that he struck Kondo after the Knudsen incident?

A. The only conversation I had pertaining to this incident was with Hamer. I didn't have any with Sanders.

Q. Did Hamer tell you that Sanders struck Kondo?

A. Hamer stated that Sanders stopped Kondo from administering the beating any further.

Q. Bunny didn't say that Sanders struck him, did he?
A. He said he stopped him from beating Hudson any more than he did.

Q. Sergeant, I ask you again did Bunny state to you whether or not Hudson struck him?
A. No, he did not.

DEFENSE: No further questions.

PROSECUTION: Prosecution has a few questions to ask and redirect.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Sergeant, you testified that when you read the record in this case, you read the report of the Hudson incident, is that correct?
A. That is correct.

Q. Did you know about this incident before you read about it?
A. Yes, I did.

Q. Did the report in any way refresh your mind as to the details of the incident?
A. I remember the Hudson incident very well as, I believe, most of the men do, due to the fact that they had seen Hudson being carried [illegible] to the latrine there on several occasions before this incident took place.

Q. Did you ever recall any times when Dr. Hoshuns wasn't present at sick call in the morning?
A. Dr. Hoshuns was present on any of the occasions that I went to sick call.

Q. The defense counsel asked you whether Bunny and Tucker stated that they were struck by Sanders because they did not go to work, and you answered "No", is that correct?
A. Yes.

Q. Why were they struck, Sergeant?

DEFENSE: I don't know the question, if the Court please. Counsel is standing with his back to an open window.

PROSECUTION: My question was why were they struck?

DEFENSE: If the [redacted] question stands, that question is objectionable on the basis it is asking for a conclusion of another man's mind. The defense counsel stands here and asks this witness "Isn't it a fact that Bunny and Tucker were struck because they didn't go to work?", and he said "No".

PROSECUTION: My question was why were they struck?

[illegible]

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DEFENSE: In the direct examination the witness testified as follows: "I have seen men slapped for arguing about staying in after Dr. Kochman recommended that they stay in." Then the question was asked, "Do you know the names of any persons that were so slapped?" He said, "Yes, Bumgy and Tasker", that they were struck because of arguing with Kondo. That was objected to; the objection was overruled. Now, on the basis of the fact that this has been brought out on direct testimony, Counsel is without any right to bring up anything that has been brought out in direct testimony. This is not a review course. This is not a refresher course. This is anything that is new that is brought out by the defense counsel. Counsel may ask this witness and clear something up, not re-establish it. The witness testified that Bumgy and Tasker told him they had been arguing with Kondo and that Kondo had struck them because they wanted to stay in from work. Now those are the notes that I have on the cross examination.

PROSECUTION: I asked the question, "Isn't it a fact that Bumgy and Tasker were struck because they argued with Kondo about going to work?" The answer was "No". I am now asking why they were struck?

LAW MEMBER: Objection is overruled.

A. They were slapped for arguing to stay in from work. They didn't stay in but were just insisting that their condition—

DEFENSE: I want to object and ask that that answer be stricken on the grounds that it is a repetition of the direct examination.

LAW MEMBER: What was the question?

The question was read back.

DEFENSE: The answer, sir, I am asking that it be stricken because it is repetitious.

LAW MEMBER: Counsel for defense has plenty of repetition. The objection is overruled. Try not to ask any questions that are repetitious.

Q. Sergeant, counsel for the defense read to you from the affidavit of John N. Zimmer as follows—

PRESIDENT: What number exhibit?

PROSECUTION: Exhibit 13, I believe, sir.

Q. —and he read as follows: "I have seen Matsumura beat Kondo when there were too many men who stayed away from work because they were sick." And he asked you if you had ever seen that and you answered "No", is that correct?

DEFENSE: If the Commission please, that is Prosecution Exhibit 12 and also he didn't ask him "if he had seen them" he asked him "if he had ever seen Matsumura strike Kondo", and his answer was "No."

LAW MEMBER: What is the question before the Commission? Is it Exhibit 12 or 13?

PROSECUTION: The meaning is precisely the same. Will you answer that please.

A. No I haven't.

Q. Correct me if I am wrong, I believe counsel asked you if you had ever heard of Matsuura beating Kondo, is that correct?
A. I had never heard that myself.

Q. Now reading from that affidavit the very next sentence of the same exhibit says as follows, "Kondo, inturn, would beat the men who stayed away fromthe job", have you ever seen that?

DEFENSE: If the Commission please, this witness has stated that he saw all of these records and all of these affidavits. We asked him about that to determine whether or not this man had seen it and to show whose the prosecution has violated a standing rule, we feel that the prosecution has; it is not the fault of this witness at all. We asked whether or not this witness, a prosecution witness, remembers this statement.

LAW MEMBER: Prosecution said that he had seen all the affidavits.

DEFENSE: Yes sir and we asked him whether or not Matsuura had ever beaten Kondo, prosecution has stood up and said that they were going to defend the defendant's rights and objected when we asked the question as whether or not Matsuura had beaten any one to show the course of conduct of the superior officers. They objected to that and then at the same time they went to turn around and by reestablishment ask this witness the same questions, ask him to affirm or contradict. We cannot bring up statements of a former witness, that is only within the rights of the defendant. It is only within the rights of cross examination. When we place our witness on the stand they can bring up anything they desire on cross examination but that is not direct examination. We were using prosecution exhibits, if the Commission please, we were not using defense exhibits. It is not the type of evidence that should be allowed. Simply asking whether or not the question was asked of this witness to have them affirm or deny that another witness which the counsel has already stood up by merely offering that affidavit by saying we vouch for the veracity of this witness. The defense has a right to attack the veracity of any witness, either by affidavit or whether he takes the stand.

PROSECUTION: Sir, I would just like to state something here. Counsel seems to be taking quite side of the fact that the witness has seen the affidavits. I don't quite understand that. Certainly if we are lawyers or prosecutors and when preparing any case we are going to show the witness anything we have. Of course he admitted he saw everything. I showed him everything, I would be remiss in my duties if I hadn't. This is in evidence now I stand up to a certain portion. I am reading the sentence immediately following which pertains to the defendant. I only read the sentence to his benefit.

DEFENSE: If the Commission please, such is not the case. The reading of these affidavits are to confront the life witness with the statement made by another man, he asked him whether or not he saw a certain thing take place. The question that the prosecutor has asked this

The reporter read back the question.

A. Yes, as in my own case and in the case of Reynolds.

PROSECUTION: Prosecution has nothing further.

PRESIDENT: Recross examination?

DEFENSE: No further questions, sir.

PRESIDENT: The Commission has a few questions.

EXAMINATION BY THE COMMISSION

Questions by Members:

Q. Sergeant, was the prisoner of war who was sick in the stockade by the latrine and who was kicked by the shavers, was he named Thompson?
A. Yes.

Q. In what position was Thompson when he was kicked?
A. He was lying in a sort of a cringed position.

Q. Lying on the floor?
A. On the bay. This bay section was--you would have the floor here (indicating) and the bay section was kind of raised just like the stand here (indicating).

witness now as to what this affiant, Zimmer, has said under oath. this witness has already testified to that for himself on innumerable occasions. No purpose can be served by inquiring and the only purpose of putting these statements before a live witness is to see whether or not the affiant, who is not here available for cross examination is himself telling the truth. We don't deny the facts of the following sentence as the prosecutor seems to indicate because Ryan himself has testified to these facts, and Zimmer has. To use the words of another witness, which is actually what Zimmer is for the prosecution, in examining any other one of their own witnesses is entirely out of order.

PROSECUTION: Sir, I'm only asking for information of this witness.

LAW MEMBER: The Commission in former cases has found sworn statements and affidavits quite at variance with evidence given by live witness. The Commission desires to hear any evidence from the live witness whether it is contained in the affidavit or not. The objection is overruled. In one particular case the defense by the prosecution cum live witness showed that the affidavits of the prosecution were in error and they were allowed to inquire of the live witness.

DEFENSE: Sir, that was the idea of why these questions were asked of these affidavits and we do not say that we are out of order but he is out of order.

LAW MEMBER: The Commission is interested in comparing these affidavits with this live witness' testimony.

PRESIDENT: Read back the question.

Q. How was he dressed?
A. He had about the same amount of clothing that an American soldier wears in the fatigue outfit, just pants and jacket.

Q. He was not undressed?
A. No.

Q. Have you ever been present when the accused refused to provide necessary medicine or medical attention?
A. The time in my own case when I went in to get aspirin for migraine headache and was refused, and the other time when Bussy went in for the same reason and he was refused.

Q. Bussy had a headache?
A. Bussy's eyes were deteriorating all the time he was in camp. In fact today he is studying Braille up in Connecticut.

Q. And what kind of medicine did he want?
A. Some aspirins.

Q. And you were denied medicine such as aspirin tablets?
A. Yes, sir.

Q. And you never heard of any other occurrence?
A. Not that I know of.

PRESIDENT: Are there any other questions by any other member? There appear to be no further questions, the witness will be excused.

The witness was excused and withdrew.

PROSECUTION: Prosecution offer in evidence as Prosecution Exhibit No. 20, original statement signed by the accused, written in Japanese and signed by him in Japanese, with English translation by ATIS.

DEFENSE: If the Commission please, I don't believe I am violating any confidence between counsel and myself to say that I had the opportunity last night to get this statement in Japanese to the defendant, there are certain things which the defendant said were omitted which were not corrupt at the time he signed it. We do not desire to object to this with the exception of being allowed to attack it when the defendant takes the stand, but not having an interpreter here which the prosecution is required to do under the rules in offering statements like this because of the fact that under any law, conversations through an interpreter are hearsay unless the interpreter is testifying. This statement is just a conversation the counsel for the prosecution held with the defendant and was taken down in English for the counsel for the prosecution through an interpreter. The questions were asked, the interpreter interpreting the questions the accused answered, the interpreter interpreting it from Japanese to English and counsel wrote down the answers. Thereafter I believe ATIS translated this particular document into Japanese and, if I understand correctly, this document in English is a translation of that document.

I believe perhaps the rule of best evidence that we should have the original document of the prosecutor because of that fact there may be some question as to the accuracy of it. We do not know whether in

taking it down or whether it is in translation or in translation back, but the defendant will have it also when he takes the stand to explain certain parts of it. Therefore, we don't want to object at this time to it with the exception that the defense does desire a certificate from AFPE that this is a true and correct translation of that document, that this is a secondary document.

LAW MEMBER: Which document did the accused sign?

DEFENSE: The accused signed the copy in Japanese.

LAW MEMBER: Did he have time to read it?

DEFENSE: He did have time to read it and at the time he signed it he was told it meant the same thing but now says it contains about three discrepancies.

LAW MEMBER: The Commission understands your point and accepting the document they will allow you to correct interpretation or explain when the accused is on the stand as you see fit and we will weigh the evidence.

DEFENSE: There is one other point. We move this be accepted with a certificate from AFPE that this is correct translation.

PROSECUTION: Counsel has spoken at considerable length about this document. Might I say I furnished this document to the defense yesterday. The rules say that statements by the accused are not necessary to be furnished to the defense, we did this as a point of cooperation. If they are concerned about the accuracy of the statement, I am here. I took the statement. They can put me on the stand. There is no certificate from AFPE necessary.

DEFENSE: Wait a minute.

PROSECUTION: I'm speaking.

LAW MEMBER: Proceed. The defendant will be on the stand if he wants to deny anything. When the accused takes the stand he may attack any part of the statement he chooses.

DEFENSE: If the Commission please, defense would like presented an Oral Bill of Discovery whereby the Court will require the prosecution to present in Court the original notes taken by Mr. Ruml on which the translation was made by AFPE into Japanese of the statements so that we can check them as we have a right to do, sir, the accuracy of the original translation. The only thing the Court is going to get is a translation of the conversation with the defendant through the interpreter as shown by the notes of Mr. Ruml and translated into Japanese and back into English. That is why we ask for a certificate from AFPE. If they don't have a certificate from AFPE then certainly the Court should require that the prosecution make it available to us so that we can check it ourself.

LAW MEMBER: Is this statement signed by the defendant?

DEFENSE: If the Court please, is that in issue?

LAW MEMBER: He said he is submitting a signed statement.

DEFENSE: Is that in Japan?

PROSECUTION: May I explain the procedure to the Court? My notes which were transcribed in English taken at the meeting are exactly as this English translation here. These same notes were translated into Japanese and then were translated back. I took the original notes and if the defense has any question of the translations, I will be willing to take the stand. If the defendant wishes to take the stand and explain anything about this he may do so.

DEFENSE: Yes but they require the defendant to take the stand. The defendant is not required to take the stand. All I want are the original notes. MMAP rules say that these statements may be taken without showing they are not voluntary. I am not saying that this is not voluntary at all.

PROSECUTION: May I at to also to the Commission that I do not know where the original notes are. The statement is here to be admitted in evidence, the offer is made by the prosecution.

LAW MEMBER: On the authority contained in directives from General Headquarters Supreme Commander for the Allied Powers, Letter AG 000.5 (5 December 1945) LF Subject: Regulations Governing the Trials of Accused War Criminals, and Letter AG 000.5 (ED) Headquarters Eighth Army, 5 February 1946, Subject: Rules and Procedure, an Outline of Procedure for Trials of Accused War Criminals, the statement of the accused will be admitted in evidence.

DEFENSE: That has already been ruled on. I now ask for the Oral Bill of Discovery for the original notes of Mr. Ryal so I can check these against the translations.

LAW MEMBER: Has the prosecution produce the original notes?

PROSECUTION: Sir, I do not know where the original notes are. They are not in my possession at this time. I may have destroyed them when I got this book. I don't remember, this was done in May 1946. As the taker of these statements I am here. I have said before I will take the stand as to any interpretation of this statement.

DEFENSE: There is a ruling to be made by the Commission at this time.

LAW MEMBER: I am trying to think what you called that.

DEFENSE: I called that an Oral Bill of Discovery, sir, asking that the opposing party allow us to examine the records for the purpose of determining whether such evidence or records of documents is available; merely asking of the Court to ask the prosecution to make those records if in existence available and if not in existence state to the Court that they are not in existence.

PROSECUTION: Sir, I have stated three times now I would be glad to take the stand and testify that these notes, this translation is exact word for word of the original notes taken by me. What else does the Commission desire? Defense may cross examine; that is the best I have. I took them.

LAW MEMBER: The Commission will not require the prosecution to present an Oyez Bill of Discovery.

PROSECUTION: I request permission of the Commission at this time to read Prosecution Exhibit 20 just admitted in evidence.

Having been admitted in evidence, Prosecution Exhibit 20 was read to the Court by the Chief Prosecutor.

PRESIDENT: At this time the Commission will take a recess for ten minutes.

The Commission then took a recess until 1430 hours, at which time all the personnel of the Commission, prosecution and defense, the accused, the reporter and interpreters resumed their seats.

PROSECUTION: The prosecution offers in evidence as Exhibit No. 21, the original affidavit of Sergeant Marshall J. Applemiller. Prosecution would like to state to the Commission that the reason this was not offered previously is that this has just come into the hands of the prosecution since the adjournment of the case two and half months ago.

DEFENSE: At this time the defense makes a general objection to the whole affidavit on the grounds it is hearsay. That is the first ground, sir, and we ask for a ruling on it from the Commission.

LAW MEMBER: Objection overruled.

DEFENSE: If the Commission please, the defense offers an objection at this time to the entire affidavit because it contains matter therein as to the activities of Kenichi Kondo at the hospitals at Osaka, Japan and Kobe, Japan; and the defendant is not charged with any activities that took place at these two hospitals. The material contained therein is actually exposing the defendant of various activities with which he is not charged and which do not appear anywhere in the charges and specifications.

LAW MEMBER: The Commission will take due cognizance of that and will not hold against the accused any matters contained therein that are not contained in the charges and specifications. They will disregard that entirely.

DEFENSE: By that do you mean, sir, that you are not admitting the affidavit and disregarding it?

LAW MEMBER: No. Is that all the objection?

DEFENSE: If the Law Member will look that over and determine whether or not it is immaterial to the issue; the question is if the entire affidavit is irrelevant to the issues in this case, then the Court should strike the entire affidavit at this time rather than having it read and disregard it.

LAW MEMBER: Is that all the objections you have?

DEFENSE: Well, I would like a ruling on them, sir.

COURT: The objection is not sustained. The Commission will evaluate the evidence contained therein entirely in connection with the existing charges and specifications. If the matter is not pertinent it will be disregarded by the Commission.

DEFENSE: Well, sir, it amounts to letting in evidence with which the defendant is not charged, but I have some specific objections to various portions of the affidavit that I would like to point out to the Commission if the Commission is going to permit the affidavit to be read. I would like to point out that we in no way waive the general objection to the entire affidavit for the grounds we stated, hearsay, and also that the defendant is having evidence put in against him with which he is not charged. The specific objection I would like to call to the Court's attention is on Page 2 of the affidavit, Question No. 3, and ask the Commission to strike the words in the first line, "deaths of."

PROSECUTION: Prosecution will consent that the words as suggested by the defense counsel be stricken.

LAW MEMBER: They will be so stricken.

DEFENSE: Now the question will read, "Do you recall any details concerning R. M. 2/C Smith and R. M. 1/C Hess in February 1944, and the possible connection of Komichi Kondo, Japanese medical orderly." The question will make sense.

LAW MEMBER: All right.

DEFENSE: And also I would like to object to the answer to that question starting at Line 9.

PROSECUTION: Prosecution will consent to striking the entire question and answer.

LAW MEMBER: The entire question and answer will be stricken.

DEFENSE: I would like to call attention to the Commission to Question No. 4 which pertains to beatings of two men at Kobe Hospital.

PROSECUTION: Prosecution will consent to striking question and answer.

LAW MEMBER: They will be stricken.

DEFENSE: The defense ask to strike the fifth question due to the fact that it pertains to the deaths of various individuals at these hospitals.

PROSECUTION: Prosecution request that that question and answer remain for the following reasons; while it is true that Kondo is not charged with any death and the question starts out saying that he cannot say that he saw these incidents but he does go on and explains various things that happened.

DEFENSE: The defense feel that any reference to deaths permitted in the record at this time and any evidence at all is prejudicial to the defendant since there are no deaths charged to him in the specifications.

PROSECUTION: Prosecution will consent to the striking of the word "deaths"

LAW MEMBER: How are you modifying it?

PROSECUTION: Prosecution will consent to the striking of the words, "as a contributing factor to the deaths of the patients in the hospital."

DEFENSE: So that the question will read, "Can you relate any incident whatsoever in which Kondo was involved?"

PROSECUTION: We will also consent to the striking of the first sentence of the answer.

LAW MEMBER: Read the question as modified.

DEFENSE: The question will now be, "Can you relate any incident whatsoever in which Kondo was involved in either of the hospitals?"

LAW MEMBER: Right.

DEFENSE: And the first sentence of the answer is deleted to that question.

PROSECUTION: Including the word "but" in the second sentence.

LAW MEMBER: It will be stricken.

DEFENSE: The defense request the Commission to rule on the striking of part of the answer in Answer 8, Line 8, of the material contained in the parenthesis beginning with the words, "apparently cursing him though most of us, including the victim, could not understand"; on the grounds that the witness himself admits his incompetency.

PROSECUTION: That is consented to by the prosecution.

LAW MEMBER: It will be stricken.

DEFENSE: And we object to the entire ninth question and answer on the grounds that it is incompetent and prejudicial to the defendant, and especially so is the last sentence because it is impossible to tell what is in the mind of another person.

LAW MEMBER: That request is overruled; the Commission will evaluate it for what it is worth.

DEFENSE: And the defense respectfully request the Commission to consider especially in this affidavit again that this entire affidavit pertains to the Stadium Hospital in Kobe, which is material outside the charges and specifications against the defendant.

PROSECUTION: Prosecution, sir, would like to strike out the third question and answer on the third page, third question and answer from the bottom on the grounds that it mentions Kobe which we are not interested in.

DEFENSE: The defense consents and on the first page also the defense would also like to strike this entire proceeding in the upper left-hand corner which starts out, "In the matter of the beatings inflicted upon American prisoners" etc., on the grounds it is prejudicial.

PROSECUTION: The prosecution consents.

LAW MEMBER: It will be stricken.

PROSECUTION: By consent with the defense and prosecution, in the upper lefthand corner of the page which was stricken out, the following words will not be stricken out, "In the matter of Kunihi Kondo, Japanese medical orderly."

DEFENSE: Sir, I was going to ask if the prosecution would agree or stipulate with the defense that these were activities that were committed in the Shoshun Hospital.

PROSECUTION: Prosecution will agree that these acts were committed at the Shoshun Hospital which the prosecution contends was the Zentsuji Hospital which is one mile from the camp.

LAW MEMBER: What specification does that come under?

PROSECUTION: Specification 10. Sergeant Tyak testified, I believe, on direct examination that the Zentsuji Hospital was one mile from the camp. I will stipulate that the acts alleged to have been committed by the defendant were committed at the Shoshun Hospital, All other acts, as stipulated, are not coming under the charges.

Sir, the prosecution rests.

DEFENSE: At this time the defense would like to make a brief statement before it makes its opening statement. The defense would like to make a few brief statements again before we proceed with our case in this specification No. 2 and also a motion for a finding of Not Guilty, on the ground that the Commission does not have jurisdiction to try this case.

It is well known that Italy was at war with the Allied Powers. It never was fully accepted as a member of the Allied Powers at any time, and as yet has not been so accepted. It is an enemy nation and this man, as the prosecution has stated, A. E. Principio was considered an Italian and he was captured and brought to this camp sometime in November 1943. At that time Italy and United States were at war, they remained at war and are still, technically, at war until the conclusion of the signing of the peace treaty, which has not yet been written up in its final form.

Italy accepted the surrender terms of the Allied Powers and became a country which was half free. Its half free to stay got a status of co-belligerency and declared war on the Germans on the 13th of October, 1943. Now, it is the feeling of the defense that Italy never officially declared war on Japan which was recognized. It is true in a Memorandum published by the prosecution they have stated that Italy unofficially declared war on Japan but it is dated one month before the entire conflict ended, on the 15th of July, 1945.

Now under the rules as laid down by the Supreme Commander Allied Powers, it is felt that the Commissions have not been given the powers to try acts committed by Italians against enemy nationals and we contend that G. B. Serafin, during the entire time he was at the camp, was an enemy national, and because this specification has been referred to this Commission by SCAP does not, by its mere reference to this Commission, give or lend any weight to the fact that this Commission has the power to or the jurisdiction to consider this case. We respectfully submit to the Commission that it should consider this defense's motion very seriously and make a finding of ~~dismissal~~ on its behalf or on this motion for at this time, as we say, Serafin was an enemy national of the United States and all its Allied Powers.

We have one other motion to make very briefly, sir, and that is to Specification 5, to this incident which is called the "balm" incident and we make this, sir, at this time on the grounds that it is not a war crime. We look to the rules and see the type of crimes which are stated to be war crimes and the type of offenses over which Commissions have jurisdiction. We do not find any place where the differences, or opinion, or mere calling in which some persons may have been struck because of a personal fight between one person calling another a "fool" is a war crime. On the facts as brought out in this case thus far, we have nothing which would indicate that it could be considered as a war crime. There is no abusive treatment and the mere fact that this act happened between one man or between people who were ~~counting~~ at the time a nation is at war does not make it a war crime.

We submit that the incident could have happened at any time between any two people. When a man is making his rounds at night carrying out his duties to check and see that blankets cover the men's shoulders, and is looking out for their welfare in the wee hours of the morning, it is pretty disconcerting to have some one wake up and call you a "baker", "fool" and we submit that there was no atrocity committed or gross mistreatment on the part of the defendant. It was nothing but a personal matter which could arise in the barracks between two American soldiers and we submit that surely this is an incident on which the Commission can rule at this time without forcing us to move further. We respectfully request the Commission to so rule because if any one of these five men, who are said or alleged to have been struck in this affidavit, thought enough of this striking or this incident which has been so well played up in this Court, was anything more than a personal fight, they certainly would have taken the trouble to write affidavits in support of this specification. So, we respectfully request the Commission to make a finding of not guilty on the motion of the defense at this time on Specification 5.

PROSECUTION: Sir, as to the first motion of the defense counsel I shall not answer because I feel that was argued, at considerable length, between Lt. Weik and myself some two and half months ago. It was referred to the Commission and I'll stand now on the Commission's rule which it made at that time when it overruled the defense.

As to Specification 5, the "baka" incident, I don't doubt that Kaniehi Kondo was quite discomcerted when he went around on his appointed rounds and found that the men didn't have their blankets around them, but it must have been quite disconcerting to the American personnel who were trying to sleep to be awaken at that hour of the morning and it must have been quite disconcerting to have five men beaten up by the accused. It was testified to by Chief Sanders and it was testified to by Sergeant Ryan, but what more convincing proof can the Commission want than the statement by the accused himself which is before this Court, and in which he admits the "baka" incident and in which he admits he hit one man whose name is not mentioned, therefore, I submit there is more than enough evidence before this Commission; and, if you will recall, just before we adjourned the motion was made to strike and refused. In between that time and now we have the additional evidence of Sergeant Ryan and the statement of the accused, more evidence than they had at that time when it ruled, and I therefore rely on that rule on which the motion was denied.

DEFENSE: Sir, on Specification 5, all evidence brought before this Court by witnesses for the prosecution has been of a hearsay nature. That has been pointed out to the Commission and I also note that the prosecutor stated Kaniehi Kondo said he had hit him, hit some man but that is not denied. That is not what the defense is basing its motion on. The defense is basing its motion on the fact that this was not atrocious conduct, this was not a war crime, this was something that arose up between two people, and one man thought he was doing his duty as he had been ordered and he did it in the hours of the morning when he wasn't required to be working, and some man said "baka" and was struck.

Now we take into consideration all that the prosecution has said as to the statement made by Kondo and stated that the rest of the incident was entirely hearsay. Sanders arrived at the barracks after the incident was over and we had testimony to that, but the main basis of this motion is that it is not a war crime and we think it isn't worthy of consideration and should be ruled upon at this time.

The Commission then after having deliberated upon the motion in closed session, announced as follows:

LAW MEMBER: With respect to the motion on Specification 3, the motion is denied. With respect to motion on Specification 5, the motion is denied.

DEFENSE: At this time the defense would like to make a brief opening statement as to what it proposes to show in this case. We will show that Kaniehi Kondo was a private in the Japanese Army. He was a man who had nothing but the barest elementary school education, he entered the Army and was sent to become a medical orderly. During the course of his career in the Japanese Army, Kaniehi Kondo never rose above the rank of a private, a superior private, he was sent to a camp, the Osaka Main Camp, and there administered to the needs of approximately 550 prisoners of war. At this camp was a colonel, Colonel Hirata, who was in charge of the entire Osaka Camp area.

In the medical section there was a senior medical officer known as First Lieutenant Nosu. Lt. Nosu had three other assistants at the main camp. They were Lt. [illegible], Lt. [illegible] and Lt. [illegible] Yoh Kondo, the defense will show, was given the job of administering to the needs of the 550 men who were at the Osaka Prisoner of War Camp. There he attended sick calls which were conducted by Lt. Hashman, an American prisoner of war, and he was a Japanese personnel who was present from June 1943 until he left there in May of 1945.

During this time the defense will show in its case that Kondo had great pressure brought to bear on him by his superiors, and specifically by Doctor Nosu. Now we will show that Doctor Nosu was an unstable individual, very erratic, and we will produce evidence to show that he is now in a hospital with some degree of mental unbalance and will have certificate from the doctor to attest to that. We will show that this was a type of man under whom Koniehi Kondo served while he was a medical orderly there at the camp. Kondo himself will be able to give a history or account of his activities while he was at the camp and give the Court a frank opinion and state the facts as to what went on at this sick call which seem to be the primary source of the trouble or motivating factor behind the case brought against him.

On the first three specifications we will have a general type of defense as we will to the general Specification 18 and will show that a considerable amount of pressure was brought to bear on Kondo to get these people out to work and we will endeavor to show who was responsible for this. We will be supported in this by various former members of the camp staff, most of whom are the former medical personnel in one capacity or other and knew Kondo quite well. Unfortunately there is one Doctor who was there longer than anyone else. We have not been able to get him to come to testify before the Commission because he is ill in the hospital with some infection in his lungs but we do have a stipulation as to what he would say if he were here in Court. We will have another medical doctor who was there but he was not there for a considerable period of time; it was mostly in the latter part of 1944 and early 1945. We will have a medical sergeant, a medical corporal, another superior private, who will testify in this case.

Now as to Specification 3; Kondo does remember the man Serafin. He does not remember Hess or Smith by names nor do the specifications set forth by the prosecution case recall anything to him about these individuals, and he will testify as to what he knows about Serafin and Serafin's case.

As to Specification 4, which was a slapping ascribed to Kondo, Kondo does not recall the name of this individual or the incident.

Specification 5, which is known as the "baka" incident, Kondo himself will testify as to the circumstances surrounding the striking on this occasion and it will be substantially the same as in the confession before this Court except for some additional details.

The Sixth Specification, involving Kettles will be denied by Kondo on the grounds that he cannot recall such an incident taking place.

Though he knew both Doherty and Knudson the men set forth in specifications7 and 9, and as these specifications state that these men were beaten with a leather slipper, Kondo will deny these specifications.

Specification 8, the "Hanley" incident, Kondo will admit striking this person and he will give his reasons.

Now as to Specification 10, the general specification, the testimony which will be brought out by the majority of our first four witnesses is a general defense. They were medical people who will speak to set forth the case for Kenichi Kondo and the reasons which motivated his actions.

Now, due to the introduction today of Prosecution Exhibit 21, the affidavit of Marshall J. Appenseller, we are forced to call additional witnesses. These two witnesses will testify that Kondo never was at any time at Ichioka Hospital stationed there. Both these men will testify that they were at Ichioka Hospital during the period stated in Sergeant Appenseller's affidavit and they will state under oath that Kondo was not in Ichioka Hospital.

Now as to Specification 11. That is the only specification that alleges any acts that took place outside of Osaka area but you must always keep in mind, Commission, that this Oyama Camp was within the Osaka Main District and, therefore, the guiding people behind the handling of prisoners of war within the Oyama Prisoner of War Camp would be superior in their various capacities in the Osaka Main Camp, namely Colonel Ikuta and Lt. Nosu as medical officers. We will have witnesses here to testify that Kondo, while he was at Oyama, performed his duties in an excellent manner with no complaints to the person in charge of that camp, and also we will show by testimony of the officer who had access to Kondo's record, Kondo's officer, that Kondo was considered a very fine medical orderly, especially when one considers he was a superior private and that he was considered to be very efficient by the officer at the Osaka Main Camp.

These are the facts which the defense proposes to set out in this case before this Commission.

Now, if the Commission please, it is almost time to adjourn. We have witnesses here to be called but it would greatly assist in not breaking the continuity if we adjourn now.

PRESIDENT: The Commission will adjourn to reconvene at 0900, the 26 of October 1946.

The Commission then, at 1550, 25 October 1946, adjourned to meet at 0900, 26 October 1946.

Richard E. Rand

LEONARD U. RAND
Chief Prosecutor

Q. [illegible]
A. [illegible] duties were examination of [illegible], [illegible] supplies, and office work.

Q. [illegible] the senior medical [illegible]

the Commission reassembled, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, the accused and the interpreters, and the reporter who were present at the close of the previous session in this case being present, except Major Philips, who was excused for the day's session by the appointing authority.

Marshall: At this time, the defense will call as its first witness Takio Amio.

Q. [illegible]
A. Takio Amio, a witness for the defense, was duly sworn and testified through the interpreter as follows:

Q. Can you recall the [illegible] DIRECT EXAMINATION five or six medical officers you mentioned as being at the camp [illegible] Counsel for the defense?

Q. What is your name?
A. Takio Amio. [illegible] class him, [illegible] Private Murakawa, Inferior Private [illegible], Superior Private Nishiura, and I have forgotten the others.
Q. Where do you reside?
A. Hyogo Ken, Nishino Machi, Ume Ano, Shinkai No. 11.
Q. Is he was not there.
Q. What is your occupation?
A. I am a doctor, assigned, Omuchi Hospital [illegible] now, I do.
Q. And where did you study medicine?
A. Keiyo Medical College.
Q. Yes, is it?
Q. And when did you graduate?
A. 1930. Lieutenant Kondo at the Omuta War Prisoner of War Camp while you were there?
Q. Have you practiced medicine since your graduation?
A. Yes.
Q. Is Ohikuo a city within the Omuta Camp?
Q. Are you married or single?
A. I am married.
Q. Did you ever [illegible] child that was sold in the camp or between
Q. How many children do you have?
A. Six.

Q. Were you ever in the Imperial Japanese Army?
A. [illegible] three times.

Q. And what were the dates of your service in the Japanese Imperial Army?
A. From 1 September 1944 to the end of the war.
Q. [illegible] told Doctor when I'll be asked [illegible]
Q. And during your period of service, did you ever serve at the Omuta Main Prisoner of War Camp?
A. All during my service. [illegible] you visited the [illegible], who were present?
Q. And in what capacity did you serve at the Omuta Prisoner of War Camp?
A. Examination and sanitation matters, medical examination.
Q. And who is Sherman?
A. He was a prisoner of war doctor.

Q. What were your duties while you were at the Omuta Main Camp?
A. My duties were examination of patients, taking care of medical supplies, and office work.

Q. Who was the senior medical officer at the Omuta Main Camp?
A. Medical Officer Nosu.

Q. While you were at the Main Camp, were there any other medical doctors there besides yourself and Nosu?
A. Medical Officer Muroi, and four NCOs, and five or six privates.

Q. Can you recall the names of the NCOs?
A. Yes, I remember their names.

Q. What were they?
A. First Sergeant Muroi, Sergeant Ohyama, Corporal Nomura, Corporal Nishina, and Sergeant Kobayashi.

Q. Can you recall the names of any of the five or six medical privates you mentioned as being at the camp?
A. Yes, I know their names.

Q. Will you give their names?
A. Private First Class Abe, Superior Private Akyakawa, Superior Private Ogo, Superior Private Kiriyama, and I have forgotten the others.

Q. Was there a superior private there named Kenichi Kondo?
A. Yes, he was there.

Q. Do you know the accused, Kenichi Kondo?
A. Yes, I do.

Q. Is he in this court room?
A. Yes, he is.

Q. Was Kenichi Kondo at the Omuta Main Prisoner of War Camp while you were there?
A. He was not at the Main Camp but he was at the Chikko.

Q. Is Chikko a camp within the Main Camp?
A. That is what I believe.

Q. Did you ever attend sick call which was held in the morning between 0800 and 1 at the Chikko Camp?
A. Yes.

Q. Approximately how many times, Doctor?
A. Approximately three times.

Q. Can you tell the Commission what constrained you to visit the Chikko Main Camp dispensary on these morning sick calls?
A. Kondo told Doctor Nosu that he wanted me for diagnoses, so Nosu told me, and that is why I went there.

Q. How on these occasions that you visited the dispensary, who were present?
A. Kondo and Nosumura.

Q. And who is Nosumura?
A. He was a prisoner of war doctor.

Q. Who were anyone else present at those visits you made to the dispensary?
A. Other [illegible] prisoners of war there.

Q. Now when you got to the dispensary, Doctor, just what did you do?
A. I made examinations.

Q. Of whom did you make these examinations?
A. The prisoners of war.

Q. On all three occasions that you visited the dispensary, did you examine prisoners of war?
A. Prisoners of war.

Q. On each occasion?
A. One prisoner each time.

Q. Then a total of three prisoners of war, is that correct?
A. That is true.

Q. Now, just what ailments were these prisoners of war suffering from that necessitated your visiting the dispensary on these occasions?
A. Dysentery.

Q. And as a result of your diagnosis, what was your recommendation as to the disposition of the patients examined?
A. We made them rest.

Q. And by "we" whom do you mean?
A. I reported this to the visiting medical officer who made them rest.

Q. And who was the visiting medical officer?
A. Medical Officer Noon.

Q. Now, were there any other occasions on which Kondo came down to request your services at the camp to assist in the diagnosis of the prisoners of war that you weren't sent to this Chihko dispensary?

PROSECUTION: May it please the Court, I want to object to that question because I think it is definitely leading.

DEFENSE: Let's strike the question.

Q. Were there any other occasions when Kondo came down to the dispensary to request your services?
A. Yes.

Q. On how many occasions?
A. Five or six times.

Q. And of whom did he make these requests?
A. Medical Officer Noon.

Q. And do you know the reason why you weren't sent on these occasions?
A. They didn't come to me for any assistance. They went to Noon, who in turn came to me.

Q. Now, just what was the procedure that it was necessary for Kondo to go through if he was to get your services at the dispensary on any given occasion?

A. There is no reason for them to come to me for assistance. They make this request to the attending medical officer who in turn orders me to go.

Q. Would you be able to visit this dispensary on your own volition, or on request by Kondo himself?
A. No, I cannot go.

Q. Is it correct then, the understanding you want the Commission to have, that you had to get the order of Nosu before you could proceed to the Chikko dispensary?
A. That is true.

Q. While you were at the Osaka Main Camp did you ever have the detail, the detail as duty officer?
A. Yes.

Q. Approximately how many times?
A. Once on the 7th or the 8th.

Q. Do you mean once every 7 or 8 days?
A. Once every 7 or 8 days.

Q. Now, as duty officer did you have the authority to excuse a prisoner of war from work?

PROSECUTION: Just a moment. I'm going to object to that question on the grounds it is irrelevant, incompetent, and immaterial as far as this case is concerned.

LAW MEMBER: Objection overruled.

A. No.

Q. In your associations with Lt. Nosu, your superior officer, just what sort of individual and superior officer did you find him to be?
A. He was very strict and gave orders and was rank conscious.

Q. Did you ever attend any meetings of medical personnel held by Nosu?
A. There were no meetings
Q. That you attended?
A. No.

DEFENSE: No further questions.

CROSS EXAMINATION

Questions by the prosecution:

Q. Doctor, how many years did you attend the Tokyo Medical College?
A. four years.

Q. And in Japan does a doctor have to serve an internship after medical college before he practices medicine?
A. Yes.

Q. Prior to entering medical college, what kind of an educational background must you have?
A. Middle school education.

Q. Now, Doctor, did you know Dr. Hochman?
A. Yes.

Q. Did you, during the time you knew Dr. Hashimoto ever discuss the treatment of diseases in these prisoners of war camps?

PRESIDENT: Treatment of what?

PROSECUTION: Illnesses and diseases.

A. With Hashimoto?

Q. Yes.
A. No.

Q. Would you know Dr. Hashimoto well enough to testify whether or not in your opinion he was a competent doctor?
A. Yes, he was quite competent as a medical officer.

Q. Now, what were Dr. Hashimoto's duties at this prison camp?
A. Immunization and taking care of patient supplies.

Q. Now, Hester, on direct examination you testified that the first time you went to the prison camp, Mr. Kondo had asked Mr. Hoan to send you there, is that true?
A. Yes.

Q. Now, when you arrived at the prison camp, did you ask Mr. Kondo why he wanted you there?
A. I did not ask him.

Q. But you did examine I think you said three prisoners and found they were suffering from hypochlorite?
A. Yes.

Q. Did you talk to Dr. Hashimoto when you arrived at the prison camp to find out whether or not he had examined them?
A. No, I didn't ask them.

Q. Did you talk with Mr. Kondo as to why he didn't allow Dr. Hashimoto to examine them instead of sending for you to examine them?

DEFENSE: I object on the ground there has been no testimony at any time that Dr. Hashimoto did not examine them. This was not brought to check on Dr. Hashimoto's diagnosis.

LAW MEMBER: Objection sustained.

Q. Did you talk to Dr. Hashimoto about these men's ailments?
A. About the results of the diagnosis?

Q. [illegible]
A. Yes.

Q. Did Dr. Hashimoto tell you that Kondo had allowed him to examine the men prior to your coming?
A. I do not know.

Q. Doctor, will you tell us how many methods you used to determine whether or not a patient is suffering from dysentery?

DEFENSE: Just a minute. Defense objects on the grounds that there has been no testimony presented by this witness that the prisoners of war he examined were suffering from dysentery at this camp.

LAW MEMBER: I think when he testified he said he examined hospitals cases.

PROSECUTION: Yes, but here is a doctor who is a medical expert.

LAW MEMBER: I think you have to stick to the things he testified he examined. Do you wish to reword your question or will I have to sustain my ruling?

PROSECUTION: There has been definite testimony in this case that the accused would send the men out to work.

LAW MEMBER: We understand that. Now what about the witness?

PROSECUTION: I still feel that he, being a doctor, should be allowed to tell the different methods used by the profession.

LAW MEMBER: You didn't word your question that way.

PROSECUTION: Will you read the question?

The reporter read back the question.

LAW MEMBER: Not suffering to a prisoner of war?

PROSECUTION: No.

LAW MEMBER: Make that clear in your question.

Q. Doctor, how many methods do you use or would you use in examining prisoners of war or other patients in order to determine whether they are suffering from dysentery?

DEFENSE: I permit the question on these grounds. The testimony that had been brought out by any examination of the prosecution that there had been dysentery in the camp has been a testimony of non-expert witnesses and men who said they had dysentery.

LAW MEMBER: There is no objection to this question, so the objection is not sustained.

DEFENSE: Yes, but we want the Commission to keep that in mind.

A. Microscopic examination, bacillary examination, stool tests, and from the general conditions of the patient's body.

Q. In other words, Doctor, would you say that a man might be suffering from dysentery although he didn't pass blood?

A. I cannot tell.

Q. Do you use the four methods you have outlined before you definitely determine a man is suffering from diarrhea?

DEFENSE: He examined him on dysentery, let's stick to dysentery.

PROSECUTION: All right.

A. Yes.

Q. Would you say, Doctor, a prisoner of war or a patient who had been relieving himself 15 to 20 times a day was suffering from dysentery?

DEFENSE: That question put by the prosecutor is not one of the four methods outlined by the doctor as to the method by which he determined dysentery.

LAW MEMBER: The objection is not sustained. The Commission will evaluate the evidence for what it's worth.

A. It may not only be dysentery, it could be intestinal catarrh, but we suspect dysentery.

Q. Doctor, were you familiar with the general health conditions of the prisoners of war at Omuta Main Camp?

DEFENSE: Just for clarity I think you ought to stick to Chilton, because he confused the details.

Q. Are you familiar with the general health conditions, Doctor?
A. Yes.

Q. And was that good or bad?
A. Since I came into the camp I believe the general condition was good.

Q. Now, Doctor, how many methods did you use in determining whether or not a prisoner of war was suffering from malaria or fevers of any kind?
A. I didn't see any malaria.

Q. Well, could you, a doctor, having been graduated from one of the medical colleges and practiced your profession for from 12 to 14 years, can you place your hand on a man's forehead and tell whether he is suffering from malaria or fever?

DEFENSE: I object to the ambiguity of the question. "Fever or malaria"; if it is confined to fever the question wouldn't be objectionable.

PROSECUTION: I agree with you.

A. I cannot tell.

LAW MEMBER: Is that translated correctly, "I cannot tell." Read the question again and get a better answer from him.

The question was repeated to the witness by the interpreter.

A. Yes, it can be determined.

PRESIDENT: Yes, what?

Q. You mean by that answer, Doctor, that your being a medical man and experienced, you can tell that, is that correct?
A. It can be determined whether a man has a fever or not by that method.

Q. Doctor, on these other two occasions where you went to the camp to examine prisoners, who sent for you?
A. I went on the orders of Lt. Nosu.

Q. Do you know of your own knowledge whether or not Kondo had asked Dr. Nosu to send you out to the camp?
A. Kondo requested this through Nosu.

Q. Do you mean on all of the occasions when you went to the hospital, Kondo had requested through Nosu that you come?
A. That is true. Once when Nosu was not there, he came to me and asked.

Q. Now, Doctor, on these three occasions when you were called to the hospital, did you examine all of the prisoners or did you just examine the ones that Kondo asked you to examine?
A. Just the ones I was requested to examine.

Q. By whom, the request?
A. Kondo.

Q. Now, on both of these three occasions before you examined any one of those prisoners, did you discuss that prisoner's condition with Dr. Hoshuan?
A. Yes.

Q. Did Dr. Hoshuan tell you that he had made a diagnosis in those cases?
A. I did not hear this from Hoshuan.

PRESIDENT: That does not answer the question. Read the question in English and then get it from him in Japanese.

The reporter read back the question and the question was interpreted to the witness.

A. No, I did not.

Q. Did Kondo tell you that Dr. Hoshuan had made a diagnosis in these cases?
A. Yes.

Q. Did Kondo say anything to you as to why he didn't rely on the diagnosis of Dr. Hoshuan?
A. No, he did not.

Q. Do you know what medical experience Kondo had?
A. He has the knowledge of a medical orderly.

Q. Would you say that Dr. Hoshuan was a competent doctor, in your opinion, a truthful man?
A. Yes, he was.

Q. You don't know what went on at sick call on any other occasions do you, Doctor, that is of your own knowledge?

PRESIDENT: When?

PROSECUTION: On any other occasion.

PRESIDENT: When?

PROSECUTION: During the three times that he was at camp.

A. Yes, I know.

PRESIDENT: Does he know, or does he mean yes?

INTERPRETER: He knows.

PRESIDENT: Have him make a complete statement instead of just saying "yes".

A. I do not know.

PRESIDENT: See. Let's be careful, interpreter.

INTERPRETER: Sir, he answered it one way, then changed it.

Q. Mr. Kondo was a private in the Japanese Army, is that right?
A. That is correct.

Q. And never received any promotion that you know of because of his ability as a medical man, did he?

DEFENSE: That question is strictly out of order.

LAW MEMBER: Objection sustained.

PROSECUTION: That is all.

RE-DIRECT EXAMINATION

Questions by the defense:

Q. Doctor, on the three occasions that you visited the Chikko dispensary, did Dr. Kaelman make any statements to you as to Kondo's behavior on sick call?
A. No, he did not.

Q. Now, Doctor, as one professional man giving an opinion about another, just what would you, Doctor, think of Dr. Mosu's ability as a medical officer?

PROSECUTION: I think that is an improper question.

LAW MEMBER: Are you objecting?

PROSECUTION: Yes.

LAW MEMBER: Objection sustained.

Q. Dr. Amae, do you have any idea why you were the person who did clerical work in the main office, while a medical orderly, Kaniehi Kondo, performed the medical treatment on prisoners of war?
A. I have no idea.

Q. Now, while Kondo was at the Chikko Main Camp who was his superior officer, not in the medical line; who was the commanding officer in the camp?
A. Second Lieutenant Matsumura.

Q. Who was the commandant of the entire Omuta Camp then?

PROSECUTION: May it please the Court, this is redirect examination and my understanding of redirect examination is—

DEFENSE: This is the last question.

PROSECUTION: I withdraw my objection.

A. Col. Marsh.

DEFENSE: Sir, the reason I wanted to ask this question is that there is another Dr. Marsh who I spoke of yesterday we desire to have testify. Now, we prepared a chart and wanted to give the overall picture of what the status was, [illegible], but then with his first and [illegible], U.S.N., was very vital

LAW MEMBER: Ask him directly.

Q. What was Dr. Marsh's status in the prisoner of war camp?
A. He was next to the ranking medical officer.

DEFENSE: Sir, the reason for that question was because we are going to get that before the Court by agreement with the prosecution, by way of preparing a chart of the medical setup there. Now, I wanted to get down on the record just exactly what people were present in the camp, who the commandants were, and who the medical people who this man knew were.

CROSS EXAMINATION

Questions by the prosecution:

Q. Doctor, I think you just testified this Dr. Hochman never made any complaints to you about Kondo, is that true?
A. Yes, that is correct.

Q. And you also testified in answer to one of my questions that you consider Dr. Hochman a responsible and truthful man?

DEFENSE: That is already on the record.

PROSECUTION: I'll withdraw it.

Q. Are you familiar with the affidavit or statement that Dr. Hochman made about Mr. Kondo?
A. No.

PROSECUTION: Let me read the statements.

DEFENSE: From which exhibit?

PROSECUTION: Exhibit No. 9. Now, let me read you the statement Dr. Hochman made.

DEFENSE: One of the statements that Dr. Hochman made.

PROSECUTION: Now, I'm cross examining the witness.

Q. Let me read this answer to you: "Q. Can you describe the medical orderly mentioned in Part B of your report?"

LAW MEMBER: Does he understand English?

PROSECUTION: Maybe he does not.

LAW MEMBER: Don't give it to him all at once.

Q. "Q. Can you describe the medical orderly mentioned in Part B of your report?

"A. In my camp we had a three-star private named Kanda. He kept the books at sick call and made decisions that should have been made by a doctor, and often overrode my decisions. He hit sick POWs over the head with books, slapped their faces, hit them with his fists and kicked them. He was about 5' 9", 145 lbs., age 33, wore very thick horn-rimmed glasses because he was nearsighted. His home town was Nagoya."

Now, knowing Dr. Hoshuma and considering him and his reputation for competency and truthfulness, would you say that statement was true or false?

A. I do not know.

DEFENSE: Sir, before we take a recess, does the Commission have any questions of this witness?

PRESIDENT: No, we have not.

DEFENSE: Then, if it please the Commission, this man is a doctor and has been here quite awhile. May he be excused?

PRESIDENT: I have no more questions.

PROSECUTION: We have no further questions.

PRESIDENT: The witness is excused.

The witness was excused and withdrew.

PRESIDENT: The Commission will take a 10-minute recess.

The Commission then recessed until 1045 hours, at which time all the personnel of the Commission, prosecution and defense, the accused, the interpreters, and the reporter resumed their seats.

Major Gordon K. Philips, chief defense counsel, was also present.

DEFENSE: Defense calls as its next witness Kiyomi Kobayashi.

Kiyomi Kobayashi, a witness for the defense, was sworn and testified through the interpreters as follows:

DIRECT EXAMINATION

Questions by the defense:

Q. State your name?

A. Kiyomi Kobayashi.

Q. How old are you?
A. 37.

Q. Where do you live?
A. Hyogo Ken, Taka Gun, Kireda Shi, Tako 720.

Q. What is your occupation?
A. Police officer.

Q. How many years education did you have?
A. Higher primary school.

Q. Are you married or single?
A. I am married.

Q. Any children?
A. One.

Q. Were you in the Imperial Japanese Army?
A. Yes.

Q. During what period did you serve in the Imperial Japanese Army?
A. The first time I was in from 1 September, 1941 to November 30 of the same year at the Himeji Army Hospital. My second period was from June 30 to December 30 at a field hospital, and my third term was from October, 1943, to the end of the war.

Q. Now, did you ever serve at the Osaka Prisoner of War Camp?
A. Yes.

Q. And during what dates did you serve there?
A. From August, 1943 up until April, 1945.

Q. Do you know the accused, Kenichi Kondo?
A. I do.

Q. Did you know him while you served at the Osaka Prisoner of War Camp?
A. Yes.

Q. What was his rank while he was there?
A. Medical private first class, medical superior private.

Q. What were his duties?
A. He was a chief medical orderly of the Ohikke Prisoner of War Camp.

Q. And was that a camp within the Osaka Main Prisoner of War Camp?
A. Yes.

Q. What were your duties while at this camp?
A. I was MDO in charge of the medical supplies of the entire Osaka Prisoner of War Camp.

Q. Were all the medical supplies for the entire Osaka Camp area stored at the Osaka Main Camp?
A. That is correct.

Q. And just what was the procedure by which you distributed these medical supplies to the sub-camps?

PROSECUTION: I have no objection to this line of questioning, except I feel that all questions so far as the distribution of supplies should relate only to the Osaka Camp. What was distributed to other camps I think is immaterial.

DEFENSE: We will show that there has been a few statements made in the record by Chief Sanders that left the impression that there were a lot of supplies there. I want to show by this question that Chikko was only a small camp and they received an allotment each month, and he did the best he could with it.

PROSECUTION: Sir, the Commission can draw its own inference as to the number of supplies.

PRESIDENT: The Commission wishes to have the entire picture of the supplies and you can proceed with the question.

DEFENSE: Please read back the question.

The question was read back by the reporter and translated to the witness by the interpreters.

A. We received medical supplies at the Osaka Prisoner of War Camp from once to twice a month, and the officer in charge or the person in charge would distribute them according to Dr. Nosu's orders.

Q. And how often did you make this allotment of medical supplies to the Sub-Camps?
A. We used to distribute them once a month, but after the air raids began we started to distribute them once every two months.

Q. And in this manner did the Chikko Camp draw its supplies?
A. That is correct.

Q. And if the medical orderly at the Chikko Camp, who was Kondo in this case, wished to procure any extra allotment of medical supplies during any given month, just what procedure would he have to attempt?
A. Do you mean in excess of--

Q. That's right. In excess of the allotted supplies.
A. In these cases they would, through their MCOs, request emergency supplies.

Q. Who was the senior medical officer in the Osaka Main Camp?
A. Medical First Lieutenant Shoichi Nosu.

Q. And was he the senior medical officer all the time you were at the Main Camp?
A. That is correct.

Q. What was your association with Lt. Nosu; what was your relationship with Lt. Nosu?
A. He was my superior officer.

Q. And as a superior officer, just what sort of a man did you find him to be?

PROSECUTION: I object to the question, sir. It is too indefinite as to what.

DEFENSE: As a superior officer.

PROSECUTION: In so far as the prosecution is concerned, they feel the question is immaterial to the issue. It makes no difference what type of man this man thought Dr. Kase to be.

DEFENSE: Well, we'll ask him from his knowledge during the approximately two years he spent at the Osaka Main Camp, what would be say was the general opinion in the Osaka Main Camp to Dr. Kase as a medical officer.

PROSECUTION: I still object on the grounds this man is not qualified to testify as to the competency of Dr. Kase.

LAW MEMBER: The objection is not sustained. The Court will evaluate whatever opinion he has for what it is worth.

A. He was very strict and very rank conscious, and treated his subordinates according to their ranks.

Q. Did you ever attend any meetings of medical personnel held by Dr. Kase?
A. Yes.

Q. Approximately how many times?
A. He assembled the men every morning except the times he was not there. He assembled them at roll call time.

Q. Did you ever see Kondo in attendance at any of these meetings?
A. Yes.

Q. And what did Dr. Kase say at any of these meetings in regard to any instructions he would give to the medical personnel?
A. He said, "I'm the ranking officer here and my orders must be obeyed to the letter, and since I have the complete responsibility here you will all obey my orders."

Q. While you were at this prisoner of war camp, did you ever see Kase speak to Kondo?
A. Yes, I have seen him.

Q. Were you present during these conversations?
A. I believe I saw them about two or three times.

Q. And where did these conversations take place?
A. In the office of the Main Camp.

Q. Now, what was said on these occasions?
A. I believe I saw Kase give instructions to this effect to Kondo, especially when there were too many patients. He said, "There are too many patients these days and you will have to raise the health standards of the camp." I saw him speak to Kondo several times and to Kondo and Hinohara several times.

Q. Do you know whether or not Kondo ever received any commendations while he was at the camp?

PROSECUTION: I want to object to that question because it is very indefinite. Did he receive any commendations from whom?

DEFENSE: From any of his superiors, if that is what you want.

LAW MEMBER: Objection not sustained.

A. Yes, he received some commendations.

Q. Can you give the reason why these were given, if you know?
A. He received these commendations about three times, and he received the commendation twice for raising the health standards of the prisoners of war there. Also for diligently working in his capacity as medical orderly, and for that he received a furlough, and on the third time he received the commendation was in 1944. It was during a flood. There was some carbide stored in the warehouse and when it was on the verge of exploding, he did some work to prevent the explosion, and he also saved some medical supplies there, removed them to a safe place. For this he received the commendation from the Army commander.

Q. What was this Army commander's name?
A. I have forgotten.

Q. Was that Maeda's superior?
A. Yes.

DEFENSE: No further questions.

PRESIDENT: What was that?

DEFENSE: Col. Maeda's superior gave that commendation.

CROSS EXAMINATION

Questions by the prosecution:

Q. Mr. Kobayashi, are you at present confined at Sugamo Prison?
A. No, I am not.

PRESIDENT: I didn't hear that question.

PROSECUTION: I asked him if he was confined to Sugamo Prison and he said "No", Sir.

Q. Now you stated Kenichi Kondo received three commendations from the Japanese. Did he receive any commendations from the American POWs?

DEFENSE: For obvious reasons that question is highly prejudicial.

LAW MEMBER: Objection sustained. Rephrase the question, but don't use the word "commendation".

PROSECUTION: I'll withdraw that question and rephrase it.

Q. You stated that Kenichi Kondo received three commendations from the Japanese commander. Do you know whether or not he received any type of praise from the American prisoners of war?

DEFENSE: I believe that any question along this line is out of order. It is highly prejudicial.

LAW MEMBER: Objection not sustained. You may proceed.

A. I do not know.

Q. When did Kondo get his commendation for improving the health conditions of the camp?
A. I don't remember the exact date.

Q. Approximately when?
A. Once sometime in 1944, and sometime in February of 1945.

Q. Now, when did you overhear the conversation between Kondo and Dr. Nosu in which Dr. Nosu stated there were too many patients, he would have to raise the health standard?
A. I don't remember the date exactly.

Q. Approximately when?
A. I believe it was around February or March of 1944.

Q. Was that the first conversation?
A. I do not know in detail.

Q. When was the last conversation you ever heard between Kondo and Nosu?
A. Towards the end of 1944.

Q. Now, you stated that towards the end of 1944 or in February of 1945, Kondo received a commendation from the Japanese authorities for improving and raising the health conditions of the camp. Can you explain why if he got that at that time, Dr. Nosu at the end of 1944 would complain to Kondo in the conversation to which you have just testified that there were too many patients, "You will have to raise the health standards of the camp"?

DEFENSE: Obviously, sir, since this man is a medical sergeant, he testified he was not the man who gave the commendation, he obviously is not competent and cannot testify as to why he received them. He testified he received them and the reason why he understood it was received, but what motivated the giving of them the man cannot testify to.

PROSECUTION: We'll withdraw the question.

Q. You don't know anything about Kenichi Kondo's activities at sick call, is that correct?
A. I do not know anything about it.

Q. Now, you have testified what the medical men thought of Dr. Nosu. Do you know what the opinion of the American prisoners of war was about Kondo?
A. As I have said before, I had no connection with the sick call so I had no contacts with the prisoners of war. I did my work inside the office in the Main Camp, and I had no contacts with the prisoners of war.

PROSECUTION: No further questions.

There being no further questions, the witness was excused and withdrew.

The Commission then adjourned to meet at 0900, October 28, 1946.

Leonard M. Kaud

LEONARD M. KAUD,
Chief Prosecutor.

Yokohama Courthouse
Yokohama, Japan
28 October, 1946

The Commission reconvened, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, the accused, the interpreters and the reporter who were present at the close of the previous session in this case being present, with the exception of Major Burton K. Philips, chief defense counsel, excused by the appointing authority for the day.

DEFENSE: At this time the defense calls as its third witness Koichi Hayakawa.

Koichi Hayakawa, a witness for the defense, having been duly sworn, testified through the interpreters as follows:

DIRECT EXAMINATION

Questions by the defense:

Q. State your name.
A. Hayakawa, Koichi.

Q. How old are you?
A. 25.

Q. Where do you live?
A. Aichi Ken, Aga Gun, Yanahima Machi, 1 Chome.

Q. What is your occupation?
A. Barber.

Q. Are you married or single?
A. I am single.

Q. Were you ever in the Imperial Japanese Army?
A. Yes, I was in the army.

Q. During what dates were you in the Japanese Imperial Army?
A. I was in the Army from the 20th of March, 1943 until the 15th of December, 1945.

Q. What was the highest rating you attained while you were in the Japanese Army?
A. I was a lance corporal, leading corporal.

Q. How much education have you had?
A. I have a higher grammar school education.

Q. Now, were you ever stationed at the Omuta Main Camp?
A. Yes.

Q. During what dates were you stationed there?
A. From the 27th of November, 1943 to the 15th of September, 1945.

Q. What were your duties at this camp during that time?
A. I was a secretary at the Omuta Main Camp.

Q. Were you in the medical section of the Main Camp?
A. Yes, I was a secretary in the office of the medical section.

Q. Do you know the accused, Kenichi Kondo?
A. Yes, I do.

Q. When did you first meet Kenichi Kondo?
A. When I first went to Omuta Prison Camp on the 27th of November, 1943.

Q. And what were Kenichi Kondo's duties at this camp?
A. Medical work at the Chikiko POW Camp.

Q. What was Kondo's rank at that time?
A. He was a superior private.

Q. Did you ever work with or under Kenichi Kondo?
A. Yes.

Q. When did you work with Kenichi Kondo?
A. December of 1943.

Q. And for how long a period did you work, either with or directly under Kenichi Kondo?
A. About one month as a student.

Q. Was this at the Chikiko dispensary within the Main Camp?
A. That is correct.

Q. And during the period while you were at the Main Camp, did you also live in the same barracks or boarding house occupied by Kenichi Kondo?
A. That is correct.

Q. Now, from your association with Kenichi Kondo during this period of approximately two years, could you tell this Commission correctly how much interest Kondo took in his duties?

PROSECUTION: Just a moment. I object to the question on this ground: This witness has stated that he worked with Kenichi Kondo for one month only. Now the question is "knowing Kondo for two years", can he state what his interest was in his duties? How could this witness possibly know?

DEFENSE: This man lived with Kondo. He can testify whether Kondo spent any period of time at his work, and what period of time he spent in his barracks.

LAW MEMBER: The objection is not sustained; the Commission will evaluate the testimony for what it is worth.

A. Kondo was a very serious person and as a leader he was very kind to us. For example, being a soldier in those days was a great hardship, but regardless of whether it was summer or winter he made his rounds at night.

Q. During this month you worked with Kenichi Kondo, did you ever see Kenichi Kondo strike a prisoner of war on sick call?
A. No.

PROSECUTION: Will you state in your question "During the one month that he was there"

DEFENSE: That's what I said.

PROSECUTION: I didn't hear it.

Q. Now, do you know a Dr. Noma at the Osaka Main Camp?
A. Yes.

Q. What were his duties at this camp?
A. He was a ranking medical officer of the medical section.

Q. Now, while you were a member of the medical section at this camp, did you ever attend any meetings held by Dr. Noma, over which Dr. Noma presided?
A. I attended Dr. Noma's morning roll call every morning.

Q. And at any of these roll calls or meetings, did Noma ever give any short talks or lectures to the medical personnel in attendance?
A. Yes.

Q. Just what was his general theme?
A. He always instructed the medical personnel and cautioned us about various things. He said, "I have the complete responsibility, do as I say."

DEFENSE: Your witness.

CROSS EXAMINATION

Questions by the prosecution:

Q. Mr. Mochizuki, are you a very good friend of the accused, Kenichi Kondo?
A. No, I am not a very close friend.

Q. Were you a very close friend of his while you were stationed at the camp?
A. We were in one room. We were in the same room and our relations were my relation to him was as subordinate and he was my leader.

Q. Now, you testified that you worked with Kondo for one month in December of 1943. Was that in the dispensary?
A. Yes, at the Chikko dispensary.

Q. During that one month did you attend sick call every morning?
A. There was no sick call in the morning.

Q. Am I correct in stating that in December of 1943 at the Chikko dispensary where Kondo operated, there was no sick call from 6:30 to 7 o'clock in the morning?
A. There was no morning sick call until we moved to the new camp.

Q. What new camp are you referring to?
A. At first the camp was divided into No. 1 and No. 2 camps. Around the middle of February, 1945 it was incorporated into one camp, and previous to that we did not have any morning sick calls.

Q. Is it possible he could have struck an American prisoner of war and you not know about it?

DEFENSE: That question is strictly out of order.

LAW MEMBER: Objection sustained.

PROSECUTION: Sir, defense asked these very same questions last Saturday morning.

LAW MEMBER: He said he never saw or heard.

Q. Can you explain to this Commission, in view of the fact that you know Kenichi Kondo for two years, can you explain the presence in this case now of approximately 15 affidavits which state Kenichi Kondo struck American prisoners of war, plus the fact that we have had live testimony that Kenichi Kondo struck American prisoners of war? Can you explain that to this Commission?

DEFENSE: Such a question is strictly out of order at this time.

LAW MEMBER: Objection sustained.

Q. Now, am I correct when I state that other than this one month which you state was in December of 1943, you don't know what Kenichi Kondo did in the POW dispensary in the Main Camp?

Q. Now, this one month you worked with Kenichi Kondo, what precisely did you do with him as regards American prisoners of war?
A. I was a subordinate of Kondo, so all I did was to carry medicine and did not have any contact with the prisoners of war.

Q. Now, during this one month you worked with Kenichi Kondo, did you see Dr. Nashuma around?

DEFENSE: Around where?

PROSECUTION: We are talking about the camp.

DEFENSE: The camp isn't an issue. It is the action at the dispensary.

PROSECUTION: I'll reword the question.

Q. During the one month you worked with Kenichi Kondo, was Dr. Nashuma present at that time?
A. Yes, he was there.

Q. Did you ever see Kenichi Kondo overrule any of Dr. Nashuma's decisions regarding treatment for an American prisoner of war?
A. No.

Q. Did you ever see Kondo send a sick American prisoner of war out to work over Dr. Nashuma's protest?
A. No, absolutely not.

Q. Now, you have stated that you never saw Kenichi Kondo strike American prisoners of war. Did you ever hear of him striking an American prisoner of war?
A. No.

DEFENSE: Of his own knowledge.

A. Kenichi Kondo did not serve at the Main Camp dispensary.

Q. I am referring to the POW dispensary where the American prisoners of war were stationed, the Chikko Camp. Am I correct in assuming that other than that one month which you state was December, 1943, you don't know what Kenichi Kondo's relation with the American prisoners of war was at the dispensary, is that correct?

A. Kondo did medical work at the Chikko dispensary, and I was at the Main Camp, so I do not know what he did over there, except at night when we came back to the same barracks.

PROSECUTION: No further questions.

RE-DIRECT EXAMINATION

Questions by the defense:

Q. Now, Hayakawa, just what time of day was sick call held for the prisoners of war when you were in attendance at sick call on December of 1943?

A. There was no sick call in the morning, but when the prisoners of war came back from work between 5 and 6 P.M. the sick call was held.

Q. Were you in attendance at this sick call during December?

A. Yes.

Q. Now, when you stated that Kondo made the rounds in the evenings, can you explain to the Commission exactly what you mean by that statement?

A. Kondo would get up around 2 or 3 o'clock and walk around the camp inspecting the general conditions. He did this daily, and at first I wondered what he did because he put on his clothes. Then I found out he was making his rounds.

Q. Rounds of what and what was he inspecting?

A. He made his rounds to see whether or not the prisoners of war were covered with their blankets. There were many prisoners of war with diarrhea, so he made this round to check on this.

Q. Now, Hayakawa, to clear up a point for the Commission, you stated on cross examination that sick calls were not held in the morning until the camps joined sometime in mid-1945. Would you wish to correct yourself and say mid-1944?

PROSECUTION: Sir, I object to this question.

DEFENSE: Oh, goodness gracious. It is in order. It is only a mistake in the year. It is not a contested point.

LAW MEMBER: Let the witness answer the question.

A. In the middle, sometime in the middle of February, 1944, the prisoner of war camps were incorporated.

DEFENSE: No further questions.

PROSECUTION: No questions, sir.

PRESIDENT: The witness may be excused.

The witness was excused and withdrew.

DEFENSE: Defense calls as its next witness Yoshio Hiraiwa.

Yoshio Hiraiwa, a witness for the defense, was sworn through the interpreters and testified as follows:

DIRECT EXAMINATION

Questions by the defense:

Q. What is your name?
A. Yoshio Hiraiwa.

Q. How old are you?
A. 59.

Q. Where do you live?
A. Akibi Ken, Hakkimi Gun, Takari Cho, Oh Aza Higeri, Aza Higashi Kohiroto 7ik.

Q. What is your occupation?
A. Farmer.

Q. Are you married or single?
A. I am married.

Q. Do you have any children?
A. Yes.

Q. How many?
A. One.

Q. How many years of education have you had?
A. Nine years.

Q. Were you ever in the Imperial Japanese Army?
A. Yes.

Q. And what was the highest rank you attained while in the army?
A. Sergeant.

Q. And what were the dates you were in the Japanese Army?
A. January 10, 1939; July 15, 1942; April 5, 1944; until 15 August, 1945.

Q. During these dates did you ever serve at the Omine Prisoner of War Camp?
A. Yes.

Q. And what was your rank while you were there?
A. At first I was a corporal, but towards the end I was a sergeant.

Q. Do you know the accused, Kaniehi Kondo?
A. Yes.

Q. And what was his rank while you were at the Omuta Main Camp?
A. He was a medical superior private.

Q. And do you know what Kondo's duties were at this camp?
A. He used to make entries in the books, help in the diagnosis, and took care of the patients.

Q. Now, what were your duties while you were at the Omuta Camp?
A. I did office work in the office, and worked together with Kondo.

Q. And when you worked with Kondo, do you mean that you worked with him in the dispensary of the Childs part of the camp?
A. That is correct.

Q. Now, who were your superior medical officers while you were at the camp?
A. Sergeant Kobayashi.

Q. I asked "officers", did you give the right question, officers, not non-commissioned officers?
A. Probational officer Amo, and Lt. Maruo, 1st Lt. Miyatake, and 1st Lt. Kuga.

Q. Who were your superior medical NCO's while you were at the camp?
A. Sergeant Kobayashi, Sergeant Toyofumiya, 1st Sergeant Kusumura, 1st Sergeant Ongawa, 1st Sergeant Sakai.

Q. Did you ever attend sick calls that were held for the prisoners of war?
A. Yes.

Q. On approximately how many occasions did you attend sick call?
A. About three times a week.

Q. During all the time you were there?
A. Yes.

Q. Now, what time were these sick calls held?
A. Between 6 and 7 in the morning.,

Q. Now, what Japanese personnel attended these sick calls?
A. Do you mean the medical orderlies?

Q. That's right, Japanese medical orderlies.
A. Medical orderlies Kondo, Hirabae, Tabata and Yamamoto.

Q. How often did Tabata attend these sick calls?
A. I do not know the number of times he attended.

Q. Can you give the Court your best recollection?
A. He was there when Hirabae was there. I saw him about three times a week.

Q. What was his rank?
A. Private first class.

Q. And approximately how many times did Yamamoto attend these sick calls?
A. About three times a week.

Q. And what was his rank?
A. Private first class.

Q. Just exactly what prisoner of war medical personnel attended these sick calls daily?
A. Ginger, Merritt, Hochman, and there were times when Roland also was there.

Q. Was Ginger a Britisher?
A. Yes.

Q. Now, just exactly what were Dr. Hochman's duties at these sick calls?
A. Examination.

Q. And who did he examine?
A. The prisoners of war.

Q. And what were Merritt's duties on these sick calls?
A. He treated the patients and took temperatures.

Q. And what did Ginger do on these sick calls?
A. He entered the temperature of the patients, the patients' names, the names of the sickness, the pulse, and whether they would rest or not rest, on the books.

Q. And what were Kondo's duties on these sick calls?
A. He would enter the following things down in the books: the name of the patients, the name of the sickness, the temperatures, and whether they would rest or not rest, and what sort of medicine was given. He would also give the medicine.

Q. Now, would Ginger make his entries in English, and Kondo make his in Japanese?
A. Yes.

Q. What were your duties while you were in this sick call?
A. I took the patients' temperatures, gave them medicines, and if no medicine was on hand, I would go and get some, and decide whether the patients would go to work or not.

Q. Now, Miraima, would you explain to this Commission exactly an example of just what a prisoner of war would do from once he entered the dispensary until he left it, that is the sick call procedure?
A. First, the PWs all lined up and I would take the temperatures of the patients that had fever. If the patient does not have a fever, they will be taken care of by Merritt, and later on they would be divided up as to the ones that are able to go to work and the ones that are unable to go to work. The ones with fever and the ones with diarrhea are told they will be given medicine, and the ones that were able to work would be sent to work, and those that were unable to work would be made to rest. Hochman examined all the patients that had fever. All of that was taken down in the book and that was the end of the sick call.

Q. Now, just how would you determine whether or not a patient had fever?
A. That can be determined by the temperature taken either with an American thermometer which was put in their mouth, or with a Japanese thermometer which was put under the arm-pit.

Q. Did they ever check some of the men's temperatures by just feeling of their foreheads?

PROSECUTION: That question is not proper. That is definitely leading the witness.

LAW MEMBER: Read the question.

DEFENSE: I just asked him if they ever took the temperature of any prisoner of war by just feeling their forehead.

LAW MEMBER: The objection is not sustained. Answer the question.

A. That is just to determine whether or not they have the fever.

Q. Were both procedures followed as far as testing whether a patient had a fever, now, by feeling of the forehead and also by the use of the thermometer?

A. We would determine whether or not they had a fever by putting our hands to their forehead, and then we would use the thermometer to measure the degree of fever.

PRESIDENT: At this time the Commission will take a 10-minute recess.

The Commission then took a recess until 1020 hours, at which time all the personnel of the Commission, prosecution and defense, the accused, interpreters, and the reporter resumed their seats.

The witness was reminded he was still under oath.

Q. Now, any time that you attended sick call, did you see any disagreements or differences of opinion arise between Dr. Hoshuan and Kondo?

A. Yes.

Q. What were these disagreements about?

A. It was as to whether they would send them out to work or not.

Q. And approximately on how many occasions did you see these disagreements arise?

A. About three times.

Q. And over what type of patients did these disagreements arise?

A. When a patient had a slight fever, and Hoshuan told them to leave them indoors while Kondo told them to send them out to work.

Q. And what happened to these patients as a result?

A. They went out to work.

Q. Now, at any time while you were in attendance at these sick calls, did Dr. Hoshuan make any complaints to you over Kondo's behavior on these sick calls?

A. No.

Q. On any of the sick calls that you attended, did you ever see any of the diarrhea patients bring stools to sick call to show to Kondo?

A. No.

Q. Now, at any time that you attended sick call, did you ever see Kondo strike a prisoner of war?

A. Yes.

Q. On how many occasions?
A. Twice.

Q. Approximately what date was the first occasion?
A. About January, 1945.

Q. Do you recall the reason why this prisoner of war was struck?
A. I do not remember the one that happened about January, 1945.

Q. Now, how many times was this prisoner struck?
A. About 8 times.

Q. And how was he struck?
A. With his fists.

Q. And do you recall whether or not this patient went to work or not?
A. I do not remember exactly.

Q. Was this prisoner of war who was struck knocked down?
A. No, he was not.

Q. Was he bleeding?
A. No.

Q. Where was this prisoner of war struck, what part of his body?
A. On his cheeks.

Q. And what physical effects did the prisoner of war show after being struck on the cheeks?
A. It was just red.

Q. Now, you stated that Kondo struck another prisoner. On what occasion did this second striking arise?
A. February, 1945.

Q. And where was this prisoner of war struck, what part of his body?
A. His cheek and his hips.

Q. And with what did Kondo strike this prisoner of war?
A. With his fists.

Q. Now, what physical evidence did this prisoner of war show on his face?
A. His cheek was just red.

Q. Was this prisoner of war knocked down?
A. No, he was not.

Q. Now, other than these two times that you explained to this Commission that Kondo struck a prisoner of war, did you ever see Kondo strike any other prisoner of war?
A. No.

Q. Did you ever hear of him striking any other prisoner of war?
A. No.

Q. And, if you know, do you know the reason the second prisoner of war was struck?
A. Sometimes this patient came to sick call and sometimes he did not.

Q. That does not answer the question. Will you explain to the Commission the reasons why this prisoner of war was struck?
A. On Saturday he came to sick call, and when he should have come to sick call again in the afternoon or the morning or the evening sick call the following day he did not come and he came on Monday.

Q. Was that the Monday morning sick call?
A. Yes.

Q. Now, did you know Chief Sanders?
A. Yes.

Q. What were his duties at the camp?
A. He supervised all the prisoners of war.

Q. And did he ever make any complaints to you about Kondo's behavior on sick call?
A. No.

Q. Now, on any of these occasions when Kondo struck a prisoner of war, was he ever scolded to your knowledge by anyone?
A. I do not know.

Q. Now, what was Dr. Nosu's capacity at the Osaka Main Camp?
A. He was a medical 1st lieutenant.

Q. And where was Dr. Nosu's office in relation to the dispensary?
A. It was in the dispensary of the Osaka Main Camp.

DEFENSE: I think he misunderstood the question.

PROSECUTION: It is right in the record.

DEFENSE: That does not make any difference whether it is in the record or not. Where was Dr. Nosu's office in relation to the dispensary? Was Nosu's office in the same building as the dispensary?

A. Yes.

Q. Now, this sick register that showed the status of the prisoners of war at sick call daily, was it taken to Nosu's office?
A. No, we did not bring this book every day.

Q. How often was it brought?
A. What we brought to Dr. Nosu's office was the daily report. We did not bring this book there.

Q. And how often was this daily report brought to Dr. Nosu's office?
A. Every morning.

Q. And who brought this report?
A. Kondo.

Q. Did you ever accompany Kondo on any occasions when he brought this report?
A. Yes.

Q. Approximately how many times?
A. Three.

Q. In any of these conditions did Dr. Kozu make any comments to Kondo about the morning sick report and what its contents were?
A. Yes.

Q. And on these occasions just exactly what did Dr. Kozu say?
A. He said, "Lately there are too many patients and regardless of the fact that there are three medical officers at this Main Camp, we have too many patients and it will lower the health standard and give the medical officers a bad name. It will also lower the work efficiency so we must make the patients with the light injuries work. You must also send the patients with temperatures of below 37.5 to work."

Q. Did he give you any other instructions on any of these occasions that you attended?
A. No, nothing more.

PROSECUTION: Is that question, "Did he ever give this witness any other instructions while he was present"; to whom?

DEFENSE: To both he and Kondo.

A. I forgot one more thing. "Do not be fooled or mislead by the prisoners of war."

Q. Approximately how many prisoners of war attended sick call in the morning?
A. On the average, 15.

Q. And of the number that attended sick call, can you give the average number of those who would be excused each day?
A. About 5.

Q. And of those five that were excused, what would be the nature of their ailments?

PROSECUTION: I want to object to that because I don't believe there is any testimony that this witness here is a medical man, and I don't see how he could possibly know what ailments they were excused for.

LAW MEMBER: He is trying to get the type of ailments.

DEFENSE: Did you want that answered, sir?

LAW MEMBER: Your question is to type?

DEFENSE: Yes, sir.

LAW MEMBER: He may answer that.

A. Those that received heavy injuries while at work, and those with high temperatures.

Q. Now, do you know a Lt. Matsumura?
A. Yes.

Q. What were his duties at the camp?
A. He was commanding officer of the Chiba Prisoner of War Camp and labor supervisor.

Q. And what was his relationship to Kondo and yourself?
A. I was working at the Chiba Prisoner of War Camp, so we had something to do with each other. Kondo was a medical orderly so he had something to do with him.

Q. Did Matsumura ever speak to you about the sick calls being held for the American POWs and the manner in which it was being conducted?
A. Yes.

Q. Approximately what date did he speak to you about this?
A. About January, 1945.

Q. What did he say on these occasions?
A. He said, "There are too many patients lately. If we do not send patients with light ailments out to work the work rate will fall, and so you will have to send out some patients with light illnesses."

Q. Were patients sent out with light ailments?
A. Yes.

Q. Are you familiar with the methods by which the medicines were distributed to the dispensary where Kondo and yourself worked?
A. We received medicines from the Osaka Army Hospital and then they were put in the warehouse. The MCO in charge would look at the previous methods and make according to the condition of the patients a list. This list he would show to the ranking medical officer, and after the ranking medical officer fixed up the bad parts of this list he would distribute the medicines.

Q. Who was the medical supply sergeant at this camp?
A. Medical sergeant Kobayashi.

Q. While you were on these sick calls in the morning, did you ever see Kondo refuse to give medicines to any prisoners of war?

PROSECUTION: If the Commission please, all of this examination here has been most leading and we haven't objected, but I think these questions are definitely and positively leading. If the Commission remembers when Mr. Hayashi, a prosecution witness, was on the stand any question which was leading counsel for defense immediately raised objection to, and there was quite a bit of to do about it. Now, if we are limited at any time, I think counsel for defense should be, too.

DEFENSE: Am I not correct in stating that Mr. Hayashi testified in English?

LAW MEMBER: It is the opinion of the Commission that this witness does not understand quite a few of the questions, and we have permitted him to be led in order to get out his testimony.

DEFENSE: It has also been my idea that they want these things expedited. It is difficult to get an answer out of this witness.

PROSECUTION: My objection is, sir, the question should be what did Kondo do with respect to the issuance of medicines regarding American prisoners of war.

DEFENSE: He has already testified that medicines were issued.

LAW MEMBER: In view of this witness, that objection is not sustained, and he may answer that question.

A. No.

Q. Did you ever receive any complaints to that effect either from Dr. Nashman or Chief Sanders?
A. No.

DEFENSE: Your witness.

CROSS EXAMINATION

Questions by the prosecution:

Q. Witness, will you state the extent of your medical training?
A. Approximately five months.

Q. What kind of training was that and where?
A. Nursing, bandaging, stretcher bearing, prescribing, and massaging.

Q. Now, witness, you have testified, I believe, that you were a corporal and Kondo was a superior private, is that correct?
A. Yes.

Q. Kondo's work was that of a medical orderly, I believe you testified; were you also designated as a medical orderly?
A. Yes.

Q. Do I understand then that you were Kondo's immediate superior at these sick calls?
A. Yes.

Q. What if anything did you do on these two occasions when you saw Kondo strike one of the prisoners eight times with his fists, and beat the other prisoner?
A. I didn't do anything.

Q. I believe you also testified that it was January of 1945 when Matsumura told you that there were too many men on sick call, is that correct?
A. Yes.

Q. I believe you also testified that it was in January of 1945 when you saw the prisoner beaten by Kondo, is that right?
A. Yes.

Q. The second beating was in February of 1945, is that correct?
A. Yes.

Q. These two beatings that you witnessed, one in January, and one in February of the same year, were shortly after Matsumura told you that Kondo was leaving too many prisoners in camp?
A. Yes.

Q. How many months were you in the camp with Kondo?
A. Approximately 8 months.

Q. And in that 8 months you saw him beat two men in a period of two months?
A. Yes.

Q. Why were you not at sick call every day if you were a medical orderly?
A. My main duty was working in the office, and the work at sick call was only one of my additional duties, and I also had to be in charge of quarters.

Q. As a matter of fact, witness, there were some few weeks when you didn't attend sick call at all, wasn't there?
A. I do not know.

PRESIDENT: He testified that he attended sick call about three times a week.

PROSECUTION: Yes, and I said as a matter of fact he didn't attend sick call for four weeks.

A. No.

Q. How many patients were reporting for sick call when you first went to the camp?
A. I do not know.

PRESIDENT: Now, for my information, does he say "no" or "remember"?

INTERPRETER: "I do not know".

PRESIDENT: That wouldn't mean "remember".

INTERPRETER: He said "shuimasen" which means "I do not know".

Q. How many men were attending sick call four months after you were in camp?
A. The average at first was around 20.

Q. In January when Matsumura talked to you, I believe you testified it was an average of about 15 a day, is that correct?

DEFENSE: There hasn't been any testimony on that, if the Commission please. The testimony was that there was an average of 15.

PRESIDENT: Ask the question that will bring that out.

Q. Would you say there was an average of about 15 prisoners a day at sick call on these occasions when you were there?
A. Around January?

Q. Well, how many would you say attended sick call a day, say during September of 1944?

DEFENSE: He wasn't at the camp in September; he didn't get there until October.

PROSECUTION: Change it to October.

A. I believe around 10.

Q. Now, would you say in January—
A. I believe it averaged around 10 or 15.

Q. Well, was it about the same in October of 1944 as it was in January of 1945?
A. There may have been a little more in January, but generally it was the same.

PRESIDENT: I think at this time if any of those figures are at all pertinent, you will have to establish the strength in numbers of the prisoners of war in the camp.

Q. Will you tell us if there was the same number of prisoners present in camp in January of 1945 as there was in October of 1944?
A. I believe it was the same number.

Q. When Lt. Matsumura complained to you that there were too many men on sick call, what did you say to Lt. Matsumura?
A. I did not say anything in particular.

Q. You didn't say to Lt. Matsumura that you had been attending sick call at least three times a week, and had been witnessing the diagnosis of these prisoners?
A. No, I did not.

Q. Were you ever present when Mr. Kondo requested that Dr. Amae come to the hospital to examine patients that had already been examined by Dr. Hochman?
A. No.

Q. Did Kondo ever tell you he had disagreed with Dr. Hochman and was calling in Dr. Amae to look over the patients?
A. No.

Q. Now, I believe you told us in the direct examination that Kondo examined the prisoners and made diagnoses of the cases also?

DEFENSE: He didn't say that.

PROSECUTION: Yes, he did.

DEFENSE: He just said, check temperatures.

PRESIDENT: All we need do is search the record and find out which is correct.

PROSECUTION: It is my recollection and in my notes here that at first when we questioned this witness, he told us that Kondo would make diagnoses, and later came back and enumerated three other things he did, such as keep records.

DEFENSE: I think it is better to check it if you want to.

PRESIDENT: What is the point you are raising?

PROSECUTION: I want to find out how far Kondo would go in making diagnoses.

PRESIDENT: Why don't you ask the question?

Q. Would Kondo diagnose the ailments of these prisoners of war, or would he merely examine them and write down the data that someone else gave him?
A. Who do you mean by others?

Q. I mean other medical orderlies, such as this gentleman and others.

PROSECUTION: I'll withdraw the question.

PRESIDENT: Ask him who decided whether he was sick or not?

Q. You testified that you were familiar with three disagreements between Dr. Hoshman and Kondo, is that correct?
A. Yes.

Q. You also testified in those three occasions where there was a disagreement, the three men were sent out to work, is that true?
A. Yes.

Q. Had Dr. Hoshman diagnosed the ailment of those three prisoners of war?
A. Yes, he looked at them.

PRESIDENT: At this time the Commission will recess until 1330 this afternoon.

The Commission then took a recess until 1330, at which time all the personnel of the Commission, prosecution and defense, the accused, interpreters, and reporter resumed their seats.

The witness was reminded he was still under oath.

PROSECUTION: Will the reporter read back the last three questions and answers.

The last three questions and answers were then read back by the reporter.

Q. Now, witness, who was in charge of the dispensary?
A. What dispensary do you mean?

Q. Where the sick prisoners came for sick call.
A. Dr. Hosu.

Q. What Japanese medical orderly was in charge when the men came to the sick call?

DEFENSE: I think "in attendance" is better. The Commission can decide who was in charge.

PROSECUTION: I think "who was in charge" is a proper question.

LAW MEMBER: All right. Go ahead.

A. Kondo.

Q. And did Kondo, was Kondo the same—

A. And Yamamoto and Tabata; these are the medical orderlies.

Q. And what medical orderly had the authority to determine whether the man should go to work or remain at home?

A. Among these three it was Kondo.

Q. Now, witness, you have told us that there was an average of 15 prisoners of war who reported to sick call each day, is that correct?

A. Yes, that is correct.

Q. You also told us that there was about five excused each day, is that correct?

A. Yes.

Q. All right, now, out of the 10 who reported to sick call and who were sent to work, how many would Dr. Hochman recommend stay at home?

DEFENSE: Just a minute. The witness has testified that he only knows of three occasions on which he saw Kondo overrule Hochman, so I don't think the question is proper.

PROSECUTION: This is cross examination. Certainly I have the right to ask out of 15, 10 who went to work and 5 stayed home—I believe I have a right to find out whether Dr. Hochman agreed as to the 10 men who went to work.

LAW MEMBER: Objection not sustained. The question will be answered.

A. About two.

Q. So that you would say each day there was at least two prisoners sent out to work that Dr. Hochman thought shouldn't be sent to work, is that true?

A. That is correct.

Q. In other words, each day Kondo would overrule Dr. Hochman's judgment on at least two prisoners?

DEFENSE: That is strictly cumulative.

PROSECUTION: I think it is a proper question to show how many times Hochman was overruled by Kondo.

LAW MEMBER: The question will be answered.

A. Yes.

Q. You also testified, in answer to the defense counsel's question, that the type of ailments that these men were allowed to remain in camp for was serious injuries and high temperatures, is that correct?

A. Yes.

Q. Did Dr. Kondo insist upon sending all prisoners of war out to work except those who had serious injuries and high temperatures?

A. Yes.

Q. Now, defense counsel asked you if Sanders or Dr. Hochman had ever complained to you about Kondo's conduct and your answer was "No".
A. No.

Q. Now, in view of the fact that Kondo is the man who had the authority to send the prisoners to work, do you know any reason why Dr. Hochman and Mr. Sanders should complain to you?

DEFENSE: That question is out of order, sir, because it is a purely argumentative question, and it is a point that can be argued by counsel if he wishes to. It isn't a proper question to put to the witness.

PROSECUTION: Counsel for the defense asked these specific questions, "Did Dr. Hochman or did Mr. Sanders ever complain to you?" Now, I want to show there was no reason why they should complain to him. The reason they didn't complain to him was because of his own testimony he had no authority. The only purpose in asking the question by the defense counsel was to show that these men had never complained. I want to show why they did not complain. They did not complain because there was no use; he had no authority.

DEFENSE: His answer, sir, was exactly what my objection was to be. He knows his reason that this witness answered the question by stating an argument which is only proper in closing. He has shown himself that the question is not proper to ask by making a brief closing argument on that point, and that is exactly his reason for asking that question at this time.

PROSECUTION: My reason, members of the Commission, for asking that question is exactly the same reason why counsel for defense asked it.

LAW MEMBER: The objection is not sustained and he may answer the question to the best of his ability.

A. He did not have the authority.

PROSECUTION: That is not an answer at all. Explain the question to him.

LAW MEMBER: Yes, yes, they didn't complain to him. That answers the question.

DEFENSE: He said, "He did not have the authority." By that he would mean Kondo.

PRESIDENT: Ask him, "Who do you mean by 'he'?"

Q. Who do you mean by "he"?
A. Kondo didn't have the authority.

PROSECUTION: I don't think that is an answer to the question. Will you read the question again?

The reporter read back the question and it was translated to the witness by the court interpreter.

A. I do not know.

PROSECUTION: That is all.

REDIRECT EXAMINATION

Questions by defense:

Q. In addition to the prisoners of war who were permitted to visit each day when they were excused from work, were there any other prisoners of war resting in camp?
A. Yes there were [illegible].

Q. Approximately how many were there when you first came to the camp in October?
A. There were approximately ten.

Q. And approximately how many rested in camp in January of 1945?
A. About twenty.

Q. On any of these sick calls, would you clear up for the Commission, did Kondo diagnose ailments of prisoners of war?
A. Kondo did not diagnose the patients.

Q. Who did?
A. Hoshuma did the diagnoses.

Q. During the entire time, I believe you testified you knew Kondo 18 months, did you ever see or hear of Kondo striking any man other than those prisoners of war you described?
A. No.

Q. Now, this morning on your cross examination you were asked by the prosecutor whether or not you had ever seen Doctor Awa at sick call and your answer was "No". Now I ask you, at this time, is that correct?
A. I am positive.

DEFENSE: Ask him again.

The question was again put to the witness by the interpreter.

A. Yes he came to the sick calls.

Q. How many times did you see Awa at sick call?
A. About three times.

Q. Do you know of any occasion when Kondo went to the medical office to get Awa to have him come to the dispensary?
A. Yes.

Q. How do you know this?
A. Because Hiraiwa and I worked in the same room as a probation officer [illegible].

Q. On how many occasions did you yourself see that Kondo came to get Awa to go to the dispensary?
A. Once.

DEFENSE: I have no further questions.

[illegible]

[illegible]: At this time the RECORDS EXAMINATION [illegible] witness [illegible] Kato.

Questions by the prosecution:

Q. Witness, on the occasions when Doctor Amma came over to examine a prisoner of war he agreed with the diagnosis of Doctor Hoshuma, didn't he?

A. There were times when they differed.

Q. You only saw Doctor Ando those once, didn't you without [illegible]

DEFENSE: He said three times.

A. Yes.

DEFENSE: Yes what?

INTERPRETER: Once.

DEFENSE: That is when Ando came after him once.

Q. How many occasions did you see the doctor coming to the dispensary, Doctor Amma?

A. Three times.

Q. Now in each one of these instances, didn't Doctor Amma examine prisoners of war and recommend that they be allowed to rest and not go to work?

A. Yes.

Q. Now don't the records show that Doctor Amma because Ando didn't want to take the recommendations of Doctor Hoshuma?

A. I do not know.

Q. Just one further question: Now in view of the fact that Ando never made any diagnoses, do you know of your own knowledge why he didn't accept the diagnosis of Doctor Hoshuma?

DEFENSE: That is argumentative, sir.

PROSECUTION: I qualified that by asking if he knew of his own knowledge.

DEFENSE: That still does not take the argument out of the question. It is strictly argumentative, sir.

LAW MEMBER: Let him answer that; we will evaluate it for what it is worth.

A. I do not know that.

PROSECUTION: No further questions.

DEFENSE: No questions by the defense.

PRESIDENT: No further questions; the witness may be excused.

The witness was excused and withdrew.

DEFENSE: At this time the defense calls as its next witness Masayoshi Kato.

Masayoshi Kato, a witness for the defense, was then sworn and testified through the interpreters as follows:

DEFENSE: Before proceeding further with this witness, I would like to state for the record that he is a war criminal suspect at Sugamo Prison and I request the President of the Commission to warn this witness that he need not make any statement that might incriminate him.

PRESIDENT: The witness is warned that he need not answer a question if he thinks that it will in any way incriminate him; he has that right.

The above was explained to the witness by the court interpreters.

DIRECT EXAMINATION

Questions by the defense:

Q. What is your name?
A. Masayoshi Kato.

Q. And how old are you?
A. 32.

Q. And where is your home?
A. Kochi ken, Aki gun, Nango mura, Oaza Fukuta, Aza Kagawa.

Q. Are you married or single?
A. I am single.

Q. How many years of education have you had?
A. Sixth grade primary school.

Q. What is your occupation?
A. I am a carpenter.

Q. Are you at present at Sugamo Prison?
A. Yes.

Q. Were you ever in the Imperial Japanese Army?
A. Yes.

Q. What were the dates that you were in the Army?
A. From the 15th of January 1943 until the end of the war. Provided that I had three month service from the first of September 1936 until the first of November.

Q. Were you ever stationed at Omuta Main Camp?
A. Yes.

Q. During what dates were you stationed there?
A. From the 20th of January 1943 until the 10th of March of the same year.

Q. Do you know the accused in this case, Kenichi Kondo?
A. Yes.

Q. Did you know him while he was at the Ogaki Camp?
A. Yes.

Q. Were you ever stationed at the Ichioka Hospital?
A. Yes.

Q. Between what dates were you stationed at this hospital?
A. From the 16th of June, 1943 until the 10th of July, 1944; after that I was at the hospital in Kobe.

Q. What were your duties at this hospital?
A. With the medics.

Q. By that you mean you were a medical orderly?
A. Yes.

Q. Now, during all the time you served at the Ichioka Hospital, did Kenichi Kondo serve there?
A. No.

Q. Did you ever see Kondo at the Stadium Hospital at any time while you were stationed there?
A. Yes, I saw him around three or four times.

Q. Where did you see him on these occasions?
A. I saw him at the Ichioka Hospital. At that time he came with a convoy of five or six prisoners of war, and he came with them.

Q. Approximately how long, if you know, did Kondo stay on these occasions?
A. I do not remember exactly but I believe around 20 or 30 minutes.

Q. Who was the Commanding Officer of the Stadium Hospital?
A. From the 16th of June, 1943 until I left, Medical Officer Matsuyama was in charge; around mid April, 1944, Medical Officer Chashi took charge.

DEFENSE: No further questions.

CROSS EXAMINATION

Questions by the prosecution:

Q. Ichioka Hospital is about one mile from the main camp, is that correct?
A. Yes.

Q. Where did you work in the hospital?
A. I was at Ichioka Hospital and I served mostly as an orderly to officers and noncommissioned officers, polishing shoes and working in the mess hall, et cetera.

Q. Then you wouldn't know what went on in the hospital ward would you?
A. Yes, that is correct.

PROSECUTION: No further questions.

PRESIDENT: The witness may be excused.

The witness was excused and withdrew.

DEFENSE: Our next witness will be Bunkachi Kento.

Bunkichi Kanto, a witness for the defense, was sworn and testified through the interpreter as follows:

PRESIDENT: Witness, you are informed that you may refuse to answer any questions that you may think might incriminate you in any way.

DIRECT EXAMINATION

Questions by the defense:

Q. What is your name?
A. Kanto Bunkichi.

Q. How old are you?
A. 57.

Q. And where is your home?
A. Yokoshiki Mura, Yuuna gun, Matsuyama Ken.

Q. What is your occupation?
A. Agriculture.

Q. Are you married or single?
A. I am married.

Q. Any children?
A. Yes.

Q. How many?
A. One.

Q. How many years detention have you had?
A. Eight years.

Q. Were you ever in the Imperial Japanese Army?
A. Yes.

Q. What were the dates? [illegible] your question?
A. 10th of February 1940 to 15 May 1942. This included some time in the hospital.

Q. Do you know the accused, Kaniehi Kondo?
A. Yes, [illegible]

Q. Where did you first meet him?
A. Osaka Main Camp.

Q. Did you ever serve at the Osaka Main Camp?
A. Yes.
I do not remember.

Q. What dates did you serve there?
A. From the 20th of November 1942 to mid June, 1943.

Q. Did you ever serve at the Ichioka Hospital?
A. Yes.

Q. What dates did you serve at the Ichioka Hospital?
A. From mid June 1943 until 10th of July 1944.

Q. When you were in the Army during these dates, in just what capacity were you employed?
A. I was serving as a civilian attached to the Army.

Q. What were your duties at the Ichioka Hospital?
A. I was a guard.

Q. Where was your guard post?
A. At the Ichioka Hospital.

Q. What sort of guard, were you gate guard or what?
A. I was a guard at the gate.

Q. How many entrances are there to Ichioka Hospital?
A. One.

Q. Do you know whether Kondo served at this hospital?
A. He did not serve at this hospital.

Q. Did you ever see Kondo at the Ichioka Hospital?
A. Yes, I have seen him there.

Q. On how many occasions?
A. Once.

Q. Do you recall when that was?
A. No, I cannot remember.

Q. Can you think of any person who fits the following descriptions: man, Japanese, five feet six inches tall, about 28 years old, well built and weighing about 165 pounds?

PROSECUTION: Sir, I am going to object to the question.

DEFENSE: Well, anyone at Ichioka Hospital then.

PROSECUTION: Are you putting that in your question?

DEFENSE: Sure.

A. There were persons of that height but I don't think there was anybody that weighed that much.

Q. Do you know the reason for the one occasion for which Kondo was at the Ichioka Hospital when you saw him?
A. He came with a stretcher patient who was to enter the hospital.

Q. Do you know how long Kondo stayed on this occasion?
A. I do not remember.

DEFENSE: No further questions.

CROSS EXAMINATION

Questions by prosecution:

Q. Now, Kondo could have come more than one time to the Ichioka Hospital without your knowing about it, isn't that correct?
A. I cannot remember.

Q. You don't know what went on in the hospital ward at the Ichioka Hospital, isn't that correct?

DEFENSE: Repeat the first question.

Q. Kondo could have come more than one time to the Ichioka Hospital without you knowing about it, isn't that correct?
A. I do not know for sure.

PROSECUTION: Repeat my second question.

The reporter read back the question and it was translated to the witness.

A. No, I do not know.

PROSECUTION: No further questions.

DEFENSE: No further questions by the defense.

PRESIDENT: The witness may be excused.

The witness was excused and withdrew.

Kenkichi Maejima, a witness for the defense, was sworn and testified through the interpreter as follows:

PRESIDENT: I wish to inform you that you need not answer any questions that you might consider might incriminate you and you have the right to refuse to answer any questions.

The above was translated to the witness.

DIRECT EXAMINATION

Questions by defense:

Q. What is your name?
A. Kenkichi Maejima

Q. How old are you?
A. 39 years of age.

Q. And where is your home?
A. Omiya City, Fukushima Ku, Ebie, Kami 3-Chome 188.

Q. Are you married or single?
A. I am married.

Q. How many children do you have?
A. One.

Q. How many years education have you had?
A. I graduated from the Economic College of the Kyoto Imperial University.

Q. And are you at present in Sugamo Prison?
A. Yes.

Q. What was your occupation?
A. I am engaged with the rationing at the Osaka City office.

Q. Were you ever in the Imperial Japanese Army?
A. Yes.

Q. During what dates were you in the Japanese Army?
A. I served one year of active duty, from the First of December 1935 until 30 November of 1936; then I was drafted on the 20th of March 1942 and stayed in until the end of the war.

Q. Were you the Commanding Officer at the Oeyama Prison Camp?
A. Yes.

Q. And during what dates were you the Commanding Officer?
A. From the 20th of August of 1943 until the end of the war.

Q. Do you know the accused, Kenichi Kondo?
A. Yes.

Q. Did he ever serve under you at the Oeyama Prisoner of War Camp?
A. Yes.

Q. Approximately what dates was Kenichi Kondo there?
A. About three months, from June 1945 until the end of the war.

Q. And what was Kenichi Kondo's rank at that time?
A. He was a superior private.

Q. What were his duties at your camp?
A. He was serving as a medic under Medical Sergeant Hayashi.

Q. Do you know whether or not Kondo ever served at the sick call for the prisoners of war at the Oeyama Prison Camp?
A. He was not when I went to work.

Q. Do you know the the Japanese personnel were in attendance at the sick call for the prisoners of war?
A. Usually Sergeant Hayashi was there, Kondo was also there at that dispensary and from the factory Doctor Nakamura also came.

DEFENSE: Did you put that question to the man the way I asked it; will the reporter read back my question?

The reporter read back the question.

DEFENSE: The one before that.

The reporter read back the previous question.

The question was then translated to the witness.

A. The sick call was held at the dispensary and his duty was office work in the dispensary, so he was there.

Q. Did you ever attend sick call?
A. I went to see the dispensary.

Q. How often did you visit the dispensary while sick call was being held?
A. From two to three times a week.

Q. Who was present on these occasions?
A. Sergeant Nagaoka and Superior Private Kondo, and the prisoner of war medical officer Captain Kleich, and four or five prisoner of war medical non-coms, and at times, Doctor Sakanaka from the Company.

Q. Do you know who made the diagnoses at these sick calls?
A. I believe it was Medical Officer Kleich.

Q. Do you know what Kondo did at these sick calls?
A. As I remember, Kondo made the records and did the office work.

Q. Do you know what Nagaoka did at these sick calls?
A. He was always at the sick call.

Q. Do you know what he did?
A. I do not remember for sure but he passed out the medicines and received results of consultations fromthe doctors.

Q. Now on any of these occasions while you were present at sick call, did you see any disagreements arise between Captain Kleich and Kondo?
A. I have not heard of any differences between anyone.

Q. Did you ever see any while you were present on these inspections?
A. When I went around I did not see any disagreements.

Q. Did Captain Kleich ever make any complaints to you about Kondo's behavior on sick call?
A. No.

Q. Was there any [illegible] doctor stationed permanently at the Ouyama Prisoner of War Camp?
A. The main camp is quite a distance from the Ouyama Camp and the medical officer from the main camp could not get around to that camp, so I asked the Company to send around there doctor and they sent around one doctor twice a week. At that time Kondo was there, a Doctor Sakanaka went to the camp.

Q. How often did Doctor Sakanaka go to the camp?
A. Usually twice in one week but if there was some urgent cases, he came at any time.

Q. Did you have occasion to talk to Doctor Sakanaka on any of his visits?
A. Yes.

Q. Now, on any of these occasions, did he make any statement as to Kondo's misbehavior on sick call?
A. No, not once.

DEFENSE: No further questions.

PRESIDENT: At this point in the proceeding the Court will take a ten minute recess.

The Commission then, at 1445, took a recess until 1455, at which time all the personnel of the Commission, the prosecution and defense, the accused, the reporter and the interpreters resumed their seats.

[illegible] the next point to put a letter [illegible] in evidence before

PRESIDENT: The Commission is in session.

The witness the recorded be was duly sworn under oath.

[illegible] the following CROSS EXAMINATION:

Questions by the prosecution: [illegible] as self-[illegible] [illegible] should be marked.

Q. Lt. Nakama, while you were at the Oeyama Prisoner of War Camp, on or about March 1945 did you receive a letter from Major Hiraishi [illegible] [illegible] [illegible]

DEFENSE: You are going to read a letter that is not in evidence before this Court.

PROSECUTION: Sir, I don't have to offer the letter.

LAW MEMBER: The objection is not sustained.

DEFENSE: Sir, I firmly believe that this letter being offered is self-incriminatory and this witness should be so warned.

PROSECUTION: Sir, the letter is not self-incriminatory. I am not asking any questions that will incriminate him. Prosecution will avoid any questions that will incriminate him. The letter in question is complimentary.

DEFENSE: In a left-handed manner.

PROSECUTION: Now, see if you remember receiving a letter which I shall now read to you.

"To: Camp Commandant and Staff.
From: PW Officers and supervisors.

On behalf of all the men in this camp we wish to express to the Camp Commandant and his staff our deepest gratitude for the interest they have taken in our health and welfare. We feel much indebted for the unrestricted privilege of taking the men to the Nipponese dentist where they are treated with utmost courtesy and professional skill. We further wish to express our thanks for being allowed to withdraw considerable sums from the Nipponese safe deposit to help defray the cost of this treatment, realizing that such withdrawals are generally not authorized and must have required much effort and intervention on the part of the Camp Commandant and his staff.

In these trying times of war, with materials so scarce or restricted as they are, we feel we have been shown consideration beyond our expectations. We would like to have our feeling of gratitude conveyed to the dentist who has so liberally given of his time and efforts.

We beg to remain, your obedient servants,"

PRESIDENT: Which exhibit is that?

PROSECUTION: 26.

DEFENSE: Stricken in the affidavit.

PROSECUTION: I'm not mentioning the affidavit, merely reading the letter.

DEFENSE: We ask for a ruling on it.

LAW MEMBER: Objection is not sustained.

DEFENSE: Defense moves a motion for mis-trial.

LAW MEMBER: What is the idea of a mistrial motion?

DEFENSE: Because it was brought in prejudicial matter and also because it is incriminating evidence against this man. At the time that letter was submitted they intended to use it against this man when he was brought to trial.

PROSECUTION: I am just testing the witness' credibility, he stated he did not receive this letter. Depending on what he stated I am going to ask him one more question.

LAW MEMBER: There is nothing in the letter that violated the rights of the accused. Answer the question.

PROSECUTION: Sir, will you rule on the motion for mistrial.

LAW MEMBER: Counsel, are you making that motion?

DEFENSE: We will withdraw the motion.

A. I don't know anything about the letter. I heard about the contents of the letter from the POW officer but I did not receive any such letter.

Q. Do you deny that this letter was written at your request?

DEFENSE: That is strictly out of order. Goodness gracious.

LAW MEMBER: He said he heard about the letter but he didn't receive the letter.

DEFENSE: Are you asking him the question "Was it written at his request"?

PROSECUTION: Sir, there is nothing incriminatory about that letter. I am attacking this witness' credibility, I am not using prosecution exhibit. I haven't offered anything about Exhibit 15. It is a fundamental rule of law that in attacking a credibility of a witness, counsel may go into extraneous matters.

LAW MEMBER: The only thing is that the defense counsel is bringing up the point that this man is liable to incriminate himself. I told him he had the right not to answer any question that might incriminate him.

PROSECUTION: There is nothing incriminatory about him asking someone to write him a letter.

DEFENSE: The innuendo is—

PROSECUTION: Is not incriminatory.

LAW MEMBER: As it stands now he testified that he did not receive such a letter but he did hear of its contents from POW officers.

INTERPRETER: I would like to correct the last answer. It should read as follows:

A. I do not know the contents of the letter but I have heard about what was expressed in the letter from the POW officers. I did not receive

that letter but I have a few other letters. I have them with me now.

PROSECUTION: I still ask my question "whether or not this letter was written at his request."

DEFENSE: The way the prosecution talks about this letter here presupposes such a letter exists; that we do not know. Also how they intend to use this letter against this defendant in the event he is brought to trial or whether it will be used against him is not set forth. In the event prosecution uses this letter, any remarks made about this letter at this time are entirely of an incriminating nature.

PROSECUTION: Sir, there is nothing incriminating about it at all.

LAW MEMBER: I do not want in any way to injure the witness' rights. Do you intend to use this letter in a case against this man?

PROSECUTION: I do not know. I am not prosecuting him. I ask this witness whether the letter was written at his request and he says he does not remember the letter, then on rebuttal prosecution may bring in testimony to show that someone in authority says a letter was written to him at his request. Now if I bring that in, you have a right to disregard all his testimony about Kaniehi Kondo. That is the sole purpose of this question. He has not said anything to incriminate him nor have I asked him anything.

LAW MEMBER: The question is now—

PROSECUTION: Did he request such a letter.

LAW MEMBER: Question will be answered.

DEFENSE: Due to the fact that he said he never heard about this letter he isn't even qualified to answer the question.

PRESIDENT: Will you ask him the question?

LAW MEMBER: The letter could have been written and he not receive it.

A. I do not know that letter.

PROSECUTION: Will you please ask the witness to answer the question?

DEFENSE: If he did not know the letter he cannot testify whether or not it was written at his request.

PRESIDENT: He has answered the question the way he wanted to and I will accept the answer.

PROSECUTION: No further questions.

PRESIDENT: Will you repeat the last question of the prosecution to the witness and tell him to answer it Yes or No.

The question was again put to the witness by the interpreters.

A. No.

Q. Are you married or single?
A. I am married.

Q. How many children do you have?
A. Four.

Q. How many years education have you had?
A. I graduated from the Prefectural Agricultural School.

Q. Are you at present at Sugamo Prison?
A. Yes.

Q. Were you ever in the Imperial Japanese Army?
A. Yes.

Q. And what are the dates that you were in the Army?
A. I received induction orders on 5 January 1940 and was in the Army until the end of the war.

Q. Did you ever served at Osaka Main Camp?
A. Yes.

Q. In what capacity did you serve while there?
A. I was head of the administration section.

Q. By that you mean that you were the Adjutant?
A. I was head of the administration section and my job was of an Adjutant.

Q. In what period did you serve in this Camp?
A. From the 20th of June 45th until the end of the war.

PRESIDENT: That is all, the witness is excused.

A. The witness was excused and withdrew.

PRESIDENT: The defense calls as its next witness, Yasuji Morimoto.

Yasuji Morimoto, a witness for the defense, was sworn and testified through the interpreters as follows:

PRESIDENT: I wish to inform you that you have the right to refuse to answer any question that might incriminate you in any way.

DIRECT EXAMINATION

Questions by defense:

Q. What is your name?
A. Yasuji Morimoto.

Q. How old are you?
A. [illegible]

Q. Where do you live?
A. Ogaki Fu, Fuyuno-gun Shonai machi, Ogaki, Shimoto.

Q. What is your occupation?
A. Agriculture.

Q. While you were at the camp did you know Kenichi Kondo, the accused?
A. Yes.

Q. Do you know what he did in the camp?
A. He was serving as a medical orderly in the main camp.

Q. Did you ever see him working in this capacity?
A. Yes.

Q. How often did you see Kondo engaged in this work?
A. I looked at the dispensary about once a week and I saw him there doing office work.

Q. As the Camp Adjutant did you have custody of the records of the various NCOs and Privates in the camp?
A. What sort of records?

Q. By that we mean records that show the efficiency and various qualifications of the NCOs and the Privates in the camp.
A. In the Army we have what is called an evaluation sheet and we have those of the camp at the camp but we do not have the sheets of the ones that are dispatched to this camp.

Q. Did you have Kondo's evaluation sheet?
A. We did not have his evaluation sheet because he was dispatched to our camp from the Zara Hospital.

Q. Did you have Kondo's evaluation sheet while he was at the Camp Camp?
A. Kondo was dispatched to the Camp Prisoner of War Camp from the Zara Hospital so the Zara Hospital has his evaluation sheet but I have seen [illegible] sheet of work and it is not one of my duties.

Q. When did you see it?
A. I believe around March 1945.

Q. Can you recall how Kondo was rated on this evaluation sheet?
A.

PROSECUTION: I object to the question, sir. It has nothing to do with the issues in this case. The issues are did Kondo beat prisoners, did Kondo send sick prisoners of war to work. If he wants to use him as a character witness the witness can testify from his own knowledge.

DEFENSE: He can testify to what he saw. You have people coming in here to testify what they heard. That is one of his senses.

LAW MEMBER: Objection overruled.

A. He was rated by numbers according to his actual work, inside work, and education.

Q. What is this inside and outside work?
A. He was rated by numbers according to his actual work, his work inside the camp and his studies.

Q. Now, just what was his rating as you recall seeing it on this evaluation sheet in March 1945?

A. [illegible] with the provisions of the prosecution. [illegible]
A. There may be points which I do not remember but he had a good report.
Q. Do you recall Kondo's transfer to Oryoku Camp from Cabu Camp?
A. Yes.
Q. Do you know the reason?
A. Yes.
Q. Will you tell the Commission, if you know?
A. In May 1945, there was a number of medical corpsmen to various camps, to the Hospital at the Old Bilibid Camp. I thought this transfer would be good for him.
DEFENSE: No further questions.

CROSS EXAMINATION

Questions by the prosecution: [illegible]

Q. The most favorable report on Kondo, do you remember?
A. Medical Officer Wood did all the work that had anything to do with the medical criterion.
Q. You never attended that call at the Cabiao Camp for the American POWs in the morning, is that correct?
A. Yes.
Q. And you didn't know that went on at the sick call at the Cabiao Camp that was held for the American prisoners of war, is that correct?
A. That is the job of the medical officers and the ones that were appointed to do that sort of work and it is not one of my duties.

PROSECUTION: No further questions.

DEFENSE: No further questions by the defense.

PRESIDENT: No further questions, the witness may be excused.

The witness was excused and withdrew.

DEFENSE: At this time, sir, the defense would like to read into evidence a few items from the Prosecution Exhibits, in view of the fact that counsel for the defense is not the same counsel who was present in this case at the time these exhibits were admitted in evidence. There are a very few passages involved. They are very brief and the exhibits I would like to read at this time I know that I would have requested them to be entered into the record at the time of their original offering had I been a member of the defense staff. I would like permission of the Court and also permission of the Prosecution to read them at this time.

PROSECUTION: I will have no objection if I feel they should be in but if I feel they should not, I shall so inform the Commission.

LAW MEMBER: The defense may proceed.

DEFENSE: The first one I would like to read anything from is from Atwood's affidavit which is Prosecution Exhibit 1. I would like to incorporate into the record the one sentence beginning on Line 3 of the answer and

ending at line 8. It is with the permission of the prosecution. This states, "A Lt. Miyatake, a medical officer in the Japanese Army, was responsible for medical regulations at this camp [illegible], and also in that same affidavit I would like to read the entire second paragraph of that answer, which is the paragraph devoted to Lt. Miyatake who has been identified in this case as one of the defendant's superiors, and my offer of proof was when we asked Sergeant Ryan to show a line of conduct on Kondo's superiors.

PROSECUTION: Prosecution objects to the offer of that portion of the affidavit for the following reasons: It merely mentions that Lt. Miyatake was on the staff and it mentions striking the prisoners with a club, a fist of his sword and with his fists by Miyatake. It does not identify him with Kondo. If he wants to put in that Lt. Miyatake, a Japanese officer, was a member of the medical staff, I have no objection to that but there is no evidence before this Commission that Miyatake beat any prisoner of war.

DEFENSE: Sergeant Ryan testified to that.

PROSECUTION: I stated that has nothing to do with the issues in this case. What difference does it make if Miyatake beat prisoners of war?

DEFENSE: For this reason, sir; even though rules as loosely as they have been drawn, it is stated that in mitigation it can be shown that the accused acted under orders. We don't say that haven't tried to bring out that anyone ordered Kondo to go out and strike prisoners but it does show that as a person who has already testified in this case, a key witness, that this man's superiors struck prisoners of war and struck them with the object or hardest stick, and it certainly shows a course of conduct and should be taken into consideration by the Commission. This man, the highest rank he attained, while at this camp, was superior private.

LAW MEMBER: As I understand you, you want the question beginning with "A Lt. MIYATAKE."

DEFENSE: No sir, I want the entire paragraph.

PROSECUTION: Sir, it is pretty far fetched to put into the record that if the man's commandant, for example, beats prisoners of war it should be in the record when we are trying Kenichi Kondo because it shows a course of conduct. We don't feel that that is in defense to Kenichi Kondo.

DEFENSE: It is "like father, like son." I certainly believe it is.

LAW MEMBER: Who was it who took it upon themself to strike that out?

PROSECUTION: The defense counsel, Lt. Hall, and myself. Under the defense counsel's argument it would be counter dividing to bring in all the evidence they would ask to be testified by any member in that camp.

DEFENSE: That is not our argument.

LAW MEMBER: Is that the only objection you have to it?

PROSECUTION: All he is showing is that other people beat prisoners in that camp besides the accused. Would I be permitted to show that some High Ranking officers did not beat prisoners of war?

LAW MEMBER: That is part of the affidavit.

PROSECUTION: No, it is not. That is why we crossed it out, sir. The record is now being cluttered up with immaterial matter.

LAW MEMBER: You want that paragraph in?

DEFENSE: All except the last line because that is conclusion.

LAW MEMBER: And you don't want that in?

PROSECUTION: Yes, sir, I strenuously object.

LAW MEMBER: Inasmuch as that paragraph is a portion of the affidavit submitted in evidence and has been ruled out, I presume with the concurrence of counsel, and the present defense counsel desires that it not be stricken out, such request is granted.

DEFENSE: I would like to read, with permission of the Commission, that portion of the Exhibit "On at least twelve occasions I observed a Lt. Miyatake, also a Japanese Army officer attached to the medical staff of the Meinohe Camp Hospital, beat prisoners of war. I am unable to identify the victims of these beatings, but personally saw Miyatake strike prisoners with a club, the flat of his sword, and with his fists. These beatings were without provocation", and also I would like to read from Prosecution Exhibit 9, affidavit of Doctor Hochman.

This is the answer to the second question on Page 2, the remainder of that answer following "this" and this is with the agreement of the prosecution. Continuing from "this" I would like to read that any evidence from Doctor Neuhaus's affidavit, Prosecution Exhibit 9, "The American doctors in the sub-camps would write no notes requesting medical supplies and often even the Japanese medical orderlies from sub-camps would come to me and ask for supplies as they were unable to get it from Lt. HOSU", that is with the concurrence of the prosecution.

LAW MEMBER: It will not be stricken.

DEFENSE: And I have another portion to read, that is from Prosecution Exhibit 15. You will remember that Major Kleich was a man stationed at the Cayuna Prisoner of War Camp.

PRESIDENT: Yes, I have it here.

DEFENSE: Just the first sentence in the paragraph on the top of page of Page 2 of Major Kleich's affidavit. The reading of this sentence is with the concurrence of the prosecution. "The Camp Commandant advises that the Osaka District had requested that 85 percent of the men work; actually, such a request was always considered as an order within our camp by the Japanese."

LAW MEMBER: All right, approved.

PRESIDENT: At this time the Commission will adjourn to reconvene at 0900 tomorrow, 29 October 1946.

The Commission then, at 1615 hours, adjourned to meet at 0900 hours, 29 October 1946.

Leonard M. Hard

LEONARD M. HARD
Chief Prosecutor

Yokohama Courthouse
Yokohama, Japan
29 October 1946

The Commission reconvened, pursuant to adjournment, at noon hours, all the personnel of the Commission, the prosecution and the defense, the interpreters and the reporter who were present at the close of the previous session being present with the exception of Major Chilling, excused by the Appointing Authority.

The accused was also present.

DEFENSE: At this time the defense would like to offer into evidence as Defense Exhibit A a medical certificate dated 17 October 1946, which shows that Atsushi Nakao is confined to the hospital and is unable to attend at this time. The reason for so offering it at this time is prior to the introduction of the defense's stipulation with the prosecution and the accused and having on the record the reason therefore

I therefore request the Commission to admit this exhibit into evidence and have it attached to the record. We have the original with a copy certified by the translation section in the Eighth Army Interpreters Unit. For the record, sir, I am going to introduce into evidence a stipulation of Dr. Nakao because he is unable to be here and for clarity on the record too. The reason for the stipulation, because they have not been used too much in our Crimes Trial.

PROSECUTION: Prosecution

DEFENSE: No objection.

PROSECUTION: I'll state that the seal at the top is incomplete.

LAW MEMBER: Defense Exhibit A will be admitted into evidence and attached to the record.

Defense Exhibit A was read into the record.

DEFENSE: At this time the defense offers into evidence Defense Exhibit B, stipulation as to the expected testimony of Atsushi Nakao and asks that it be accepted and attached to the record.

PROSECUTION: The prosecution has no objection and wishes to state its position in the matter, this is a stipulation as to the expected testimony of the witness that if he were on the stand he would testify under direct examination to the following; the prosecution is, in effect, waiving its right to cross examination and is doing this merely to expedite the case of the long delay. We would, actually, prefer to have the witness here to interrogate him. But rather than risk

any further delay we have agreed to stipulate to this, that if he were here he would testify as to that under direct examination.

LAW MEMBER: Defense Exhibit B will be admitted in evidence and attached to the record.

Defense Evidence B was then read to the Commission.

DEFENSE: At this time, sir, defense offers into evidence Defense Exhibit C which purport to be the diagnosis report showing the condition of Lt. Nosu, who is at the present time confined in the hospital. We offer this report at this time with a duly certified translation to show that this man, who was Ando's superior throughout the war, suddenly about eight or nine months after the war ended was hospitalized for being mentally deranged and to show to the Commission, and to appear on the record, as to why Nosu is not being called as a witness. We have two of these reports which I will introduce as Defense Exhibits C and Exhibit D. The other shows that his condition has not changed at all in October. At this time we respectfully request the Commission to receive Defense Exhibit C.

PROSECUTION: We object on the ground that such offer is irrelevant and immaterial to the issues concerned. If the defense wishes to contend that at the time Kondo acted under orders of Doctor Nosu and Doctor Nosu was deranged, such evidence might be material. No evidence to that effect has been offered. It is not relevant at all to the issue. The defense has made no contention that at the time Kondo took orders from Doctor Nosu, Doctor Nosu was mentally deranged.

DEFENSE: The reason sir, we put it before the Commission is to show that this man, who had charge of the whole Osaka area prisoners of war camps, the senior medical officer, the man who was responsible for the medical welfare of all the prisoners of war in that area, was a person who had or possessed some degree of mental unbalance as we attempt to show now by the fact that since he was incarcerated, he has shown signs of being mentally deranged.

PROSECUTION: The question is was he mentally deranged at the time he was the superior of Kondo. What good is evidence that he is now if there is no evidence he was before? The only reason any evidence at all should be offered about Doctor Nosu is to explain to the Commission why Doctor Nosu is not available to testify; the only statement that can be made is that Doctor Nosu is in a hospital. Any attempt to offer any other evidence is an attempt to influence the Commission.

DEFENSE: We will withdraw the exhibit, sir. At this time, sir, the defense calls as its next witness the accused, Keniehi Kondo.

LAW MEMBER: Has the accused been fully warned of his rights?

DEFENSE: I'll state that for the record and I'll again advise him of his rights as the accused in this case preliminary to his being sworn.

The accused, Kenichi Kondo, then answered the following interrogations by his defense counsel through the interpreter as follows:

Questions by the defense:

Q. Kondo, at the time you were originally served with the charges and specifications in this case, were you also given a copy of your rights as an accused war criminal?
A. Yes.

Q. Now, Kondo, you have three rights as the accused, I would like to explain them to you again before you make your election as to what you wish to do in this case.
A. Yes.

Q. First of these three rights you have is that you have the right to make a statement under oath, that is sworn statement. No. 2, you have an election to make an unsworn statement, that is a statement not made under oath. In the event you elect either one of these two, prosecution may cross examine on any matters contained in the charges and specifications brought against you and are in no way limited on the matter brought out on direct examination.
A. Yes.

Q. No. 3, you may elect to remain silent. That means you need notsay anything in your own defense. But if you elect to remain silent the Commission may draw such inferences from your failure to testify as is fair and competent to a reasonable mind and the prosecution may comment as evidence of your guilt on your failure to take the stand and to testify in your own defense.
A. Yes.

Q. Now, with the explanation as to your three rights in this case, (1) to make a sworn statement, (2) to make an unsworn statement, (3) to remain silent, which do you elect to do?
A. I'll testify under oath.

Kenichi Kondo the accused in this case, at his own request, was then sworn and testified through the interpreters as follows:

DIRECT EXAMINATION

Questions by Defense:

Q. What is your name?
A. Kenichi Kondo.

Q. How old are you?
A. 32.

Q. And where do you reside?
A. Nagoya City, Nakagawa ku, Yagumo cho, Shimanoyama.

Q. What is your religion?
A. Zen Sect of the Buddists.

Q. Are you married or single?
A. I am married.

Q. Do you have any children?
A. Yes.

Q. How many?
A. Three.

Q. And how old are they?
A. Ten, seven and five.

Q. Do you have any one dependent on you for support other than your wife and three children?

PROSECUTION: I object. What is the purpose of these questions?

DEFENSE: These are questions that have been requested by the Reviewing Authority for all defense counsels to ask.

LAW MEMBER: Objection overruled. Proceed.

A. No.

Q. How many years of education have you had?
A. Eight years.

Q. What is your occupation?
A. Before I was in the Army?

Q. Yes.
A. I use to be a coal dealer but later changed to blacksmith.

Q. Were you engaged in these occupations after you got out of the Army?
A. No.

Q. When did you entered the Japanese Army?
A. 8 May 1942 to 8 May 1943, and from January C, 1943 to end of the war.

Q. What is the highest rank you attained while in the Japanese Army?
A. I was a superior private but at the end of the war, just before I went home, I was promoted to a leading private.

Q: What date was that?
A. It was after the end of the war, 14 September.

Q. When did you entered Sugamo?
A. 7 December 1945.

Q. Did you ever serve at the Osaka Prisoner of War Camp?
A. Yes.

Q. During what dates?
A. From the 21 January 1943 until 2 September 1945.

Q. I mean the dates you were at the Osaka Main Prisoner of War Camp?
A. I was there from 21st January 1943 until 8 June 1945, but from the 8th of May 1945 until the first of June 1945 I was sent to the Maruo Dispatch Camp to close that camp.

Q. What dates were you at the Oeyama Prisoner of War Camp?
A. From 9 June 1945 until the 2nd of September of the same year.

PRESIDENT: Counsel, check him on the 9th of June, did he have that correct?

Q. Is it true that the first day you arrived at the Oeyama Prisoner of War Camp was 9 June 1945?
A. That is correct.

Q. Kondo, when you entered the Army the second time in 1943, were you immediately assigned to becoming a medical orderly?
A. I was a medical orderly previous to that.

Q. You had been a medical orderly during the first period you served in the Army. Is that correct?
A. Yes, I received two months training.

Q. Is this a correct statement, Kondo, that you received this two month training prior to your second entrance into the Japanese Army in 1943?
A. Yes.

Q. A few days after you received your conscription notice in 1943 you were sent to the Osaka Main Camp. Is that correct?
A. I was inducted into the Army on the 15th of January at the Central District 67th Unit and on the 16th of January I was sent to the Nara Army Hospital and on the 21st of January I was dispatched from there to the Osaka Main Camp.

Q. Upon your arrival at the Osaka Main Camp, just what were your first duties?
A. I didn't have any particular duties.

Q. Where were you assigned to work upon your arrival at the Osaka Main Camp?
A. Until April I went to the Ichioka Hospital to refresh my previous training.

Q. This is from the end of January until sometime in April you were at the Ichioka Hospital taking a refresher course in medicine, is that correct?
A. It was not medicines, I went there every day for a refresher course in medical orderly duties.

Q. How many hours a day did you spent at the Ichioka Hospital during this period?
A. Half a day every day in the morning.

Q. And were there any other medical orderlies taking this refresher course at that time?
A. Yes, there were four going there every day.

Q. Now from January to April of 1945 after you returned from the Ichioka Hospital in the morning, just what did you do in the afternoon?
A. We did what Lt. Nosu told us, the four of us went on errands.

Q. During this period from January to sometime in April 1945, what was your relationship with the prisoners of war?
A. At Ichioka or at the Main Camp?

Q. At Ichioka and at the Main Camp?
A. No relationship with the prisoners of war.

Q. Now will you give the Court your best recollection as to date in April 1945 when you finished your course at the Ichioka Hospital?
A. I have no definite recollection.

Q. Was it the end of April, the middle of April, or the first of April?
A. I have no recollection.

Q. What duties did you assumed in the camp upon completion of your course at Ichioka Hospital?
A. I gave medicine to the POWs and helped out on the diagnosis sheet and the daily report.

Q. And what time of day was this sick call held in April of 1945?
A. Just at night.

Q. Was this after the prisoners of war returned from work?
A. Yes.

Q. Where was this sick call held?
A. At the dispensary in the No. 1 and No. 2 Camps.

Q. How many prisoners of war were in the No. 1 Camp at that time; give your best recollection.
A. I believe there was about 330.

Q. In this No. 1 Camp, were these prisoners classified as to British or American prisoners of war?
A. In that Camp there were British, Indians, Chinese, Philippines, Italians and Cubans.
Q. Approximately how many prisoners of war were in the No. 2 Prisoner of War Camp?
A. About 300.
Q. Were these the prisoners of war that were classified as American prisoners of war?
A. The 300 in the No. 2 Camp were British.
Q. Where were the American prisoners of War?
A. In No. 1, among the 300.
Q. How many did you attend the sick call for both the No. 1 and No. 2 Camps?
A. 600, at night.
Q. The sick call for both No. 1 and No. 2 Camps at the same time or different times?
A. I was working at the No. 1 Camp up until August so I do not know what was going on at the No. 2 Camp.
Q. You only attended sick calls for No. 1 until August 1943, is that correct?
A. Yes.
Q. Just where in the camp were these sick calls held?
A. There was a treatment room in a small place.
Q. What prisoner of war medical personnel were at attendance at these sick calls?
A. At that time, Merritt.
Q. Any other prisoner of war medical personnel in attendance at these sick calls?
A. By sick call I mean just giving them medicine. It was so small that we could not have a regular sick call.
Q. Was this in the evening now that you are speaking of? Was any doctor in attendance at these evening sick calls?
A. Merritt had a list of what to give the patients and he received this list from the doctor, so we gave out this medicine from this list.
Q. From what doctor did he receive this list?
A. Doctor Hochman.
Q. Do you mean that then Doctor Hochman examined the patients he had this list of medicines compiled?
A. This was done before I got there, I had to take care of two camps so I could not be there at certain times and I had to do errands, so the time I got there was not definite.
Q. Only the only persons in attendance at these evenings when medicine was passed out were yourself and Merritt?
A. Yes.

Q. And this period continued from April of 1943 until August of 1943?
A. This continued until March or April and sometime the doctor may think when I gave out the medicine,

Q. May I ask, how often was the doctor there when you gave out medicine?
A. Do you mean Doctor Hoehnen or a Japanese doctor?

Q. I mean Doctor Hoehnen.
A. Doctor Hoehnen visited at the No. 1 and No. 2 Camps, he sometimes there I would have he was not there and sometimes he was still there when I got there,

Q. What is your first recollection of seeing Doctor Hoehnen at any sick call which you attended?
A. I met him right after I started working at the prisoner of war camp.

Q. The Commission then, at 2:15, recessed until 1:30 hours, at which time the appearance of the Commission, the prosecution and defense, the accused, the interpreters and the reporter resumed their seats.

The Witness entered the stand and was reminded he was still under oath.

Q. Mrs Kuhn, right after you started at the prisoner of war camp and right after you attended your first sick call it was some time in April of 1943, is that correct?
A. To the best I would say the first sick call.

Q. And what date was this?
A. In mid April.

Approximately how many prisoners of war were living in the Manila Bilibid

January 1943.

Q. Mrs Kuhn, how often did you find Doctor Hoehnen in attendance at these sick calls that during?
A. About three out of ten times.

Q. On those occasions that you saw Doctor Hoehnen, just what did Doctor Hoehnen do?
A. He was making examinations.

Q. What did you do?
A. At that time I gave the medicine that Doctor Hoehnen prescribed to the prisoners of war.

Q. What did [illegible] do?
A. [illegible] was injecting the patients.

Q. Was there any other medical personnel in attendance at these sick calls?
A. No.

Q. For how long a period did you only see Doctor Hoehnen in attendance at these sick call for three times out of every ten days?
A. When I first started working with the prisoners of war in April of 1943 until the merger of the No. 1 and No. 2 Camps in March of 1944.

Q. Mar. During this period from abt. April 1943 to abt March 1944, what other duties did you have in addition to your attendance at the evening sick call when you assisted the prisoners of war medical personnel?
A. I made entries into the diagnosis sheet, helped in the entries of the daily reports and helped in the writing of the daily report of the medicines that day. I also run errands of the unit and I went with the prisoners of war to the work places and went for them at night, and also performed other miscellaneous tasks like private errands, et cetera.

Q. Mar Kondo, was there a sick bay for prisoners of war on the British side of the camp?
A. It was not what we called a sick bay but they had one squad which consisted of sick prisoners.

Q. Did you have any occasion to visit this squad room where sick prisoners were isolated?
A. There were times when I brought medicines there.

Q. Between what periods did this sick reconcentrado, between what dates?
A. I do not remember for sure but it was when it started getting hot in 1943 until the troops were consolidated.

Q. How often would you bring medicines to this sick call room?
A. About every other day.

Q. Mar Kondo, when were sick calls first held in the morning?
A. When the No. 1 and No. 2 Camps were consolidated in March 1944.

Q. At that time how many prisoners of war were living in the new consolidated camp?
A. About 650.

Q. What time of day was sick call held?
A. In the mornings from 6:30 to 7:00 and in the evenings from about 5:00 to 6:00.

Q. Did you attend both of these sick calls?
A. Yes, both hours before.

Q. What other Japanese medical personnel were in attendance at these sick calls?

PROSECUTION: Are you referring to the morning or the evening sick call?

DEFENSE: No, just the morning.

PROSECUTION: Change your question.

DEFENSE: Refer him to the morning sick call only.

A. Yes, but from half a month to a month they changed around.

DEFENSE: He didn't answer my question. I asked what Japanese medical personnel were in attendance at these morning sick calls.

A. Superior Private Fujii were, Superior Private Hashimoto and for a while there was Superior Private Kato, Private First-Class Tanaka, Superior Private Kishimura, Superior Private Takata and Superior Private Shimatsuji; that is about all I remember.

Q. For how long a period of time where these various naval personnel in attendance at these sick calls?
A. From about half a month to a month.

Q. On these sick calls what would their duties be?
A. They came to the dispensary for training in preparing for work after being dispatched to the various dispatch camps.

Q. While they were in attendance at these sick calls for these periods, were they also in attendance at the evening sick call?
A. Yes, together with myself.

Q. Did prisoner of war medical personnel attended these morning and evening sick calls after the camps became consolidated in March of 1944?
A. As present by the name of Hewitt and Ginger, just those two.

Q. Did any doctor attended these sick calls?
A. Yes, Doctor Hashimoto,

Q. Did any Japanese doctor regularly attend these sick calls?
A. Yes, when I went to call somebody.

INTERPRETER: Sands, you are not answering the questions.

Q. Was there any Japanese doctor there in regular attendance at these sick calls?
A. No.

Q. What were Doctor Hashimoto's duties on these sick calls?
A. To examine the patients.

Q. What were Hewitt's duties on these sick calls?
A. Hewitt and Ginger treated the patients and they also took down the numbers of the prisoners of war that were to be absent from work and the numbers of the prisoners of war that were to go to proper work.

Q. What were your duties on these sick calls?
A. I would prepare the medicines which Doctor Hashimoto prescribed and record the numbers of the prisoners of war and the prescriptions on the book; I would also help in the treatment.

Q. Now Sands, on any of these sick calls, did yourself and Doctor Hashimoto disagree as to whether or not a prisoner of war was sick or well to go to work?
A. No.

Q. Can you give this Commission approximately the first date on which any of these disagreements arose?
A. It was around mid March of 1944; Doctor Hara would make unreasonable demands at times.

PRESIDENT'S: I ask that any remarks after 1944 be restricted as not responsive.

DEFENSE: That is a technical objection.

PROSECUTION: This is a chief witness for the defense. I have not objected to any leading questions just to expedite the matter but now we are getting to the heart of the issue and I think all answers should be responsive to the question.

LAW MEMBER: What was the question?

DEFENSE: It was just the date he objected to.

PROSECUTION: Counsel asked the witness to give the first day he had disagreement with Doctor Hoshuna. The answer started to come back "mid March."

DEFENSE: If they are so insistent we will consent to it, but it certainly opens the door---

PROSECUTION: Let me say this if I might. It is my understanding when I took the assignment to assist in the trial of these war criminals, it was my duty to see or try to see that these trials were conducted in accordance with rules and regulations as laid down by the High Command; that plus the rules laid down by law. I feel that I and Mr. Rapp would be neglectful in our duties if we did not object to questions that we think are improper.

LAW MEMBER: Your premise is correct. Have the witness answer the question, let him answer the question. You must remember that the Japanese do not answer as directly as we do and we must be somewhat lenient.

PROSECUTION: The only point I am making is let him testify of his own knowledge responsive to the questions.

LAW MEMBER: Correct.

Q. Now Kondo, you testified that in mid March of 1944 that was the first time you disagreed with Doctor Hoshuna, is that correct?
A. Yes.

Q. Now, could you state approximately how often any of these disagreements arose between yourself and Doctor Hoshuna?
A. They would occur from time to time, but I cannot remember how often.

Q. Did they happen daily, Kondo?
A. No, not every day.

Q. Approximately, how many times in a week would they arise?
A. In 1944 we had these disagreements about once or twice a week, but in 1945, when Doctor Hoshuna became very cranky with us, we had these disagreements about three or four times a week.

DEFENSE: Will you tell him from now on just to answer questions as they are put to him and not to be volunteering anything.

Q. What kind of patients did these disagreements arise over, that is in the general course of these disagreements?
A. They were mostly over patients with fever.

Q. How did you determine whether or not a patient had a fever?
A. With a thermometer.

Q. How did you take this temperature with the thermometer?
A. The American thermometers that came in the relief supplies were used in the mouth by Doctor Horvath and Singer. The Japanese thermometers were used under the arm pits.

Q. Can you tell the Commission the reason why disagreements arose between yourself and Doctor Hoshuan?
A. It was because Medical Officer Nogu told us to send the patients with 37.5 degrees centigrade, with temperature of 37.5 degrees centigrade, out to work.

Q. When did he first make this statement to you?
A. It was immediately after the camps were incorporated in March 1944.

PROSECUTION: I wonder if counsel for the defence could state for the record how much in terms of our degrees is 37.5 centigrade?

DEFENCE: It is about 99.5 degrees Fahrenheit.

Q. What was Doctor Noma's position at the camp?
A. Diagnosis and supervision of general office work in the dispensary.

Q. What was his position in relation to the medical personnel in this camp?
A. He was the ranking medical officer and in charge of the dispensary.

Q. Where was Doctor Noma's office in relation to this consolidated dispensary that was set up in March 1944?
A. The office was about 20 metres from the dispensary.

Q. Were they in the same building?
A. Yes, in the same hallway.

Q. Kondo, you have stated that a prisoner of war would have had to have a temperature of 37.5 degrees centigrade before he could be excused from work; you stated that it was began on the first time that Doctor Noma complained to you in March 1944. How did Doctor Noma make any further complaints to you?
A. Yes, frequently; it was not only 10 or 20 times.

Q. You mean it was more than 10 or 20 times?
A. It was more than that.

Q. Now Kondo, do you know what the complaints were for these complaints that Doctor Noma registered with you?
A. It was because we had sent a lot of men out to work.

DEFENCE: Is that right, did you give him the right question?

The interpreter repeated the question to the witness.

PRESIDENT: I suggest you ask him point-blank what the complaints were about.

A. The reason for this was I was letting patients with a temperature below 37.5 absent themselves from work and when this used to occur, he used to call me into his office.

Q. What is the normal temperature, Kondo, of a person expressed in centigrade?

A. To learned that it was from 96.5 to 97 degrees centigrade.

Q. Did Doctor Kuma ever complain or make any statement about anything else except the temperature of the prisoners of war?
A. Yes.

Q. And what were those complaints?
A. He told us to send the men with light diarrhea out to work.

Q. Sumiko, did you ever have prisoners of war bring their stools to sick call for you to see?

[illegible] I object on the grounds that the question is leading. The question should be: When prisoners of war had diarrhea, what would you do when they came to sick call?

LAW [illegible] Do you have anything to say?

DEFENSE: No sir, I have nothing to say about leading questions.

LAW [illegible] Read the question.

The reporter read back the question.

LAW [illegible] And you are objecting to it?

PROSECUTION: Yes sir, as I said, this witness is the heart of the defense. He should testify of his own knowledge without being led. The question should be: When prisoners of war had diarrhea, what would you do when they came to sick call?

LAW MEMBER: It is a leading question and the objection is sustained. Do [illegible] and rephrase the question.

Q. Sumiko, what would a prisoner of war have to do to be excused from work if he complained he was suffering from diarrhea?
A. Doctor Kuma told me that if they had to go to the latrine less than five or six times then they would be sent out to work, if they had to go out more than five or six times they would be kept in.

Q. How would you determine whether or not a prisoner of war had been to the latrine more than five or six times?
A. I used to ask the dutyman.

Q. What doctor is that?
A. Doctor Nochuma.

Q. And if Doctor Nochuma recommended that a man stay in because he went to the latrine more than five or six times, what would you do?
A. Then I let them rest.

Q. Did Doctor Kuma ever attend the sick call?
A. Yes, then we used to call him to look after the patients.

Q. On how many occasions did Doctor Kuma come to examine prisoners of war?
A. In the morning or the evening?

Q. In the morning first, just sick call Kondo, no other time.
A. I do not remember for sure but I believe it was 10 or 15 times.

Q. What procedure did you have to go through to get Doctor Naruo to attend the sick call in the morning?
A. First I would tell Medical Officer Noma who would order Naruo.

Q. Approximately how many times did you go to the office to get Doctor Naruo to come on sick call?
A. I told Medical Officer Noma to have him come down every day if possible, but I was refused.

Q. Do you know the reason for this refusal?
A. I do not know.

Q. Why did you request of Doctor Noma that Doctor Naruo attend these sick calls in the morning?
A. This was because at first Medical Officer Miyatake came but he came for only a while and Doctor Hashman and I thought that Doctor Naruo would be better, that is why I requested his help.

Q. You stated that Doctor Naruo actually did come between 10 and 15 times; now just what was the reason that you went to Doctor Noma and requested Doctor Naruo to come and examine the patients on sick call?
A. When Doctor Hashman stated that the patients had a fever so that they should be resting, if I made them rest that Doctor Noma would scold me, so I thought if I called Doctor Naruo and got his opinion that I would not get all of the blame.

The Commission then, at 1152, recessed until 1330, at which time the personnel of the Commission, the prosecution and defense, the accused, the interpreters and the reporter resumed their seats.

The witness resumed the stand and was reminded he was still under oath.

DEFENSE: Would you read the last question.

The reporter read back the last question and answer.

Q. Now, had these patients been examined by Doctor Hashman prior to their examination by Doctor Naruo?
A. Yes.

Q. On each of these occasions, approximately how many prisoners of war would be examined by Doctor Naruo?
A. About one or two each time, so about ten altogether.

Q. Could you tell this Commission exactly what disposition was made of the patients that Doctor Naruo examined on these occasions?
A. About half of them rested and about half of them went to "paper work."

Q. What had been Doctor Hashman's recommendations as to disposition of these prisoners of war that Doctor Naruo had examined?
A. The two of them conferred and made a decision so I believe there was no objection.

Q. [illegible] how many times did Doctor Ando appear on these morning sick calls?
A. I do not remember the exact number but I believe it was around three or four times.

Q. Now, did you have to go through the same procedure to get Doctor Ando to come and examine these patients as you did for Doctor Hayes?
A. Yes, that is according- [illegible] tell me if they were to work or

Q. Approximately how many times did you go to Doctor Ando and request Doctor Ando's attendance at sick calls in the morning? [illegible]
A. About 15 or 20 times. [illegible] would not [illegible]

Q. Did you ever request the appearance of Doctor Miyatake at any of these sick calls?
A. Yes.

Q. Did he ever come? [illegible]
A. Yes.

Q. On how many occasions?
A. Three times. [illegible] I would be in

Q. On how many occasions did you request that this doctor accompany
A. About six or seven times. [illegible] but I did all

Q. When did Corporal Hirsima first started attending these sick calls with you?
A. I believe it was around October. [illegible]

PROSECUTOR: What year, please? [illegible]

Q. What year?
A. 1944.

Q. Approximately how often did he attend these sick calls? [illegible]
A. At least twice and most [illegible] or four times a week [illegible]

Q. For how long a period did he attend these sick calls? [illegible]

PROSECUTOR: Who are you referring to now? [illegible]

DEFENSE: Corporal Hirsima, the man who testified [illegible]

A. From October 1944 until the 14th [illegible] the 23 days.

Q. That is when you left the camp? [illegible]
A. Yes. [illegible]

Q. Now, just exactly what did Hirsima do on the mornings he attended sick calls?
A. Hirsima came to supervise me on Yosu's orders.

Q. Did he do anything else at these sick calls other than to supervise?
A. He helped me until the second and also helped me in the prescriptions.

[illegible]

[illegible]

Q. If a prisoner of war came on sick call complaining of diarrhea and said he had been to the latrine many times, five or six times, would you accept his statement that he was suffering from dysentery without any further proof?
A. Yes.

Q. And what would you have those patients do, if anything?
A. A doctor would diagnose them and tell me if they could go to work or not, then I would tell this to Hara and Hara would tell me that I should send them to work, so I would go and tell the doctor and if the doctor could not do anything about it then he would send them to work, but if he still objected then I would put them to "paper work."

Q. What doctor?
A. Doctor Hoffman.

Q. Did you have any other duties in addition to attending sick calls of the prisoners of war every day?
A. Yes. [illegible]

Q. What were those duties?
A. I would have day duty and I would also have night duty, I would be in charge of treatment of the patients from the 66th Camp personnel and the 100 men from the Chihkai Hospital Unit, and other than that I would have miscellaneous duties. I forgot to mention earlier but I did all the reporting work and I did all the work recording the patients of the prisoners of war patients.

Q. What did you do with this daily sick report which you compiled on sick call each day?
A. I brought it to medical officer Hara.

Q. Do you recall a mumps epidemic in the winter of '44-'45?
A. Yes.

Q. When this epidemic originally broke out, how many POWs were involved?
A. At first there were about 15, but later on there were from 20 to 25.

Q. When the first ones broke out, just what actually was done with these prisoners of war?
A. I reported this to Lt. Hara and had them put into sick bay.

Q. How long did these prisoners of war remain in sick bay?
A. The ones that received first stayed in for about 15 days. The ones that received slowly stayed in from 25 to 30 days.

Q. Were any of these prisoners of war who were suffering from mumps ever sent out to work?
A. No, absolutely not.

Q. Do you know a Lt. Matsumura?
A. Yes.

Q. What were his duties at the camp?
A. He was the labor supervisor and took care of all the matters concerning prisoner of war labor.

Q. Was he your commanding officer?
A. He was not a commanding officer, but he was more or less in the chain of command.

Q. Just what was his relationship with you?
A. Generally I received the usual orders from that headquarters, but orders in matters concerning the prisoners of war I received the orders from Matsumura.

Q. Did he ever make any suggestions to you about the manner in which sick call was being conducted?
A. Yes.

Q. What did he say?
A. When there were too many patients he would tell me to send men out to work because the commanding officer was displeased.

Q. Can you give any occasion on which he stated this by giving us the date?
A. I was told once around January, 1945, and I believe I was told a few other times but I do not remember the exact date.

Q. Can you recall for this Commission how many times he made such statements to you?
A. I believe around three times.

DEFENSE: At this time, Sir, after having gone through various numbers who were in the camp at the time and have been identified by Kondo, I had intended to put this exhibit in evidence through him by showing that it had been translated from a copy made out by him and certified to as correct by one of the interpreters in the Higashi Camp Headquarters. Doing but rather than go through that procedure and to expedite matters, the prosecution has consented that this Osaka Main Camp Chain of Command be introduced in evidence as Defense Exhibit C, and he would like to make a remark or two about any questions that he may encounter. At this time, Sir, we make this offer as Defense Exhibit C, to be withdrawn at the conclusion of the trial and a photographic copy or a photostatic copy be substituted in lieu thereof and attached to the record.

PROSECUTION: Prosecution has no objection to the offer of this document, relying on the word of the defense counsel that as far as he knows this is the chain of command. I have no information about all of these small people, but I will take his word for it. However, we do take exception to Corporal Hirata who was mentioned under "examination room", because he is also listed under "medical office", and is also listed as one of the persons who served in the examination room at one time or another. His own testimony is that he was only there six or seven months. There was three all the time. I don't think he should appear under "examination room". Other than that, I have no objection at all.

LAW MEMBER: The chart will be accepted in evidence on the basis as you presented it.

DEFENSE: We had also intended to have this identified by Dr. Haruo, who was there for a period of three years, but due to the fact that we had to get his testimony by stipulation, we couldn't have him identify the chart.

PROSECUTION: I don't see why you can't strike that. It shows Hinata was in the examination room here.

DEFENSE: The Commission understands that you are admitting the exhibit, but was making any objection to [illegible] Japanese at sick call.

LAW MEMBER: That is what I meant; you can attack it. It will be accepted in evidence.

[illegible] counsel in withdrawing the question. There is no

Q. Kondo, did you make a statement to the prosecutor, Mr. Rand, in the presence of an interpreter on the 21st of May, 1946?
A. Yes.

Q. At the time this statement, Kondo, was originally made, was there anyone else present besides Mr. Rand and the interpreter?
A. Yes.

Q. Who?
A. A person by the name of Hoshijima. [illegible] would that question and in this confession?

Q. Was this the same Hoshijima who was the chief of the prisoners of war of the camp?
A. Yes. [illegible] is exactly the same as the name Hoshijima [illegible] I think we are merely going to [illegible]

Q. Now, it is correct that you signed this statement voluntarily, is that not true?
A. I was told to read all this and also the will signed [illegible] by this

Q. Kondo, do you have any questions within this confession that you would like to explain to the Commission at this time?
A. Yes.

Q. What question or questions would you like to make a statement to the Court about at this time?
A. I believe there is something missing from No. 30.

PROSECUTION: Would you read that question?

DEFENSE: Yes, I'm going to. [illegible] I'm trying to say that another question [illegible] and the

Q. Question 30 is "The medical section [illegible] was able to go to work with 38 men to sick call." The answer is "I decided whether a man was able to go to work or not."

Now, what would you like to state at this time in regard to Question 30, Kondo?
A. When I first answered it, I answered it like this: "Dr. Hoshima decided whether the men would work and I did things according to what he said, but in case of doubt I would act according to the Japanese medical corps' instructions."

[illegible] this time as to [illegible]

Kondo are a few more things. When I was asked who was always at the dispensary, I answered I was there most of the time.

Q. That question "The was at the dispensary most of the time" and your answer "I was there" does not appear, Kondo, in this confession. Will you explain that to this Commission? [illegible] answer is "I was there most of the time."

Will you explain to the court what you thought that meant at the time you signed it?

DEFENSE: [illegible] I was mistaken about that. I will withdraw it. Question 24 says "Who was the dispenser at sick call each morning for P.O.W.", and the answer was "I was".

PROSECUTION: [illegible] counsel is withdrawing his question, there is no [illegible] on it.

DEFENSE: Read back the question.

The question was read back.

DEFENSE: Strike that question and ask this one instead.

Q. Isn't it not you were asked "Who spent most of the time in the dispensary" and you replied "You were". Just exactly where would that question and answer appear if it were contained in this confession?

PROSECUTION: If the Commission please, in view of the fact that the answer that is in there is apparently the same as the one the witness is trying to say is left out, I think we are merely going to get the witness confused by going into it. The purport is the same; just a few different words but the meaning is the same and unless there is an essential point in continuing this, I think the witness is going to be confused and we are not going to accomplish anything by this.

DEFENSE: Sir, he is liable to state that the answer should appear somewhere around 30. Read back my question.

The question was read back.

INTERPRETER: I think he is kind of mixed up, sir.

PRESIDENT: Is he claiming that Question 24 is not answered correctly?

DEFENSE: No, sir, I believe he is trying to say that another question was asked him by the interpreter down around Question 30, and the two questions were put together and signed as the answer to Question 30. And he seems to indicate that he did not answer Question 30 as it appears here.

PRESIDENT: He has modified that as he testified.

DEFENSE: Sir, we'll withdraw any further questions other than what he has testified to.

Q. Sgt. [illegible], do you have any other questions in this confession you would like to clarify at all to the Court at this time as to what you thought they meant at the time you signed this confession?

A. Yes.

Q. What number is it?

A. No. 33.

Q. No. 33 is "Who had the final decision as to whether a P.O.W. went to work or not?" The answer is "I made the final decision."

Will you explain to the Court what you thought that meant at the time you signed it?

A. To this question I really answered the officer of the day had the right after that I answered [illegible] to the question anything [illegible] and to the dispensary], the sentence was added upon [illegible] or by hearing and I would like for you to change it for me before

Q. Rather will you simply refer Commission wholly that your answer will be sufficient but give a complete answer don't just say the thing was added upon reading the matter with it and "You will be

A. [illegible] "The officer of the day made the final decision." I signed this.

Q. Was anything else said by you at that time to this question?

A. [illegible], but I am going into the specifications.

Q. Will you tell the Commission what else you said?

A. That I was asked "Who was at the dispensary?" I answered "I was at the dispensary."

The Commission then took a recess until 1130 hours, at which time

Q. You were asked "Who was at the dispensary?" and your reply "I was at the dispensary", was this question asked by the interpreter in conjunction with Question 39 as it appears here?

A. That question was immediately following No. 39.

Q. Now, do you have any other questions that you would like to clarify to this Commission at this time or any answer?

A. I would like to revise something near the end of No. 39.

I direct your attention to page [illegible] question I read to you if you recall?

Q. And what is number of [illegible] David M. Smith?

A. No.

INTERPRETER: What is the question number, Mr. Duffy?

[illegible] refer you to specification 2 and ask you if you know an American

DEFENSE: It is identified [illegible] M. Smith?

A. No.

PROSECUTION: Mr. Duffy, why don't you just ask the question I propounded and omit him to give the answer to you now? [illegible] ask you if you remember an Italian by the name of [illegible] Serafini?

A. I would like to change the details in it. I would like to change that to "Sanders and Kimura came because I struck Horsley".

Q. [illegible] do you first recall seeing this [illegible] Serafini?

DEFENSE: Sir, the explanation of the Horsley incident in which he stated he struck Horsley, the last sentence of that reads "Sanders and Kimura came because I was striking Horsley". Evidently he wants to change it to "because I struck Horsley". [illegible] duty or honest [illegible].

Q. Do you have anything else you want to change in that?

A. No. Now, on this specification you are charged with [illegible] this was not to work when he was physically unable to do so, and despite

Q. Did you first identify Sanders before you signed [illegible]. Now,

A. Does [illegible] you, as you recall seeing S. E. Sanders [illegible] all at any time in mid-part January, 1943?

Q. And did you make any questions of the interpreters in regards to questions 30, 33, and 39 that you have clarified to the Court at this time? [illegible] Sanders at the dispensary during January of 1943?

A. Yes, I told the interpreters.

A. [illegible] not while I was [illegible].

Q. And what did you tell the interpreters?

[illegible] what did you say? [illegible] At any time did you say [illegible] in connection with Sanders that he was ill in January of 1943?

A. No, as far as [illegible] was not ill in January.

A. I told them that I read this and found that there were a few phrases with mistakes, and they might either be mistakes of interpretation or in my hearing and I would like for you to change it for me before I signed it. There were two interpreters and the two interpreters talked among themselves and told me the same thing is written in English, so there is nothing the matter with it and "You will be able to change it in Court if you wish". So, taking their word, I signed it.

DEFENSE: Now, sir, I don't know whether you want to take a recess or not, but I am going into the specifications.

PRESIDENT: At this point the Commission will recess for 10 minutes.

The Commission then took a recess until 1130 hours, at which time all the personnel of the Commission, prosecution and defense, the accused, interpreters and the reporter resumed their seats.

The witness was reminded he was still under oath.

Q. You have a copy of the charges and specifications, Kondo?
A. Yes.

Q. I direct your attention to Specification 1 and ask you if you recall an American prisoner of war named David W. Smith?
A. No.

Q. I refer you to Specification 2 and ask you if you know an American prisoner of war named Robert W. Rose?
A. No.

Q. I direct your attention to Specification 3 and ask you if you remember an Italian by the name of C. B. Serafin?
A. Yes.

Q. What do you first recall seeing this Italian, C. B. Serafin?
A. I saw him when Serafin was an officer's orderly.

Q. Do you recall what date that was?
A. I do not know for sure, but I believe it was around July or August of 1943.

Q. Now, Kondo, in this specification you are charged with forcing this man out to work when he was physically unable to do so, and denying him necessary medical treatment in and about January, 1945. Now, Kondo, I ask you, do you recall saying C. B. Serafin on sick call at any time in and about January, 1945?
A. He did not come to sick call.

Q. Did you see C. B. Serafin at all in the dispensary during January of 1945?
A. No, not while I was there.

Q. I don't mean at sick call now. I mean at any time did you see Serafin ill and registering any complaints that he was ill in January of 1945?
A. No, as far as I remember I did not see him in January.

Q. Now, Kondo, do you ever recall treating Serafin at all or assisting in his treatment?
A. If it was sometime in 1944 I remember that he came.

Q. When in 1944?
A. It was while Serafin was doing "paper work".

Q. And just what do you recall about Serafin in regard to treating him at any time?
A. No, I cannot remember anything.

DEFENSE: Will the reporter read back the question.

The question was read back.

DEFENSE: Would you put that question to him again in Japanese?

The question was repeated to the witness by the interpreter.

A. I do not remember what sickness he came for.

Q. Do you recall him ever coming to you?
A. Yes, he did come.

Q. On how many occasions do you recall his ever coming to you on sick call?
A. No, I cannot recall.

DEFENSE: Would you put that question to him again, please?

The question was repeated by the interpreter.

A. No, I cannot remember.

Q. You cannot remember how many times he came?
A. Yes.

Q. Can you recall the last time he came?
A. I do not know for sure, but it was one month before he went out to work, so I think it was sometime in September or October of 1944.

Q. Do you recall what he was treated for at this time?
A. No, I do not remember.

Q. Do you recall Dr. Hochman treating him for any ailment at any date later than September of 1944?
A. I received a report from Dr. Hochman in January of 1945 saying that he had a fever.

Q. And by "he" do you mean Serafin?
A. Yes.

Q. Approximately when in January did you get this report from Dr. Hochman?
A. It was on the morning of 16 January. If I look at the diagnosis sheet I can tell for sure.

Q. Can you recall what Dr. Hochman said was his ailment?
A. Yes.

Q. What did he say was his ailment?
A. He told me that Serafin had a fever from the previous night and was resting in bed. He told me that he was suffering from bronchitis.

Q. Did you see Serafin the morning of the 16th at all?
A. No.

Q. Did Dr. Hoshman state what treatment he was prescribing for Serafin other than that for the fever?
A. He told me that he gave him some aspirin the night before. He told me to give him some aspirin and stomach powders that day.

Q. As a result of Hoshman's recommendations, did you give him stomach powders and aspirin that day?
A. Yes, I immediately filled the prescription and gave it to him. Dr. Hoshman told me that it was not necessary to give him any antibiotics, so I did not give him any.

Q. Do you know what was done in further treatment of Serafin?
A. That is all I did, but since the Doctor had ordered the relief supplies they may have given him something from these supplies, but I do not know.

Q. Where did Serafin rest?
A. Within his own quarters.

Q. Was he ever placed in the hospital?
A. The day after the sickness, Noom made the rounds of the camp and he told me the following: He said he looked around the camp that day and he saw many flu patients and then he looked into the recuperation room to the many camp patients, and told Hoshman to stop hospitalizing all these patients. So I relayed this order to Dr. Hoshman.

Q. Mgm. Kondo, we are talking about Serafin. What, if anything, did this have to do in connection with Serafin?

[illegible] Why I ask that last answer be stricken? It is not the least bit responsive to the question.

[illegible] If you let him answer this one it may tie it up.

A. That is all I did; I just filled out the prescription and I gave it to him.

[illegible] I think you better put the original question to him again.

[illegible] Then we have it all stricken?

[illegible] Strike the last two questions and answers and ask him the question over again.

PRESIDENT: When he replies that he gave some medicine to him, let him specify whether he gave it to Dr. Hoshman or Serafin.

[illegible]: Please repeat the previous question.

The reporter read back the question and it was translated to the witness.

A. [illegible] how much did you weigh then?
[illegible] about 140 lbs. a week and sometimes five times
Q. Do you know the reason why Serafin was not placed in the hospital?
A. [illegible] just during the summer months
[illegible], but in the winter only once or twice.
Q. Will you tell the Commission that reason please?
A. The [illegible] for this was because Sh. Hans told me that there were only [illegible] patients in the sick bay, and if we put him there he might [illegible] the diseases from the others, so he told me to keep him [illegible] was usually between twelve and two o'clock [illegible].
Q. [illegible] do you know Serafin?
A. Yes.
Q. How, [illegible], do you recall [illegible] the summer of 1944 he [illegible]
Q. How for how long a period after the 16th of January did Serafin stay in the [illegible] compound?
A. The [illegible] under this [illegible] in which [illegible] that want to [illegible] them about it because there were [illegible] who were violating [illegible]
Q. And what part of treatment did Serafin receive during these two days?
A. I don't [illegible] what sort of treatment he received, because Merritt and Ginger made the treatments.
Q. About what time of night did this incident take place
Q. Mr. Kinsler, you stated that you were told to give Stomach powders and aspirin to Serafin on the 16th. Now, did you actually give these to Serafin yourself or did you give them to Merritt and Ginger to give [illegible] to Serafin?
A. I gave it to Merritt.
Q. Now, Hardy, just [illegible] did this incident occur?
Q. Now Hardy I direct your attention to Specification 1 and ask you to do you know a Soviet-British prisoner of war named Albert M. Herbert?
A. Yes I do but remember [illegible] among the prisoners of [illegible] making a sort of racial slurred "Nazi", so I hit this prisoner of war
Q. Do you recall any British prisoner of war that came on sick call between 1 January and 16 February, 1944 complaining of stomach ulcers?
A. At that time we did not have any stomach ulcer patients.
A. Yes.
Q. Do you recall any patients suffering from stomach ulcers who came to you on sick call and asked for pardon and were slapped by you?
A. I remember one stomach ulcer patient but I did not hit him.
A. As I started to leave, [illegible] about, pertain to the award
Q. Now Hardy I direct your attention to Specification 3 and ask you if you know a Sergeant John R. Smith, a Sergeant Norbert M. Vostal, a Private Gilbert G. Gregory, a Private Lyle Wood, and a Private John McCarthy, American prisoners of war?
A. No, I do not remember them, but after seeing the [illegible] I do recall that in the war we [illegible] Ginger, as I knew
Q. Now Hardy, was there a rule in effect in this camp that all prisoners would sleep in the summer time with a blanket over their stomach?
A. Yes [illegible]
Q. [illegible] other than that [illegible]
A. Lt. Hoon's order.
Q. Did you make tours of inspection to see that prisoners of war complied with this order?
A. Yes.
[illegible]

Q. Approximately how often did you make these trips?
A. From [illegible] to four times a week and sometimes five times.

Q. [illegible] during the summer months?
A. [illegible] in the winter only once or twice.

Q. [illegible] what time did you make these inspection trips, what time of night?
A. There was no definite time on which I would make my rounds, but it [illegible] between twelve and one o'clock [illegible] between ten to three.

Q. Now, Hondo, do you recall any evening in the summer of 1944 in which any person or prisoners of war were shrunk by you while you were making these inspections?
A. Yes, I remember this: It is when I was on my rounds and went to [illegible] there were many who were violating the rule of playing a blanket over their [illegible] I went over to caution them.

Q. About what time of night did this incident take place? The summer of [illegible] a little before roll call, between eight and nine, [illegible]
Q. between eight and nine in the evening?
A. Yes.

Q. [illegible] Hondo, just how did this incident arise [illegible]
A. I went around to caution the prisoners of war and when I went to the [illegible] No. 7 Squad was, after I finished cautioning No. 7 Squad and started to leave, someone among the prisoners of war who was making a lot of noise shouted "Baka", so I hit this prisoner of war who said this [illegible] him.

Q. Did you strike the prisoner of war who said the word "Baka"?
A. [illegible] a Nisei war and I knew him to be, but I did not strike him.

Q. How did you determine that he was the prisoner of war who had said "Baka"?
A. As I started to leave, someone shouted "Baka", someone in the second [illegible] shouted "Baka", so as I turned around I saw all the prisoners of war turned around and look in that direction, and when I looked in that direction I saw one man just lying in his bed and all the prisoners of war were looking at him. At that time there was a guard with a rifle making his rounds, and after someone shouted "Baka" he said "That is the man" and pointed his finger, so I knew this person to be the one that shouted "Baka".

Q. How many times did you slap this prisoner of war?

PROSECUTION: He did not say that he had slapped him as I recall it.

DEFENSE: I withdrew the question.

Q. Did you slap him, William Hondo?
A. Yes.

Q. Where was this person when he was slapped?
A. He was sitting in his bed.

Q. [illegible] of war was to work I ordered the [illegible]
A. [illegible] after hearing about these patients from Singer and Merritt, and [illegible] submitted the daily report to the
Q. [illegible] office [illegible] to
A. At that time [illegible] was wrong on the report. I then told Singer and Merritt that there was a discrepancy in one
Q. [illegible] report and both of them claimed that there was no
A. [illegible], and I told them that the report at the labor office about
the laborers [illegible] did not like to be, went out and instructed
Q. [illegible]
A. [illegible]
Q. [illegible]
A. [illegible]
Q. [illegible]
A. [illegible]

A. The day after the prisoners of war went to work I entered the patients' records on the daily report after hearing about these patients from Ginger and Merritt, and then I submitted the daily report to the medical office and labor office. The labor office later reported to me that there was something about one person wrong on the report. I then told Ginger and Merritt that there was a discrepancy of one person on the report and both of them claimed that there was no mistake, and I told them that the report at the labor office about the labourers and patients did not jibe so they went out and inspected the barracks. After awhile the two of them came back bringing with them Hawley. I asked Hawley why he absented himself without reporting and was anything wrong with him and "Why did you not report to Ginger and Merritt before you absented yourself from work?" I asked him this several times and then I said "Why don't you say something?" and hit him. I then said "Don't be caught by the Japanese officers today" and let him go. I told him to go back to bed. After awhile Sanders, the interpreter Kimura, and Hawley came to me and Sanders, through the interpreter Kimura, asked me why I struck Horsley. I told him that no matter how much I asked him something, he would not answer so I struck him. Then Sanders told me that Hawley had the permission of the day duty officer Kajiyama to be absent from work. I then asked them "Why don't you tell me these things, either call Ginger or Merritt and tell him", and then Sanders told me that "He is only a youth of 17; that is probably why he didn't tell you". Then I said "I do not know his age, but if anything like this happens again let me know, let us know previously".

Q. Kondo, how many times was Horsley struck?
A. Five or six times with both of my open hands.

Q. In the face or where?
A. In the face.

Q. Did the duty officer report to you or did you ever receive a report that Hawley had been ordered to stay in from work?
A. No, I did not hear anything.

Q. Do you have anything else you would like to say about Specification 8?
A. Yes.

Q. Will you tell it to the Commission, please?
A. It is the custom of some armies that there is a great deal of shame when a person strikes a youngster of only 17, and I am very sorry about this incident.

Q. I direct your attention to Specification 9 and ask you if you know a former American prisoner named Age Harreby Knudsen?
A. Yes.

Q. Do you recall ever striking Knudsen on or about August, 1944?
A. I did not strike him.

Q. Do you recall of ever having stricken Age Harreby Knudsen?
A. In 1944 Knudsen sustained injuries at work. I made a report of this incident. I saw him for the first time then, and after this accident I did not see him.

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Q. Did you ever strike Knudsen?
A. Not after I knew him.

Q. Did you ever strike Knudsen?
A. No.

The commission reconvened, pursuant to adjournment, at [redacted]. All [redacted] the commission with counsel for prosecution and [redacted] the 30th of October, 1946, interpreters and the reporter [redacted] the commission then recessed at 1635 hours, 29 October, 1946, to reconvene at 0900, 30 October, 1946, pursuant to the [redacted] authority.

The witness was [redacted] duly sworn.

Edward Tetard

Questions by the defense (cont.):

Q. Now, Tetard, do you recall ever seeing [redacted] Peter Ryan, who testified for the prosecution in Chief Prosecutor
A. Yes.

Q. When do you first recall seeing Sergeant Ryan?
A. I knew him after March of 1944.

Q. Did you ever strike Sergeant Ryan?
A. I cannot remember.

[redacted]: Strike that.

[redacted]: I asked him if he ever hit Sergeant Ryan. He testified he cannot remember.

Q. Do you remember an American prisoner of war by the name of Sergeant
A. No.

Q. Do you recall an American prisoner of war named Sergeant [redacted]
A. No.

Q. Do you recall a prisoner of war by the name of Whaley?
A. No.

Q. Do you recall a prisoner of war by the name of Sweet?
A. No.

Q. Do you recall three American prisoners of war by the name of [redacted], Sikes, and Tetard
A. No.

Q. Do you recall three prisoners of war who were [redacted] for [redacted] the process of cigarettes and the base of Kanagawa [redacted] Sergeant Sikes, Tetard and [redacted]
A. I have heard of Sergeant Sikes, but I do not remember [redacted] who else [redacted] that I do not remember right now.

Q. Do you recall when that took place?
A. I believe it was some time in July or August of 1944.

Q. [illegible]
A. Yes.

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Q. Did you strike them?
A. No.

The Commission reconvened, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, the accused, the interpreters and the reporter who were present at the close of the previous session in this case being present, except Major Philips, who was excused for the day's session by the convening authority.

A. The witness who remained he was still under oath.

Questions by the Defense (cont.):

Q. Now, Kondo, do you recall ever seeing Sergeant Walter Ryan, who testified for the prosecution in this case?
A. Yes, I was [illegible] when the prisoner of war called [illegible] and when the prisoner of war called to them, I knew him from [illegible] March of 1945.

Q. When do you first recall seeing Sergeant Ryan?
A. I knew him from [illegible] March of 1945.

Q. Did you ever strike Sergeant Ryan?
A. I [illegible] remember.

PRESIDENT: Strike whom?

DEFENSE: I asked him if he ever struck Sergeant Ryan. He testified he cannot remember.

Q. Do you remember an American prisoner of war by the name of Bob Favorite?
A. No.

Q. Do you recall an American prisoner of war named George [illegible]?
A. No.

Q. Do you recall a prisoner of war by the name of Grimsley?
A. No.

Q. Do you recall a prisoner of war by the name of Bussy?
A. No.

Q. Do you recall three American prisoners of war by the name of Spalding, Tidd, and Lewis?
A. No, [illegible] Spalding, Tidd, Lewis, Ginger, Leavell, and myself.

Q. Do you recall three prisoners of war who were punished for stealing 500 packages of cigarettes and 100 bars of soap?
A. I have heard of somebody stealing one box of relief supplies, but other than that I do not remember anything.

Q. Do you recall when that took place?
A. I believe it was some time in July or August of 1944.

Q. How many prisoners of war were involved in this incident?
A. Two.

Q. Did you strike them?
A. No.

Q. Can you recall any prisoner of war you ever struck other than Moseley and the one man who was struck over the "mahn" incident?
A. Yes.

Q. How many?
A. About five or six besides these two.

Q. Can you state the reasons for the striking?
A. Yes.

Q. What was the reason?
A. There were some prisoners of war who rested from work without giving any reason, and when the prisoner of war medical ordelige went to investigate this they complained to them, and it was in the case when prisoners of war feigned sickness or absented themselves from work.

Q. Do you recall the dates when any of these incidents took place?
A. No,

Q. And just how did you strike these prisoners of war?
A. I slapped them with both of my open hands.

Q. Did you ever hit a man with your fists?
A. Yes.

Q. On how many occasions?
A. I hit them with my fists twice, and the rest was with my open hand.

Q. Did you ever kick a prisoner of war?
A. No.

Q. Did you ever strike a prisoner of war with a stick?
A. No.

Q. Do you ever recall attending a meeting of Dr. Hochman, Sugiochi, and Sanders and yourself in August of 1944?
A. No, I have not attended any meetings, but after the Moseley incident there was a meeting of Dr. Sanders, Kimura, Singer, Merritt, and myself.

Q. Is this the meeting you testified to yesterday when you described the Moseley incident?
A. Yes.

Q. Were there ever any other meetings that you attended with Sanders?
A. No, I cannot remember.

Q. Did Kondow ever strike you on any occasion while you were at the Oeyama Prisoner of War Camp? [illegible] prisoner of war
A. Not [illegible] interline.

Q. Now, Kondo, I ask you if you were ever stationed at the Ichioka Hospital between the dates of 11 June, 1945 and 16, May, 1946? [illegible] complaints
A. Now [illegible] patients.

Q. Did you ever have occasion to visit the Ichioka Hospital
A. for any reason during that period? [illegible]
A. Yes.
Q. Did you attend sick call daily?
Q. Upon how many occasions?
A. I believe around five or six times.
Q. How often did you attend sick call?
Q. And do you recall the occasions? [illegible], and because I had?
A. Yes, make entries into the diagnosis sheet I attended.

Q. What were they? Each call daily, or did you not attend
A. I went in a convoy of patients to be hospitalized.
A. I [illegible] once a week.
Q. And what did you do while you were there?
A. I turned the patients over to the hospital at the entrance and received a piece of paper for their receipt.
A. At [illegible] I had to make entries into the diagnosis sheet
Q. Now, Kondo, I direct your attention to Specification 21 and ask you again, when did you go to the Oeyama Prisoner of War Camp? and [illegible] taken by Dr. [illegible],
A. 9th of June, 1944. [illegible] to send light patients out to work I was working them out.
Q. What did you do while you were at the Oeyama Prisoner of
A. War Camp? [illegible] personal attend the [illegible] daily sick
A. I made entries in the diagnosis sheet, daily report, and made entries into the medicine records and also did agricultural work.
A. [illegible] there [illegible] into [illegible] camp?
Q. What was your rank while you were there? [illegible] came
A. Superior [illegible] there.

Q. Were there any other Japanese medical personnel at the Army Oeyama Camp? struck by your [illegible]
A. Yes, when I went there there was one superior private, [illegible] Takashima. I object to that question. What difference does that make in this case?
Q. Were there any other medical personnel there?
A. Yes, a medical NCO, Sergeant Hayashi.

Q. While you were at the Oeyama Prisoner of War Camp, did you ever attend sick call? [illegible] make in this case?
A. Yes.
[illegible] I don't see how prosecution can say it is immaterial
Q. And who were in attendance at these sick calls?
A. Do you want to know the Japanese personnel or the prisoners?
[illegible] to [illegible] the question with?
Q. I want to know both the Japanese personnel and the prisoner of war personnel.
A. Yes.

A. Sergeant Hayashi and myself, Dr. Bleich, a medical NCO named Harvey, and two of these other prisoner of war medical orderlies.

Q. Were these people who you have named in daily attendance at sick call?

A. Hay attended once a week when Dr. Bleich made a complete examination of the patients [illegible]

Q. Who was Dr. Bleich?

A. He was a prisoner of war doctor at Oeyama.

Q. Did you attend sick call daily?

A. It was not held every day. [illegible]

Q. How often did you attend sick call?

A. They held sick calls about once a week, and because I had to make entries into the diagnosis sheet I attended.

Q. Did you attend sick call daily, or did you just attend this examination conducted by Dr. Bleich once a week?

A. I attended once a week.

Q. At these sick calls that you attended once a week, what were your duties?

A. At that time I had to make entries into the diagnosis sheet when various illnesses of the patients changed and when the medical supplies changed, and I also had to enter the temperatures and pulse readings taken by Dr. Bleich, and when Hayashi told me to send light patients out to work I was sending them out.

Q. Did any Japanese personnel attend the regular daily sick call?

A. No.

Q. Were there any Japanese doctors in attendance at this camp?

A. Dr. Sakamaki attended about once a week, but the only cause for sickness of the sheet.

Q. Now, Kondo, at any time while you were in the Japanese Army, were you ever struck by your superiors?

PROSECUTION: I object to that question. What difference does that make in this case?

LAW MEMBER: What is it?

PROSECUTION: I object on the grounds it is irrelevant and immaterial. What difference does that make in this case?

DEFENSE: I don't see how prosecution can say it is immaterial in this case.

LAW MEMBER: The objection is overruled; the question will be answered.

A. Yes.

Q. On how many occasions?
A. Six times after I went to the prisoner of war camp.

Q. Who were these superiors?
A. [illegible]

Q. Now, Kondo, at any time while you were in the Army while you were at the Osaka Prisoner of War Camp, did you ever have read to you or explained to you the Hague Convention of 1907 regarding the treatment of prisoners of war?
A. [illegible]

Q. At any time while you were in the Japanese Army or at the Osaka Prisoner of War Camp, did you ever have read or explained to you the Geneva Convention of 1929 regarding the treatment of prisoners of war?
A. No, I have not heard of it or read it.

Q. Now, Kondo, would you take a look at the charges and specifications against you? I now ask you if you have anything you would like to say about anyone of these particular specifications?
A. Yes.

Q. Would you tell the Commission at this time?
A. After being confined at Sugamo Prison for 10 months and receiving the good treatment, and the generous and good treatment and without suffering any undue hardship, I feel very sorry about the way the prisoners of war were treated, and I realize now the difference of the treatment to the prisoners of war in my camp. I am very sorry about what yielded the prisoners after finding out that Japanese prisoners are not struck by American guards. I am also very satisfied with this public trial, and with the work of my defense counsels and investigators, and I am very glad to be brought to trial before this court.

Q. Do you have anything else you would like to say to this Commission at this time in defense of the charges and specifications against you?
A. [illegible]

PROSECUTION: I want to move that the entire statement that was just made by the defense and read into the record be stricken from the record, because it has no bearing on the guilt or innocence of this defendant and is merely an attempt to secure the sympathy of the Commission. I move it be removed as having no part in the case.

DEFENSE: I have nothing to say to that.

LAW MEMBER: The accused is having his day in court. This is [illegible] the testimony for what it is worth. The objection is not sustained.

[illegible]

[illegible] that he struck [illegible] and it was proper. [illegible] did he st[illegible] such a time, how was

Questioned by the prosecution:

Q. [illegible] was questioned at the Queen Mine [illegible] to
[illegible] in the health and welfare of American prisoners of war,
to that purpose?
A. I did by [illegible] explain.

Q. Do you remember my asking you to impose Prison on or about 21 May, 1945 and taking a statement from you?
A. Yes. [illegible] no recollection.

Q. Now, when I was there with Chief Spokane, did you give your statement voluntarily?
A. Yes.

Q. Now, Prosecution Exhibit 20 is written in Japanese; did you see that?
A. Yes.

Q. Did you read it? [illegible]
A. Yes.

Q. Does your signature appear on each of those 10 pages?
A. Yes.

Q. Did you hear Sergeant Ayoi testify on the stand?
A. Yes.

Q. Did you hear Sergeant Ayoi testify under oath that while he was [illegible] you hit him with your fists and knocked out two of his teeth, and he showed where the two teeth were missing? Did you hear him say that?
A. Yes. [illegible] did you hit those prisoners?
A. Yes. [illegible] a prisoner of war camp [illegible] to stay until one [illegible] Dr. Allard looked him over and

Q. Now, do you deny that you did that?
A. I [illegible] this point at that time.
[illegible] I would be made to realize [illegible] more. The prisoner did

Q. Now, prosecution has in evidence an affidavit from Joel T. Boone which states that while he [illegible] you hit him with your fists and you kicked him. [illegible] they brought back

DEFENSE: What number is that? I would like you to hand it to him.

Q. Anything you are going to confront him with said by someone else should be said to him. [illegible] look well.

PROSECUTION: I am reading from it, but I haven't finished my question.

LAW MEMBER: Go ahead.

Q. (cont.) And Sergeant Ayoi on the stand under oath also stated that he saw you [illegible] with your fists and kick him. Did you do that, or didn't you?

DEFENSE: If it pleases the Commission, if you will recall the witness was asked if he knew George Boone and he said he did not know George Boone. Now, to put a question to him of this nature seems like a

[illegible] he does not know, and he not answer.
A. [illegible] did he strike persons at such and such a time, because he does not recall the man's name. If he gets the witness to say
Q. [illegible] then the inference can be drawn that he is lying. This man has stated that he does not know German, English, and to put a question to him of this type would bring out the inference that he is lying.

[illegible] All I want him to say is yes or no. Am I to be limited in my cross examination?

[illegible] that objection be not sustained. [illegible]

A. I have no recollection.

[illegible] I object to the [illegible] explain if possible.

[illegible] I'll withdraw [illegible]. It is not [illegible] any specific reason.

Q. Why?

A. I do not remember.

[illegible]

Q. Did you ever hit anyone with your fists at sick call?
A. Yes.

[illegible] Sir, such a question will [illegible]—

Q. Who?

A. I cannot remember.

[illegible]

Q. How many times did you hit someone with your fist at sick call?
A. [illegible] by putting your hand to [illegible]

Q. Are those the two occasions that Corporal Hiraim testified to on the stand?
A. [illegible] requires a prisoner of war to bring you a report of his [illegible] based in it is to examination that he was [illegible]

Q. And why did you hit those prisoners?
A. [illegible] morning a prisoner of war came limping to sick call and told me [illegible]. The Medical Lecturer looked him over and said he could not tell the condition of this patient at that time, as the prisoner will [illegible] a few days. The prisoner did not come again the rest of that day or the following day, on Sunday. [illegible] on Sunday at around noon, I saw this prisoner and he was not limping. The following morning I told Singer and Hamlet about this and told them to go get this man. When they brought back this man he was limping again, so I called him a liar and hit him [illegible]

Q. How many times did you slap prisoners of war at sick call?
A. I did not slap anybody during sick call.

Q. Did you ever strike any sick American prisoners of war?
A. I have never struck a sick patient.

Q. [illegible] Prosecution Exhibit 8, the affidavit of Dr. Hoskyns, states [illegible] sick [illegible] over the head with books, slapped their faces, hit them with his fists, and kicked them. Is that correct or isn't it?
A. I cannot recall.

Q. [illegible] worked at the dispensary with you, didn't he? [illegible] that
A. [illegible]

[illegible]

Q. Now, Merritt worked in the dispensary with you, too, didn't he?
A. Yes.
[illegible] is not necessary, sir.
Q. Now Merritt, in Prosecution Exhibit 14, states "Kunde prescribed medicines and convinced the sick men. I ordered sick men do work in all kinds of weather, beat them and disturbed them at night when they were trying to sleep". Is that correct or isn't it?
A. I have no recollection.

Q. Now, both Dr. Heckman and Merritt worked with you at the dispensary while you were there. Will you try and explain to this Commission why these statements were made? [illegible] with blood in it. Did you hear Sergeant Ryan testify [illegible] bowel movements of about
DEFENSE: I object to the word "why", "Will you explain" is permissible.
[illegible] in camp and not to be had to [illegible] you a sample of his
PROSECUTION: I'll withdraw the word "try". It is not done for any specific reason.
[illegible] I would like a previous question that was not [illegible]
PRESIDENT: Will you repeat the question as changed [illegible] and not [illegible] for any other answer than to put before this Court. The question was read back by the reporter.

DEFENSE: Sir, such a question will call necessarily for [illegible] important [illegible] part of cross examination.
PROSECUTION: I'll consent to its withdrawal.
DEFENSE: [illegible] the door is also open as far as questions as to [illegible] are raised,
Q. Now, Kunde, in the operation of the dispensary, did you ever take a man's temperature by putting your hand to his forehead?
A. Yes, there were times when I did that [illegible] previous question.
Q. Did you ever require a prisoner of war to bring you a sample of his [illegible] with blood in it if he complained that he was suffering from diarrhea or dysentery? [illegible] Sergeant Ryan testified, he testified under oath; we had to. Any statement he made was made under oath.
DEFENSE: I don't believe, sir, there has been any stool with blood in it in previous testimony brought out to date. [illegible] attempt to [illegible] the witness.
PROSECUTION: I think Ryan did testify to that.
[illegible]: I would like to inform the witness that this Commission is
LAW MEMBER: Did you want to take that time to read up to this—that was brought out in Sergeant Ryan's testimony, both blood and mucus.

DEFENSE: If the Commission remembers that I'll accept the Commission's ruling on it, I will withdraw the objection and stand by the Commission's ruling. [illegible] state that was in court.
[illegible]
A. Yes, at times when the patients were suffering from diarrhea or there was blood in the stools or when they suffered from diarrhea.

Q. Now, Kunde, if an American prisoner of war came to you and stated through Dr. Heckman that he had movements of over seven times, and didn't bring you a sample of his stool, would you permit him to stay in camp?
A. I made them [illegible] by the reporter.

Q. Then it was not necessary for a man to bring you a sample of his stool if he had diarrhea in order for him to stay in camp, is that correct?
A. It was not necessary.

A. Yes, I heard Sergeant [illegible] testify to that in Court, sir.
Q. Did you hear Sergeant Ryan state on the stand here under oath—

DEFENSE: Today "under oath" is not necessary, sir. The stenographer made [illegible] Court. That is
PROSECUTION: Sir, I haven't finished my question. If counsel wants to object to it, I suggest he wait until I finish.
[illegible] will you change that to "stated"?
PRESIDENT: Continue.
[illegible] sir, it was inadvertently said. I would like to change
Q. (Cont.) Did you hear Sergeant Ryan testify under oath that he had diarrhea and that he had movements, but before he could be permitted
A. to stay in camp he had to bring you a stool with blood in it. Did you hear Sergeant Ryan testify that he had bowel movements of about
Q. [illegible] during a fourhour period, and that before you permitted him to
stay in camp and rest he had to come and bring you a sample of his
A. stool with blood in it.

DEFENSE: I would like the previous question that had any mention of the
A. word "under oath" stricken because they are purely superfluous and are not made for any other purpose than to put before this Court evidence of a prejudicial nature. [illegible]
[illegible] Personal Property [illegible] American prisoner of
PROSECUTION: Sir, everything is going to be prejudicial to the defendant
A. that I call on cross examination.

DEFENSE: We know the door is wide open on the cross examination to be asked, but there are certain methods of asking a question that are improper.
[illegible] when you were present with Mr. Holmes, did you [illegible] the
PROSECUTION: I have an objection to the words being stricken from the previous question [illegible] prisoners of war
A. it. [illegible] told us to make [illegible].
DEFENSE: Sir, I am objecting to the original question that appears on
Q. the record. We know that when Sergeant Ryan testified, he testified under oath; he had to. Any statement he made was made under oath,
[illegible] more mention of the fact that he testified under oath does not lend sanctity to his testimony. It is purely made in an attempt to
A. discredit the witness.

PRESIDENT: I would like to inform the defense that this Commission is not prejudiced by any statements made by either side. The witness will answer the questions [illegible] to.

A. I have no recollection [illegible] will never [illegible].

Q. I asked him if he heard Sergeant Ryan state that here in Court.
A. Yes.
The reporter will [illegible] question and answer.
Q. Now, is that true or isn't it?
Q. You testified with respect to the "bunga" incident that [illegible]
DEFENSE: That is an improper question, [illegible]
A. Yes.
LAW MEMBER: I want to hear that question.
Q. All of the witnesses [illegible] that [illegible] and
The question was [illegible] by the reporter as to
A. Yes.
LAW MEMBER: Objection sustained.

Q. Now, Kondo, you heard Sergeant Ryan testify to that in Court; are these facts true or was Sergeant Ryan trying to get rid of their sick condition so they were sent out to work, is that correct?

DEFENSE: I object to the use of the word "facts". The statements made by Sergeant Ryan, from my point, are not necessarily facts. That is what the Commission is here to ascertain.

LAW MEMBER: Will you change that to "statements"?

PROSECUTION: Sir, it was inadvertently said. I would be glad to change that to "statements".

A. I do not know, sir, that is.

Q. Now, Kondo, who was in charge of the dispensary of the Japanese medical personnel of war camp and the number 1 camp, you
A. Mr. Kondo all out to work, and the American prisoners of war complained because they felt that that was unnecessary. Did you say that?
Q. Who was in charge that was present at the dispensary?
A. That was myself.
Q. Now, Kondo, did you have the authority to overrule a decision of Dr. Hoshuma regarding a sick or regarding an American prisoner of war who came to the dispensary for treatment?
A. This was Mr. Kondo prisoners, statements correct or are they correct?
Q. Now, Kondo, apparently you didn't understand my question. At sick call in the morning when American prisoners of war appeared for treatment when you were present with Dr. Hoshuma, did you have the authority at that sick call to overrule Dr. Hoshuma regarding any treatment of an American prisoner of war? Is that statement correct or not?
A. Mr. Hoga told me to make the decisions.
Q. Did you ever overrule Dr. Hoshuma's decisions?

DEFENSE: I think, Mr. Kondo, if you ask him up to what? It is correct.

A. Yes. Before we go any further, I would like to check this. I am quite sure he said to me, I was not to work.

The Commission then recessed until 1032 hours, at which time all the personnel of the Commission, prosecution and defense, the accused, interpreters and the reporter resumed their seats.

The witness was reminded he was still under oath.

PROSECUTION: Will you read back the last question?

The reporter read back the last question and answer.

Q. You testified with regards to the "mumps" incident that no prisoners of war with mumps were sent out to work, is that right?
A. Yes. If he was not in this camp, I don't know about his
Q. All of the prisoners of war that had mumps were segregated and hospitalized until they got better, is that correct?
A. Yes.

Q. And it wasn't until they did get better and got rid of their camp
[illegible] that they were sent out to work, is that correct?
A. Yes, that is correct, I believe that is correct, because Medical
Officer Ando and Dr. Hashima told me this.
Q. Now, you never took any American prisoner of war who had camps to
work, did you?
A. No.
Q. You never [illegible]?
[illegible]: They, he didn't.
Q. Now, did you later interpret Ryan testimony on the stand that when the
American prisoners of war got camps and the medical treatment, [illegible]
with them all sent to camps and the American prisoners of war completed
camps they felt that's that was contagious? Did you hear him say that?
A. Yes.
Q. Yes, he heard that?
[illegible]
Q. Now, is that correct; are those statements correct or aren't they
correct?
A. As far as I know the two medical officers, Ando and Hashima, told
[illegible] got sick and got sent to camp.
Q. Mary Thompson [illegible] that you, Ando, sent American prisoners
of war [illegible] camps out to work. Is that statement correct or isn't
it correct? [illegible]
A. I have never took them to work.
Q. Chief Justice on the stand stated you had sent American prisoners of
war who took camps. Is that correct or isn't it correct?
[illegible]
DEFENSE: Before you go any further, I would like to check that. I am
quite sure he said he took them to [illegible] again and [illegible]
PROSECUTION: This witness can say.
DEFENSE: That is not for him to say.
PROSECUTION: That is my best recollection.
DEFENSE: At this time I think I am correct, and I would like to check
the record on it.
PROSECUTION: To save time, I'll withdraw the question.
LAW MEMBER: You can say it this way. Don't say that Chief Justice said it;
say it was testified.
PROSECUTION: I'll withdraw the question; it is not important. The point
has been made.

Q. Now, Sunday the Nazi didn't order those sick patients out to work, did he?
A. [illegible] prisoner if he was on the sick list until he had been
Q. Then what Nazi order there is which says prisoners of War belong
would you send [illegible]?
Q. Now you just stated before that they did not go to work until they
were all better; which statement is correct? Did the Nazi Luther
[illegible] him?

DEFENSE: The inference, sir, given by the question is not correct. He
Q. stated that your guard said that they weren't sent out to work until
they were entirely well. That is very broad. Now by putting a question to
him in the effect that the last answer was they were sent out to work
while they were ill, and that is not proper, would sir, in case and
[illegible], all you know that?

PROSECUTION: Sir, he testified on cross examination first that these
patients were hospitalized and were not sent to work until they were
well, better, that we have been questioning him did Dr. Rosa send these
patients out to work and he said "Yes". His statements are at
variance.

Q. Sergt, did you ever refuse to give any medicine to any American
DEFENSE: Let's get it straight to the witness.
A. No.
LAW MEMBER: The witness never used the word "cure". He said "better".
Q. You repeat the question and if [illegible] refused to give him
[illegible] for the Japanese was he going to put him then?
PROSECUTION: I'll withdraw the question. I won't press it any further.

Q. Sergt, if a man came to sick call and claimed he was injured at work,
A. what would be necessary before you would let him stay in camp?
Q. I would listen to Dr. Beckman's diagnosis, and if he had to stay in,
then he would stay. But when Dr. Beckman's diagnosis differed
with Dr. Rosa's diagnosis, and when I brought Dr. Beckman's diagnosis
A. to Dr. Rosa, my request would be turned down so I would talk this
over with Dr. Beckman and he would send them out to paper work.
Q. Did that [illegible] you?
DEFENSE: The defense interpreter wants to make a statement to the court
interpreter.
Q. Did you have the [illegible] and beyond about a meeting that
The interpreters held a conference. The question was then again put
to the witness by the court interpreters. The answer came back as follows:

A. If it was an injury sustained at work, then they would do whatever
Dr. Beckman said, never with you people treatment of American prisoners
of war, your overruling of Dr. Beckman's decisions to send sick
PROSECUTION: Sir, let's state that now I believe the witness is confused.
Repeat the question to the witness and see what his answer will be.
A. Yes.
The reporter read back the question which was translated to the
witness by the court interpreters, getting back [illegible]
Q. [illegible]
A. If a prisoner was injured at work, then a person from the work place
Q. would bring a certificate of the injured and come to sick call.
My helper would then diagnose this person and make out a certificate
A. stating that this person was injured while at work. He would then
be allowed to rest from work.
Q. What were they [illegible] when they were first given you?

Q.

A.

Q.

A.

Q.

A. [redacted] was sick because the records of men who were sick in camp, who

Q. [redacted] or isn't it correct?

A. I do not know.

Q.

A.

Q.

A. [redacted] health condition of the prisoner of war?

Q. [redacted] or isn't it correct?

A. [redacted] counsel has asked you whether or not you read the

Q. [redacted] and did [redacted]

A. [redacted] as anything you did or might have done, but merely [redacted] as to what you think. Do you understand me?

Q. [redacted] incident ever happen?

A. No, sir, I am not referring to you; do not think it is right or

Q. [redacted] and [redacted] at Camp Camp around August of 1944?

A. [redacted] questions have on this [redacted] unless they pertain to Lance himself. His testimony has been

Q. [redacted] and also has [redacted] and [redacted] the reason for the [redacted] of the trial of Lance [redacted] you are [redacted]

A. [redacted] now, or at the times alleged in the specifications?

Q. [redacted] that such a meeting took place?

A. I do not know.

Q. [redacted] with you and if you [redacted] reverting to you.

A. Yes.

Q. What were they for and when were they given you?

[redacted]

A. I did not send them out to work, except the paper work.

[redacted]: By Duke.

Q. Now, Duke, your counsel has asked you whether or not you read the [redacted] and the fact of Duke testimony and you stated [redacted] the question I'm going to you are going to [redacted] you did or might have done, but merely question as to what you think, do you understand me?

A. [redacted] Sir, I am asking if he or anyone else understands. [redacted] interest parted with both these men in the discovery. This was the

Q. Now, Duke, I am not referring to you do you think it is right or wrong for a medical supply to supply sick American prisoners of war?

[redacted]: Next objection is overruled.

[redacted]: I would like to know what bearing such questions have on this [redacted] subject matter pertain to Duke himself. His testimony has been that he has not shrunk any sick prisoners of war.

[redacted]: No further questions.

PRESIDENT: Counsel may mind this witness whether or not he read the Geneva Convention or will be explained to him. Now, I want to find out what this man's standings are or would be.

[redacted] questions by the defense:

[redacted]: Now, or at the time alleged in the specifications?

A. Now, under, on these [redacted] you stated, [redacted] Geneva of war

PRESIDENT: I'll permit that question. [redacted] permits [redacted] you to be [redacted] Now you will [redacted] Geneva [redacted] you understand.

Q. Duke, during the time do you think it would be right or wrong for a [redacted] supply to supply sick American prisoners of war?

A. I am not referring to you [redacted] with it is worth that [redacted] or harm [redacted] have [redacted] to be afraid to go and I [redacted] there [redacted] hospital for examination.

[redacted] the prerogatives of the Commission. The Commission was appointed to [redacted] set forth in the charges and specifications. The [redacted] his aim to answer both a question is putting the aim of what himself. [redacted] is trying himself, and it is a usurpation of the prerogatives of the Commission. The Commission was appointed to try [redacted], and to reach a decision. To ask this man to answer such a question is [redacted] improper and should be ruled out of order, because it puts this man in the position of trying himself [redacted] in the dispensary, and then on

PROSECUTION: Sir, I have [redacted] further duty I am not qualified to perform with the duke. Counsel has asked him about the Geneva Convention. It was not explained to him, as the Rules of Land Warfare, he are entitled to know what his standings were [redacted] in court.

LAW MEMBER: Objection sustained. Counsel will be confined to the duty imposed in the charges and specifications.

A. [redacted] There were

Q. [redacted] Now, Doctor, I put you to you that the accused [redacted] Colonel, [redacted] that you had sick prisoners of war and well prisoners of war to work. Now, can you offer any explanation at all, any at all for those statements?

Q. [redacted] of persons who were sick?

PROSECUTION: By [redacted]

Q. [redacted] would you treat, or the medical material

[redacted] diarrhea [redacted] to my knowledge [redacted] sustained light

PROSECUTION: [redacted] offering to put other my explanations. This witness [redacted] both those that is the diplomatic [redacted] the day in court. No one fly that he can or cannot explain.

LAW MEMBER: Next objection is sustained. [redacted] you received [redacted] other communications.

A. [redacted]

Q. [redacted]

PROSECUTION: No further questions.

Q. [redacted] Colonel those communications?

A. They were my [redacted] in July and early [redacted] I received [redacted]

Questions by the defense:

Q. [redacted] you received [redacted] those communications?

Q. Doctor, on cross examination you stated that prisoners of war who were suffering from diarrhea upon occasion brought stools for [redacted] up to your hut there. Was you told that information why you requested that the stools of diarrhea patients be brought before you?

A. The reason I told them bring their stools to me for examination was because [redacted] told me to do so many of the patients that told me with their mouth that they themselves had diarrhea or they had blood in their stool or high fever. In such cases [redacted] told me to have them bring their stools to me and I would send them to the hospital for examination.

Q. Now, Hondo, just what happened so far as child visiting procedure or treatment for a prisoner of war who was injured at work?

PROSECUTION: I am objecting to the question only because I feel it has been answered by the witness twelve and is thereby repetitious.

LAY MEMBER: Objection not sustained; proceed Lt's get along.

A. When a prisoner of war sustained an injury at work the Japanese supervisor of this work place and the prisoner of war squad leader would bring this injured person to the dispensary, and then we would have to furnish sixteen with printed that we would make out a certificate stating that this person was injured at work, and also have the company make out a statement stating that they witnessed this person being injured that he would be allowed to rest.

Q. Just what sort of injury would a person have to suffer before Dr. Nihei would examine them?

A. Broken bones or prisoners of war with compound fractures. There were not very many of these, but prisoners that slipped on the deck of a ship and have their legs or had things fall on their feet would come to the dispensary.

Q. Did you yourself or any of the guards of any medical orderlies speak any Japanese to persons who were hurt at work?

A. Yes.

Q. What sort of Japanese would you have, or the medical orderlies?

A. If a prisoner of war was unable to walk back to camp, then I would take a purchase to the dispensary and carry him. Then I would bring him back to a carpenter and Dr. Nihei would look after him. I would also look at the prisoners of war who sustained broken bones, dislocations and all things according to Dr. Nihei's instructions. Minor and injuries would be busy with the other patients most of the time, so I would do this work.

Q. The certificate that in addition to the examinations you received from Dr. Nihei, Hondo, you received two other examinations. Who gave you these?

A. The camp commander, Col. Nyutani.

Q. Do you recall the dates you received these examinations?

A. They were not strictly examinations, but in mid-July and early December I received a furlough.

Q. Were they furloughs you received rather than examinations?

A. Yes.

Q. What years were these examinations received in July and December?

A. July and December of 1944.

DEFENSE: Defense has no further questions.

A. That was your duty [illegible] station did you say?
A. I was attending to Sungpark Higher [illegible] and I did [illegible] work.

Questions by members:

Q. [illegible] you in charge of [illegible] at the [illegible]
Q. That was the date that you reported for duty at the Oryoku Pidsoner of War Camp?
A. The [illegible] Military Police [illegible] to my station - men would go out to work or [illegible] to work.
Q. You were not there during May?
A. No, I was not there.
Q. Did you ever [illegible] any kind of [illegible] to whether the
Q. When did you terminate your duties at that camp?
A. On the 2nd of September, 1945, [illegible] Imperial Japanese Army surrendered [illegible] then [illegible] a week I would say.
Q. What unit [illegible] you reported to [illegible] or not.
A. Superior private.
Q. Did [illegible] who were [illegible]

PROSECUTION: Sir, may I interrupt you just a moment. I have an official [illegible] have any evidence at all [illegible] Imperial Japanese [illegible]

PRESIDENT: The specification alleges dates that are incorrect.

[illegible] no further [illegible]

PROSECUTION: Sir, I have an official record. Would the Court desire to see it or offer it in evidence [illegible] the date of the accused's duty at Oryoku Camp.

[illegible] The [illegible] will [illegible]

PRESIDENT: Show it to the defense and see if he has any objection. I am trying to straighten out the dates: October 15th, [illegible] [illegible], 2 October, [illegible]

PROSECUTION: I am trying to aid the Commission, sir.

DEFENSE: I object to the first part because he has already explained that though the record may indicate that he was at the Oryoku Camp in May as it appears on this record, he wants to put in, [illegible] has explained if you recall, that he was on some sort of [illegible]

PROSECUTION: Sir, what is more official than the official record of the Prisoner of War Information Bureau? Is this more reliable or is the memory of this witness?

LAW MEMBER: Is that in evidence?

PROSECUTION: If the Commission requests it.

LAW MEMBER: I want all this straightened out.

DEFENSE: You will only prolong the case, because I will get a man down here to show that the records are not always reliable.

Questions by members (cont.):

Q. You state that you were not physically at that camp in May?
A. No, I was not there.

Q. You stated that your rank was superior private. Does that correspond to two-star private in the Japanese Army?
A. No, it is a three-star private.

Q. What were your duties at the Cayuga Camp? What positions did you hold?
A. I was substitute to Sergeant Reynolds, and I did [illegible]

Q. Were you in charge of sick call at the dispensary at the camp?
A. I was not in charge [illegible]
Q. Was sick call held [illegible] or was [illegible]
[illegible]
A. This was all done by Dr. Kotch.
Q. Did you ever pass on any case of prisoners of war as to whether they were to go to work or stay [illegible]
A. [illegible]
Q. Did you [illegible] at such sickness at this camp as you did at Camp [illegible]
A. I did not have any authority at all at Cayuga because Sergeant Reynolds [illegible]
PRESIDENT: [illegible] The witness may be excused and withdraw to the defense table.

PRESIDENT: The Commission will adjourn to meet at 0900, 31 October, 1944.

The Commission then at 1615 hours, 30 October, 1944, adjourned to meet at 0900 hours, 31 October, 1944.

[redacted]

LAW MEMBER: What?

PROSECUTION: Shoichi Hara.

My present condition has no bearing in the issues in this case. If Counsel wishes to state for the record that the proper Shoichi Hara is not here to testify in person he is at the hospital, prosecution will consent to it. But if the only purpose is that, there will be nothing more in the prosecution's case or in the defense's case that should keep the commission detained during the time that Shoichi Hara was in the camp. It makes no difference what his condition is now. The only thing that Counsel can state to the effect is that Shoichi Hara is unable to appear here because he is in the hospital, to which the prosecution will agree. My statements as to his present condition are certainly irrelevant and immaterial to any the issues [illegible]

DEFENSE: If the Commission please, the reason for the request of this request is that we can definitely show on the record for future purposes the reason why Shoichi Hara was not available a witness. From the testimony that has been brought out, it is very evident that if would appear that Shoichi Hara able to come he should be called. How a determination by the officer that Shoichi Hara is confined to a hospital is not sufficient reason to show why there is no evidence before this Commission by Shoichi Hara himself; because if he were just in a hospital like any other sick person, we could take a deposition from him through which the prosecution and defense could examine the case and present his testimony before this Court; but such is not the case and for the protection of the Commission, if for nothing else, from future criticism as to why Shoichi Hara is not before this Court, it should appear on the record.

PROSECUTION: Sir, such an argument intended to show the Commission is not proper.

DEFENSE: It is not an argument to sway the Commission. It is purely an offer for the reason I stated: To show that Shoichi Hara is confined to a hospital and cannot testify before this Court, and that no deposition can be taken from him. That is the only reason we offer this exhibit.

PRESIDENT: Any prosecution will suggest to a statement that Shoichi Hara is in a hospital in his present condition which does not permit him to testify. That is all that this commission needs in evidence if it wants to protect itself. Anything to his present condition is entirely out of order.

LAW MEMBER: This exhibit you are introducing only concerns the inability of Shoichi Hara to testify, is that it?

DEFENSE: That is right, sir.

LAW MEMBER: Then the objection is not sustained. It will be admitted in evidence.

DEFENSE: I request permission to read the exhibit.

PRESIDENT: Proceed.

Defense Exhibit A was then read to the Court and opposing to the record.

LAW MEMBER: At this time the defense rests.

PROSECUTION: Prosecution offers in rebuttal, evidence as Prosecution Exhibit No. 15, that portion of an affidavit which I will read from the affidavit of Lalapuro C. Kinkaid, which is now in evidence as Prosecution Exhibit 15; and the portion that prosecution will read is offered only in rebuttal to counteract the testimony of Lt. Kosuke Nakamura, and goes only as to his credibility and nothing else.

LAW MEMBER: We have had 15 previously?

PROSECUTION: Yes, sir, but the portion I am going to read was obvious out originally, and the portion I now offer is to attack the credibility of Lt. Kosuke Nakamura.

DEFENSE: If it is only offered for that purpose and not to jeopardize any case brought against Nakamura, the defense has no objection.

PROSECUTION: Prosecution will read from Page 4 of Major Kinkaid's affidavit:

"There was only one officer in the camp in charge, Lt Lt. Kosuke Nakamura", and then skipping down to the last sentence of that paragraph, "The following is a true and exact copy of one of the letters written at his request".

LAW MEMBER: I am trying to get it straightened out. I don't know what you are offering.

PROSECUTION: Just the letter, and that sentence.

LAW MEMBER: Have you read it yet?

PROSECUTION: I haven't read it yet. I am waiting for you to rule it in evidence.

LAW MEMBER: The affidavit as amended will be appended to the record and corrections made as requested. It is admitted in evidence.

PROSECUTION: I will now read that portion of the affidavit which has just been admitted into evidence by the Law Member:

"There was only one officer in the camp in charge, 1st LA. Komaki Kentaro. The following is a true and exact copy of one of the letters written at his requests

Omuta Prisoner of War Camp
Nippon
March 25, 1945

"To: Camp Commandant and Staff

From: POW Officers and supervisors.

On behalf of all the men in this camp we wish to express to the Camp Commandant and his staff our deepest gratitude for the interest they have taken in our health and welfare. We feel most indebted for the unrestricted privilege of taking the men to the Nipponese dentist where they are treated with utmost courtesy and professional skill. We further wish to express our thanks for being allowed to withdraw considerable sums from the Nipponese safe deposit to help defray the cost of this treatment, realising that such withdrawals are generally not authorised and must have required much effort and intervention on the part of the Camp Commandant and his staff.

In these trying times of war, with materials as scarce or restricted as they are, we feel we have been shown consideration beyond our expectations. We would like to have our feeling of gratitude conveyed to the dentist who has so liberally given of his time and effort.

We beg to remain, your obedient servants."

Prosecution offers in evidence as Prosecution Exhibit No. 22 official record from the Prisoner of War Information Bureau, which was the statement of service of Kaniehi Kondo at Cupuan Prisoner of War Camp.

DEFENSE: There is nothing on the face of that to object to, but the POW records themselves are not entirely reliable, and have been so testified to by the persons who has signed this document in other cases.

LAW MEMBER: This is just an exhibit to show the time that the accused was at this camp?

PROSECUTION: Yes, sir.

LAW MEMBER: And you have no objection?

DEFENSE: On the face of it I can't object to it. I just made remarks about similar exhibits that come from the POW Information Bureau.

LAW MEMBER: The exhibit will be accepted.

PRESIDENT: Has the defense rested?

DEFENSE: Yes, sir.

PRESIDENT: Prosecution?

PROSECUTION: Yes, sir.

PRESIDENT: The Commission will now hear the arguments for the prosecution and defense.

Oral arguments were then presented by the prosecution and defense.

The Commission then at 1615 hours, 31 October, 1946, adjourned to meet at 1315 hours, 1 November, 1946.

Leonard M. Rand

LEONARD M. RAND
Chief Prosecutor

[redacted]

Yokohama Courthouse
Yokohama, Japan
3 November, 1948

The Commission reconvened, pursuant to adjournment, at 1315 hours, all the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter who were present at the close of the previous session in this case being present.

[redacted] I would like to say.

FINDING

[redacted] The Commission at this time is prepared to render its verdict on findings and sentence of the accused. The accused will come over to the table.

[redacted] soldier, I am asked on behalf of my colleagues and myself to state that for the trial you were given no. I [redacted]

In closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds the accused:

Of Specification 1: Guilty, except for the words "by beating him", of the excepted words Not Guilty.

Of Specification 2: Guilty.

Of Specification 3: Not Guilty.

Of Specification 4: Guilty, except for the words and letters "1 January" and "16 February, 1945", substituting therefor the words and letters "1 November" and "31 December, 1945", of the excepted words Not Guilty. Of the substituted words, Guilty. [redacted] November, 1946, adjourned to

Of Specification 5: Guilty, except for the words "and a bamboo stick", of the excepted words Not Guilty.

Of Specification 6: Guilty.

Of Specification 7: Guilty. [redacted]

Of Specification 8: Guilty. [redacted]

Of Specification 9: Guilty, except for the words "with a leather slipper", of the excepted words Not Guilty.

Of Specification 10: Guilty, except for the words "medicine and", of the excepted words Not Guilty.

Of Specification 11: Not Guilty.

Of the charge: Guilty.

SENTENCE

[redacted]

To be confined at hard labor, at such place as the reviewing or higher authority may direct, for twelve (12) years.

ACCUSED THROUGH THE INTERPRETER: There is something I would like to say.

[redacted]

PRESIDENT: You may proceed.

[redacted]

ACCUSED THROUGH THE INTERPRETER: I would like to express my deepest thanks for the investigation and for the trial you have given me. I, as a Japanese soldier, had acted on orders of my superiors and I did my best. I would like to get out as soon as possible. That is all.

PROSECUTION: I have nothing further.

PRESIDENT: No further business before the Commission?

PROSECUTION: No, sir.

PRESIDENT: Defense?

DEFENSE: No, sir.

PRESIDENT: The Commission is closed.

The Commission then, at 1325 hours, on 1 November, 1946, adjourned to meet at the call of the President.

AUTHENTICATION OF RECORD

The foregoing typewritten record of trial, together with Prosecution Exhibits No. 1 to No. 10 and No. 12 to No. 22 inclusive, and Defense Exhibits A through D inclusive, referred to, and identified therein, except such portions of the exhibits as have been lined out, deleted, and initialed, constitute the complete record of trial in this case.

GEORGE W. KASTENDAY
Colonel, CAC
President

LEONARD M. BAKO
Chief Prosecutor

I consider the record before it was authenticated, and Prosecution Exhibits No. 1 to No. 10 and No. 22 to No. 32 inclusive, and Defense Exhibits A through D inclusive, referred to, and identified in the record are a part thereof, except such portions of the exhibits as have been lined out, deleted, and initialed.

WILLIAM T. MARTIN, JR.
Major, INF.
Defense Counsel.

I examined the record before it was authenticated, and Prosecution Exhibits No. 1 to No. 10 and No. 19 to No. 22 inclusive, and Defense Exhibits A through D inclusive, referred to, and identified in the record are a part thereof, except such portions of the exhibits as have been lined out, deleted, and initialed.

THOMAS J. DOTY
Defense Counsel

Exhi
to D
there
delete

SENTENCE

And again in closed session and upon secret written ballot, two-thirds of the Members present at the time the vote was taken concurring, sentences the accused:

To be confined at hard labor, at such place as the reviewing or higher authority may direct, for twelve (12) years.

ACCUSED THROUGH THE INTERPRETER: There is something I would like to say.

PRESIDENT: You may proceed.

ACCUSED THROUGH THE INTERPRETER: I would like to express my deepest thanks for the investigation and for the trial you have given me. I, as a Japanese soldier, had acted on orders of my superiors and I did my best. I would like to get out as soon as possible. That is all.

PROSECUTION: I have nothing further.

PRESIDENT: No further business before the Commission?

PROSECUTION: No, sir.

PRESIDENT: Defense?

DEFENSE: No, sir.

PRESIDENT: The Commission is closed.

The Commission then, at 1325 hours, on 1 November 1946, adjourned to meet at the call of the President.

AUTHENTICATION OF RECORD

The foregoing typewritten record of trial, together with Prosecution Exhibits Nos. 1 to 18 and 20 to 22 inclusive, and Defense Exhibits A to D inclusive, referred to and identified therein, except such portions of the exhibits as have been lined out, deleted and initialed, constitite the complete record of trial in this case.

For and in the absence of Colonel George W. Easterday:

GEORGE W. EASTERDAY
Colonel, CAC
President

LEONARD M. RAND
Chief Prosecutor

GERALD L. CHURCH,
Lieut-Col., CMP,
Senior Member of Court.

1 to 10, 12-18 and 20-22

I examined the record before it was authenticated, and Prosecution Exhibits Nos. ~~1 to 18 and 20 to 22~~ inclusive, and Defense Exhibits A to D inclusive, referred to and identified in the record are a part thereof, except such portions of the exhibits as have been lined out, deleted, and initialed.

THOMAS J. DUFFY
Defense Counsel

417 J

VOLUME II

E X H I B I T S
to
R E C O R D O F T R I A L
(5th Original Carbon)

in the case of

UNITED STATES
vs
K E N I C H I K O N D O
Case Docket No. 61

MILITARY COMMISSION
Appointed by
Commanding General, Eighth Army

Tried at
Yokohama, Japan
5 August 1946 - 1 November 1946

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EXHIBITS, ETC., APPENDED

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Affidavit of Dr. David Nachman	2	15
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Q. State your full name, rank, serial number, permanent home address and arm of service.

A. My name is Clayton Woodrow ATWOOD. My rank is Pharmacist Mate, Second, Class, U.S.N. My serial number is 393-25-58. I am an American citizen and was born 23 April 1915 at Seattle, Washington. My permanent address is Maitland, Oregon, and I have no street address.
Mapleton, /s/ CWA

Q. Will you please give us what information you can concerning your experience as a prisoner of war paying particular attention to your experiences during your transfer to Japan and in Japanese prisons.

A. I was confined as a prisoner of war in Hoincho Prison Camp, Osaka, Japan from 9 June 1942 until 19 June 1945, and worked on the medical staff of the camp hospital during half of that time. ~~A Lieutenant NASSAU, a medical officer in the Japanese Army, was responsible~~ for medical regulations at the camp hospital. In January 1944 a Norwegian subject named KNUDSON became seriously ill with pneumonia. He had been captured by the Germans in the North Atlantic when he was serving on a merchant ship. Lieutenant NASSAU ordered this man transferred from the camp hospital to Itchioka Stadium, which was a prisoner of war hospital located beneath the bleachers of a stadium at Osaka. This so-called hospital was filthy and unsanitary. In spite of his condition KNUDSON was placed in a stretcher, in an open truck and taken to the stadium in a driving rain storm, without an attendant. I learned from the Ichioka staff subsequently that KNUDSON died on the following day.

On at least 12 occasions I observed a Lieutenant MIATAKI, also a Japanese Army officer attached to the medical staff of the Hoincho camp hospital, beat prisoners of war. I am unable to identify the victims of these beatings, but personally saw MIATAKI strike prisoners with a club, the flat of his sword, and with his fists. These beatings were without provocation.

A Private in the Japanese Army named KONDO was in charge of the sick list at Hoincho prison camp hospital. Lieutenant David HOCHMAN, Medical Officer in the U.S. Army, whose address is 5614 - 15th Avenue, Brooklyn, New York, was a prisoner of war at the camp. He recommended to KONDO that D. W. SMITH, a Radio Man First Class, U.S.N. be allowed to stay in the camp hospital because of beginning pneumonia. KONDO refused to permit this and sent SMITH to work because he was not running a temperature of 102 degrees. After working for two days SMITH collapsed and died two days later.

I have no further information which I believe to be of value in the prosecutionof men responsible for the mistreatment of prisoners in Japan.

STATE OF CALIFORNIA:
: SS.
County of Alameda :

I, Clayton Woodrow ATWOOD, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation, consisting of two pages, including this end the title page, and that all answers contained therein are true to the best of my knowledge and belief.

/s/CWA /s/ Clayton Woodrow Atwood

Subscribed and sworn to before me this 29th day of September 1945, at Oakland, California.

/s/ J.P.
/s/ Jack P. Kaetzel

PROSECUTION EXHIBIT

STATE OF CALIFORNIA:
: SS.
County of Alameda :

I, Jack P. KAETZEL, Lieutenant, U.S.N.R., certify that Clayton Woodrow ATWOOD, Pharmacist Mate, Second Class, U.S. Navy, Serial #393-25-58, personally appeared before me on the 29th day of September 1945, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Oakland, California.

/s/ Jack P. Kaetzel

Date: 29 September 1945

Page 3 of 3 pages.

A CERTIFIED TRUE COPY

THEODORE R. C. KING
Major, Infantry

THE WAR CRIMES OFFICE

Judge Advocate General's Department -- War Departement

United States of America

In the matter of the atrocities committed at Hoinsho POW Camp, Japan, on or about March, 1944.	* * *

A. Yes.

Q. State all that you know about this incident.

A. In February or March, 1944 - I don't recall exactly when - Smith came to me on regular sick call, complaining of illness. In my examination it developed that Smith was undernourished and poorly developed. He was a good man and rarely complained. There were no positive symptoms of pneumonia present at this examination. I did, however, recommend to the Japanese medical orderly, Kenichi Kondo, that Smith be kept in camp for a few days in order to enable him to rest up. Kondo, I believe, acting upon general instructions that no prisoner, unless definitely sick (high temperature, broken bones) would be permitted to rest, refused to allow Smith to remain. He was sent to work and a few days later developed pneumonia. Because of his extreme weakness, malnutrition and lack of resistance, he died within a short time.

Q. Is there anything further that you care to state about the matter in question?

A. No.

/s/ David Hochman
Dr. David Hochman

State of N. Y.)
) SS:
County of Kings)

I, David Hochman, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ David Hochman
Dr. David Hochman

Subscribed and sworn to before me this 18 day of June 1946.

/s/ Gordon J. MacKenzie
Gordon J. MacKenzie, 2d Lt., Inf.
Summary Court Officer

CERTIFICATE

I, Gordon J. MacKenzie, 2d Lt., Inf., O-2018029, certify that David Hochman personally appeared before me on 18 June 1946 and gave the foregoing answers to the several questions set forth.

Place: 5614 15th Avenue
Brooklyn, New York

Date: 18 June 1946

/s/ Gordon J. MacKenzie
Gordon J. Mackenzie, 2d Lt., Inf.
0-2018029
Area Intelligence Division
AC of S, G-2
Headquarters, First Army
1270 Avenue of the Americas
New York 20, New York

A CERTIFIED TRUE COPY

THEODORE R. C. KING
Major Infantry

~~CONFIDENTIAL~~ RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War--By /s/ T.R.C. King, Major, Inf.

For the WAR CRIMES OFFICE

Judge Advocate General's Department - War Department

United States of America

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In the matter of the manner in which Kenichi Kondo, Japanese Medical Orderly, was a contributing factor to the deaths of RM 2/C Smith and BM 1/C Hess in February 1944. * Perpetuation of Testimony of S/Sgt John Harold Zimmer, ASN 6573878.

****

Taken at: Valley Forge General Hospital, Phoenixville, Pa.

Date: 23 April 1946

In the Presence of: Charles H. Bergerhouse, Jr., Agent, Counter Intelligence Corps, Third Service Command

Reporter: Doris Wadsworth, Stenographer, Philadelphia Field Office, Counter Intelligence Corps, Third Service Command

Questions by: Charles H. Bergerhouse, Jr.

Q. State your name, rank, serial number, and permanent home address.

A. My name is John Harold Zimmer. I am a Staff Sergeant, ASN 6573878, and my permanent home address is 128 Manchester Avenue, Wabash, Indiana.

Q. State the date and place of your birth, your education, and your civilian occupation prior to entering the Army.

A. I was born 16 August 1910 at Wabash, Indiana, and I completed two years of high school. I worked as a travelling salesman for about five years before I went into the Army.

Q. Were you a Prisoner of War?

A. Yes.

Q. Have you recently been returned to the United States from overseas?

A. Yes. I arrived at San Francisco, California on 25 October 1945.

Q. At what places were you held and state the approximate dates.

A. I was captured on Bataan, 8 April 1942. About midnight of the same date, after we had been ordered to bivouac on an open field for the night, we were assemble and marched off without any equipment from the point of our capture near Marveilles to San Fernando, where we arrived about 2100 12 April 1942. The next day we were loaded into box cars and transferred by train to Fort O'Donnell, arriving there about 1300 13 April 1942. On 5 June 1942, we were again moved, because of dysentery at Fort O'Donnell, to Cabanatuan. On 4 October 1942, we were transferred to Manila, where we boarded a converted freighter on 5 October 1942. We arrived at Osaka, Japan, 11 November 1942, and were immediately imprisoned at Camp No. 1, Osaka. On 20 May 1945, with a group of other men from Osaka, I was transferred to Neatogua, Honshu Island, where I remained until liberated on 10 September 1945.

Q. State what you saw and heard regarding the complete details surrounding the deaths of RM 2/C Smith and BM 1/C Hess in February 1944, and tell to what extent Kenichi Kondo, Japanese Medical Orderly, was a contributing factor.

PROSECUTION EXHIBIT 3

A. In February 1944, while we were imprisoned at Camp No. 1, Osaka, Japan, Smith complained that he was sick and too weak to work. Smith wanted to remain in camp, but Kondo refused and ordered him to report for work. Smith was returned from the job by the Japanese civilian supervisor at the Osaka Teokee Foundry, about noon, as they felt Smith was too ill to work. On the next day, Smith again complained to Kondo that he was unable to work because of his weakened condition. However, Kondo again forced Smith to report for work. On this day, the Japanese civilian supervisor at the Osaka Teokeo Foundry did not return Smith to the Camp, but told him not to work and to lay somewhere on the side and rest. On the third morning, Smith stayed in bed and did not report to Kondo at all. Smith risked a beating by Kondo by staying in bed, but apparently, he rather risked the beating then report for work, because he was feeling so bad. On this third day, Smith died some time during the day, before we returned from work at the Osaka Teokeo Foundry.

I do not know what the cause of Smith's death was, nor do I know just what time he died. An American lieutenant named Kauffman, who was from New York City, and who was a doctor in the Medical Corps, should be able to give more information about this incident, as he was present at sick call every day wi Kondo. I was told that Kondo refused to let Smith stay away from work by Sergeant Hector J.Bussey, of Shawnee, Oklahoma, who was a close friend of Smith and who had heard the story from Smith directly. I did not actually witness any of the above incident, except that it was easy to see that Smith was ill. I did not see Kondo beat Smith at any time, nor did I hear that he did.

Early in 1943, while we were at Camp No. 1, Oskka, Japan, Hess started breaking out all over the body with a rash. He was taken to the Stadium Sick Bay at Osaka, where he remained for several months. A great deal of difficulty was experienced in healing this rash, but it was finally cleared up in March or April of 1943, when Hess was returned from the Stadium in a very weakened condition. Hess tried to work, but was unable to do so. The other American Prisoners of War made Hess "Honcho", which is a group leader, who does not have to work. In July or August of 1943, sores broke out all over Hess' body After these sores first developed, Hess' weakened condition became worse, unt: Kondo allowed him to remain in bed for approximately one month, until Hess finally died in the early Fall of 1943. The American doctors did what they could for Hess with medicine from the Red Cross packages, but they were unable to prevent his ultimate death.

I do not particularly remember that Kondo beat Hess because Kondo beat so many men unmercifully, with clubs as well as fists, that it is impossible for me to recall the specific individuals who were beaten by him.

Chief Saunders, a Boatswain's Mate in the Navy, who was the Camp Commander at Camp No. 1, Osaka, and from Bellaire, Ohio, probably would remember a great deal more about Hess' death than I, as he was a very close friend of Hess. Also, Chief Scott, a Watertender in the Navy, was very close to Hess. Both of these men were captured off the same ship on which Hess served. Lieutenant Kauffman also treated Hess, and may know something about his death. I do not know whether or not any medication was given Hess by Kondo, nor do I recall in what manner the medication given by Lt. Kauffman was obtained.

I was an eye witness to the fact that Hess broke out into the rash, which was finally cleared up at the Stadium Sick Bay, and that Hess broke out in sores all over his body about a month before his death.

Q. Who was responsible for these deaths?

A. Colonel Maurota was Camp Commander over the Osaka area and had under his jurisdiction about fourteen prison camps, including Camp No. I. Maurota was almost six feet tall, weighed about 175 lbs., and was sixty or sixty-five years of age. His hair was graying on his shaven head.

Lieutenant Matsamura was Camp Commander of Camp No. 1, Osaka, Japan, and had direct authority over Kondo. He was about five feet ten inches tall, weighed 160 lbs., and was thirty-five years of age. He was medium built and rat-featured.

PROSECUTION EXHIBIT

Kenichi Kondo, Medical Orderly at Camp No. 1, Osaka, Japan, administered all medicines at Camp No. 1 for the Prisoners of War. I felt that Kondo was not qualified as a Medical Orderly. He gave me the impression that he was interested only in getting the men to work and see that they did not stay in the sick bay.

I have seen Matsamura beat Kondo when there were too many men who stayed away from work because they were sick. Kondo, in turn, would beat the men who stayed off the job.

This constitutes my full knowledge concerning these incidents.

Q. Do you have any further information or knowledge concerning War Crimes, other than that about which you have testified this date?

A. No.

/s/ John Harold Zimmer
John Harold Zimmer, S/Sgt., ASN 6573878

State of: Pennsylvania)
) SS
County of: Philadelphia)

I, John Harold Zimmer, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ John Harold Zimmer
John Harold Zimmer, S/Sgt., ASN 6573878

Subscribed and sworn to before me this 29 day of April 1946.

/s/ William A Reynolds

C E R T I F I C A T E

I, Charles H. Bergerhouse, Jr., Agent, Counter Intelligence Corps, Third Service Command, certify that on 23 April 1946, personally appeared before me John Harold Zimmer, S/Sgt., ASN 6573878, and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed the said John Harold Zimmer read the same and affixed his signature thereto in my presence.

Place: Phoenixville Pa

Date: 29 Apr. 1946

/s/ Charles H. Bergerhouse, Jr
Charles H. Bergerhouse, Jr., Agent
Counter Intelligence Corps, III S.C

A CERTIFIED TRUE COPY:

THEODORE R.C. KING
Major, Inf.

4

~~CONFIDENTIAL~~ Classification changed from
RESTRICTED "CONFIDENTIAL" to "RESTRICTED"
by order of the Secretary of War
By /s/ E. Checket, Major, Inf.

FOR THE WAR CRIMES OFFICE

Judge Advocate General's Department — War Department

United States of America

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* * * * * * * * * * * * * * * * * *

In the matter of improper medical care of prisoners and the death of Radioman 2/c Smith, and several others. * Perpetuation of Testimony of S/ Sgt Tasker Homer Bliss, 268511, U. S. Marine Corps.

* * * * * * * * * * * * * * * * * *

Taken at: Columbus, Ohio

Date: 12 December 1945

In the Presence of: Robert H. Armbrust, Special Agent, SIC 5th Service Command

Reporter: Robert H. Armbrust, Special Agent, SIC 5th Service Command

Q: State your name, rank, serial number, organization and permanent home address.

A: S/Sgt Tasker Homer Bliss, 268511, U. S. Marine Corps, 197 South Bell Street, Columbus, Ohio.

Q: Will you give the places and approximate dates where you were held?

A: I was captured while in the hospital on Corregidor on 6 May 1942 by Japanese troops. On 25 May 1942, I was moved to Bilibid, Manila, Philippine Islands, where I stayed until the 28th of May 1942, when I was moved to the city of Cabanatuan, where we were placed in a school yard until the following morning. On 29 May 1942, we were marched to Camp No 3, approximately 30 Kilometers from Cabantuan, arriving the same day. There we were searched and all our personal possessions and clothing were taken from us. On 6 October 1942, we were moved to Fort Terminal Building, Manila, Philippine Islands, where we were loaded on a Japanese vessel Tattori Maru and sailed on October 7, 1942, arriving at Formosa on or about 9 October 1942. We left Formosa on 10 October 1942 and anchored off Bacu, Japan until the 19th of October 1942, when we returned to Formosa. On 22 October 1942, we left Formosa and sailed around off shore returning to port at Formosa again on 24 October 1942. We s tayed at Formosa until 27 October 1942 and sailed to Fresin, arriving 8 November 1942. We were then marched to the Camp Hoinsho, Japan, where we stayed until 20 May 1945. On 20 May 1945, we were transferred to Notagawa, Japan, where we stayed until liberated by American occupation forces on 10 September 1945.

Q: Did you witness any improper medical care of prisoners while interned?

A: Yes. at Camp Hoinsho, Osaka, Japan, they had a Japanese superior private by the name of Condo, who was in charge of medical treatment of the prisoners Condo, during sick call, very seldom ever examined any of the prisoners. Most of the time he would tell the men to go out and work. In about January or February of 1944, RM2/c Smith went to Condo for treatment of a chest cold. Condo refused to treat him and when Smith argued with Condo, telling him of his illness, he was beaten and then sent out to work, without any medical treatment. Smith returned on that same evening and died the following morning about 3:00 a.m. Boatsman Mate 1/c Robert W. Hess died of beriberi after Condo refused to treat him. When prisoners went to Condo at sick call in the

PROSECUTION EXHIBIT 4

~~CONFIDENTIAL~~
RESTRICTED /s/ E. C.

morning, for medical treatment, Condo very seldom examined the men but would send them out to work, even though they had baráberi, dysentery, or pneumonia, without treatment of any kind. Several men died while going to work, on the job, or after they returned to their barracks, due to lack of proper medical dare.

Q: Can you name any other persons who would have knowledge of this incident?

A: Yes.
Fireman 2/c Robert Zimmer, Delaware, Ohio.
Eugene DeLong, 1678 South Fourth Street, Columbus, Ohio.
Harold Thomas, Coxswain, Marion, Ohio.
Marshal Apponzeller, Stratford, Iowa.
John Zimmer, Sergeant, U. S. Army, Wabash, Indiana.

Q: Can you name, describe, or identify in any way the officer in charge at the time the atrocity occurred, or any officer in any way responsible?
ta /s/ T H B

A: Colonel Mora was commandant of the camp.

Q: Have you any further knowledge or information regarding this condition or the persons responsible for them?

A: No, I do not.

Tasker H. Bliss, S/Sgt

State of Ohio:)
) SS
County of Franklin:)

I, Tasker H. Bliss, of lawful age, being duly sworn on oath, state that I Have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Tasker H. Bliss, S/Sgt

Subscribed and sworn to before me this 14th day of December 1945.

DANIEL P. KREER, O-2048983
1st Lt, MAC
Summary Court Officer

~~CONFIDENTIAL~~
RESTRICTED /s/ E. C.

CERTIFICATE

I, Robert H. Armbrust, Special Agent, Security & Intelligence Division, Fifth Service Command, certify that on 12 December 1945, personally appeared before me Tasker H. Bliss, S/ Sgt, U. S. Marine Corps, and gave the foregoing answers to the several questions set forth.

Place: Columbus, Ohio

Date: 13 December 1945

Robert H. Armbrust, Sp Agt
SIC, 5th SvC

A CERTIFIED TRUE COPY:

Everett Checket

EVERETT CHECKET
Major, Infantry

~~CONFIDENTIAL~~
RESTRICTED /s/ E. C.

5

~~CONFIDENTIAL~~ Classification changed from
RESTRICTED "CONFIDENTIAL" to "RESTRICTED"
by order of the Secretary of War
by /s/ T.R.C. King, Major, Inf.

For the WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department

United States of America

--- V-68238

* * * * * * * * * * *

In the matter of the improper medical treatment given HESS (First Name Unknown), BM, 1/C, United States Navy, by KENICHI KONDO, Private, Japanese Army, resulting in HESS' death in or about February 1944.	Perpetuation of Testimony of HAROLD EUGENE THOMAS, BM, 2/C, 2795859, 317 S. Vine Street, Marion, Ohio.

* * * * * * * * * * *

Taken at: 317 S. Vine Street, Marion, Ohio

Date: 25 April 1946

In the presence of: Robert L. Oar, Special Agent, SIC, 5th SvC.

Reporter: Robert L. Oar, Special Agent, SIC, 5th SvC.

Q. Give your name, rank, serial number, and permanent home address.

A. Harold Eugene Thomas, BM, 2/C, 2795859, 317 S. Vine Street, Marion, Ohio.

Q. When did you enlist in the United States Navy?

A. I enlisted in the United States Navy in December 1938. I have reenlisted and am due to report to active duty in May 1946.

Q. What was your civilian occupation prior to enlistment in the Navy?

A. I had no employment prior to enlistment in the United States Navy.

Q. What was the extent of your education?

A. I completed the tenth grade at Harding High School, Marion, Ohio in June 19[illegible]

Q. Were you a Prisoner of War?

A. Yes. I was a Prisoner of War of the Japanese.

Q. When and where were you captured?

A. I was captured on Corregidor 9 May 1942 while attached to the United States Naval Battalion, 4th Marine Corps.

Q. Give the places and approximate dates of your imprisonment.

A. I was imprisoned on Corregidor for approximately one (1) week after my capture, then at Cabanatuan #3, Philippine Islands, until 9 October 1942. From here I was transferred to Osaka Prison Camp #1, Chikko District, Japan, where I remained from 11 November 1942 until 28 May 1945; from there I was transferred to Neotogawa Prison Camp, Honshu Island, Japan, where I remained from 1 June 1945 to 19 September 1945, at which time I was liberated.

Q. When did you return to the United States?

A. I arrived at Oakland, California on 6 October 1945.

Q. During the time that you were a Prisoner of War, did you ever witness a killing of an American Prisoner of War?

PROSECUTION EXHIBIT 5

WAR CRIMES OFFICE
Washington 25, D. C. 5

~~CONFIDENTIAL~~ RESTRICTED /s/T.R.C.K.

A. I never witnessed an actual killing of an American Prisoner of War, but improper medical treatment of a sick American by Japanese resulted in the death of HESS (First Name Unknown), BM, 1/C.

Q. Describe this incident in detail.

A. In approximately February 1944, HESS, who was imprisoned at that time at Osaka Prison Camp #1, Chikko Dist., Japan, was taken ill to such an extent that he was unable to answer sick call, which reported at the Japanese sick bay. He was unable to walk or get out of his bunk after the first few days of his illness. KENICHI KONDO, the Japanese medical orderly, would then go to his bunk and when HESS was unable to stand at attention, KENICHI KONDO would proceed to slap him in the face and body. I witnessed this occurrence on several occasions and understood that it was a regular happening. He would then give HESS very little medical treatment and within two (2) weeks of his confinement, HESS died.

Q. Was HESS fed properly during the period of his illness?

A. No. It was the custom at this camp to give only half rations to those who were ill and unable to work. HESS received only this amount during the time that he was ill.

Q. Do you know the cause of HESS' death?

A. An American medical doctor, whose name I do not remember, but who was at the camp at that time, told me that HESS was suffering from amoebic dysentery and that with proper treatment he could easily have recovered. However, with the treatment given him by KONDO and the Japanese medics, his death was a foregone conclusion.

Q. Can you name, describe, or identify any Japanese personnel at this camp responsible for HESS' death.

A. Yes. KENICHI KONDO was a three-star Private in the regular Japanese Army. At this camp he was a medical orderly attached to the Japanese sick bay. He was approximately twenty-five (25) years of age, five (5) feet four (4) inches tall, weighed one hundred and thirty-five (135) pounds, had a shaven head, black eyes, very dark complexion, wore thick lensed glasses, was full lipped, and spoke poor English. His only outstanding characteristic was his habit of walking "duck-footed." I do not know the names of any of the other personnel attached to this camp.

Q. Can you name any other American Prisoner of War who might have knowledge of this incident?

A. Yes. The following men were Prisoners of War at this camp:
L. T. SMITH, R.R. #2, Everton, Missouri
L. V. DEFOE, Box 891, c/o Mrs. Vocchivy, Seattle, Washington.
ROBERT TAVARITE, 822 Brighton Place, Mission Beach, San Diego, Californ ia
L. R. SCOGGIN, 1401 N. Blaine Street, Oltus, Oklahoma.
FRED M. BREWER, Rough Rock School, Chin Lee, Arizona
FRANK CENTO, 4559 Pope Street, St. Louis, Missouri.

Q. Do you have any further information regarding this incident?

A. No.

/s/ Harold Eugene Thomas
HAROLD EUGENE THOMAS, BM, 2/C,
2795859

WAR CRIMES OFFICE
Washington 25, D.C.

State of Ohio:)
) SS
County of Marion:)

I, Harold Eugene Thomas, of lawful age, being duly sworn on oath, state tha I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ Harold Eugene Thomas
HAROLD EUGENE THOMAS, BM, 2/C

Subscribed and sworn to before me this 9th day of May 1946.

/s/ Frederick T. Griffiths
FREDERICK T. GRIFFITHS
Captain, Infantry, Summary Court Officer Per S.O. #25, Hq., Fifth Service Command Par. #10, Dated 4 February 1946

C E R T I F I C A T E

I, Robert L. Oar, Special Agent, certify that HAROLD EUGENE THOMAS, BM, 2/C, 2795859, personally appeared before me on 25 April 1946 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Youngstown, Ohio /s/ Robert L Oar

Date: 9 May 1946 Sp. Agt. CIC, 5th Sv C

WAR CRIMES OFFICE
Washington 25 D. C.

A CERTIFIED TRUE COPY:
Theodore R. C. King
THEODORE R. C. KING
Major Infantry

7

RESTRICTED

THE WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department

United States of America

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* * * * * * * * * * * * * * * * * * *

In the matter of atrocities committed at POW Camps in the Osaka Area, between 28 May 1944 to 18 January 1945, by Kenichi Kondo, Medical Orderly.	Perpetuation of Testimony of Dr. David (NMI) Hochman (formerly Capt. Hochman, MC, AS: 0-420069), 5614 15th Avenue. Brooklyn, New York.

* * * * * * * * * * * * * * * * * * *

Taken at: 5614 15th Avenue, Brooklyn, New York

Date: 1 July 1946

In the Presence of: Joseph S. Smith, 1st Lt., Inf., [illegible]
0-1329998, 108th CIC Det.
Area Intelligence Division
AC of S, G-2
Headquarters, First Army
1270 Avenue of the Americas
New York 20, New York

Reporter: Joseph S. Smith, 1st Lt.

Questions by: Joseph S. Smith, 1st Lt.

Q. State your name and permanent home address.

A. David Hochman, 5614 15th Avenue, Brooklyn, New York.

Q. State the date and place of your birth and civilian occupation.

A. 23 April 1912, New York City. I am a physician.

Q. What formal education have you had?

A. I was graduated from the Royal College of Surgeons, Edinburgh, Scotland.

Q. What is your marital status?

A. Married.

Q. Have you recently returned to the United States from overseas?

A. Yes. I returned to the United States on 9 October 1945.

Q. Were you a prisoner of war?

A. Yes.

Q. At what places were you held and state the approximate dates.

A. I was captured by the Japanese on Bataan, Philippine Islands, in April, 1942. I was imprisoned in the Headquarters POW Camp Osaka, Japan, from November, 1942 until July, 1945.

PROSECUTION EXHIBIT 7

Q. Do you recall the circumstances surrounding the death of a man named Serafin?

A. Yes.

Q. State in your own words what you know of this incident.

A. Serafin's first name was Tony. He was an Italian by birth and a British subject. I believe he resided in London, England, an was in the Merchant Marine Service of Great Britain. He was an elderly man, about 60 years of age, had grey hair, was about 5' 1" tall, and was very undeveloped. Despite his age, he was assigned to do manual labor. Exactly what he did I don't know. On the evening of 16 January 1945, he returned from work completely tired and exhausted and with a head cold. He told me he felt he could not continue to work any longer because of his physical condition. With the permission of Kenichi Kondo, the Japanese medical orderly, Serafin was sent to his bunk and told to stay there. I wanted to hospitalize Serafin, but this was not permitted by Kondo. Serafin remained in his bunk all the following day. On the evening of 18 January 1945, between 2000 and 2100 hours, Serafin died.

Q. Can you state what he died from?

A. My opinion is that he died from coronary thrombosis, brought about by his age, hard work and insufficient rest and food.

Q. Were you permitted to perform an autopsy to definitely determi the cause of death?

A. No. The Japanese never permitted an autopsy to be performed.

Q. Do you recall the circumstances surrounding the death of a Petty Officer Robert W. Hess?

A. No. I cannot recall the circumstances, but I do recall the name.

Q. Do you have anything further to say?

A. Yes. Before the death of Serafin, I had been thinking about writing a request to the Japanese to excuse all men over the age of 40 years from manual labor. After the death of Serafin, I did this.

Q. Did the Japanese agree to this request?

A. No. They merely laughed at me. Nothing was ever done about it

Q. Is there anything further that you wish to state?

A. No.

/s/ David Hochman
Dr. David Hochman

State of New York)
) SS:
County of Kings)

I, David Hochman, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ David Hochman
Dr. David Hochman

Subscribed and sworn to before me this 1 ST day of JULY 194

/s/ Joseph S Smith
Joseph S. Smith, 1st Lt., Inf.
Summary Court Officer

CERTIFICATE

I, Joseph S. Smith, 1st Lt., Inf., O-1329998, 108th C.I.C. Det., certify that David Hochman personally appeared before me on 1 July 1946 and gave the foregoing answers to the several questions set forth.

Place: 5614 15th Avenue
Brooklyn, New York

Date: 1 July 1946

/s/ Joseph S Smith
Joseph S. Smith, 1st Lt., Inf.
O-1329998, 108th C.I.C. DET.
Area Intelligence Division
AC of S, G-2
Headquarters, First Army
1270 Avenue of the Americas
New York 20, New York

A CERTIFIED TRUE COPY:

THEODORE R. C. KING
Major, Inf.

6

RESTRICTED

FOR THE WAR CRIMES OFFICE
Judge Advocate General's Department - War Department

United States of America

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In the matter of the death of BM 1/c Hess, American prisoner of war, at Prisoner of War Camp #1 in Osaka, Japan, in February 1944.

* Perpetuation of the testimony of Alvin Eugene Delong.

****

Taken at : U. S. Army Recruiting Office, Federal Bldg., Beaumont, Texas
Date : 10 May 1946
In the presence of: Aubrey R. Rice, Special Agent, C.I.C., Eighth Service Comma

****

QUESTIONS BY : Aubrey R. Rice, Special Agent, C.I.C., Eighth Service Comma

Q. State your name and permanent home address.

A. Alvin Eugene Delong, 1678 So. 4th St, Columbus 7, Ohio.

Q. What is the place and date of your birth?

A. I was born in Chillicothe, Ohio, 18 April 1918.

Q. What is the extent of your scholastic education?

A. I completed eight (8) years of grade school and three (3) years of high sch in Chillicothe, Ohio, in 1936.

Q. What was your prior occupation?

A. I was fireman, water tender, and gunner aboard the SS Stanvac-Calcutta from 4 February 1942 until 6 June 1942.

Q. What is your present occupation and who do you work for?

A. I am the oiler aboard the SS Calusa which is in service for the Magnolia Oi Co.

Q. What terminated your employment aboard the SS Stanvac-Calcutta?

A. My ship was sunk off the coast of South America by the germans and I was ca tured. Later the Germans turned me over to the Japanese as a prisoner of w

Q. Where did the Japanese take you?

A. I was eventually taken to Prisoner of War Camp #1 at Osaka, Japan.

Q. While you were at this camp did you know BM 1/c Hess who died in February 1944?

A. Yes.

Q. Do you recall a Japanese Medical Orderly by the name of Kenichi Kondo?

A. Yes.

Q. Of your own knowledge, just how did Kondo contribute to the causes of the death of Hess?

A. To the best of my knowledge, Kondo only refused to give Hess any medicine forced him to work after he was deathly sick. His body was swolen and he difficulty moving about. We did not know what kind of sickness he had.

Q. Do you have any idea as to what the diagnosis of Hess's case was?

PROSECUTION EXHIBIT 6

WAR CRIMES OFFICE
Washington 25, D.C.

6

RESTRICTED

FOR THE WAR CRIMES OFFICE
Judge Advocate General's Department - War Department

United States of America

****

In the matter of the death of BM 1/c Hess, American prisoner of war, at Prisoner of War Camp #1 in Osaka, Japan, in February 1944.

Perpetuation of the testimony of Alvin Eugene Delong.

****

Taken at : U. S. Army Recruiting Office, Federal Bldg., Beaumont, Texas
Date : 10 May 1946
In the presence of: Aubrey R. Rice, Special Agent, C.I.C., Eighth Service Comma

****

QUESTIONS BY : Aubrey R. Rice, Special Agent, C.I.C., Eighth Service Comma

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A. I am the oiler aboard the SS Calusa which is in service for the Magnolia Oi Co.

Q. What terminated your employment aboard the SS Stanvac-Calcutta?

A. My ship was sunk off the coast of South America by the germans and I was ca tured. Later the Germans turned me over to the Japanese as a prisoner of w

Q. Where did the Japanese take you?

A. I was eventually taken to Prisoner of War Camp #1 at Osaka, Japan.

Q. While you were at this camp did you know BM 1/c Hess who died in February 1944?

A. Yes.

Q. Do you recall a Japanese Medical Orderly by the name of Kenichi Kondo?

A. Yes.

Q. Of your own knowledge, just how did Kondo contribute to the causes of the death of Hess?

A. To the best of my knowledge, Kondo only refused to give Hess any medicine forced him to work after he was deathly sick. His body was swolen and he difficulty moving about. We did not know what kind of sickness he had.

Q. Do you have any idea as to what the diagnosis of Hess's case was?

PROSECUTION EXHIBIT 6

A. Nothing more that hearsay. I was told that an American Medical Officer who was a P.O.W. in our camp had diagnosed the case as Beri-Beri.

Q. Do you know who this medical officer is?

A. Yes. David Hookman, 1st. Lt., M.C., Reserve Corps. His home is in Brooklyn, New York.

Q. Can you think of anything else which Kondo did that might be a contributing cause to the death of Hess?

A. No, I can not.

Q. Do you consider Kondo responsible for the death of Hess?

A. Yes!

Q. Can you give the names or particular description of any other Americans who were mistreated by Kondo?

A. Yes, Thomas Knutsen of Brooklyn, New York. He was the Third Mate aboard the SS W. F. Humphries which was in the service of Tide Water Oil Company of New York. He died with pneumonia.

Q. How was Kondo concerned or responsible for the death of Knutsen?

A. Kondo refused medicine to Knutsen when he first had a cold. Then later on as he became worse, he did not receive sufficient medicine. He was not afforded adequate shelter and he was forced to "strip" in a very cold barrack for a physical examination. This occured almost at Christmas time in December 1943 Knutsen died about two (2) days the Christmas of forty-three ('43). Lt. David Hookman, previously mentioned, is aquainted with this situation also.

/s/ Alvin Eugene De Long
ALVIN EUGENE DELONG

State of Texas)
) SS
County of Jefferson)

I, Alvin Eugene Delong, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ Alvin Eugene De Long
ALVIN EUGENE DELONG

Subscribed and sworn to before me this 10th day of May 1946.
NOTARY PUBLIC
(seal)
COUNTY OF JEFFERSON
TEXAS

/s/ J. M. Gowling
J. M. GOWLING, Notary Public,
Jefferson County, Texas.

C E R T I F I C A T E

I, Aubrey R. Rice, Special Agent, Counter Intelligence Corps, Eighth Service Command, certify that Alvin Eugene Delong, personally appeared before me on 10th day of May 1946, and testified concerning War Crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

/s/ Aubrey R. Rice.
Aubrey R. Rice, Sp Agent, CIC, 8th SvC.

Place : Beaumont, Texas
Date : 10 May 1946

WAR CRIMES OFFICE
Washington 25, D.C.

A CERTIFIED TRUE COPY

THEODORE R. C. KING
Major, Inf.

SS RESCUE(AH18) UNITED STATES PACIFIC FLEET
THIRD FLEET /s/ J.R.N.

COMMANDER THIRD FLEET LIBERATION FORM ABLE

KNUDSEN AAGE HARREBY — Nagoya #10
NAME (Last) (First) (Middle) — (Name of camp)
(Released Prisoner of War)

Rank or Rate CH.OFFICER MERCHANT MARINE Nationality American

Home Address 35 43 PAWTUCKETT AVE RIVERSIDE R.I.

Next of Kin Mrs. Doris KNUDSEN Relationship Wife

Address of Next of Kin 35 43 Pawtucket Ave. Riverside R.I.

When and where captured JUNE 6, 1942 6°20"S 82° 26°W SUNK AT SEA

Unit serving with when captured SS. STAN VAC CALCUTTA MARCHANT SHIP.

Has prisoner been subjected to atrocities or abuse. Give ssential facts including identity of assailants: CONDOR 3 star PRIVATE IN OSAKA Camp #1 KNOCKED ME OVER WHEN I WAS UNABLE to WALK DUE to PAINS IN MY BACK OCCURED WHILE CARRYING ALARGE (below)

Does prisoner know of other prisoners subjected to atrocities or abuse. Give essential facts: ———

Does prisoner know of any other POW who died while prisoner. Give names, rank or rate, date and place: ———

Remarks: BLANK THAT ORDINARILY TOOK 4 MEN TO CARRY

Diagnosis: Malnutrition

Ambulatory

Disposition A.P.D. JR.N.

A CERTIFIED TRUE COPY:
THEODORE R.C. KING
Major, Inf.

PROSECUTION EXHIBIT 8

DAVID HOCHMAN (Name) CAPT (Rank) ASN 0420069

after being duly sworn at 29th Repl Depot, Luzon, P. I.

on 29 September, 1945, testified as follows:

Q. How old are you?

A. 33 years.

Q. Were you captured by the Japanese and made a prisoner of war? If so, when and where?

A. Bataan, P. I., on 9 April 1942.

Q. At the time of your capture of what unit were you a member?

A. General Hospital #2, Bataan.

Q. By what Japanese unit were you captured?

A. Japanese Ground Forces.

Q. Do you expect to be repatriated, and if so, to what country?

A. Yes, United States.

Q. What will your complete address be after your repatriation?

A. 5614-15th Ave, Brooklyn, N. Y.

Q. Will you state the names and locations of the camps at which you were held as a prisoner of war and the dates you were confined at each camp?

	Compound or Camp	Location	Dates
A.	Camp Cabanatuan	Luzon	1 Jun 42 - 6 Oct 42
	Osaka Hq POW Camp	Osaka, Japan	11 Nov 42 - 6 Jul 45
	SS TITORII MARU	Manila to Osaka	7 Oct 42 - 11 Nov 42
	Ikuno Camp	Osaka, Japan	6 Jul 45 - 4 Sep 45

Q. Do you know, or have you reason to believe, that the Imperial Japanese Forces failed to treat prisoners of war with humanity or otherwise committed atrocities and war crimes against them?

A. Yes.

PROSECUTION EXHIBIT 9

Q. Will you state all facts in detail pertaining to atrocities, war crimes, violations of Rules of Land Warfare and human decency at OSAKA HQ CAMP, OSAKA (camp or other place), the dates thereof, the perpetrators, giving their names, ranks, units and other identifying information.

A. I was the first American doctor in the Osaka Headquarters Camp. I have here a 3 page report written by myself which roughly gives the situation.

INVESTIGATING OFFICER: This 3 page report by David HOUCHMAN, Capt (then 1st Lt), MC, dated 14 September 1945, is received in evidence and identified as Exhibit "A".

Q. Is the information contained in this report of your own personal knowledge and the opinions expressed your own?

A. Yes, ~~the American doctors in the sub-camps would write me notes~~ requesting medical supplies and often even the Japanese medical orderlies from the sub-camps would come to me and ask for supplies as they were unable to get it through Lt. NOSU.

Q. Will you describe Lt NOSU?

A He was about 5'4", 125 lbs, age 38, flat broad nose, thick lips, ears stood out, base of skull flat, speak broken English. He lived in Osaka with his wife. I don't think he had any children. He arrived in December, 1942 and stayed until the surrender. He was head doctor over all the sub-camps in the ~~Osaka POW System.~~

Q. Can you describe the Medical Orderlies mentioned in Part B of your report?

A In my camp we had a three star private named KONDO. He kept the books at sick call and made decisions that should have been made by a doctor and often overrode my decisions. He hit sick POWs over the head with books, slapped their faces, hit them with his fists and kicked them. He was about 5'1", 125 lbs, age 33, wore very thick horned-rimmed glasses because he was near sighted. His hometown was Nagoya. ~~There other soldiers and NCOs were at sub-camps and I speak of them in a general manner.~~

~~The [illegible] would [illegible] and [illegible] to show that [illegible] and medicine was given [illegible] like many other [illegible] state-[illegible] record.~~

Q. Who was the Camp Commander?

A A 2nd Lt MATSUMURO. He was about 5'10", 150 lbs, age 30, thin, wore glasses, only spoke few words of English and would end up a sentence with "you know?". His hometown was Kyoto near Osaka and he was newly married. A colonel MURATA was in

(NEXT PAGE)

~~Subscribed and sworn to before me this day of~~

~~1946~~

(CONTINUATION)

A. charge of all the camps. This covers the situation from the Medical stand point.

Lt.

~~Q. How many POWs died from a lack of proper medicine, care and~~ treatment on the part of Lt NOSU?

A Thirty died in our camp, but about seven died from natural causes such heart attack, old age and high blood pressure. True conditions that were forced on them would not have been prescribed. I have no way of knowing how many died at the sub-camps except that over 160 POWs died at Itchioka Camp from cold, hunger, starvation, beatings, and at the beginning lack of medicine. The only reason the death rate in my camp was low was because the men worked on the docks and stole food that kept their resistance up.

Lt.

(S) DAVID HOCHMAN
Captain, Medical Corps
U S Army

Subscribed and sworn to before me this 29th day of September 1945.

CERTIFIED A TRUE COPY:

/s/ Alfred E. Edgar, Jr
2nd Lt, QMC

(S) ALFRED E. EDGAR JR.
2nd Lt QMC
Investigating Officer,
War Crimes Investigating Det.

RESTRICTED

A CERTIFIED TRUE COPY

EVERETT CHECKET
Major, Infantry

Q. Please state your name, rank, serial number, permanent home address and any other pertinent information concerning yourself.

A. My name is Frank Rilea ALLEN. I am a Private First Class in the United States Marine Corps. My serial number is 280441 and my permanent home address is Box 66, Rt. 1, Tigard, Oregon. I enlisted in the Marine Corps December 8, 1940 after completing two years of high school.

Q. When were you captured by the Japanese and at what prison camps were you interned.

A. I was captured May 6, 1942 at Corregidor and was in the Camp No 3; Cabanitnan, Philippine Islands until November 1942. I was then transferred to Osaka Camp No. 1 in Japan until June 1945 and then sent to the Natogawa, Japan camp until released on the 28 of September 1945.

Q. Did you witness any beatings or other cruelties at the Osaka and Natogawa prison camps.

A. ~~During the entire period while I was at these prison camps I was~~ beaten two or three times a week; sometimes for stealing food and sometimes simply for failure to salute or bow. A Corporal SARAMURI (phonetic) my and other prisoners what our nationality was and then would beat us if we answered American. Prisoners were often beaten and cut with bamboo poles which were cracked, scalded with hot tea or beaten by officers with Samurai swords. I saw the water treatment given Corporal Frank R. COMBEST and Seaman First Class VALENTINE at the Osaka Camp. The worst beating I witnessed was administered on about March 15, 1945 to Army Private G. P. GRIMSLEY who was beaten until unconscious with shovels, pick handles, etc., by about ten guards. GRIMSLEY had gotten drunk on some wine given him by Japanese soldiers and swung back when beaten by one of the guards. Other Japanese involved in the beating were First Lieutenant MATSUMURA (phonetic), Commandant of the Osaka No. 1 Camp and a Private on the medical staff named KONDO. Colonel MIRATA (phonetic), in charge of the prison camps in the entire Osaka area, looked on at several of the beatings and occasionally beat prisoners himself.

Q. Do you know of instances of failure to provide prisoners with proper medical care.

A. Yes. In June 1944 I received a head injury while working as a stevedore at about 0800 and was not treated until about 1530 and was told that the wound was sewed up with regular sewing thread.

Q. Does the testimony you have given cover all the pertinent details of thse incidents which you are now able to remember.

A. Yes.

/s/ Frank R Allen

PROSECUTION EXHIBIT 10

STATE OF CALIFORNIA :
: SS
County of Alameda :

I, Frank Rilea ALLEN of lawful age, being duly sworn, state that I have read the foregoing transcription of my interrogation, consisting of two pages, and that all answers contained therein are true to the best of my knowledge and belief.

/s/ Frank R Allen

Subscribed and sworn to before me this eighth day of October, 19 45, at Oakland, California.

/s/ R B Curtiss
(Rank) Lt USNR

STATE OF CALIFORNIA :
: SS
County of Alameda :

I, R. B. CURTISS, Lieutenant, USNR certify that (Name) Frank Rilea ALLEN, (Rank) Pfc. U.S.M.C. (ASN) 280441, personally appeared before me on the eighth day of October, 19 45, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by (him (her) to the several questions set forth.

Place: Oakland, California

Date: 8 October 1945 /s/ R B Curtiss

Page Two of Two pages.

A CERTIFIED TRUE COPY:

THEODORE R. C. KING
Major Infantry

F43

~~CONFIDENTIAL~~ RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War -- By /s/ T.R.C. King, Major, Infantry

For the WAR CRIMES OFFICE

Judge Advocate General's Department - War Department

United States of America

****

In the matter of George Yeager, Infantry being severely beaten while in the hospital suffering from diarrhea, by Kenichi Kondo, Japanese Medical Orderly, at Camp No. 1, Osaka, Japan.	Perpetuation of Testimony of S/Sgt John Harold Zimmer, ASN 6573878.

****

Taken at: Valley Forge General Hospital, Phoenixville, Pa.

Date: 23 April 1946

In the Presence of: Charles H. Bergerhouse, Jr., Agent, Counter Intelligence Corps, Third Service Command

Reporter: Doris Wadsworth, Stenographer, Philadelphia Field Office, Counter Intelligence Corps, Third Service Command

Questions by: Charles H. Bergerhouse, Jr.

Q. State your name, rank, serial number, and permanent home address.

A. My name is John Harold Zimmer. I am a Staff Sergeant, ASN 6573878, and my permanent home address is 127 Manchester Avenue, Wabash, Indiana.

Q. State the date and place of your bith, your education, and your civilian occupation prior to entering the Army.

A. I was born 16 August 1910 at Wabash, Indiana, and I completed two years of high school. I worked as a travelling salesman for about five years before I went into the Army.

Q. Were you a Prisoner of War?

A. Yes.

Q. Have you recently been returned to the United States from overseas?

A. Yes. I arrived at San Francisco, California on 25 October 1945.

Q. At what places were you held and state the approximate dates.

A. I was captured on Bataan, 8 April 1942. About midnight of the same date, after we had been ordered to bivouac on an open field for the night, we were assembled and marched off without any equipment, from the point of our capture Near Marveilles to San Fernando, where we arrived about 2100 12 April 1942. The next day, we were loaded into box cars and transferred by train to Fort O'Donnell, arriving there about 1300 13 April 1942. On 5 June 1942, we were again moved, because of dysentery at Fort O'Donnell, to Cabanatuan. On 4 October 1942, we were transferred to Manila, where we boarded a converted freighter on 5 October 1942. We arrived at Osaka , Japan, 11 November 1942, and were immediately imprisoned at Camp No. 1, Osaka. On 20 May 1945, with a group of other men from Osaka, I was transferred to Neatogua, Honshu Island where I remained until liberated on 10 September 1945.

Q. State what you know of your own knowledge concerning the beating of George Yeager, while he was in the hospital suffering from diarrhea, by Kenichi Kondo, Japanese Medical Orderly, at Camp No. 1, Osaka, Japan.

PROSECUTION EXHIBIT 12

A. During January 1943, George Yeager, who was from "G" or "K" Company of the 31s Infantry, was in the hospital suffering from chronic diarrhea. Yeager was abou 5'10½" tall, weighed 180 pounds, had black curly hair, and dark eyes. He also had a brother, Jack Yeager, who was a Prisoner of War at another War Camp in Japan.

One day in January 1943, Kenichi Kondo, the Japanese Medical Orderly at Camp N 1, Osaka, Japan, ordered Yeager to report for work. However, Yeager refused t do so, claiming that he was sick. Kondo then asked Yeager if he had had any medicine and Yeager acknowledge that he had. Accusing Yeager of stealing medicin, Kondo beat him severely until Yeager crawled under the bed to escape the beating. Kondo then continued by kicking Yeager for a time after that. One of Yeager's teeth was knocked out, either by Kondo's fists or by his feet.

I was a witness to this incident, as I was in the hospital at the time. I believe Kondo acted on his own initiative in this particular case, as it seeme to be a spontaneous outburst of rage on Kondo's part which precipitated the beating.

Q. Who was responsible for this incident?

A. I believe that Kondo was responsible for this incident, because, as I have stated before, it seemed to be a spontaneous outburst of rage on his part whi precipitated the beating. Kondo was the Japanese Medical Orderly at Camp No. Japan, and administered all medicines at this Camp for the Prisoners of War. I felt that Kondo was not qualified as a Medical Orderly, as he gave me the impression that he was interested only in getting the men to work and see tha they did not stay in the sick bay.

Lieutenant Matsamura was Camp Commander of Camp No. 1, Osaka, Japan, and had direct authority over Kondo. He was about five feet ten inches tall, weighed 160 pounds, and was thirty-five years of age. He was medium built and rat-featured. I have seen Matsamura beat Kondo when there were too many men who stayed away from work because they were sick. Kondo, in turn, would beat the men who stayed away from the job.

Colonel Maurota was Camp Commander over the Osaka area and had under his juri diction about fourteen camps, including Camp No. 1. Maurota was almost six feet tall, weighed about 175 pounds, and was sixty or sixty-five years of age His hair was graying on his shaven head.

This constitutes my full knowledge concerning this incident.

Q. Do you have any further information or knowledge concerning War Crimes, other than that about which you have testified this date?

A. No.

/s/ John Harold Zimmer
John Harold Zimmer, S/Sgt., ASN 657387

State Of: Pennsylvania)
) SS
County of: Philadelphia)

I, John Harold Zimmer, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ John Harold Zimmer
John Harold Zimmer, S/Sgt., ASN 657387

WAR CRIMES OFFIC
Washington 25, D

Subscribed and sworn to before me this 29 day of April 1946.

/s/ William A Reynolds

C E R T I F I C A T E

I, Charles H. Bergerhouse, Jr., Agent, Counter Intelligence Corps, Third Service Command, certify that on 23 April 1946, personally appeared before me John Harol Zimmer, S/Sgt., ASN 6573878, and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed, the said John Harold Zimmer read the same and affixed his signature thereto in my presenc.

Place: Phoenixville Pa

Date: 29 Apr. 1946

/s/ Charles H. Bergerhouse, Jr
Charles H. Bergerhouse, Jr., Agent
Counter Intelligence Corps, III S.C.

A CERTIFIED TRUE COPY

THEODORE R. C. KING
Major Infantry

~~RESTRICTED~~ ~~CONFIDENTIAL~~

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War --By /s/ T.R.C. King, Major Inf
For the WAR CRIMES OFFICE

Judge Advocate General's Department - War Department

United States of America

****

In the matter of the torture of John "Red" Lewis and Oxendine, both enlisted men in the Navy, and Private Titus, U. S. Army, by the Jap interpreter at Camp No. 1, Osaka, Japan.	Perpetuation of Testimony of S/Sgt. John Harold Zimmer, ASN 6573878.

****

Taken at: Valley Forge General Hospital, Phoenixville, Pa.

Date: 23 April 1946

In the Presence of: Charles H. Bergerhouse, Jr., Agent, Counter Intelligence Corps, Third Service Command

Reporter: Doris Wadsworth, Stenographer, Philadelphia Field Office. Counter Intelligence Corps, Third Service Command

Questions by: Charles H. Bergerhouse, Jr.

Q. State your name, rank, serial number, and permanent home address.

A. My name is John Harold Zimmer. I am a Staff Sergeant, ASN 6573878, and my permanent home address is 128 Manchester Avenue, Wabash, Indiana.

Q. State the date and place of your birth, your education, and your civilian occupation prior to entering the Army.

A. I was born 16 August 1910 at Wabash, Indiana, and I completed two years of high school. I worked as a travelling salesman for about five years before I went into the Army.

Q. Were you a Prisoner of War?

A. Yes.

Q. Have you recently been returned to the United States from overseas?

A. Yes. I arrived at San Francisco, California on 25 October 1945.

Q. At what places were you held and state the approximate dates.

A. I was captured on Bataan, 8 April 1942. About midnight of the same date, after we had been ordered to bivouac on an open field for the night, we were assembled and marched off without any equipment, from the point of our capture near Marveilles to San Fernando, where we arrived about 2100 12 April 1942. The next day, we were loaded into box cars and transferred by train to Fort O'Donnell, arriving there about 1300 13 April 1942. On 5 June 1942, we were again moved, because of dysentery, at Fort O'Donnell, to Cabanatuan. On 4 October 1942, we were again moved, because of dysentery, at Fort O'Donnell, to Cabanatuan. On 4 October 1942, we were transferred to Manila, where we boarded a converted freighter on 5 October 1942. We arrived at Osaka, Japan, 11 November 1942, and were immediately imprisoned at Camp No. 1, Osaka. On 20 May 1945, with a group of other men from Osaka, I was transferred to Neatogua, Honshu Island, where I remained until liberated on 10 September 1945.

Q. State what you heard and saw concerning the torture of John "Red" Lewis and Oxendine, both enlisted men in the Navy, and Private Titus, U. S. Army, by a Japanese interpreter at Camp No. 1, Osaka, Japan.

PROSECUTION EXHIBIT 13

A. Approximately in January 1943, someone broke into the Red Cross storehouse at Camp No. 1, Osaka, Japan, and stole some soap. A portion of this soap was foun in the possession of John "Red" Lewis, an enlisted man in the Navy, who later died of tuberculosis; Oxendine, also an enlisted man in the Navy, whose first name I do not know, who was 6'2" tall, weighed about 190 pounds, blond hair, blue eyes, and who gave the appearance of being tall and husky; and Private Ti us, who was from Arkansas or Missouri, 5'10" tall, weighed 190 pounds, black hair, dark eyes, and giving the appearance of being husky. Titus had formerly been a wrestler with some carnival.

The Japanese interpreter, whom we called "The Thug", devised a method of tor - ture which he used to force a confession from Lewis, Titus, and Oxendine. "The Thug" forced the three men to lie on their backs on their bed with their head extending over the top of the bed. A wire was then placed taut across the throat of each man, so that the head could not be raised. The three men were then beaten with what I believe was soap in a sock. After this beating, when the men still refused to confess, water was poured into their faces until they were choked into unconsciousness. After these men had fainted, the wire was removed and they were thrown on the side to recover. When the men had regainc consciousness, they were forced to cross their legs and sit on their ankles. They remained in this position at attention for about fourteen or fifteen hour from 1600 one day until 0700 the next day. One of the three men finally confe ed, and they all served prison terms in the Osaka prison with Japanese crimina for about thirty days.

The victims, themselves, told me about the incident mentioned above. I saw th sitting cross-legged in the guardhouse, and was told by them later, that they had been in this position for about fourteen or fifteen hours. I believe tha Lewis' death was speeded up by the beating, imprisonment, and the fact that he was forced to work, although suffering from tuberculosis.

Q. Who was responsible for this incident?

A. "The Thug", whose name I cannot recall, in my opinion, bears most of the respo sibility as he took fiendish delight in torturing and beating the prisoners at all times. "The Thug" was the Japanese interpreter and was an Aide to Colonel Maurota. He was about 5'6" tall, weighed 160 pounds, and was about twenty-five years of age. He was very well educated and wore European clothes. At the ti this incident took place, "The Thug" was a civilian, but he was later inducted into the Japanese Army.

Colonel Maurota was Camp Commander over the Osaka area and had under his juris- diction about fourteen camps, including Camp No. 1. Maurota was almost six feet tall, wieghed about 175 pounds, and was sixty or sixty-five years of age. His hair was graying on his shaven head. Maurota assisted in the beating of Lewis, Oxendine, and Titus.

Lieutenant Matsamura, who also assisted in beating the three men mentioned above, was Camp Commander of Camp No. 1, Osaka, Japan. He was about five feet ten inches tall, weighed 160 pounds, and was thirty-five years of age. He was of medium build and rat-featured.

Kenichi Kondo, the Japanese Medical Orderly at Camp No. 1, Osaka, Japan, also assisted in beating Lewis, Oxendine, and Titus. Kondo administered all the medicines at Camp No. 1 for the Prisoners of War. I felt that Kondo was not qualified as a Medical Orderly, as he gave me the impression that he was in- terested only in getting the men to work and see that they did not stay in the sick bay.

This constitutes my full knowledge concerning this incident.

Q. Do you have any further information or knowledge concerning War Crimes, other than that about which you have testified this date?

A. No.

WAR CRIMES OFFICE

Washington 25 D.C.

/s/ John Harold Zimmer
John Harold Zimmer, S/Sgt., ASN 6573878

State of: Pennsylvania)
) SS
County of: Philadelphia)

I, John Harold Zimmer, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ John Harold Zimmer
John Harold Zimmer, S/Sgt., ASN 6573878

Subscribed and sworn to before me this 29 day of April 1946.

/s/ William A Reynolds

C E R T I F I C A T E

I, Charles H. Bergerhouse, Jr., Agent, Counter Intelligence Corps, Third Service Command, certify that on 23 April 1946, personally appeared before me John Harold Zimmer, S/Sgt., ASN 6573878, and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed, the said John Harold Zimmer read the same and affixed his signature thereto in my presence.

Place: Phoenixiville, Pa
Date: 29 Apr. 1946

/s/ Charles H. Bergerhouse, Jr.
Charles H. Bergerhouse, Jr., Agt.
Counter Intelligence Corps, III S.C.

A CERTIFIED TRUE COPY
THEODORE R.C. KING
Major, Inf.

WAR CRIMES OFFICE
Washington 25, D.C.

RESTRICTED

For The WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department

United States of America

* *

In the matter of the mistreatment of American Prisoners of War at Osaka Camp No. 1.	*	Perpetuation of Testimony of Lonnie C. Merritt, W/O, 484870.

* *

Taken at: U.S. Naval Special Hospital, West Palm Beach, Florida.

Date: 25 March 1946.

In the Presence of: Vung T. Chen, Agent, Security Intelligence Corps, Fourth Service Command.

Reporter: Elizabeth B. Roth, Clerk-Steno, District #5, Fourth Service Command, Miami, Florida.

Questions by: Vung T. Chen, Agent, Security Intelligence Corps, Fourth Service Command.

Q. State your name, rank, serial number and permanent home address.

A. Lonnie C. Merritt, W/O (formerly Chief Pharmacist Mate), 484870 , 721 Hampton Road, West Palm Beach, Florida; telephone 3830.

Q. How long have you been in the Navy?

A. Since the date of my first enlistment, 9 August 1923.

Q. On what date were you captured by the Japanese and under what circumstances?

A. I was captured on 10 December 1941 at Guam and was taken prisoner with the rest of the garrison. There were approximately 100 civilians and 400 servicemen. At this time, we were all taken to prison camp except one person, a German, who had the German flag flying over his property at the time of capture.

Q. Do you recall the name of this German and any other information concerning him?

A. Yes, his name was George Scharf. He had been to the United States but came back to Guam and lived there for a number of years. He supposedly had tried for American citizenship but had been refused. As far as I know he was still a German citizen and when the Japanese took over Guam, he hoisted the German flag.

Q. Can you describe this individual?

A. Scharf was about 45 years of age; had dark hair, ruddy complexion, weighed about 175 pounds; was tall -- approximately 6 feet. He spoke English with a definite German accent.

Q. Do you know of any other Americans who might have additional information regarding Scharf?

A. Possibly the following two people: Chief Boatswain Mate P.S. Saunders, c/o Navy Department, Washington, D.C.; and Phar. Mate 1/c [illegible]. Atwood who is now in a hospital somewhere in California but who can be contacted through the Navy Department in Washington, D.C.

PROSECUTION EXHIBIT 14

14

RESTRICTED

For The WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department

United States of America

* *

In the matter of the mistreatment of American Prisoners of War at Osaka Camp No. 1.	*	Perpetuation of Testimony of Lonnie C. Merritt, W/O, 484870.

* *

Taken at: U.S. Naval Special Hospital, West Palm Beach, Florida.

Date: 25 March 1946.

In the Presence of: Vung T. Chen, Agent, Security Intelligence Corps, Fourth Service Command.

Reporter: Elizabeth B. Roth, Clerk-Steno, District #5, Fourth Service Command, Miami, Florida.

Questions by: Vung T. Chen, Agent, Security Intelligence Corps, Fourth Service Command.

Q. State your name, rank, serial number and permanent home address.

A. Lonnie C. Merritt, W/O (formerly Chief Pharmacist Mate), 484870 , 721 Hampton Road, West Palm Beach, Florida; telephone 3830.

Q. How long have you been in the Navy?

A. Since the date of my first enlistment, 9 August 1923.

Q. On what date were you captured by the Japanese and under what circumstances?

A. I was captured on 10 December 1941 at Guam and was taken prisoner with the rest of the garrison. There were approximately 100 civilians and 400 servicemen. At this time, we were all taken to prison camp except one person, a German, who had the German flag flying over his property at the time of capture.

Q. Do you recall the name of this German and any other information concerning him?

A. Yes, his name was George Scharf. He had been to the United States but came back to Guam and lived there for a number of years. He supposedly had tried for American citizenship but had been refused. As far as I know he was still a German citizen and when the Japanese took over Guam, he hoisted the German flag.

Q. Can you describe this individual?

A. Scharf was about 45 years of age; had dark hair, ruddy complexion, weighed about 175 pounds; was tall -- approximately 6 feet. He spoke English with a definite German accent.

Q. Do you know of any other Americans who might have additional information regarding Scharf?

A. Possibly the following two people: Chief Boatswain Mate P.S. Saunders, c/o Navy Department, Washington, D.C.; and Phar. Mate 1/c C.W. Atwood who is now in a hospital somewhere in California but who can be contacted through the Navy Department in Washington, D.C.

PROSECUTION EXHIBIT 14

Q. State the places where you were held, the approximate dates and the date of your liberation.

A. I was at Camp Zentsuji from about 15 January until 9 June 1942; from approximately 15 June until 20 June 1945 at Osaka Camp No. 1; from there I was sent to Nagoya Area Prisoner of War Camp 10-B. I was liberated 6 September 1945.

Q. Do you recall anything about a building called "The Old Stadium"?

A. Yes, at Osaka Camp No. 1, there was a building which we called "The Old Stadium." This was used as a hospital. Only the men who were too sick to do any work were sent there and left to die. This building was filthy beyond belief. There were no precautions taken against bombings or strafings except a dugout which was two or three feet deep and this really was not any good.

Q. Do you recall any prisoners of war being sent to "The Old Stadium"?

A. Yes, the Japanese doctor at Osaka Camp No. 1 sent patients, who were suffering from pneumonia, from the camp to "The Old Stadium." I can remember at least three instances when men were taken out of bed, put on a truck loaded with old clothing and junk of all sorts which was being transferred to "The Old Stadium." These men were put in an open truck, during rainy weather, and compelled to sit up on bags of various things. One of these patients survived and his name was S/Sgt. Hopper, U.S. Army, and he lived somewhere in Texas. The other two men died. I can't recall their names but one was a Norwegian and other was an Australian.

Q. Who was this Japanese doctor at Osaka Camp No. 1?

A. I do not know his name, but he was a lieutenant and the senior medical officer. He turned practically everything over to a guard named Condo and backed Condo in everything he did. This medical officer had no interest in the sick men and he never examined them or prescribed medicine for them. Condo prescribed medicine and examined the sick men; ordered sick men to work in all kinds of weather; beat them; disturbed them at night while they were trying to sleep; caused unnecessary trouble in the camp when it could have been avoided and had the authority or took it upon himself to cut rations of the sick men in half.

Q. Can you describe Condo?

A. Yes, he was about 30 years of age; very short -- about 5'4"; weighed approximately 145 pounds; was bowlegged; wore glasses and was very nearsighted. As far as I know, he had no nickname. He was at this camp for about three years and at first, he was a one-star private but at the end of three years, he was a three-star private.

Q. Can you describe the senior medical officer?

A. He was very thin, weighed about 135 pounds; approximately 5'8" tall; had dark short hair and was slightly bald on top and he work glasses. He spoke some English, also German and he claimed to have been educated in Germany and that is the reason we called him "The German Doctor."

Q. Do you know of anyone who might possible know "The German Doctor's" name?

A. I believe that Dr. Jackson, a lieutenant in the Medical Corps of the British Navy would know "The German Doctor's" name, but I do not know how Dr. Jackson could be contacted.

Q. Was there a Japanese doctor at "The Old Stadium"? If so, can you give any information about him?

A. The name of the doctor at "The Old Stadium" was Dr. Maru who was a sergeant major, officer cadet. He was about 33 years old; around 5'7" tall; approximately 130 pounds; wore glasses; was medium dark. He was fairly good as far as treatment of prisoners of war was concerned. This doctor claimed to be suffering with TB and he was hospitalized while on duty at this building. He would be sent to a Japanese military hospital for three months, then returned to duty; then back to the hospital, etc.

Q. Do you know any Americans who may have further information about "The Old Stadium"?

A. Lt. Col. Paul S. Roland whose home address is 52 Riverside Drive, New York City, knows the conditions that existed at "The Old Stadium" and in addition to this, he kept a record of the names of the men who died there. I myself do not know the names of any of the prisoners of war who were there but I do know that at least forty or fifty men died there.

Q. Did the Japanese guards mistreat or beat any of the American Prisoners of War?

A. Yes, I can remember one guard, a first sergeant, especially. This man was nicknamed "The Strafer" and would come out every day with a club or baseball bat and hit everyone over the head or on some other part of the body. At least 400 men out of 600, including the officers, were beaten by "The Strafer" more than once. Every morning he would stand at the gate as the working parties passes through and he would hit all the men over the head with a bamboo pole. He had no reason for doing this just that he seemed to get a thrill out of it. He would laugh and grin as he strafed the men passing by him and that is where he got the name of "The Strafer."

Q. Can you describe "The Strafer"?

A. Yes. He was tall and thin, about 5'11" and 150 pounds. He was a sergeant major; approximately 30 years old; rather hump shouldered and had a great many gold teeth.

Q. Do you know his real name?

A. No, but I believe it would be known by the following men: Chief Boatswain Mate P.S. Saunders, mentioned above; Lt. Col. Paul S. Roland; mentioned above; Lt. Hauptman, U.S. Army Medical Corps, whose address is someplace in New York but the exact street and town could be obtained from Lt. Col. Roland; Phar. Mate 1/c C.W. Atwood, also mentioned above; Com. Callahan, Communications, Seventh Naval District, Miami, Florida.

I believe that the camp interpreter who we had at Osaka would have additional information relative to the Japanese personnel. His name was Haishi. He was a civilian who had worked in the Honolulu Navy Yard for 14 years and spoke very good English. He was married and had 4 children. I asked him several times if he was a citizen of the United States but he never would tell me. However, I am under the impression that he was. Haishi was about 45 years of age; 5'7" tall; weighed approximately 140 pounds and wore glasses.

I would like to add that while on work parties, several of the prisoners were injured by civilians. I do not know the names of any of these civilians as we never had time to find out. They never had any reason to beat the men but sometimes stated that they were not working hard enough. The work parties were in the city and suburbs of Osaka.

Q. Did any other beatings occur at this camp?

A. Yes, one day while some of the prisoners of war were loading Japanese

ships ~~with war material, they went on a sit-down strike.~~ There was not enough guards that day to handle everyone but the next day there were 20 guards and each one was armed with a baseball bat. When the prisoners again refused to work, the Japs beat each man they came in contact with and several of the prisoners were injured so badly that they could hardly walk for two weeks after the incident took place. The guards who came the second day were from other stations and we had never seen them before. None of the prisoners of war were able to describe them because in the confusion they looked just like any other Jap.

Q. Who was the Japanese responsible for these conditions?

A. Col. Murato was in charge of the camp, and he made life miserable for the men. In addition to the things mentioned above, he would hold muster at midnight and send the prisoners to work in all kinds of weather.

Q. Is there anything else you would like to say about this camp?

A. Yes, about three to four months before V-J Day when the Japanese knew they were going to lose the war, they would load their barges with great amounts of nickel, pig iron, aluminum, iron and steel. They would send these boats out and when they were just inside the breakwater, they would sink them.

Q. Do you have anything further which you would like to state?

A. Only that I would be willing to go to Japan to testify at these War Crime trials provided I would not be kept there longer than six weeks.

/s/ Lonnie C. Merritt
Lonnie C. Merritt

State of Florida)
) SS:
County of Palm Beach)

I, Lonnie C. Merritt, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ Lonnie C. Merritt
Lonnie C. Merritt

Subscribed and sworn to before me this 28TH day of March 1946.

(SEAL)
LIDA G. MERRITT
NOTARY PUBLIC
STATE OF FLORIDA AT LARGE

/s/ Lida G. Merritt

Notary Public, State of Florida at Large.
My commission expires March 24, 1949.

CERTIFICATE

I, Vung T. Chen, Agent, Security Intelligence Corps, Fourth Service Command, certify that Lonnie C. Merritt, W/O, 484870 , personally appeared before me on 25 March 1946, and testified concerning War Crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Miami, Florida

Date: 28 March 1946

/s/ Vung T. Chen
Vung T. Chen, Agent
Security Intelligence Corps
Fourth Service Command

CERTIFIED TRUE COPY:
Theodore R. C. King
THEODORE R. C. KING
Major Infantry

STATE OF CALIFORNIA
: ss:
City and County of San Francisco

RESTRICTED Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War — By /s/ E. Checket, Major, Inf.

15

LA MOYNE C. BLEICH, Major, ASN O-381692, 100 Grey Street, Buffalo, New York, being first duly sworn, deposes and says:

I am a member of the American Army Medical Corps, having obtained my medical degree in 1939 from the University of Buffalo Medical School, Buffalo, New York. From 1939 to 1941, I completed my interneship and surgical residence at Buffalo General Hospital, Buffalo, New York, and entered active duty with the army in May 1941. I was a prisoner of war of the Japanese at Oeyama Sub-Camp No. 3, Osaka District, Japan, from 6 August 1944 to 10 September 1945.

Medical information. At this camp our diet was always inadequate in calories, proteins and vitamins. Our basic ration supposedly was to include 700 grams of grain per man per day, with 60 grams of meat or fish and additional vegetables. Actually from August 1944 until July 1945, we received between 600 and 650 grams of grain for the working man and about 500 grams for non-workers, and the meat and fish ration was almost non-existent. In July 1945, the ration of grain was cut to 600 for the workers and 300 for all others; meat and fish rations did not average more than ten to fifteen grams per day, but over long periods we might receive none whatever; vegetables even were not available, but at times we would get some potatos and greens. Just before V-J day, the average weight of the men was between 50 and 55 kilos, extreme cases being lower, including Private Mike Perich who weighed 47 kilos and Private Otaro who weighed 48 kilos. Both of these men were required to work in the open pit nickel mine withing the refinery where the ore was treated, not far from the camp. The Japanese worked our men even though they were not in good physical condition. They worked over 80% of the prisoners of war for work details each day, including camp workers and workers at the mine and refinery. I had come to the camp with about 300 American prisoners of war, and details at the mine and refinery might range up to 100 men. Not a single one of the men who went to the mine and refinery should have worked at all because they were under-nourished, about 10% had obviously evident edema from beri-beri, practically

/s/ LCB

RESTRICTED /s/ E.C.

PROSECUTION EXHIBIT 15

all showed evidence of pelagra, and at least 10% had diarrhea.

The camp commandant advised that the Osaka District had requested that 85% of the men work; actually, such a request was always considered as an order within our camp by the Japanese. These men worked long hours, leaving camp at 7:00 a.m. and returning about 5:00p.m. From August 1944 to Christmas of the same year, the pressure to reach the 85% quota was extremely heavy, but after Christmas 1944 half of the men broke down so much that even the Japanese recognized conditions, and almost 50% of the prisoners were on a Rest or Sick status/ The winter of 1944-45 was extremely severe, with temperatures averaging between 18 degrees and 20 degrees F. From December to March the ground was covered with snow to a depth of about three feet. Men and factory details were always sent out despite inclement weather, even though they were unable to do any work when they got to the mine or factory because of the weather conditions. /s/ LCB Some cases of pneumonia and cold resulted. Yeoman Shelley, USN, American prisoner of war, contracted pneumonia from exposure, probably while walking to and from the mine. He was seriously undernourished, and was a bad sick case for about two weeks. His health was broken, and he was still very sick at the time of liberation.

Our fuel supply was always inadequate. Our barracks had a small stove that could only be fired between 5:00 p.m. and about 7:30 p.m., and occasionally in the mornings. These fires failed to even heat up the barracks.

During the summer, fleas were a continual menace. I have seen our American prisoners of war with at least two bites for every 2" square of surface. No disinfectants were provided, and we could only air our clothes and beat them. The soap supply was inadequate, and although we had a boiler, we seldom had enough fuel to boil the clothes. Because of the fleas, the men did not sleep at night, and this tended to further deteriorate their health.

Medicines were wholly inadequate; we were allowed 500 GRAMS /s/ LCB of asperin per month for all 600 men in camp, including British and other nationals. This was only a small proportion of what was needed as fever cases were frequent. The Japanese gave us adsorbine for diarrhea, between 1000 and 1500 grains per month, but it was not effective and would help only mild cases if given in heavy

/s/ LCB

doses. Because of the inadequacy of medicines, our best treatment was to prescribe Rest. The Japanese medical men, Two Star Private KONDO, however, was extremely arbitrary in refusing to allow men to stay in from the work detail. He would require diarrhea cases, for example, to show him their stools containing excrete so that he could determine whether the case was serious enough. Many times I had to shake thermometers up to get him to allow our men to stay in, as a temperature decline in favor would always be an excuse for KONDO to send such cases back to work. /s/ LCB

KONDO was permanent at the camp from about May 1945 until it closed; was quite bowlegged; wore glasses because he was near sighted; was about 5'2"; 120 lbs; and about 25 years old.

Before him, Sergeant NAKAMA was the Japanese Medical Supervisor. He was a real tyrant. If he thought too many prisoners were on rest, he would hold an arbitrary inspection out of doors, and indoors if the weather was unfavorable. At one time he required T.B. case Pfc Chester McCusker of the 4th Marines to go out on work detail. At least two other men were definitely diagnosed as T.B. cases, including Pvt. Russell G. Chipps of the 60th Coast Artillery, ASN 15017249, and Cpl Norman Bussell, 4th. Marine Corps ASN 290908. Aside from a little American Red Cross food that came through very seldom, it was impossible to get these men extra food. As a result, Pvt. Chipps died September 3, 1945, after V-J day. His nearest relative was his sister, Mrs Lillian Neighbors, R.R. No. 1, Morgantown, West Virginia. Bussell was from Bakersfield, California. /s/ LCB

Nakiama was permanent at the camp from August 1944 to after Christmas 1944. He was about 5'5" tall; 130 to 135 lbs; and between 30 and 35 years of age.

In addition, there was further heckling and sadistic conduct by the ranking sergeant in the camp, ICHI BA. He would call roll call formation at unwarranted hours. He once got me and my five ranking medical non-coms. in on a sudden inspection, and had all of us run around the parade ground, a distance of about one and one eighth or one and one quarter miles after slapping each of us. This kind of thing made treatment of the sick patients difficult. /s/ LCB /s/ LCB

In addition to Pvt. Chipps, there were the following seven other deaths for which the Japanese were largely responsible: Chief Yeoman Robert C. Brittingham, USN, ASN 3415195; he died 13 August 1944 from acute dysentery, about after we arrived at the camp. He had lost 56 pounds under his normal

weight and was very undernourished, even at this late date he could have been saved if there had been available some emetine for treatment of dysentery, but there was none in camp/ /s/ LCB Pfc. Elmar A. Latvala, 4th. Marines, died January 1, 1945 from beri-beri heart. Earlier that day he was called out to work in order to fill the work quota. He was back a little later in a coma, and died that afternoon. He should not have been working at all as he was undernourished; he was really too far gone to save even with medicines. Private P. Kirkley, 60th. Coast Artillery, ASN 16041119, died January 30 1945 from acute dysentery aggravated by extreme malnutrition. Full and adequate diet would probably have saved him. Sgt. Major Cohen, American 4th. Marines ASN 722718 died March 6,1945 from MITCHELL /s/ LCB T.B.; just before his death he weighed 36 kilos. He was extremely undernourished and an adequate diet would probably have saved him. Storekeeper First Class Charles F. McCoy, USN 214-73-72 died 16 May 1946 from peritonitis following /s/ LCB amoebic dysentery. He had extreme malnutrition and simply lacked the strength to fight. With adequate foods and medicines he would probably have lived. Watertender John M. Fenell, USN died July 13,1945 from acute dysentery with peritonitis and extreme malnutrition; he would probably have lived if adequately fed. Private Joseph J. Keller, American 4th Marines died August 16, 1945 from beri-beri, heart failure and chronic dysentery. He could have lived if adequatel fed.

There was only one officer in the camp in charge, 1st. Lt. KOSAKU HAZAMA whose address I obtained as 188 Ebie Jami 3, Fukushima-ku, Osaka, Japan. He was a definitely weak and vacilating character. He left his camp to the noncommissioned officers to run. He frequently asked for letters thanking him for what he had done, and I as well as other officers at the camp, obliged, as we knew it was expedient to do so. The following is a true and exact copy of one of the letters written at his request:

Osaka Prisoner of War Camp
Nippon
March 25, 1945

To: Camp Commandant and Staff

From: POW Officers and supervisors.

On behalf of all the men in this camp we wish to express to the Camp Commandant and his staff our deepest

welfare. We feel most indebted for the unrestricted privilege of taking the men to the Nipponese dentish where they are treated with utmost courtesy and professional skill. We further wish to express our thanks for being allowed to withdraw considerable sums from the Nipponese safe deposit to help defray the cost of this treatment, realizing that such withdrawals are generally not authorized and must have required much effort and intervention on the part of the Camp Commandant and his staff.

In these trying times of war, with materials as scarce or restricted as they are, we feel we have been shown consideration beyond our expectations. We would like to have our feeling of gratitude conveyed to the dentish who has so liberally given of his time and effort.

We beg to remain, your obediant servants,

This letter was obtained under duress, and it, definitely, does not not express my true attitude, as I feel he was responsible for the mistreatment of American prisoners of war at that came.

Prisoners of war at the camp included Lt. Andrew Bryant, Infantry offic. who was there the entire year that I was; and Lt. Colonel William Riordan, 200th. Coast Artillery, formerly stationed in New Mexico. He was there only after April 1945.

After V-J day, Lt. Hazama blamed headquarters for all the poor treatment of prisoners of war. He did not specify what orders he had received from higher headquarters, but simply said that Osaka had ordered everything as it was.

/s/ La Moyne C. Bleich
LA MOYNE C. BLEICH, Major

Subscribed and sworn to before me this 24 day of October 1945

/s/ Albert A. Lee
ALBERT A. LEE
CAPT. SIGNAL CORPS
SUMMARY COURT

Interviewed by Joseph C. Simpson, Agent, SIC.

A CERTIFIED TRUE COPY:

Everett Checket

EVERETT CHECKET
Major, Infantry

RESTRICTED /s/ E.C.

DEATH CERTIFICATE

1. Name and Individual Record Card No. : SMITH, DAVID W. 1547, OSAKA MAIN CAMP
2. Sex: Male
3. Nationality: American
4. Rank and Service: Petty Officer 1st Class
5. Date of birth: 16 February 1917
6. Died thru illness, Suicide, Unnatural Death, Poisoning, etc.: Died thru Illness
7. Name of Illness: Bronchio Pneumonia
8. Date taken ill: 22 February 1944
9. Date and Time of Death: 27 February 1944 16:00
10. Place of death: OSAKA-shi, MINATO-ku, YAMATAYA, MATSUNO-machi, 1 Chome OSAKA POW CAMP MAIN CAMP, NO. 3

Aforementioned is certified: 27 February 1944

Army Medical Officer, 1st Lt. Shoichi NOSE, (seal)
OSAKA POW CAMP

David ROSEMAN, 1st Lieut., Medical Corps.

Volume # 22 29 Page # 998

I hereby certify that this is a true translation of the official document in our files.

Henry T. Omachi

HENRY T. OMACHI
2nd Lt., Inf.
AC Casualty Clearance
Japanese PW Information Bureau

PROSECUTION EXHIBIT
No 16

PROSECUTION EXHIBIT
No. 20

HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE
FICIAL DOCUMENT IN OUR FILES
SHIGEYUKI YAMASHITA
SECRETARY.

DEATH CERTIFICATE and Individual Record Card INFORMATION Bureau

738

1510

1. Name:	氏名	男	American
2. Sex:	男女別	女	Male
3. Nationality:	国籍	階級	Petty Officer 1st Class
4. Rank and Service:	兵種	生年月日	5 March 1917
5. Date of birth:	生年月日	身分	/
6. Died thru illness, Suicide, Unnatural Death, Poisoning, etc.:	病死、自殺、変死、中毒等	他	Died thru illness
7. Name of Illness:	病名	別	Inflamation of Cardiac Valves Uremia; & Vital Disease
8. Date taken ill:	月日	日	25 May 1944
9. Date and time of death:	昭和十九年 月 日 時 分	診断	26 May 1944
10. Place of death:	大阪市港区八幡屋松町一丁目大阪俘虜収容所本所第三収容所		OSAKA-shi, MINATO-ku, MATSUKO-machi 1 Chome OSAKA POW CAMP MAIN CAMP, NO. 3 CAMP

Aforementioned is certified: 26 May 1944

Army Medical Officer, 1st Lt. Shoichi NOSU (seal)
OSAKA POW CAMP

二月二十七日 二十六時〇〇分 死亡

Volume # 39 Page # 948

I hereby certify that this is a true translation of the official document in our files.

HENRY K. OWACHI
2nd Lt., Inf.
AC / asualty Clearance
Japanese PW Information Bureau

(Signed by) DAVID HOCHMAN
/ 1ST LIEUT MEDICAL CORPS

大阪俘虜収容所第三収容所本所
陸軍軍醫中尉 野須 正

大阪市港区八幡屋松町一丁目 大阪俘虜収容所本所第三収容所

スミス・ダビッド 二等兵 米国

俘虜情報局

PROSECUTION EXHIBIT
No. 39

PROSECUTION EXHIBIT
No. 20

DEATH CERTIFICATE

1. Name and Individual Record Card No. : [redacted], Robert W. 1910
2. Sex: Male
3. Nationality: American
4. Rank and Service: Petty Officer 1st Class
5. Date of birth: 5 March 1917
6. Died thru illness, Suicide, Unnatural Death, Poisoning, etc.: Died thru Illness
7. Name of Illness: Inflamation of Cardiac Valves Uremia; & Mitral Disease
8. Date taken ill: 25 May 1944
9. Date and Time of Death: 28 May 1944
10. Place of death: OSAKA-shi, MINATO-ku, NAKANO-machi 1 Chome OSAKA POW CAMP MAIN CAMP, NO. 3 CAMP

Aforementioned is certified: 28 May 1944

Army Medical Officer, 1st Lt. Shoichi NOSU (seal)
OSAKA POW CAMP

Volume # [redacted] Page # [redacted]

I hereby certify that this is a true translation of the official document in our files.

HENRY T. OMACHI
2nd Lt., Inf.
AG Casualty Clearance
Japanese PW Information Bureau

PROSECUTION EXHIBIT
No 19

PROSECUTION EXHIBIT
No. 20

HEREBY CERTIFY THA THIS IS A TRUE COPY OF TH
OFFICIAL DOCUMENT IN OUR FILES
SHIGEYUKI YAMASHITA
SECRETARY,
JAPANESE PW INFORMATION BUREAU.

大本営陸軍部

昭和十七年五月廿一日

大本営陸軍部戦争指導班

一、昭和十七年五月廿一日大本営陸軍部戦争指導班ニ於テ左ノ通リ作成ス

二、昭和十七年五月廿一日ヨリ昭和廿年八月廿日迄ノ間ニ於ケル大本営陸軍部戦争指導班ノ業務ニ関スル一切ノ書類ハ左ノ通リ処置ス

処分

昭和廿年八月廿日午後十時ヨリ翌廿一日午前二時迄ノ間ニ焼却ス

保管

昭和廿年八月廿日午後十時ヨリ翌廿一日午前二時迄ノ間ニ焼却ス

米国

昭和廿年八月廿日午後十時ヨリ翌廿一日午前二時迄ノ間ニ焼却ス

PROSECUTION
EXHIBIT
No. 20

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OFFICIAL DOCUMENT IN OUR FILES
SHIGEYUKI YAMASHITA
SECRETARY,
JAPANESE PW INFORMATION BUREAU.

大本営陸軍部

昭和十八年五月十日

大本営陸軍部戦争指導班ヲシテ別紙ノ通リ大東亜戦争ノ開戦ニ関スル大詔ノ渙発ニ関シ

HEREBY CERTIFY THA THIS IS A TRUE COPY OF Th
OFFICIAL DOCUMENT IN OUR FILES
S. Yamashita
SHIGEYUKI YAMASHITA
SECRETARY,
JAPANESE PW INFORMATION BUREAU.

842

死亡診断書

俘虜情報局

一、氏名又ハ番號 HESS, ROBERT. W (ス・ヘス・ロバート・ダブリュー)
二、男女 ノ 別 男
三、國籍 米國
四、階級 身分 海軍一等兵曹
五、生年月日 西歴一九ノ〇年三月五日生
六、病死、自殺、其ノ他變死、申告ノ別 病死
七、病名 尿毒症兼心臓弁膜症
八、發病年月日 昭和十九年五月三十日
九、死亡年月日 昭和十九年五月三十一日 九時ロ分
十、死亡ノ場所 大阪市港区八幡屋松町一番大阪俘虜収容所第三収容舎
右ニ相違ナシ
昭和十九年五月三十一日
大阪俘虜収容所
陸軍軍醫中尉 野須正一 印

(申米 4009)

JA 39

PROSECUTION
EXHIBIT
No. 20

DEATH CERTIFICATE

1. Name and Individual Record Card No. : [illegible], Robert W. 1320
2. Sex: Male
3. Nationality: American
4. Rank and Service: Petty Officer 1st Class
5. Date of birth: 5 March 1917
6. Died thru illness, Suicide, Unnatural Death, Poisoning, etc.: Died thru Illness
7. Name of Illness: Inflamation of Cardiac Valves Uremia; & Mitral Disease
8. Date taken ill: 25 May 1944
9. Date and Time of Death: 28 May 1944
10. Place of death: OSAKA-shi, MINATO-ku, MATSUNO-machi 1 Chome OSAKA POW CAMP MAIN CAMP, NO. 3 CAMP

Aforementioned is certified: 28 May 1944

Army Medical Officer, 1st Lt. Shoichi NOMI (seal)
OSAKA POW CAMP

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I hereby certify that this is a true translation of the official document in our files.

HENRY T. OMACHI
2nd Lt., Inf.
AC Casualty Clearance
Japanese PW Information Bureau

PROSECUTION EXHIBIT
No 19

PROSECUTION EXHIBIT
No. 20

DEATH CERTIFICATE

1. Name and Individual Record Card No. : SHAVIN, G. B. 9819
2. Sex: Male
3. Nationality: Italian (Two characters revised)
4. Rank and Service: Civilian
5. Date of birth: 26 February 1897
6. Died thru illness, Suicide, Unnatural Death, Poisoning, etc.: Died thru Illness
7. Name of Illness: Acute Pneumonia
8. Date taken ill: 15 January 1945
9. Date and Time of Death: 18 January 1945 4:30 A.M.
10. Place of death: OSAKA-shi, NISHATO-ku, SEIJO-dori, 4 Chome 52 OSAKA PCW CAMP

Aforementioned is certified: 18 January 1945

Army Medical Officer, 1st Lt. Sheield MCW (seal)
OSAKA PCW CAMP

David Hochman, 1st Lt., Medical Corps, U.S. Army

Volume # JA 46 Page # 37

I hereby certify that this is a true translation of the official document in our files.

HENRY T. OHACHI
2nd Lt., Inf.
AC Casualty Clearance
Japanese PW Information Bureau

PROSECUTION EXHIBIT
No. 18

PROSECUTION EXHIBIT
No. 20

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE OFFICIAL DOCUMENT IN OUR FILES

S. Yamashita
SHIGEYUKI YAMASHITA
SECRETARY,
JAPANESE PW INFORMATION BUREAU.

17

21 May 1946

Statement of Kenichi Kondo by Captain Bernard M. Kaye at Interpreter Tai Hiroshima. Interrogation

一	二	三	四	五	六	七	八	九	十
氏名々	別	女	級	月	日	日	月	年	生

6. Are you married
Yes - 5 children - 1 boy - 4 girls

7. Do you wear glasses
Yes - dark horn rimmed glasses. I am near sighted

8. Do you have any gold teeth
Yes some on top and bottom on side rear.

9. Were you in the Japanese Army and if so tell me where from the time of your induction.
On Jan 10 - 1945 I received my conscription notice. Immediately reported to Kure and attached to 67th Unit of Central District. On Jan 15th I was transferred to Kure Military Hospital. On 31st Jan 1945 I was transferred to Osaka P.O.W. Camp No 1 (Konshō). I stayed there until June 7th 1945. I was then transferred to Oeyama P.O.W. Camp branch #3 and stayed there until Sept 8 - 1945. Then I returned back to Kure Military Hospital until Sept 18th 1945. Then I was discharged.

10. At Osaka Main Camp what was the name of the P.O.W. (Non-com) in charge of the prisoners.
Sandhoe who was in the Navy.

11. Do you know him
Yes

PROSECUTION EXHIBIT
No. 20

21 May 1946

Interrogation of Kenichi Kondo by Captain Leonard N. Rand at Sugamo Prison. Interpreter T/5 Takeshima. Interrogation started at 0830.

1. What is your name?
   Kondo, Kenichi

2. How old are you
   [illegible]

3. How tall are you
   5'3"

4. How much do you weigh
   [illegible]

5. Where do you live
   [illegible] Ishi, Kuta-gawa-ku, Yagawa - cho, Shimanoyama

12. Is this him (bringing Chief Bosun Mate Sandore into room)
Yes

13. What was your job at Main Camp in Osaka.
I was medical orderly under Dr. Nosu.

14. What was your rank.
Superior Private.

15. Were you a Superior Private during your entire stay at Osaka.
I was a 2nd Class private when I first got there. I became a 1st Class private in April 1945. I became a Superior private on Oct 15th 1945.

16. Who was the American in charge of the hospital for P.O.W. at Osaka
Capt Ryland and Lt Boehman

17. Who was in actual charge of the dispensary.
Lt Boehman

18. What principly were your duties at OSAKA Main Camp.
I made reports of P.O.W. coming on sick call. I wrote down medicines given to P.O.W. daily. I had charge of the sick book.

19. Who gave permission for a sick P.O.W. to go to Nishihira Hospital.
Dr. Nosu. If I saw that a P.O.W. required hospital attention I got in touch with Dr. Nosu through a senior non-com. in Dr. Nosu office. I have gone to Dr. Nosu direct on several occasions when the non-com wasn't there.

20. Who was present at sick call each morning.
I and Dr. Boehman and P.O.W. medical orderly Egyptian and a Britan named Singer.

21. Was Dr. Nosu there
He came to sick call about once a month. When he came he didn't stay very long. He only examined the P.O.W. when Dr. Boehman requested it.

22. When Dr. Nosu wasn't there who was the Japanese in charge of the Dispensary.
Dr. Haruna

23. Was he present at sick call each morning for the P.O.W.
No

24. Who was the Japanese at sick call each morning for P.O.W.
I was

25. What time was sick call in the morning
From 0730 until 0900

26. Was there any other Japanese medical officer or orderly who was present besides yourself.
No.

27. About how many P.O.W. came on sick call each morning.
Between 10 to 20.

28. What were the usual things they came to be treated for.
Headache, slight cold, stomach trouble, diarrhea.

29. How much medical training have you had.
2 months at Nagoya Military Hospital.

30. Who decided whether a P.O.W. was able to go to work when he came to sick call.
I decided whether a man was able to go to work or not.

31. Did you ever override any of Dr. Neuman's decisions when he told you a man was too sick to go to work.
Yes

32. How did you decide whether a man was well enough to go to work.
I was instructed to let men without fever go to work.
I was told this by Dr. Neau.

33. Who had the final decision as to whether a P.O.W. went to work or not.
I made the final decision.

34. Did you ever hit any P.O.W. at sick call.
No.

35. Did you know an American P.O.W. named Knudsen #258.
Yes

36. Was Knudsen ever injured while he was at the main camp.
I don't remember.

37. Do you know Horsley #328.
Yes.

38. Did you ever hit Horsley.
Yes.

35. When and why.
I don't remember the time exactly. This young English-man was missing from work detail one morning and the report came back to camp that he was missing from the work detail. Merritt & Ginger found him in his quarters and brought him outside of the dispensary. I struck him there. I slapped him accross the face 4 or 5 times. Merritt and Ginger were there with Moseley and me. Then Sanders and Kimura, who was the camp interpreter came there. They informed me why Moseley wasn't out to work. Sanders and Kimura Agwa because I was striking Moseley.

40. Do you know an American P.O.W. named Doherty.
Yes.

41. Did you ever hit Doherty.
I have no recollection.

42. During the summer were the men required to sleep with a blanket around them.
In order not to catch cold I required them to use blankets.

43. Did you ever make an inspection around midnight to see if the order was being carried out.
Yes.

44. What did you do when you found the P.O.W. without a blanket.
I told the man in charge to take care of it.

45. In July-1944 the 4th, did you hit any P.O.W. on your midnight inspection.
I was making my tour around the rooms. All the P.O.W.'s were not asleep yet. I was going around to enforce the rules that all P.O.W.'s had to have a blanket around them. Then someone from the 2nd story yelled BAKA (fool). I struck the person who yelled BAKA. I slapped him. I don't remember his name.

46. Tell me about all the times you hit P.O.W.
I believe there were 7 or 8 times when I struck P.O.W.'s When P.O.W.'s were absent from work without authority I would slap them.

47. Do you know an Italian Sarafin.
Yes

48. What happened to him.
He died.

49. From what
He had a cold and after his fever went down, he had a relapse and died without anyone being aware of it.

Q. Did you send Zarafin out to work while he had a cold. He was confined to quarters due to a high fever, then the fever went down, then he died when no one was aware of it.

51. Do you remember P.O.W. Ross.
I don't recall.

Interrogation Finished at 1600.

I certify that the answers to the foregoing 51 questions are true to the best of my knowledge.

Kenichi Kondo

A TRUE COPY:

F. B. Bouch
F. B. BOUCH
Capt., WAC

RESTRICTED

Classification changed from "SECRET" to "RESTRICTED" by order of Secretary of War

FOR THE WAR CRIMES OFFICE

JAPANESE PRISONER OF WAR INFORMATION BUREAU

CIVILIAN INTERNEE DIVISION

CERTIFICATE

I hereby certify that the official records of the Japanese Prisoner of War Information Bureau indicate that the following named Japanese soldier served at the Prisoner of War Camp located at KYUTO-fu, YODA-gun, YOSHIDA-mura, SUPER, during the period stated below. (The said camp was established on 20 August 1945 as the OSAKA POW CAMP, NO. 12 BRANCH CAMP (OMURA); on August 1945 it was renamed OSAKA POW CAMP, NO. 9 BRANCH CAMP and on September 1945, this camp was terminated.)

NAME	RANK	PERIOD OF SERVICE
KUNO, Kuniki	Medical Sup. Pvt.	9 May 1945 to 15 Aug. 1945

6 June 1946

PROSECUTION EXHIBIT 22

A CERTIFIED TRUE COPY

F. E. BOONE
Captain USA

PROSECUTION EXHIBIT

9/a22

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For The WAR CRIMES OFFICE

Judge Advocate General's Department - War Department

United States of America

* * * \

Q. What unit were you with when captured?
A. I was with the 4th Regiment, U. S. Marines, Philippine Islands.

Q. Did you witness any atrocities or mistreatment of American citizens at any time?
A. Yes.

Q. Do you recall any details concerning the deaths of R.M. ~~S/c Smith and B.M.1/c~~ Hess in February 1944, and a possible connection of Kenichi Kondo, Japanese Medical Orderly with these deaths?
A. No, I do not. I recall a Radioman Smith of the U. S. Navy who slept near me in Cabanatuan Prison Camp No. 3. I got well acquainted with Smith at this camp. I saw him later when I was in Cabanatuan Prison Camp No. 1, but after I left there I never saw him again. It is entirely possible that he was at the Stadium Hospital where I was in February 1944, but I was a bed patient and did not see all the other patients. I do not recall knowing a B.M.1/c Hess. I knew Kenichi Kondo, the Japanese Medical Orderly. He was working at the Stadium Hospital during the entire time I was a patient there; although both he and I were in this hospital in February 1944, it is possible that he was involved in the deaths of these men without my knowing about it, since I was a bed patient. Later Kondo was transferred with me to the hospital in Kobe, where he remained on duty until a few days before I myself was moved from Kobe.

Q. Do you recall any details relative to beatings of Ernie West and Mike Siroka in October 194- by this same Kenichi Kondo?
A. No, I do not. At this time both Kondo and I were at the hospital in Kobe, but here again, I was a bed patient much of the time and did not have the ~~opportunity to observe a big proportion of the things that went on in the hospital~~.

Q. Can you relate any incidents whatsoever in which Kondo was involved ~~as a contributing factor to the death of~~ patients in either of the hospitals?
A. ~~I cannot say definitely that his actions brought about or directly hastened the death of any patient~~ but it is my opinion that certain actions of his had a most undescribable effect on the physical condition of patients in both these hospitals.

Q. What were these actions by Kondo?
A. Beatings that he administered to hospital patients.

Q. Can you describe any specific beating, giving the date, the name of the victim and other details?
A. No; there were many beatings administered by Kondo with many patients involved. The incidents are a bit confused in my mind, particularly with reference to dates. But I can relate a typical incident so that it may be seen how Kondo's beatings were administered.

Q. Please do so.
A. He would come into the hospital ward, walk up to a patient, and start talking rapidly in Japanese. If the patient happened to be a bed patient, Kondo would force him to stand at attention if he could possibly get on his feet. If Kondo suspected that the patient was able to stand but unwilling to do so, he would "cuff him around" in bed until he got up. If Kondo finally became assured that the man could not get up, he would usually go on to some other patient to use as a beating victim. When he had the patient on his feet at attention, he would talk to him rapidly in Japanese ~~apparently cursing him, though most of us, including the victim, could not understand~~ and at the same time he would strike the patient about the head, sometimes with the "heel" of his hand and sometimes with a belt or a bamboo stick. Frequently he would knock patients down while administering these beatings.

Q. Would the patients ever know what they were being beaten for?
A. Yes, sometimes they would know that it was for infraction of some military rule or prescribed routine, (such as being caught with a needle, a pencil, or other writing material) but often they would have no idea of what the beating was for. It seemed to us that sometimes Kondo would come into the hospital with the express idea of finding a man even slightly out of line so he would have an excuse for administering one of these beatings.

Q. Would the beatings be administered even though the victims were obviously very ill men, or very weak?
A. Yes.

Q. Can you describe any other actions of this kind that were typical of Kondo?
A. Yes. Sometimes he would walk into the ward and call the whole group to attention and at his command the men who were well enough to stand would come to attention in a group. Then he would eye the group critically and if he saw one man who was not sufficiently rigid, or not in precisely the proper Japanese posture for attention, he would walk over to him and administer the type of tongue lashing and severe physical beating I have described above.

Q. Were you, yourself, ever beaten by Kondo?
A. Yes. It was Kondo who administered a beating to me and approximately twelve others in May of 1944, when we were ambulatory patients and were detailed to go out and build a Japanese garden, in the arena of the Stadium Hospital. We weren't working fast enough to suit Kondo and he lined us up; then went down the line with a wide leather belt, one trip down and a trip back, giving each of us three blows on the head with the belt, on both the trip down and the trip back.

Q. Do you know of any permanent injuries he inflicted at this time?
A. No.

Q. Did you ever see him strike a medical officer of the Allied Forces?
A. Yes. We had an English medical officer, a Lieutenant Robert Jackson, of the Royal Navy, in the Stadium Hospital, who was beaten occasionally by Kondo. These beatings were not very severe, being delivered by Kondo with the heels of his hands. Reasons for these beatings were (1) Lt. Jackson's "sticking up" for patients; (2) failure to have the ward properly policed; and (3) failure to have the medical records properly "juggled" to suit Kondo.

Q. Were beatings administered by Kondo both at the Stadium Hospital and at the hospital in Kobe?
A. Yes, but he gave fewer and less severe beatings after we got to Kobe because the commanding officer of the hospital there did not approve such severe treatment.

Q. Please describe Kondo.
A. He was about five feet, six inches tall, exceptionally well built, weighing about 165 pounds. He was about twenty-eight years of age. He was clean shaven and had no unusual facial characteristics. I have never heard him speak more than a few words of English. He habitually spoke Japanese to the hospital patients.

Q. Do you hold anyone else jointly responsible with Kondo for his mistreatment of hospital patients?
A. Yes, I hold the commanding officer of the Stadium Hospital definitely responsible because he permitted these things to go on. To what extent he definitely encouraged Kondo to do what he did, I cannot say. This commanding officer's name, I do not know, but his nickname was "The Pig." The commanding officer at the hospital at Kobe was named Ohashi (phonetic). He was a fairly decent person and as I have said before, was apparently responsible for the more moderate treatment we received from Kondo there.

Q. Do you have anything further to add?
A. No.

/s/ Marshall J. Appenzeller
Marshall J. Appenzeller

State of Georgia)
) SS
County of Laurens)

I, Marshall J. Appenzeller, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ Marshall J. Appenzeller
Marshall J. Appenzeller

Subscribed and sworn to before me this 24th day of April 1946.

SEAL:
KATHRYNE YOUNGBLOOD
NOTARY PUBLIC
GEORGIA, STATE AT LARGE

/s/ Kathrynne Youngblood
(Notary Public)

My commission expires:

Notary Public, Georgia, State at Large,
My Commission Expires Oct. 8, 1948.

C E R T I F I C A T E

I, Charles A. Lewis, Captain, O-371313, Foreign Branch, ID, certify that Marshall J. Appenzeller, personally appeared before me on 3 April 1946 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Chicago, Ill.

Date: 10 April, 1946

/s/ Charles A. Lewis
CHARLES A. LEWIS, Captain, Inf.
Chief, Foreign Branch, ID.

A CERTIFIED TRUE COPY

AGNES A. MASHIDLAUSKY
CAPTAIN, WAC

Incomplete

SEAL

No. 2154

MEDICAL CERTIFICATE

Atsushi Ebara 36 years old

Ueno-Ku, Kita Hamachi-gun, Hachigashi-machi, Hongo-cho, 6.
Metropolitan Residency

Name of Illness: Bilateral Pulmonary Infiltration

In view of the above illness, rest and treatment for 3 months are necessary.

I duly certify the above diagnosis.

17 October 1946

Dr. Fujiro Ijichi

Matsumoto Hospital
Ueno-Ku, Kita Hamachi-gun, Hachigashi-machi,
Higashi-cho, 2-761

Seal

Internal Medicine Dept.

Matsumoto Hospital

TRANSLATION BY CERTIFIED
NAME Jack L. Tasui
DATE 25 OCT 1946
J. A. D. N.

DEFENSE EXHIBIT A

STIPULATION AS TO EXPECTED

TESTIMONY OF

ATSUSHI MARUO VCD

United States

Vs.

Kenichi Kondo

Yokohama, Honshu, Japan

24 October 1946.

S T I P U L A T I O N

It is hereby stipulated and agreed by and between the prosecution, the defense and the accused that if Atsushi Maruo, 701, 8 Miyoshi-cho, Mori-gushimachi, Kita Kawauchigun, Osaka-Ku were present, he would testify as follows:

My name is Maruo Atsushi, formerly a 2nd Lt. in the Medical Corps in the Imperial Japanese Army. I served at the Osaka Main Camp from 21 Dec. 1942 through July 1945. During this term while serving directly under Lt. Shoichi Nosu, I was absent from work during the following periods:

1. From the beginning of February 1944 to the end of March, I was sent to Ceyama Prisoner of War Camp by order of Col. Murata. There was an epidemic of some contagious disease, as I recall, and for that reason I was dispatched.

2. From the beginning of July 1945 through 20 October 1945, I was ill and hospitalized in Osaka at three different hospitals. Of the four months, the latter two were spent convalescing at home.

3. From the end of November 1944 to the beginning of March 1945, I was convalescing at home.

I was serving at the Osaka Main Camp as a Medical Officer under 1st Lt. Shoichi Nosu. There was 1st Lt. Miyatake besides myself, who was later followed by Probationary Officer Takeo Amo.

Sick calls were held daily from 0630 - 0700. Those who wanted treatment would report to the dispensary at that time to Lt. Koehman, the Prisoner of War Medical Officer. Lt. Koehman wou-

DEFENSE EXHIBIT

Make the diagnosis and make out a slip as to whether the Prisoner of War should be allowed to rest or not, and also a prescription slip of what medicines should be issued. Common medicines like stomach powders and aspirin were kept on hand by Dr. Hoehman and issued directly. Kondo, the medical orderly, issued the medicine and recorded the diagnoses and medicines issued in the examination (Register) book. If a prescription was ordered by Dr. Hoehman, Kondo issued it to the Prisoner of War then and there. Then the prescription slips would be sent to the Japanese Medical Officer for his stamp of approval.

Kondo's regular hours were from 0800 to 1700, but since he was a medical Corpsman, he came in time to serve at the 0600 - 0700 sick call period.

As for medicine, the full amount of the monthly requisition was never received from the Osaka Army Hospital. I would say it was about 65% to 80% of the requested amount. In the latter part of 1943, (although it was not acute) there was a shortage of medicine from the Army Hospital.

During the middle of 1944, the average issue from the Army Hospital was about 65% of the requisition. Part of this shortage was supplemented by medicine bought locally through the efforts of Sgt. Kobayashi with company funds. The distribution of medicine was done by Kobayashi under orders of Lt. Nosu, who was the final authority in all medical matters. Nosu was the chief Medical Officer of the Osaka Area Prisoner of War Camps. I have seen Kondo being scalded by Nosu five times, but have not seen him being struck. I saw these reprimands in the medical office, since Kondo brought a daily sick call report to Lt. Nosu. Whenever there was an increase of patients, Nosu would reprimand Kondo for being too lenient.

I have heard of the instruction by Lt. Nosu that Prisoners of War with 37.5° C and under were to be sent to work. Nosu received the morning sick report daily from Kondo. I believe it was on these occasions that he flared up and bawled Kondo out for having too many sick Prisoners of War excused from work, and that all Prisoners of War with temperatures under 37.5° C were to be sent to work.

Col. Murata was the camp commandant who held a meeting every morning of the camp personnel. In these meetings, he gave short lectures and instructions on the handling of Prisoners of War and such. In the monthly camp commandant's meetings, he had a graph showing the work production figures of the various sub and dispatched camps. He reproved any commandant whose graph figures fell below the rest of the camp. Murata did not call any conferences of the Medical section only at any time.

Lt. Hochman was the Prisoner of War Medical Officer who took charge of sick calls daily. Since he handled most of the Prisoner of War diagnoses he was in a position to know the most about the Prisoner of War health conditions. I got along very well with him and liked him. There were instances when Kondo came to me or Probationary Officer Amo to have a recheck made on a Prisoner of War as to whether the prisoner in question should be allowed to rest from detail that day or not. (Amo came to Osaka Main Camp at the beginning of September 1944.)

During the period of 21 December 1942 to the beginning of September 1944 when Amo came into camp, I made the most diagnoses among the Japanese medical officers in the main camp, but was not in attendance at daily sick calls. I worked on the average of two times a week at the Main Camp where two hours or less were spent in actual diagnoses of Prisoners of War, after which I did clerical work in the Medical Office of the Main Camp. On any of these occasions when I diagnosed Prisoners of War, Lt. Hochman or Chief Sanders never made any complaints to me about Kondo's behavior toward Prisoners of War.

Leonard Rand
LEONARD RAND Chief Prosecutor

Thomas J. Duffy
THOMAS J. DUFFY Defense Counsel

近藤寅二
KENICHI KONDO Accused.

TRANSLATION BY CERTIFIED
NAME
DATE 22 OCT 1946
J.A.D.N.

DEFENSE EXHIBIT D

OSAKA MAIN CAMP
CHAIN OF COMMAND

COMMANDER OF CAMP Col. MURATA

- **LABOUR SECTION** — 2nd Lt. MATSUMURO AND THE OTHERS.
- **MEDICAL SECTION** — MED. 1st Lt. NOSU (CHIEF OFFICER)
  - PROBATIONAL OFFICER AMO (LIVED IN THE CAMP)
  - MED. 1st Lt. MIYATAKE (TRANSFERRED AUG '44)
    - **MEDICAL OFFICE**
      - M/SGT. OKUYAMA
      - SUP. PVT. HAYAKAWA
      - SUP. PVT. KISHIMURA
      - CPL. HIRAIWA
      - SGT. KOBAYASHI
      - SUP. PVT. HIRAKAWA
      - SUP. PVT. KATO
      - CPL. NOMURA
      - SUP. PVT. YASUFUKU
      - PFC. NAKATSUJI
      - PFC. SHO, AKIRA
    - **EXAMINATION ROOM**
      - CPL. HIRAIWA
      - SUP. PVT. KONDO
      - AND
  - MED. 2nd Lt. MARUO (LIVED IN THE CAMP TILL JULY '44)
- **INTENDANCE SECTION** — INTENDANCE 1st Lt. FUKUNAGA AND THE OTHERS.
- **GENERAL AFFAIRS SECTION** — ADJ. CAP. MORIMOTO AND THE OTHERS.

ONES WHO SERVED IN THE EXAMINATION ROOM AT ONE TIME OR ANOTHER.

NCO.	SOLDIER.
SGT. OTSUDA	SUP. PVT. HAYAKAWA
SGT. NAKAI	SUP. PVT. FUJIHARA
M/SGT. OKUYAMA	SUP. PVT. KASHIWAGI
M/SGT. TSUNEMITO	PFC. HATSUMOTO
CPL. TANABE	SUP. PVT. KATO
CPL. HIRAIWA	PFC. TANAKA
M/SGT. KAWAMURA	PFC. KISHIMURA
	PFC. NAKATSUJI
	PFC. TABATA
	PFC. YAMAMOTO

DEFENSE EXHIBIT C

DIAGNOSIS REPORT

Shoichi Noro

Born on 24 October 1912 (Age: 35)

Legal Address: 7, Minato-machi, Gifu-shi.

Name of Disease: Mental Derangement.

Remarks: 1. He was hospitalized at Matsumura Hospital of Metropolitan Tokyo on 15 May 1946, at present, he is under hospitalization and treatment.

2. Tranquility has been recognized as compared to the time of his hospitalization; however, he is irritable and becomes excited on the slightest provocation. He is suspicious, lacks self-confidence, and has lapses of memory.

Due to above mentioned conditions, it will be impossible for him to testify for a considerable period of time.

11 September 1946.

The diagnosis was as above.

Doctor Shinyuki Matsumura (Seal)

Superintendent of Matsumura Hospital
of Metropolitan Tokyo.

Address: 3-1048, Kamikitazawa-machi,
Setagaya-ku, Tokyo.

TRANSLATION BY CERTIFIED
NAME Masaki C. Kobayashi
DATE 22 OCT 1946
J. A. D. N.

DEFENSE EXHIBIT D

MEDICAL CERTIFICATE

Address: Gifu-shi, Minato-cho, 7

Mase, Shoichi

Date of Birth: 15 October 1912

Name of Sickness: Mental Derangement

Remarks: 1. Admitted to Matsumura Hospital of Metropolitan Tokyo on 15 May 1946, and still under treatment.

2. Although there is no special change in symptoms from the previous diagnosis (dated 11th September), he has gradually fallen into a state of stupor since the beginning of October, is very uncooperative and speaks very little.

In view of the above mentioned conditions, it will be impossible for him to testify for a considerable period of time.

Certification: 16 October 1946

Tokyo-To, Setagaya-ku, Kami-Kitazawa-machi, 1048

Matsumura Hospital of Metropolitan Tokyo

Doctor, Superintendent of Hospital

Tohimura, Sukeyuki

TRANSLATION CERTIFIED BY

NAME Yuzo Miyaoi

DATE 21 OCT 1946

J. A. D. N.

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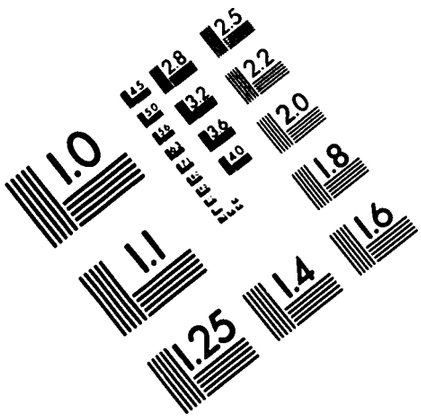

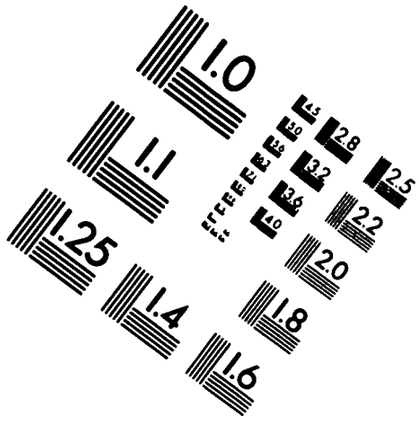

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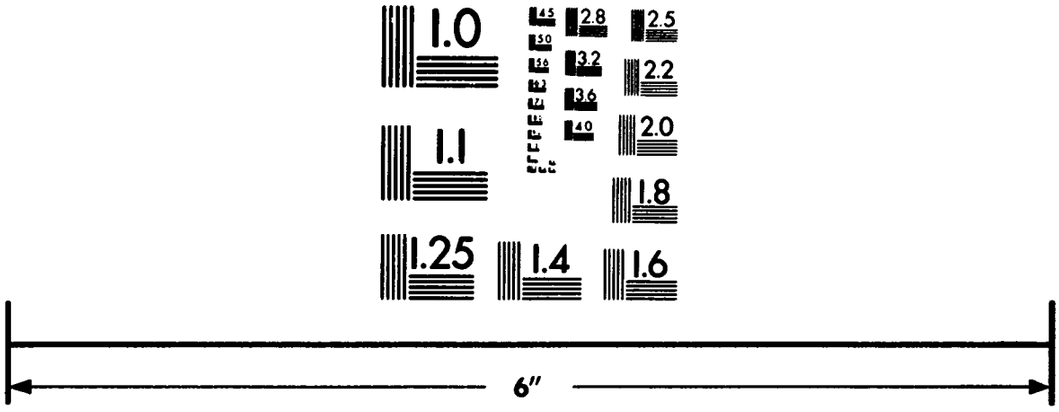

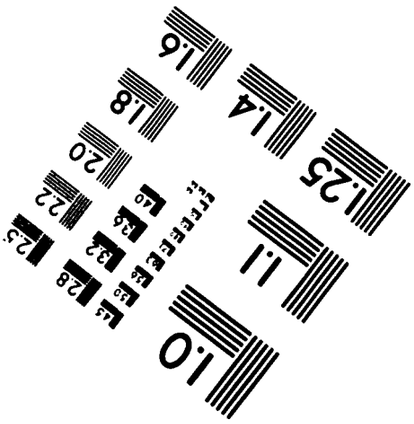

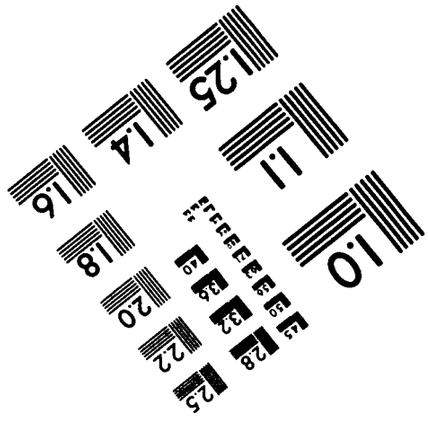

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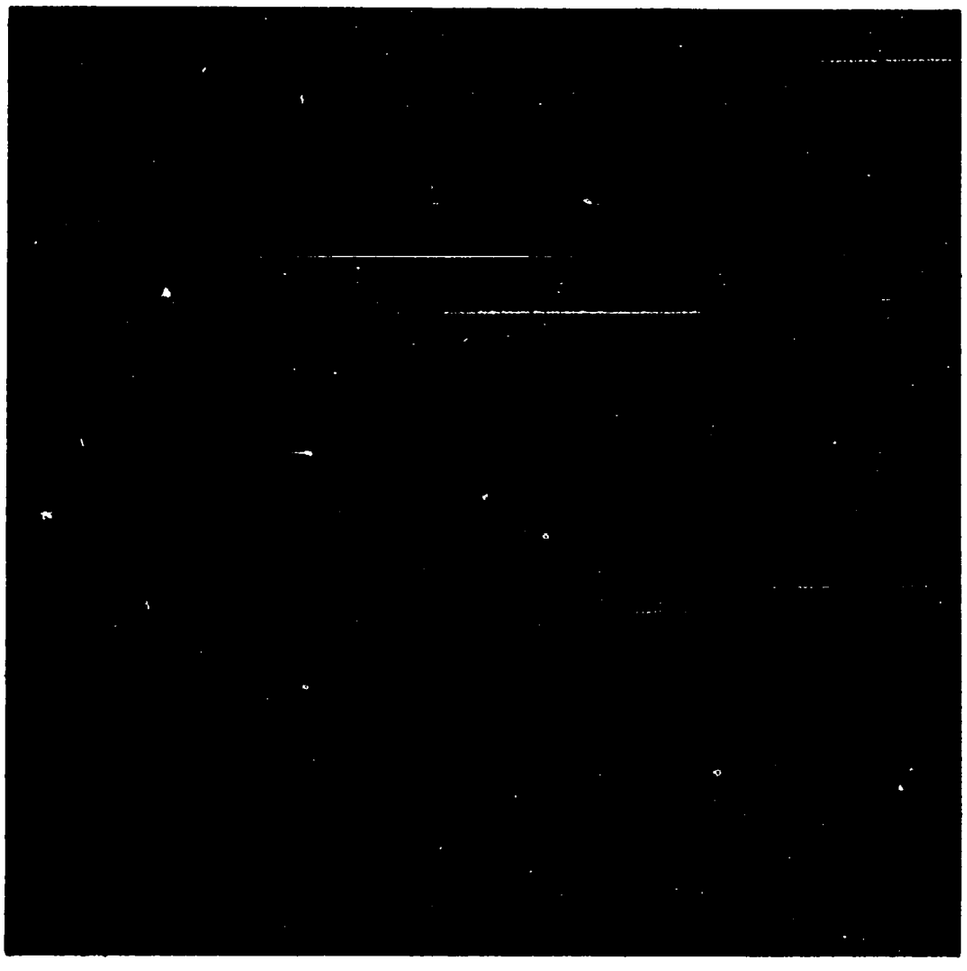

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